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**LEGAL
ANALYSIS
OF
HUMAN
TRAFFICKING
IN**

THAILAND

LIBERTY ASIA
TO PREVENT
HUMAN TRAFFICKING

2017



Legal Gap Analysis of Thailand's Anti-Trafficking Legislation {June 2017}

A collaboration between

LIBERTY ASIA
TO PREVENT
HUMAN TRAFFICKING

Linklaters



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FOREWORD

From 2015-2017, the Thai government issued extensive amendments to their Prevention and Suppression of Human Trafficking Act, their primary legislation on the subject. The amendments introduced greater penalties including death penalty in the most serious cases of human trafficking, granted various authorities power to suspend operating licenses where trafficking is identified and expanded the definition of “forced labor or services” to include debt bondage and withholding of identification documents. Subsequent amendments to other related laws show a similar shift in thinking. The multiple policy changes aimed at improving identification of victims and protecting victims through a more streamlined and expedient judicial process demonstrate a clear commitment to address the issue. In a similar vein, new anti-corruption legislation and renewed efforts by the AMLO also demonstrate a will to take a more holistic approach to combating human trafficking.

While these amendments are very much welcomed and further developments are anticipated, implementation and enforcement of these new laws and policies remains a challenge particularly in rural areas and coastal regions away from the decision-making bodies. Concerns also remain about the use of defamation to restrict the reporting of human trafficking cases and incidents. In particular, the amendments to the Computer Crimes Act as passed by the National Legislative Assembly on 16 December 2016 will broaden the powers and reach of the Ministry of Digital Economy and Society and will grant officials the power to “request a court order to block or destroy any data which is contrary to the stability or good morals of the people, even if the data does not violate any criminal laws.”¹ This may suppress reporting of trafficking cases that involve collusion or corruption of government officials, an important aspect of a holistic counter-trafficking response. It is still difficult to form any other conclusion than that Thailand’s journey to a comprehensive response is just beginning, and perhaps not for the first time.

Thailand’s economic progress and relatively advanced socio-economic status in the region would suggest that more could be done to combat human trafficking in the country. There are good reasons to be optimistic that Thailand is responding to the challenge on a political, administrative and social level, but only a conspicuous long term commitment is likely to turn optimism to confidence.

As this legal gap analysis shows, the existing law, supplemented by the developments during the past two years, do produce sophisticated and thoughtful anti-trafficking legislation, and from a substantive perspective, one could reasonably conclude that the government is closing gaps and making progress. But the gap that still remains unaddressed in a coherent and structured manner is the implementation and enforcement of the anti-trafficking laws. There is a significant role for a range of stakeholders including civil society, the private sector, academics and industry bodies to join efforts in supporting the implementation and enforcement of anti-trafficking laws.

This Legal Gap Analysis is offered to all stakeholders in the Thailand counter-trafficking movement as a comprehensive look at local laws as part of a constructive conversation on the way forward and, as with those who have already given input whom we thank, we welcome all other thoughts and comments.

Thank you to Linklaters, MAST, Nvader and UN-ACT Bangkok for all their collaboration, hard work and dedication in producing this Legal Gap Analysis.

Archana Kotecha
Head of Legal
Liberty Asia

Duncan Jepson
CEO and Founder
Liberty Asia

¹ Computer Crimes Act B.E. 2550 (2007), as amended by the Computer Crimes Act (No.2) B.E.2560 (2017), <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/010/24.PDF>.

EXECUTIVE SUMMARY

1. Thailand's anti-human trafficking legislative framework gives an insight into how the future of human trafficking might look in Thailand. A range of laws are in place, and recent amendments to the key piece of anti-human trafficking legislation are signs of further progress and the more rigorous approach the Thai government has recently taken in relation to human trafficking. By way of example:-
 - penalties are now heavier;
 - protection for whistleblowers has been introduced; and
 - definitions of “exploitation,” “forced labor or services” and the means to commit the crime of human trafficking have been amended to closely mirror the Palermo Protocol definitions and in line with international standards.
2. Despite the progress being made in the legislative framework, the lack of systematic implementation hinders the laws from being translated into reality. For example, the level of protection afforded to victims and in particular those that serve as witnesses through laws is not delivered effectively and consistently.
3. There have also typically been significant issues in relation to the enforcement of anti-human trafficking laws in Thailand. Various reasons have been given for this, including corruption, limited understanding of the laws by those responsible for enforcing them, restrictive policies that serve to curb the breadth of protection offered by the legal framework, lack of training in recognising and identifying victims of trafficking, victim-focused services not being available in the languages of victims and the slow pace at which the justice system moves, both in getting matters to trial, and then finalising the judgment. One of the effects of these laws being poorly enforced and misunderstood is that victims of trafficking are often classified as illegal aliens, and deported as such, without any compensation. Likewise, whilst corporations can be liable for human trafficking offences, there has been only one conviction of a company under the Prevention and Suppression of Human Trafficking Act.
4. Despite these issues, there is reason to be optimistic that the laws will be more effectively enforced in the future. For example, recent implementation by the Thai government have indicated a more victim-focused approach to victim identification, involving the multi-disciplinary teams (“MDTs”), and industry-specific measures, such as in the fishing industry, where new laws require fishing vessels to be fitted with Vessel Monitoring System (VMS). New initiatives such as the Human Trafficking Case Division of the Criminal Court and judicial guidelines requiring human trafficking cases to be dealt with swiftly are further steps in the right direction, as is the new Human Trafficking Criminal Procedure Act, which is intended to aid courts to streamline prosecution practices in human trafficking cases. However, as with many of the new measures, the effectiveness of these initiatives is thus far untested and enforcing all new laws and policies remain a challenge.
5. Human trafficking has been a highly-publicised issue in South-East Asia over the past two years. There has been significant media coverage of the number of persons from Myanmar (including many Rohingya persons) in particular who are seeking to relocate by paying traffickers to take them by boat to Thailand or to destinations such as Malaysia via Thailand. Having previously taken little action against such movements of people, Thailand's recent attempts to more effectively enforce its human trafficking legislation have led to traffickers abandoning boats (and the persons on them) at sea. This has led to calls for greater regional cooperation to find an appropriate solution, however to date there has been little progress in achieving such an outcome.
6. Since the new “predicate offence” relating to trafficking in persons has now been included in the anti-money laundering legislation, the Anti-Money Laundering Office (“AMLO”) has made some significant asset seizures in suspected cases of money laundering in connection with trafficking in persons. In one major case, the Secretary of the AMLO issued an order impounding 121 items valued at approximately THB32 million, in connection with an investigation into trafficking of Rohingya persons from Myanmar to Malaysia via Thailand.² This also led to an arrest of 9 persons involved in the human trafficking operation. The financial investigations, if conducted in parallel with criminal case, can advance the fight against the crime of human trafficking and the order by the Royal Thai Police to make it compulsory to refer all human trafficking cases to the AMLO for parallel financial investigations is a move in the right direction. However, this is one of the areas in which Thailand continues to face significant hurdles due to the predominance of the cash economy, the lack of trained anti-money laundering staff in Thailand, and the high costs associated with installing and maintaining sophisticated anti-money laundering systems.
7. The fight against corruption has become another focus area for the current Thai government. Recognising allegations that corruption is pervasive at all levels of officialdom, and that corruption is one of the most significant barriers to reducing the incidence of human trafficking, new measures are being taken to identify and eradicate corrupt conduct. These include significant amendments to the primary anti-corruption legislation, implementing the new Corruption Criminal Procedure Act, increased funding of the National Anti-Corruption Commission, the introduction of strict liability for corporations who benefit from bribes involving a “related person”, and the implementation of hotlines and email addresses for the reporting of suspected corrupt conduct. However, whether such measures will be successful remains to be seen, and will require a substantial shift in the approach taken to enforcement to date.

2 Thailand's Progress Report on Anti-Human Trafficking Efforts 2015, available at <http://www.mfa.go.th/main/contents/files/media-center-20150430-161606-980768.pdf>.

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SECTION A

HUMAN TRAFFICKING

CHAPTER ONE: LEGISLATIVE FRAMEWORK

Question 1. What is Thailand's specific anti-trafficking legislation?

a. Specific anti-trafficking legislation

Thailand has one of the most comprehensive sets of anti-trafficking laws in Southeast Asia. These laws prohibit all forms of trafficking, impose stringent penalties, and seek to protect the rights of victims of trafficking through both criminal and civil remedies.

The Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008), as amended by the Prevention and Suppression of Human Trafficking (No.2) Act, B.E. 2558 (2015) and the Prevention and Suppression of Human Trafficking (No.3) Act, B.E. 2560 (2017) (together, the “Anti-Trafficking Act”)

The Anti-Trafficking Act of 2008 as amended in 2015 and 2017 is the primary piece of legislation relating to human trafficking in Thailand. The Anti-Trafficking Act identifies the conduct which is considered to be human trafficking activity, and criminalises the act of trafficking, for which the penalty, as amended the latest in 2017, is imprisonment for 4 to 12 years and a fine of THB400,000 to THB1,200,000. If the victim(s) of the trafficking is a person of age between 15-18 year, the penalty shall increase to imprisonment for 6 to 15 years, and fine from THB600,000 to THB1,500,000. The highest penalty of imprisonment for 8 to 20 years and fine for THB800,000 to THB2,000,000 are for the trafficking crime against person under 15 years old or persons with disabilities or mental impairment.³ These penalties apply not only to persons found guilty of trafficking, but also to those involved in human trafficking (e.g. persons supporting or aiding human trafficking activities). Reduced penalties apply to those found guilty of preparing or conspiring to engage in human trafficking.

Under the Anti-Trafficking Act, corporations can also be criminally liable for engaging in human trafficking, provided they satisfy each of the elements of the offence and penalty for the corporations is fine from one to five millions Thai baht⁴. Likewise, criminal liability can attach to its director or manager or an individual who is acting on behalf of the corporation. To date, there has been only one successful conviction under the Anti-Trafficking Act against a company in a forced labour case on fishing boats owned by Boonlap Fishery Limited Partnership. The defendants were sentenced to 14 years imprisonment each and the victims were awarded THB1.9 million in compensation. The Court also fined the company THB600,000 (USD57,176)⁵.

As a result of attempts by the Thai government to further combat human trafficking, the Anti-Trafficking Act was amended in March 2015 and January 2017 to provide additional disincentives to human traffickers. Those amendments include:

1. the introduction of more severe penalties where a victim of human trafficking is severely injured (8 to 20 years imprisonment and a THB800,000 to THB2,000,000 fine)⁶;
2. the introduction of life imprisonment or the death penalty where a victim of human trafficking dies⁷;
3. granting authorities the power to temporarily shut down workplaces and suspend operating licenses of businesses (and vehicles) where human trafficking is identified; the violation of the order for shutting down or operational suspension shall result in the owner or business operator being liable to 6 months' imprisonment or a fine from THB10,000 to THB100,000⁸;
4. the provision of protection and immunity from prosecution to persons who provide information that leads to the discovery of human trafficking, even if the person was involved in the crime at an earlier stage. This includes the removal of civil liability for persons who report suspected human trafficking or arrest persons for suspected human trafficking (both of which were seen as deterrents to making reports/arrests); and
5. offering incentives, including protection from intimidation and immunity from prosecution, to encourage witnesses to human trafficking to provide information to authorities.

There have been two additional accompanying regulations issued by the Office of the Prime Minister⁹ and the Ministry of Social

³ Section 52 of the Anti-Trafficking Act of 2008 (amended in 2015 and 2017).

⁴ Section 53 of the Anti-Trafficking Act of 2008 (amended in 2015 and 2017).

⁵ See case summary, <http://hrdfoundation.org/?p=1807>.

⁶ Section 53/1 (1) of the Anti-Trafficking Act of 2008 (amended in 2015 and 2017).

⁷ Section 53/1 (2) of the Anti-Trafficking Act of 2008 (amended in 2015 and 2017).

⁸ Section 16/2 and 53/2 of the Anti-Trafficking Act of 2008 (amended in 2015 and 2017).

⁹ “The Prime Minister Office Notification on Measures to Prevent and Suppress Human Trafficking in Businesses, Factories, and Vehicles”, published in the Royal Gazette on November 19, 2015, came into force on December 20, 2015.

Development and Human Security¹⁰, effective on 20 and 25 December 2015, respectively. The two regulations are intended to increase the effective implementation of the Anti-Trafficking Act and help implement the measures and criteria for responsible officers to require owners or operators of factories, entertainment facilities, guest houses, hotels, vessels and vehicles to constantly monitor and ensure that their employees are not subject to forced labour or abuses equivalent to human trafficking. Employers are also required by law to provide training for all employees, at least once a year, on what human trafficking means and what rights trafficking victims are entitled to. They must also notify relevant authorities of suspected incidents of human trafficking. Where it is reasonable to believe that human trafficking is taking place, the owner or operator is obliged to facilitate competent officials' entry into their premises, vessels, and/or vehicles to provide assistance to the victims.¹¹

Throughout 2016, the Thai government continued to reform the existing legislation and the amended Anti-Trafficking Act entered into force on 28 January 2017.¹² The new amendment increases the clarity and operational efficiency and key provisions include:

1. Revised definition of "exploitation" to include "practices similar to slavery";
2. Revised definition of "forced labor or services" to include seizure of identification documents and debt bondage;
3. Revised definition of "means" to include "abuse of a position of vulnerability";
4. Increased protection for children under the age of 15¹³; and
5. Increased punishment to include an imprisonment term of up to 12 years and/or a fine of up to THB1,200,000.

NGOs on the ground suggest that the abovementioned amendments are a step in the right direction to ensure that legislation is more reflective of the current realities of exploitation faced by vulnerable individuals.

The Human Trafficking Criminal Procedure Act B.E. 2559 (2016) (the "Trafficking Procedure Act")

The Trafficking Procedure Act came into effect on 25 May 2016. It serves to streamline the prevention and prosecution of human trafficking cases, and also increases the success rate of reaching verdicts in a timely and transparent manner, with better protection of victims and witnesses while giving evidence in court.

The following key provisions significantly enhance the effectiveness of the judicial process when it comes to dealing with human trafficking cases:

1. Trial will use the Inquisitorial System pursuant to the Trafficking Procedure Act and the Rules of the Supreme Court President (see below). Where no provision indicates otherwise, the court shall apply the Criminal Procedural Code, the Civil Procedural Code, and the Provincial Procedural law, *mutatis mutandis*¹⁴;
2. Immediate implementation of pre-trial deposition, trial proceedings, and court hearing via video conference out of the courtroom both, within the country and from foreign countries;
3. There will be more stringent consideration of bail requests in cases of organized crime, influential defendants or officials, or concerns for the safety of the witness. There will be concrete measures to prevent defendants from jumping bail, including the usage of electronic tracking devices;
4. In the event that a defendant jumps bail, the statute of limitations for trafficking offenses shall be extended indefinitely so long as the defendant has jumped bail;
5. In cases where convicted offenders are not imprisoned (either due to fleeing or being on bail during the appeal) and file an appeal, it is their duty to be present at court for the submission of the appeal. Otherwise, the court will reject this appeal;
6. In cases of wrongdoings that involve cruelty, detention, imprisonment, physical abuse, or persecution that are deemed inhumane and serious, the court has the authority to increase restitution for victims as appropriate in a form of punitive damages. Factors to be considered include severity of the damages, defendant's benefits and financial status, as well as the history of prior offenses relating to trafficking in persons¹⁵;

10 "The Ministry of Social Development and Human Security Notification on Designated Rules, Methods, and Condition for the Temporary Shutdown of Businesses and Factory, the Suspension of Business and Factory Permits, and the Temporary Prohibition for Vehicle Using, or Other Necessary Measures to Prevent Further Crime". The Notification was published in the Royal Gazette on November 24, 2015, came into force on December 25, 2015.

11 Thailand's Country Report on Anti-Human Trafficking Response 2015, p.17.

12 The Anti-Trafficking Act of 2008 (amended in 2017), available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/012/19.PDF>.

13 Section 52 para 3 of the Anti-Trafficking Act imposes punishment term of 8 to 20 years imprisonment and fine of THB800,000 to THB2,000,000 for child trafficking under the age of 15. Note that pursuant to Section 56/1 in the case of child trafficking under the age of 15 to carry out extremely dangerous work or service that has an effect on their body or mind, growth, or personal development; or to work in a dangerous environment, or to carry out immoral acts, the punishment term is not more than 4 years imprisonment and fine not more than THB400,000. However, there is an exemption to Section 56/1 where the court may elect not to punish the offender if the act was committed by parent(s) of the child due to intolerable poverty or other reasonable considerations.

14 Section 8 of the Trafficking Procedure Act.

15 Section 14 of the Trafficking Procedure Act.

7. Where the court of first instance dismisses the case, the victim himself (if he is a co-plaintiff to the prosecutor) can appeal to the Division of Human Trafficking of the Court of Appeal within one month after the verdict is read or presumably read. When period of appeal has lapsed, the verdict is final.

Under current regulation, verdict of special courts shall be appealed to the Court of Appeal, not directly to the Supreme Court. All verdicts from the Trafficking Court shall be submitted to the Appellate Court (Human Trafficking Division) within one month from the date of the verdict. If the decision of the Appellate Court is unfavourable, the party has another chance to bring his arguments to the consideration of the Supreme Court. Along with his appeal to the Supreme Court, the appellant has to specify reasons why the Supreme Court should take up his case. If the Supreme Court considers that the appeal raises important matters pursuant to Section 45 of the Trafficking Procedure Act, it shall have the authority to accept the appeal of trafficking cases. In other words, in trafficking cases, the Supreme Court does not accept the appeal of the Appellate Court's decision or order unless there is an important matter as specified in Section 45. Emphasizing that if the Supreme Court denies accepting the appeal, the decision of the Appellate Court is final. Section 45 the 'important matters' that make the Supreme Court has authority to accept the appeal of the Appellate Court's decision are as follows:

1. The argument concerns public interest;
2. When the interpretation of the laws in the Appellate Court's decision or order is conflicted, or contradicts to the Supreme Court precedent;
3. When the Appellate Court gives interpretation of important legal matter that has never been considered by the Supreme Court;
4. When the decision or order of the Appellate Court (Human Trafficking Division) contradicts to final decision of other courts;
5. For the development of legal interpretation;
6. When the punishment of the Appellate Court is capital punishment or life sentence; and
7. When applying the facts to the laws, the outcome of the case may be different or reverse the decision of the Appellate Court.

The Rule of the Supreme Court President on Human Trafficking Criminal Procedure of B.E. 2559 (2016) (“The Rule”)

The Rule is the subordinate law of the Trafficking Procedure Act to which issued by the General Assembly of the Supreme Court in accordance to Section 7, 9, 20, 45(8), and 46 of the Trafficking Procedure Act. The Rule gives details on practical practices and methods on how to handle confidential information appearing in evidence and documents at trial, how to conduct a deposition or witness examination through teleconference technology, and the Supreme Court discretion to accept the petition for its consideration. For remote witness testifying, the court shall apply, *mutatis mutandis*, the Rule of the Supreme Court President on Witness Testimony through Teleconference of B.E. 2556 (2013).

Thailand has also ratified a number of international conventions and bilateral agreements on human trafficking and incorporated the framework of such agreements into Thai legislation (see question 2 below for further information).

b. Other legislation that seeks to prevent human trafficking

In addition to the Anti-Trafficking Act and the Trafficking Procedure Act, Thailand also has other legal tools to fight human trafficking, namely the:

1. Penal Code B.E. 2499 (1956) (the “**Penal Code**”);
2. Child Protection Act B.E. 2546 (2003) (the “**Child Protection Act**”);
3. Prevention and Suppression of Prostitution Act B.E. 2539 (1996) (the “**Prevention and Suppression of Prostitution Act**”);
4. Labour Protection Act B.E. 2541 (1998), No. 2 B.E. 2551 (2008) (the “**Labour Protection Act**”);
5. Immigration Act B.E. 2522 (1979) (the “**Immigration Act**”);
6. Alien Working Act B.E. 2551 (2008) (the “**Alien Working Act**”);
7. Anti-Money Laundering Act (No. 2) B.E. 2551 (2008) (the “**Anti-Money Laundering Act**”);
8. Prevention and Suppression of Transnational Organized Crime Involvement B.E. 2556 (2013);
9. Witness Protection Act B.E. 2546 (2003) (the “**Witness Protection Act**”);

10. The Royal Ordinance on Fisheries B.E. 2558 (2015) (repealing Fisheries Act B.E. 2558 (2015)) and Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E. 2557 (2014) (which does not have the same legal status as an Act, but is enforceable) (together, the “**Fisheries Act**”);
11. The Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with the Employers in the Kingdom B.E. 2559 (2016);
and
12. Beggar Control Act B.E. 2559 (2016) (the “**Beggar Control Act**”).

Please refer to Schedule 1 for a full list of the relevant provisions of the above laws.

Question 2. Where Thailand has ratified regional or international anti-trafficking conventions (including the Palermo Protocol), does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligations?

a. International and Regional Anti-Trafficking Conventions, MOUs and Agreements

Thailand is party to the following international conventions and bilateral agreements regarding human trafficking:

1. Convention on the Rights of the Child (“CRC”);
2. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”);
3. International Covenant on Civil and Political Rights (“ICCPR”);
4. Various International Labour Organisation conventions: the Forced Labour Convention, the Abolition of Forced Labour Convention, the Minimum Age Convention, the Worst Forms of Child Labour Convention, the Occupational Safety and Health Convention, and the Maritime Labor Convention;
5. Memorandum of Understanding on Cooperation against trafficking in persons in the Greater Mekong Sub-Region between the Governments of the Kingdom of Cambodia, the People’s Republic of China, the Lao People’s Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam;
6. Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Lao People’s Democratic Republic on Cooperation to Combat Trafficking in Persons;
7. Memorandum of Understanding Between the Government of the Lao People’s Democratic Republic and the Government of the Kingdom of Thailand on Labour Cooperation;
8. Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (“**Thailand-Cambodia MOU**”);
9. Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers;
10. Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Establishment of Transit and Reception Center for Victims of Trafficking and Other Vulnerable Groups;
11. Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Cooperation to Combat Trafficking in Persons;
12. Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers;
13. Agreement Between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking;
14. ASEAN Convention Against Trafficking in Persons Especially Women and Children (“**ACTIP**”); and
15. Memorandum of Cooperation between the Government of Japan and Thailand concerning the Exchange of Information for the Purpose of Preventing and Combating Trafficking in Persons.

Full details of Thailand’s commitments or obligations under these conventions and agreements, and commentary on Thailand’s compliance is set out in Schedule 2.

The terms of the MOU with China have been concluded and are awaiting signatures from both countries. Further MOUs are currently being negotiated with the governments of Malaysia, the UAE, Brunei Darussalam.

After several years of negotiation, the ACTIP was signed on 21 November 2015. This is a significant step forward for the anti-human trafficking movement in the region, given the need to obtain the consensus of each Member State and the fact that the ACTIP is binding on all 10 ASEAN Member States, some of whom are not signatories to the Palermo Protocol. The objectives of the ACTIP are to prevent and combat trafficking in persons, to ensure just and effective punishment of traffickers, to protect and assist victims of trafficking, and to promote cooperation amongst the Member States in meeting those objectives. The ACTIP entered into force on 8 March 2017 and will be implemented alongside the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children.

The ASEAN Declaration of Human Rights (adopted in November 2012) lays down a principle of freedom from being subjected to human trafficking, and the prior ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (adopted in 2004) sets out

certain commitments by member states to combat trafficking in the ASEAN region. However, unlike the ACTIP, such declarations are not binding, but merely the expression of political views or efforts of ASEAN member states.

Whilst not directly aimed at human trafficking, in 2010 ASEAN established the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children as a consultative intergovernmental body which promotes and protects the human rights and fundamental freedoms of women and children in the ASEAN region. Further, the ASEAN Committee on Migrant Workers is in the process of drafting an agreement aimed at protecting and promoting the rights of migrant workers. This Committee was established following the adoption of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007. Should the terms of the agreement be finalised and adopted, it would be a significant step forward for migrant worker rights in the region.

b. The Palermo Protocol

The Palermo Protocol was made supplementary to the UN Convention against Transnational Organised Crime (the Palermo Convention), and was ratified by Thailand in October 2013.

1. Legislative measures

Under the Palermo Protocol, Thailand has an obligation to adopt such legislative and other measures as may be necessary to establish human trafficking activities as criminal offences.

Whilst the Anti-Trafficking Act does not adopt the precise definition of “trafficking in persons” used in the Palermo Protocol, it arguably adopts a broader definition, as it includes acts of procuring, buying, selling, vending, detaining and confining persons. After the most recent amendments to the Anti-Trafficking Act, the means to commit the crime of human trafficking have been amended to closely mirror the Palermo Protocol definitions by including abuse of a position of vulnerability. This will have the effect of allowing the inclusion of a broader range of factors when considering a case e.g. economic situation, personal characteristics, dependency on exploiters family situation etc.¹⁶

The Anti-Trafficking Act could be said to satisfy Thailand’s obligations under the Palermo Protocol, despite the discrepancies in the precise definitions and the enforcement issues highlighted in response to question 11 below.

2. Assistance to, and protection of, victims

The Palermo Protocol requires Thailand to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking, such as: appropriate housing; counseling and information in a language that the victims of trafficking can understand; medical, psychological and material assistance; and employment, educational and training opportunities. The Palermo Protocol further requires Thailand to endeavour to provide for the physical safety of victims of trafficking while they are in Thailand.

Victims of trafficking will be provided with shelter and other necessities including physical, psycho-social, legal, educational and healthcare assistance. The Anti-Trafficking Act further provides that the Ministry of Social Development and Human Security (“MSDHS”) shall consider providing assistance as appropriate to a victim of trafficking, including food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, return to the country of origin or domicile, and assistance with legal proceedings to claim compensation.

The Anti-Trafficking Act allows victims to claim compensation from offenders for any damage caused by human trafficking. In 2014, the Attorney-General’s office filed 57 claims (in respect of 14 Thai nationals and 43 foreign nationals) for civil compensation on behalf of victims of trafficking, resulting in compensation payments totaling THB8.6 million.¹⁷ A further 53 victims of trafficking received expenses for injury and damages in criminal cases, totaling THB1.59 million.¹⁸ The number of civil compensation claims filed by the Thai government on behalf of victims increased to 77 in 2015, however the compensation payments were lower, totaling THB3.3 million.¹⁹ In 2016, 61 victims filed claims for compensation amounting to THB13,486,671 (USD385,333). Following a trial verdict of seven cases, the court found 15 victims eligible for compensation in which they were compensated amounting to THB1,656,100 (USD47,317). The remaining victims are awaiting trial verdict.²⁰

Although the Anti-Trafficking Act generally satisfies Thailand’s obligations under the Palermo Protocol in relation to assistance to, and protection of, victims of trafficking, in practice victims are not adequately protected because existing victim identification measures fail to identify victims of trafficking in the first place. After the 2015 Report pointed to the lack of consistency when it comes to identifying victims of trafficking, the Human Trafficking Prevention and Suppression Committee has implemented a revised

16 ILO, Indicators of Trafficking of adults for Labour exploitation.

17 US Department of State, Trafficking in Persons Report 2015, p.333.

18 Thailand’s Trafficking in Persons 2014 Country Report 2014, p.76, available at <http://www.mfa.go.th/main/contents/files/media-center-20150311-164953-538433.pdf>.

19 US Department of State, Trafficking in Persons Report 2016, p.367.

20 Thailand’s Country Report on Anti-Human Trafficking Response 2016, p.9.

user-friendly Preliminary Victim Interview Form on 5 January 2016. All relevant agencies including the Multi-disciplinary teams (“MDTs”), labor inspectors, and frontline officers have since consistently used the same form in the victim identification process, resulting in the identification of 824 victims of trafficking in 2016.²¹ The 8-page user-friendly template now provides a clearer definition of human trafficking, guideline questions for interviewing victims, and information on relevant anti-human trafficking laws.

In some areas, the MDTs has proven to be very effective, whilst in other areas, some law enforcement officers assert that physical detention, kidnapping, confinement, or extreme deception is an essential element of human trafficking, and do not recognise alternative forms of coercion such as debt bondage or manipulation of undocumented migrants’ fear of deportation. The latter approach leads to victims of trafficking not being identified, and highlights the need for a consistently high level of potential victim screening. The success and consistency lies with the fact that authorities operating in the MDTs must be equipped with extensive knowledge and understanding of the Anti-Trafficking Act as well as knowledge of their own responsibility and other official’s distinct expertise which enable them to detect various forms of offences and violations of rights in accordance with the laws and regulations. With a comprehensive interagency guideline as well as training for MDTs, the victim identification system can become much more consistent and effective provided that its implementation remains consistent.

An additional problem in this respect is the restrictive 24 hours’ custody and screening time. In the past, NGOs on the ground particularly those working with unaccompanied migrant children have expressed concern over the 24-hour screening window being rigidly applied at the expense of basic victim entitlements enshrined in the law. For example, the right to an interpreter, and access to a social worker.

The Thai government recently implemented across the country and across relevant agencies a new universal set of Guidelines to Enhance Efficiency of Human Trafficking Victim Identification (the “**Guideline to Enhance Efficiency**”) on 21 December 2016 after consultation with concerned agencies from both the public sector and civil society. This Guideline to Enhance Efficiency aims to clarify and provide practical direction to resolve any possible challenge in various steps of the processes – from preliminary screening to victim identification to referral of cases and addresses a number of deficiencies in the current system that have direct impact on the effectiveness of law enforcement, including the removal of the 24-hour deadline that previously existed and resulted in officials having to make a quick decision on whether or not someone is a victim of trafficking.

In addition, the Guideline to Enhance Efficiency recognizes the ineffectiveness of the immediate victim identification and the need for a recovery and reflection period to allow victims to rehabilitate and provide truthful information. In particular in cases of conflicting opinions or where victims await the identification process, the Guideline to Enhance Efficiency provides that appropriate accommodation should be arranged for victims while the relevant officials conduct further investigation. In cases where it is concluded that the person may be a potential victim of trafficking, further investigation must be conducted within 24 hours with the possible extension of seven days. The implementation of a recovery and reflection period are very welcome and should actually have built in realistic timelines so as to be more effective.

A further concern expressed by NGOs working with unaccompanied children was the requirement for a perpetrator to be “caught in the act” of trafficking a child. If the perpetrator is not caught on the premises, the identification of the child as a victim of trafficking is seriously impaired. In the law and in existing policies, there is no requirement for the trafficker to be apprehended on the scene for the purposes of a positive identification of a child as a victim. This practice illustrates the chasm between legal protections made available by the law and the implementation of the laws, often to the detriment of those they are designed to protect. Maintaining the 24 hour period for further investigation is not likely to be useful when it comes to curbing malpractices that stem from the need for law enforcement to conclude investigations within such a short timeframe.

Assistance and protection of victims is expected to be more comprehensive as the human trafficking database system on the prevention and suppression of human trafficking is now fully operational. Concerned agencies, including Royal Thai Police, DSI, Office of the Attorney-General, and MSDHS, have participated to update the record of prosecution and victim support information since the Anti-trafficking law first entered into force in 2008. In 2017, the Court of Justice is expected to link the judgment delivery of these cases to complete the database system.

3. Prevention Measures

Under the Palermo Protocol, Thailand has an obligation to establish comprehensive policies, programs and other measures to prevent and combat trafficking, and to protect victims of trafficking, especially women and children, from re-victimisation. Moreover, Thailand is required to endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat human trafficking.

In 2016, Thailand made efforts to strengthen the standards of the preventive system and set key objectives for preventing human and labor trafficking through the adoption of the National Master Plan for Labour Management (2017-2021). The National Master Plan aims to set policy direction with the main objective of creating fair labor standards for all workers. This includes ensuring that all documented migrant workers in Thailand have legal status, putting in place a better system of labor inspections, eliminating any legal loopholes in the labor laws.

21 Thailand’s Country Report on Anti-Human Trafficking Response 2016, p.85.

In FY 2016 (1 October 2015 – 30 September 2016), the Thai government continued to support its anti-human trafficking priorities by allocating a total budget of THB2,590.28 million (USD74 million) for human trafficking and migrant labor issues, which then rose for FY 2017 to THB3,208.91 million (USD91.68 million).²² The budget allocated specifically for prevention rose from THB515.36 million (USD14.7 million) in FY 2016 to THB584.41 million (USD16.7 million) in FY 2017, an increase of 12.96 percent. This reflects the ongoing commitment to enhance prevention programs, such as improved labor management system, along with legal reforms and programs to reduce vulnerabilities for migrant workers, women and children, and regularize the movement of migrant workers to come and work legally in Thailand in order to prevent exploitation by recruitment agencies or brokers.

With regard to information and mass media campaigns, the Ministry of Labor in 2016 disseminated information on child labor protection, worst forms of child labor, employer and worker rights (in 4 different languages), debt bondage and forced labor, and migrant worker rights through various channels as newspapers, social media, information pamphlets, and press releases. The Department of Fisheries (DOF) has also produced pamphlets in six languages (Thai, English, Lao, Myanmar, Cambodian, and Vietnamese) to disseminate to migrant workers to help them to remember the type of fishing vessel they work for, which will prove to be useful information if situations of abuse, exploitation, or misconduct may arise.

One setback in Thailand's efforts was the lack of freedom of human trafficking reporting, which is largely inconsistent with Thailand's obligations under the Palermo Protocol in relation to prevention. The Thai Navy's defamation lawsuit in 2013 against 2 journalists who reported the potential involvement of the Thai Navy in human trafficking crimes, and the Thai Prime Minister's statements discouraging the media from reporting trafficking crimes in March 2015²³ do not reflect the principle of press freedom that Thailand upholds. Although the Court of Justice dismissed the lawsuit, ruling that the Computer Crimes Act of 2007 could not be used to prosecute charges of defamation in this case, the amendments to this Act, as passed by the National Legislative Assembly on 16 December 2016, appears to move in a different direction. The new Computer Crimes Act,²⁴ effective later this year, will broaden the powers and reach of the Ministry of Digital Economy and Society and will grant officials to request a court order to block or destroy any data which is contrary to the stability or good morals of the people, even if the data does not violate any criminal laws. This provision can continue to be used to silence any critiques of the government.

Although the introduction of "whistleblowers" protection as part of the 2015 amendments to the Anti-Trafficking Act should have prevented a similar situation to the Thai Navy defamation case, Thai authorities have reportedly threatened Police Major General Paween Pongsirin, the chief investigator of the case involving government complicity in Rohingya boat people trafficked via trafficking camps on the Thai/Malaysia border, with criminal defamation charges after exposing high-level government involvement in human trafficking.²⁵ Witnesses in this case were also under threat not to testify against officials of Thailand's Army, Navy, Police, and the Internal Security Operation Command.

22 Thailand's Country Report on Anti-Human Trafficking Response 2016, p. 2.

23 "TIP Report: A harsh picture", Bangkok Post, 29 July 2015, <http://www.bangkokpost.com/print/637492>.

24 See note 1.

25 "Thailand considers defamation case against human trafficking investigator", The Guardian, 11 December 2015, [http://www.theguardian.com/world/2015/dec/11/thailand-considers-defamation-case-against-human-trafficking-investigator?ct=\(E_U_Maintain_Pressure_on_THA_2_23_2016\)&mc_cid=80c000d317&mc_eid=e39ea80c14](http://www.theguardian.com/world/2015/dec/11/thailand-considers-defamation-case-against-human-trafficking-investigator?ct=(E_U_Maintain_Pressure_on_THA_2_23_2016)&mc_cid=80c000d317&mc_eid=e39ea80c14).

Question 3. What legislation exists to cover labour laws {e.g. protection of workers' rights, domestic workers}? Are migrant workers – both legal and illegal – covered by such legislation?

a. Labour laws generally

There are a number of labour laws in Thailand, all of which apply to migrant workers, both illegal and legal:

1. Labour Protection Act

This legislation sets out minimum protections for employees, and the rights and obligations of employers and employees in connection with discrimination on grounds of race, nationality or sex. The minimum protections cover wages, compensation, leave, holiday and overtime pay, employment of women and children, work health and safety, and complaint procedures.

There are additional specific requirements which apply to employees in certain industries, such as agriculture, fishery, and housekeeping, and in some respects employees in these industries may have fewer protections than those provided under the Labour Protection Act.

In a 2010 case, two defendants were charged with offences under the Labour Protection Act, the Penal Code, and the now repealed Measures in Preventing and Suppressing Trafficking in Women and Children Act B.E. 2540 (1997). The defendants had received and detained over 200 illegal migrants from Myanmar for work in a shrimp processing factory over a 5 year period, and were sentenced to 5 and 8 years' imprisonment respectively.²⁶

The amendment to the Labor Protection Act was passed by the National Legislative Assembly on 17 November 2016 and published in the Royal Thai Government Gazette on 24 January 2017. An important part of the amendment concerns child protection, increasing punishments that deal with child labor violations. The hiring of children under 18 years of age to work in hazardous conditions, i.e., metal works, work involving chemical and poisonous substances, slaughterhouse, pub, and bar, shall subject to a fine of THB400,000 – THB800,000 per child hired and/or imprisonment for not over 2 years.

2. The Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with the Employers in the Kingdom B.E. 2559 (2016)

This law entered into force on 16 August 2016 and aims to help improve Thailand's management of recruitment agencies and prevent migrant workers from being exploited and becoming victims of forced labor or debt bondage. The Ordinance addresses trafficking in persons loopholes and provide additional protection to migrant workers by providing oversight of recruitment process, imposing stringent punishment for illegal recruitment practices, regulating recruitment fees to prevent debt bondage and improving workers' well-being and welfare.

3. Compensation Fund Act B.E. 2537 (1994)

The purpose of this law is to protect and compensate workers in cases of injury, sickness, disappearance, or death occurring during their employment.

4. Labour Relations Act B.E. 2518 (1975)

This legislation regulates conflicts arising between employers and employees by establishing procedures for labour negotiations.

5. Social Security Act B.E. 2533 (1990), No. 3 B.E. 2542 (1999)

Seven kinds of compensation benefits are prescribed by this law: non-work-related injury or sickness of employees, maternity, disability, death, child welfare, old age and unemployment. The fund from which these benefits are paid consists of contributions from three parties: the government, employers, and employees.

6. Establishment of Labour Court and Labour Court Procedure Act B.E. 2522 (1979)

This legislation establishes specialised labour courts and specific time- and fee-saving procedures which focus on reconciliation between employers and employees.

7. Occupational Safety, Health and Environment Act B.E. 2554 (2011) (“OSHE Act”)

The OSHE Act requires employers to provide and keep safe hygienic working conditions and environment, including preventing harm to employees' lives, physique, mentality and health.

8. Alien Working Act B.E. 2551 (2008)

²⁶ See case summary, https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/tha/2010/weerapong_saelee_anoma_siriyoowattananon.html.

This legislation sets out the requirements that are applicable to non-Thai citizens wishing to work in Thailand.

9. Recruitment and Job Seekers Protection Act B.E. 2528 (1985)

This legislation aims to protect workers and job seekers wishing to work abroad from exploitation by regulating recruitment companies. Whilst it has previously been considered to only apply to Thai citizens wishing to work abroad, one opinion from a Thai Government judiciary interpretive body has stated that it also applies to inbound migrant workers, a potentially significant increase in protection for inbound migrant workers.

10. State Enterprise Labour Relations Act B.E. 2543 (2000)

The purpose of this legislation is to regulate the benefits and labour relations standards between State Enterprises' management and employees, including establishing collective bargaining rights.

11. Skill Development Promotion Act B.E. 2545 (2002)

This legislation aims to promote and support training in occupational skills in order to upgrade the skill levels of employees in Thailand. Subject to some exceptions, companies with more than 100 employees must provide occupational skills training to at least 50% of their employees, or make a contribution to the Labour Skill Development Fund, which funds the promotion of skills training.

12. Provident Fund Act B.E. 2530 (1987) and Provident Fund Act (No. 4) B.E. 2558 (2015)

Employees and employers are required to make contributions to provident funds in order to provide for an employee's security in retirement. Contributions can range between 2-15% for both employee and employer.

13. Factory Act B.E. 2535 (1992)

This legislation contains provisions on engagement in a factory business, supervision of the factory, and penalties.

14. The Royal Ordinance Concerning Migrant Worker Management B.E...

The Ordinance is currently under the review of the Office of the Council of State. Then, the revised version shall be approved again by the Cabinet before being publicized in the Royal Thai Government Gazette to enter into force. The Ordinance is expected to consolidate all rules applied to migrant workers in every employment sector including the fisheries sector.

Despite these laws purporting to protect the fundamental rights of workers and migrant workers, Thailand continues to encounter significant forced labour problem in various industries that employ a large number of migrant workers.

From the time of being downgraded to Tier 3 ranking in 2014, the government announced a range of measures in relation to forced labour, child labour, and human trafficking.²⁷ Those measures included: tackling the problem of forced child labour, including a proposal to increase the minimum age of workers from 16 to 18; increasing confidence among Thai shrimp and seafood buyers by increasing cooperation between government departments and the International Labour Organization to ensure that employers comply with good labour practices; and setting up a system of monitoring consumer confidence. In 2014, 1,316 workplaces were charged with violations of labour laws following inspections.²⁸ In 2016, the government found unlawful practices in nine of the 202 labor recruitment agencies that facilitate overseas and domestic employment. For these cases, the government suspended the licenses of three agencies and filed criminal charges against six agencies. It further initiated prosecutions against 108 illegal brokers under the Employment and Job-Seeker Protection Act in 91 cases involving 187 Thai laborers.²⁹ Another important measure included the clarification of the definitions of key terms related to "forced labour" and "bonded labour" to ensure that all officials have a shared understanding of these terms and how to correctly distinguish between labour trafficking and other labour violations. The Ministry of Labour also issued two new guidelines and begun training officials on these clarified definitions.³⁰

Another key measure to reduce the incidence of forced labour is the introduction of One Stop Service Centers ("OSS centers"). OSS centers issue temporary work permits to migrant workers, and are responsible for managing all migrant workers to ensure they have legal status and hence being protected by the laws and entitled to employment rights and assistance. The first centre was set up in mid-2014, and more than 80 centres are now operating nationwide, with plans to expand, especially in the country's coastal provinces. As of 30 November 2016, there are 2,665,704 documented migrant workers present in Thailand of which 1,178,678 workers were registered at OSS centers.³¹ Migrant workers who have registered at OSS centers are permitted to stay and work in the country until 31 March 2018 in which they will go through the nationality verification process where they will be able to extend their work and stay permit for another 2 years. However, it must be noted that some MDTs and labor inspectors have assumed a worker with a work permit could not be a trafficking victim

27 See Joint Press briefing by the Ministry of Foreign Affairs, Ministry of Labor and Thai Frozen Foods Association on the situation on human trafficking and forced labour in Thailand, <http://www.mfa.go.th/main/en/media-center/14/47215-Joint-press-briefing-by-the-Ministry-of-Foreign-Af.html>.

28 <http://www2.thaiembassy.be/wp-content/uploads/2015/03/2014-significant-efforts-highlight-as-of-4-march-2015.pdf>.

29 US Department of State, Trafficking in Persons Report 2017, p.391.

30 Thailand's Country Report on Anti-Human Trafficking Responses 2015, p.7, available at http://ccpl.mol.go.th/ewt_dl_link.php?nid=86&filename=index.

31 Thailand's Country Report on Anti-Human Trafficking Response 2016, p.179.

or be working under exploitive situations, leading to the misidentification of victims.³² Thailand's Country Report on Anti-Human Trafficking Responses 2016 noted that by 2020, all migrant workers in Thailand are expected to be employed through MOUs/Government-to-Government channels and recruited by authorized employment agencies or employees.

In addition, a range of measures have been implemented that seek to reduce the exploitation of undocumented or illegal migrant workers. These include:

1. Reducing the cost of registering as a migrant worker. The high cost of registering as a migrant worker was considered to be a deterrent to registration. However, being unregistered made migrant workers vulnerable to being intimidated into exploitative work by traffickers. By reducing the cost of registration, it is hoped that more migrant workers will become registered and be eligible for the benefits of such, including being paid a minimum wage, having access to the healthcare and banking systems, and being able to move openly and freely across borders. The costs for migrant worker employment through MOUs/Government-to-Government channels have been significantly reduced while the process has been streamlined. Currently, the process only takes 17 days from previously 25 days. Fees are reduced from THB5,400 (USD154) to THB1,900 (USD54).³³ The new Ordinance on Bringing Migrant Workers also designates that recruitment fees and other expenses, such as transportation, accommodation, and food will be solely covered by the employer. Properly enforced, these provisions are likely to lead to a significant decline in prevalence of debt bondage amongst foreign migrant workers;
2. Relaxing visa requirements for migrant workers. Under the previous system, migrant workers were granted a work visa for 2 years, which could be renewed for a further 2 years. After that 4 year period, migrant workers were required to return to their home country for a period of 3 years before being able to apply for a further work visa. Many of those workers were unable to obtain employment on return to their home country, and so returned to Thailand to work illegally. The government planned to extend the length of their work permits to 2 years, renewable for up to 8 years (2+2+2+2) and the 3 year waiting period has now been reduced to 30 days, so as to incentivise migrant workers to comply with the rules;
3. Creating Special Economic Zones in areas that have traditionally high populations of migrant workers. Migrant workers will be able to obtain a border pass for THB100 which allows them to work legally on a daily or seasonal basis. These workers will not be required to have a passport, do not need to register as migrant workers, and will be entitled to a minimum wage;
4. Increasing penalties (as explained above) and frequency of inspections. The Department of Labor Protection and Welfare (DPLW) conducted 1,346 labor inspections at high-risk workplaces, including sugarcane farms, garment factories, shrimp and fish processing facilities, pig farms, and poultry farms in 2016, finding 136 violations, taking three legal actions, and collecting fines in the amount of THB 45,000 (USD\$1,260)³⁴; and
5. Granting Thai nationality to 19,340 stateless persons, ethnic minorities and highland people between 2013-2015, enabling them to seek employment without fear of being exploited or becoming victims of trafficking.³⁵ In 2016, the Ministry of Interior (MOI) granted Thai citizenship to 8,145 formerly stateless people.³⁶ In addition, the government approved two regulations to provide legal residency to non-Thai children born in Thailand and to grant citizenship to stateless or abandoned children.³⁷

The purpose of these measures is to make it more costly for employers to employ undocumented or illegal workers than to employ registered migrant workers.

b. The fishing industry

In addition to the downgrade to a Tier 3 ranking in the 2014 Report, articles³⁸ alleging slave labour in the Thai seafood industry have been published, and the European Commission issued Thailand an initial 'yellow card' in April 2015 for "not taking sufficient measures in the international fight against illegal fishing ("IUU")"³⁹ and extended the yellow card designation for another six months, set to expire in April 2016. The EU's yellow card designation has brought about significant legal reforms and it has been advised to maintain pressure for the next six months to ensure that effective enforcement of these new regulations will be achieved.⁴⁰ As at July 2016, the yellow card remains in place, whilst the EU continues to demand further progress from Thailand.⁴¹

32 US Department of State, Trafficking in Persons Report 2017, p.391.

33 Thailand's Country Report on Anti-Human Trafficking Response 2016, p.180.

34 US Department of State, Trafficking in Persons Report 2017, p.391.

35 Thailand's Country Report on Anti-Human Trafficking Responses 2015, p.38.

36 Thailand's Country Report on Anti-Human Trafficking Responses 2016, p.94.

37 US Department of State, Trafficking in Persons Report 2017, p.391.

38 See, for example: "Thailand's seafood industry: a case of state-sanctioned slavery?", <http://www.theguardian.com/global-development/2014/jun/10/thailand-seafood-industry-state-sanctioned-slavery>; and "Revealed: Asian slave labour producing prawns for supermarkets in US, UK", <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>.

39 "EU acts on illegal fishing: Yellow card issued to Thailand with South Korea & Philippines are cleared", http://europa.eu/rapid/press-release_IP-15-4806_en.htm.

40 Joint Letter on Thailand to EU Commissioner for Fisheries, Maritime Affairs and Environment, <https://www.hrw.org/news/2016/02/25/joint-letter-thailand-eu-commissioner-fisheries-maritime-affairs-and-environment>.

41 "EU wants reduction in trawler numbers", <http://www.bangkokpost.com/news/general/1044425/eu-wants-reduction-in-trawler-numbers>.

The prospect of bans on the importation of Thai fish and shrimp into the United States has also been raised recently, with the passage of the Trade Facilitation and Trade Enforcement Act in February 2016. Customs and Border Protection can seize shipments of goods where forced labour is suspected, and importers can no longer rely on the “consumptive demand” exception, which allowed the importation regardless of how goods were produced where there was not sufficient supply to meet domestic demand. Only two “withhold release” orders (preventing goods from entering the United States) have been made as of May 2016 on grounds that the goods were suspected of having been produced by forced labour, and neither related to Thai fish or shrimp producers.

Over the past two years, Thailand has introduced a range of measures in an effort to combat illegal fishing and human trafficking in the fishing industry including, in late 2015, the new Fisheries Act.⁴² The Fisheries Act has the objectives of eliminating illegal, unreported and unregulated fishing, and eliminating all forms of forced labour in this sector, both on fishing vessels and in seafood processing factories.

The significant changes in 2016, among others, include an interagency integrated database and computerized inspections, along with strict law enforcement to tackle issues of human trafficking in the fishery sector, the Monitoring Control and Surveillance (MCS) system comprising of the Vessel Monitoring System (VMS) in all fishing vessels of 30 gross tonnages or above to monitor the location and ensure that all workers can be traced and accounted for, labour inspections by multi-disciplinary teams at 32 Port-In-Port-Out (PIPO) Centers and 19 additional Forward Inspection Points (FIPs). PIPO Centers and FIPs perform inspections at port, at sea, and on land to ensure that fishing vessels are operating legally and workers have contracts, work permits, and identity documents.⁴³ In 2016 the multidisciplinary teams of the Command Center for Combating Illegal Fishing (CCCIF) inspected 415 on-land seafood processing workplaces and found 66 cases of illegal employment from October to November 2016. In addition, the CCCIF found 35 seafood processing factories violated employment laws or the Fisheries Act and 64 factories in violation of labor protection laws.⁴⁴ It is unclear how many of these cases and violations had direct ties to trafficking.

Moreover, a system requiring compulsory secondary identification documents were introduced for both Thai and migrant workers, comprising of a Seaman Book from Marine Department (for Thai workers) and a Sea Book from Department of Fisheries (for migrant workers). These documents are used for inspection and identification of persons by conducting pre-screening interviews with migrant workers using Seafarer Interview Form by MSDHS and MOL to identify any potential victims of human trafficking and forced labour during the sea book issuance process. An issue in the fishing industry is that interviews were conducted in front of ship captains, or ship captains acted as interpreters, which hindered workers from speaking freely and may have led to misidentification of trafficking victims. Others reported that the inspection process often only consisted of a review of documents, and in some cases, inspectors reportedly did not board vessels or speak to crew members.⁴⁵

Tough new penalties apply in respect of illegal workers found in seafood processing factories: fines of up to THB800,000 per illegal worker found, and potentially closure of the factory. The MOL issued additional Ministerial Regulations prohibiting employing workers under 18 years of age on 14 January 2016, setting a minimum age of 18 years for employees at the seafood factories under the Factory Act B.E. 2535 (1992) and seafood processing factories under the Royal Ordinance on Fisheries B.E. 2558 (2015). The measures set out above will also apply to employers in the fishing industry. It is anticipated that fishing vessels that use trafficked labour will be less willing to enter Thai waters and dock at Thai ports as a result of these measures. Whilst this may reduce the incidence of human trafficking in Thailand, it will not necessarily eliminate the problem, potentially shifting the human trafficking problem into other regions or causing traffickers to implement strategies to avoid the new measures.

Despite this recent progress, exploitative labour practices in the fishing industry remain a significant concern.⁴⁶ The 2016 Report also highlights that during investigations, officials on MDTs often limit their focus to the immigration status of workers, rather than on whether any indicators of forced labour exist. Some of the other issues that continue to plague the fishing industry are reports of 18-20 hour work days for seven days a week, workers being threatened, beaten or killed for becoming ill, attempting to escape or disobeying orders, and difficulties in returning home due to isolated workplaces, unpaid wages, and the lack of identity documents or a safe means of travel. The 2017 Report points to the varying levels of enforcement at PIPO Centers which have resulted in some boat captains choosing ports where inspections and enforcement were weaker.⁴⁷

42 Other measures include the Ministerial Regulation Concerning Labour Protection in Sea Fishery Work B.E.2557 (2014), the Marine Department’s Regulations on Permission to Work in Fishing Vessels of 30 gross tonnage or over (2014), the National Plan of Action to Combat, Deter, and Eliminate IUU Fishing 2015-2019, the Fisheries Management Plan, the MOL Regulation to Prohibit Employment of Workers below 18 in the Seafood Processing Factories (2015) and the Trafficking Procedure Act.

43 US Department of State, Trafficking in Persons Report 2017, p.391.

44 Id.

45 US Department of State, Trafficking in Persons Report 2017, p.389.

46 For an example of a case of trafficking in the fishing industry, see <https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/tha/2013/samaesan.html?lng=en&tmpl=sherloc>.

47 US Department of State, Trafficking in Persons Report 2017, p.391.

Although 2017 saw one conviction of a company and individuals involved in forced labour on Boonlap fishing boats,⁴⁸ another case of two fishing vessels, Nawamongkholchai 1 and Nawamongkholchai 8 identified as holding 11 Cambodian victims of human trafficking respectively, was dismissed by the Provincial Court of Ranong.⁴⁹ Despite evidence of physical abuse, withholding of passports, wage deduction, the Court ruled that it could not prove beyond doubt that the offence had been committed.

c. Forced Begging

Begging has been regulated in Thailand since 1941 under the Control of Begging Act B.E. 2484 (1941) (the “1941 Begging Act”). However, the 1941 Begging Act only defined the act of begging and lacked any provisions to punish those responsible for trafficking people into begging. However, the government has recognized that begging is closely linked with the problem of human trafficking, particularly of women and children from neighbouring countries.

In 2008, a revised law was drafted and proposed to empower local authorities to better manage begging by issuing licenses to the physically disabled and to old people with no other means of financial support. However, the draft was not passed due to considerable opposition, much of which was an objection to the idea that the only work that disabled people were capable of was begging.

In April 2016, the 2016 Begging Act replaced the 1941 Begging Act. The 2016 Begging Act serves as a framework for legal action against human traffickers that exploit people by forcing them into begging. In particular, it:

1. prohibits all forms of begging, direct or indirect;
2. regulates street performance by requiring registration with local authorities;
3. provides authority to screen for those with specific needs (children, elderly, pregnant women, and persons with physical or mental disabilities) and coordinate with relevant agencies under specialized laws to provide assistance and protection to them;
4. imposes penalties for traffickers and those seeking to benefit from begging of up to three years imprisonment and/or up to THB30,000 fine; and
5. imposes more severe punishments of up to five years imprisonment and/or up to THB50,000 fines for government officials found to be complicit.

The head of the Mirror Foundation’s Stop Child Begging Campaign noted that the “previous law was never effectively implemented because the police did not want to be tasked with chasing after and rounding up beggars, with immediate repercussions for other agencies pursuing trafficking and child-welfare cases. Whether the relevant authorities can now better distinguish between beggars, street people, homeless persons and those who take advantage of them remains to be seen.”⁵⁰ In one case involving begging before the introduction of the 2016 Begging Act, the offender was charged with offences under the Immigration Act and the Anti-Trafficking Act, instead of under the 1941 Begging Act.⁵¹

From October 2015 – 28 July 2016 (before the Begging Act came into force), there were a total of 4,649 beggars of which 2,945 were Thai nationals and 1,704 were foreign nationals.⁵² From 29 July – 24 November 2016 (after the Begging Act was enacted), 60 beggars were found, 34 of which were Thai nationals and 26 were foreign nationals.⁵³

48 See note 5.

49 See case summary, <http://hrdfoundation.org/?p=1561&lang=en>.

50 “No more beggars on the footpath? The new Beggar Control Act”, Prachatai, 30 May 2016, <http://www.prachatai.com/english/node/6168>.

51 See case summary, https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/tha/2011/no_or_nok_moen.html?lng=en&tmpl=sherloc.

52 Thailand’s Country Report on Anti-Human Trafficking Response 2016, pp. 27-28.

53 See *Id.*

Question 4. What legislation exists to protect women and girls from gender-based exploitation (e.g. sexual exploitation, domestic violence, child marriage and temporary marriage)? Are migrant workers – both legal and illegal – covered by such legislation?

The legislation below protects victims from gender-based exploitation in general, regardless of the victim's gender. Each piece of legislation applies to migrants, both legal and illegal.

a. Sexual exploitation

The key pieces of legislation relating to sexual exploitation are the Anti-Trafficking Act, the Prevention and Suppression of Prostitution Act, the Child Protection Act and the Penal Code.

The Anti-Trafficking Act sets out penalties for traffickers who, for the purpose of exploitation, do any of the following acts:

1. procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving, any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits, to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or
2. procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving, a child.

As set out in question 1 above, these penalties also apply to others involved in the trafficking process.

The Prevention and Suppression of Prostitution Act establishes penalties for any person who associates with another person in a prostitution establishment for the purpose of prostitution of oneself or another person. In addition, any person who procures, seduces, or takes away, any person for the prostitution of such person, even with her or his consent, and irrespective of whether the various acts which constitute an offence are committed within or outside Thailand, shall also be liable. A person who commits such an offence because they were forced to, or were under an influence which could not be avoided or resisted, is not guilty of the offence. In one case in which three women were trafficked to Italy to work as prostitutes, the traffickers were found guilty of offences under the Penal Code and the Prevention and Suppression of Prostitution Act.⁵⁴

The Child Protection Act ensures protection for child victims in any acts punishable by other laws that, regardless of a child's consent, a person is forbidden to force, threaten, induce, encourage or allow a child to adopt behaviour and manners which are inappropriate or likely to be the cause of wrongdoing, regardless of whether the intention is to obtain remuneration or anything else.

Several provisions of the Penal Code also address sexual exploitation, such as rape of an adult (Section 276), rape of a girl not more than 15 (Section 277), indecent act on person over 15 by unlawful means (Section 278), indecent act on person not more than 15 with or without consent (Section 279), procuring, seducing or taking away for an indecent act with consent (Section 282), procuring, seducing or taking away for an indecent act using unlawful means (Section 283), subsisting on the earnings of a prostitute (Section 286), procuring a woman to have an abortion with or without her consent (Section 302 and 303). Pursuant to general criminal law principles in Thailand, in cases where conduct constitutes an offence under several laws, the offender shall be liable under the law which imposes the heaviest penalty.

b. Domestic Violence

The Domestic Violence Victim Protection Act B.E. 2550 (2007) (the “**Domestic Violence Act**”) aims to balance protection for victims of domestic violence with reconciliation, in order to maintain the family institution. Consequently, any person who conducts an act of domestic violence is liable to imprisonment and a fine, and the offence can be compounded. In addition, pursuant to the Domestic Violence Act, the court must make an effort to judge litigants taking into account the principles of: protection for the victim; family security maintenance; responsibility for a child; and reconciliation.

As part of Thailand's National Human Rights Plan (2014-2018), a Human Rights Plan on Women has been prepared. That Plan includes an objective of promoting the utilization of the Women's Role Development Fund in the provision of basic social welfare to female victims of human trafficking and domestic violence and an adjustment of attitudes and values regarding the issue of domestic violence. One of the other objectives is to conduct campaigns to enhance knowledge and understanding of the provisions of the Domestic Violence Act.⁵⁵

⁵⁴ See case summary, https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/tha/2009/kulab_or_rampueng_thongmeesri_or_sai-utah.html.

⁵⁵ See the summary of Thailand's 3rd National Human Rights Plan (2017–2018), http://www.rlpd.go.th/rlpdnew/images/rlpd_1/2556/thaigov_Plan3/10plan3.pdf.

c. Children, including child marriages

Thailand is a State Party to the CRC, which defines the child as “every human being below the age of 18 years”, and Thailand is also a State Party to the CEDAW, which states that the “betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage” and makes the registration of marriages in an official registry compulsory. In Thailand, the Civil and Commercial Code stipulates that the minimum age for marriage is 17 years of age, but that the Court may, with appropriate reason, allow persons to marry before attaining such age. Accordingly, Thailand’s laws are not compliant with the CRC in this respect.

In addition, the Penal Code stipulates that the act of sexual intercourse with a child not yet over 15 years of age and not being the offender’s own wife or husband is an offence, whether such child has consented or not. However, where the offender is under 18, the offender may elect to marry the victim instead of being prosecuted for the offence.⁵⁶ This exception from strict liability could be considered a form of non-compliance with Thailand’s obligations under the CRC. In December 2015, the Penal Code was amended to create new offenses of possessing, sharing and distributing child pornography. Moreover, the Computer Crime Act B.E. 2550 (2007) criminalises the importing into a computer system or the dissemination from such a system obscene pornographic material. Both this Act and the Penal Code were amended in 2015 to introduce new provisions to cover possession of child pornography. Also in 2015, the Thai Internet Crimes Against Children Task Force was established by the Royal Thai Police, with the objective of combatting child sex trafficking and exploitation that takes place online.

The Public Entertainment Places Act B.E. 2509 (1966) also provides some protection for minors, including forbidding the hiring of staff under 18 in places of entertainment such as karaoke bars and forbids those under 20 entering such establishments (Section 16) and forbidding pornographic shows in such places (Section 19).

The 2016 Report notes that entry into Thailand was denied for 511 known foreign sex offenders in 2015 (an increase from 98 in 2014). In addition, training on the prevention of child sexual exploitation was provided to government officials and tourism workers

d. Temporary Marriages

In Thailand, temporary marriages are generally only prevalent in the Islamic communities in the four southernmost provinces of Thailand. These provinces are governed by a separate body of law in relation to family and succession law matters.⁵⁷

e. Surrogacy

Recent surrogacy scandals in Thailand⁵⁸ have raised questions as to whether commercial surrogacy is another form of human trafficking. The regulations of the Medical Council of Thailand regarding surrogacy apply only to medical practitioners and facilities, and such regulations are not comprehensive. However, if persons involved in surrogate activities commit other offences (such as those identified above), they can be subject to penalties in respect of those other offences.

In February 2015, the Thai parliament passed a law (the Protection for Children Born Through Assisted Reproductive Technologies Act B.E. 2558 (2015)) restricting the circumstances in which surrogacy can take place. This is the first law in Thailand specifically regulating surrogacy. Previously, the provisions of the Penal Code relating to enslavement and buying or selling persons was relied upon.⁵⁹

The key features of the law are:

1. foreign and same-sex couples cannot seek surrogacy services in Thailand;
2. no fees are allowed to be paid for the service;
3. surrogate mothers must be Thai and over the age of 25;
4. the surrogate mother must be a relative of either the husband or the wife; and
5. advertising and promoting surrogacy services is banned.

It remains to be seen how strictly the new law will be enforced, and whether the measures proposed are effective in eliminating commercial surrogacy arrangements.

⁵⁶ Section 277 of the Penal Code and the Supreme Court Judgment No. 854/2545.

⁵⁷ The Act on Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satul B.E. 2489 (1946).

⁵⁸ “Surrogate Update: Warning issued a year ago”, Bangkok post, <http://www.bangkokpost.com/learning/learning-from-news/425502/surrogate-update-thurs-warnings-issued-a-year-ago>.

⁵⁹ For an example of a case where the Penal Code and Anti-Trafficking Act were used in circumstances of women being trafficked in order to be surrogates, see https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/tha/2012/choen_pai_wan_and_others.html?lng=en&tmpl=sherloc.

CHAPTER TWO: TREATMENT OF VICTIMS

Question 5. Do victims of trafficking have protected status under the law?

In Thailand there are several laws which provide protection for victims of trafficking.

a. Anti-Trafficking Act

1. Provision of assistance to, and protection of, victims of trafficking

Under Section 33 of the Anti-Trafficking Act, the MSDHS is required to consider the provision of assistance as appropriate to a victim of trafficking, including food, shelter (in either a primary government shelter or private welfare centre), medical treatment, physical and mental rehabilitation, education, training, legal aid, return to the country of origin or domicile, and assistance with legal proceedings to claim compensation. In determining what is appropriate, consideration will be given to the person's human dignity, gender, age, nationality, race, and culture. The opinion of the trafficked person is to be sought.

The right to receive protection shall be communicated to the trafficked person at each stage of assistance that is provided to him or her. The Competent Official shall provide protection to the trafficked person under his care, regardless of where such person stays, and whether it is prior to, during or after the proceedings. In so doing, the safety of the family members of a trafficked person shall also be taken into account. If a trafficked person has to return to his or her country of residence or domicile, or if the family members of the trafficked person live in another country, the Competent Official shall coordinate with the relevant government or private agency in such country, with a view to providing ongoing protection for the trafficked person and family members in that country.

The inquiry official or public prosecutor shall inform the trafficked person of his or her right to claim compensation for damages as a victim of trafficking, and the right to seek legal aid. MSDHS will determine the amount of compensation the victim of trafficking should be entitled to, in conjunction with the victim or his/her delegate. The public prosecutor is then notified of the amount and takes the claim through the court process. As outlined in response to question 2 above, 57 awards of compensation were made in 2014, totalling approximately THB8.6 million, 77 awards of compensation in 2015, totalling approximately THB3.3 million and 61 awards of compensation in 2016, totalling approximately THB13.5 million. An additional THB22.5 million in compensation was paid to 19 Thai victims of human trafficking who had been repatriated to Thailand in 2014.

For the purposes of instituting proceedings against the offender, providing medical treatment and/or rehabilitation for the trafficked person, or claiming compensation for the trafficked person, the Competent Official may assist the trafficked person to obtain permission to stay in Thailand temporarily with permission to work during the stay. As a result of a Cabinet decision on 13 December 2016, migrant trafficking victims and witnesses are now permitted to stay in Thailand for up to two years (previously extended to one year by the Cabinet on 29 March 2016) after witness examination has concluded, and the time for processing work permit applications has been decreased from 45 days to 10 days. After the 2-year period, if the victims' behaviours are consistent with the public order, moral decency and national security, their work permits are renewable for 1 year each year afterwards.⁶⁰ This Cabinet Resolution also expands the scope of work the victims and witnesses can undertake to all sectors (compared to the 2013 Prime Minister Office's Announcement on the same matter, which only limits victims and witnesses to work in labor intensive sector and domestic household work).

Victims of trafficking who stay in MSDHS shelters who do not wish to work are provided with basic vocational and skills training to assist them in obtaining future employment. Women who wish to work, but do not want to leave the shelter are given work inside the shelter's facilities, such as in the beauty salon or gift shop. MSDHS now has 76 short-stay shelters and nine long-term regional shelters across Thailand. Of the 497 victims of trafficking in MSDHS shelters in 2015, only 58 work permits and visas were issued, and only 47 victims of trafficking took up work outside the shelter.⁶¹ In 2016, employment opportunities were provided to 196 out of 561 victims of trafficking both inside and outside the shelters, a significant increase. Among the 196 employed victims of trafficking, 139 worked outside the shelters.⁶²

In relation to the Thai victims of trafficking who are located outside the country, pursuant to Section 39 of the Anti-Trafficking Act the MSDHS must undertake efforts to prove Thai citizenship and to repatriate them back to Thailand safely without delay. In 2014, 72 Thai victims of trafficking located outside of Thailand were repatriated to Thailand.⁶³ Upon arrival in Bangkok, they were processed at a government centre and most were returned to their home communities. The number of repatriated Thai nationals

⁶⁰ Thailand's Country Report on Anti-Human Trafficking Response 2016, p. 20.

⁶¹ US Department of State, Trafficking in Persons Report 2016, p.367.

⁶² Thailand's Country Report on Anti-Human Trafficking Response 2016, p. 8.

⁶³ US Department of State, Trafficking in Persons Report 2015, p.333.

increased significantly in 2015, to 211.⁶⁴ In 2016, the Ministry of Foreign Affairs facilitated the return of 80 Thai nationals identified as victims of trafficking from sexual exploitation, forced labor and other forms of trafficking in persons. Moreover, a total of 30 crew members were rescued from an Indonesian boat (the Ambon and Benjina Island cases) and returned to Thailand. The crew members were verified to have Thai citizenship, and 16 were able to return home. The remaining 14 crew members have reported that they are Thai, but do not have any legal identifying document to prove so; therefore, they are placed under the care and protection of the MSDHS and are given the same services as victims of trafficking living in MSDHS shelters. The MOI is undergoing a process to identify where their homes are.⁶⁵

The above provision of assistance to victims of trafficking is supported by the Anti-Human Trafficking Fund of the MSDHS (the “**Anti-Human Trafficking Fund**”), set up pursuant to Section 42 of the Anti-Trafficking Act, with the aim to prevent and suppress human trafficking. It seeks to do this by providing assistance and protection to victims of trafficking, providing assistance to victims of trafficking in a foreign country to return to Thailand, and preventing and suppressing human trafficking as directed by the CMP Committee. Approximately THB3.7 million was paid in financial aid to a total of 463 victims of trafficking in 2014,⁶⁶ and in 2015 the amount paid out increased to THB7.1 million, shared between 472 victims of trafficking.⁶⁷ In addition, the Anti-Human Trafficking Fund also completely covered the cost of repatriating 397 victims of trafficking to their home country in 2014, including the cost of police and social workers to travel with the victims.⁶⁸ In 2016, the Anti-Human Trafficking Fund compensated 648 victims, amounting to THB5.3 million (USD151,679).⁶⁹

b. The Prevention and Suppression of Prostitution Act

Victims being seduced or coerced against their will to engage in prostitution will be assisted by the Competent Official to be protected by, and receive occupational development at, a Primary Admittance Centre.

c. The Child Protection Act

The Child Protection Act aims to shield children in Thailand from inhumane practices, being mistreated, being exploited or being discriminated against, and in doing so, conforms with the Thai Constitution and Thailand’s obligations under the CRC.

Guardians must take care and urge and develop a child under their guardianship in appropriate manners, and this care must not be below the minimum standards as prescribed in the Child Protection Act. The guardian shall also safeguard the child against potentially harmful circumstances, whether physical or psychological.

State Officers have a duty to protect the safety of children living in their jurisdiction, regardless of whether or not the children have parents or guardians. Such State Officers, once notified of the possibility that a child has been subject to torture (which includes the deprivation of freedom, and therefore includes human trafficking), have powers to inspect premises and remove the child from those premises in order to protect the child.

d. Data protection laws

Thailand does not have a comprehensive national data privacy law. Some protection can be found from legislation such as the Civil and Commercial Code B.E. 2468 (1925), under which the disclosure or transfer of personal data may amount to a “wrongful act” if it causes damage to an individual; or the Official Information Act B.E. 2540 (1997), which regulates the government’s collection and maintenance of personal data.

Victims of trafficking would be better protected by a more comprehensive data privacy regime. Whilst draft legislation was published in early 2015, it has been criticised for potentially imposing a significant burden on businesses, and there is some doubt as to whether it will pass either in its current form or at all.

e. The role of non-government organisations

The terms “non-government organisation” and “NGO” are not used in Thai law. If an NGO wishes to establish itself in Thailand, it generally has two options, neither of which are simple. The first option is to register as a Foreign Private Organisation. This requires approval from the government, and usually only a limited permit is issued. There are often significant legal and financial obstacles involved in this approach.

64 US Department of State, Trafficking in Persons Report 2016, p.366.

65 Thailand’s Country Report on Anti-Human Trafficking Response 2016, pp. 102-103.

66 US Department of State, Trafficking in Persons Report 2015, p.333.

67 US Department of State, Trafficking in Persons Report 2016, p.367.

68 Thailand’s Trafficking in Persons 2014 Country Report 2014, p. 10.

69 Thailand’s Country Report on Anti-Human Trafficking Response 2016, p. 8.

The second option is to register as a Thai Registered Foundation. This is appropriate for not for profit organisations with reasonable resourcing levels (they require THB200,000 in the bank and three board members who work voluntarily for the organisation).

The requirements for establishing an NGO in Thailand are strict and complex. Generally, a probation period, during which the NGO will be monitored by a number of government departments, will apply. The consequence of this is that NGOs' access to Thailand, and therefore victims of human trafficking in Thailand, may be limited.

f. Protection of witnesses

In the event of a trafficked person making a statement or testifying as a witness in relation to a human trafficking offence, the Anti-Trafficking Act provides that the trafficked person, as a witness, shall be protected according to the laws regarding the protection of witnesses in a criminal case. The MSDHS provides protection to witnesses who are victims of trafficking while the Rights and Liberties Protection Department under the Ministry of Justice (MOJ) provides protection to those witnesses who are not victims of trafficking, including informants.

The Witness Protection Act provides that where a person who commits to being a witness loses his or her security (including, for example, security in life, body, health or liberty), appropriate measures will be put in place. The measures available include a safe house, 24-hour security protection, THB200/day (USD5.71) for food and beverage, and THB200/day (USD5.71) for living expense, and change of name, domicile or other identifying information.⁷⁰ These protections extend to dependants of witnesses as well. Special protection measures may be available for witnesses in cases relating to some sexual offences under the Penal Code, and any other crime punishable with at least 10 years of imprisonment. Where a witness (or person with a close connection to the witness) has a right (for example, a right in relation to life, body, health or liberty) impaired as a result of becoming a witness, he or she will be entitled to compensation unless witness protection was refused.

During the trial and investigation process, witnesses who are victims of trafficking are under tight security and during witness examination, adult victims can ask the court to be put in a separate room, if they fear confronting their perpetrators. Child victims are always put in a separate room and are accompanied by a social worker and psychologist or persons whom the children have requested. Sections 171, 172, 172 ter, 172 quarter and 178 of the Criminal Procedure Code provide jurisdiction to the Court to make directions for witnesses to give evidence "in camera" away from the physical presence of the defendant and related orders to provide for questioning through a psychologist or social worker.

The Australia-Asia Program to Combat Trafficking in Persons work plan for Thailand covers the period from 2015-2018, and proposes trialling two Victim-Witness Coordinator positions in Thailand based in provinces with high rates of human trafficking cases. The work plan envisages further positions being created if this trial is successful, as well as mentoring judges in relation to the handling of vulnerable witnesses.

In a recent instance of witness protection measures being used in Thailand, 13 Laotian workers (9 of which were aged between 15 and 18 years) were rescued from a pig farm, with the men being transferred to a witness protection centre, and the female worker being housed at a Protection and Occupational Development Centre.⁷¹ It is expected that the witnesses will remain in protection during the 2 months it takes to prepare the case for court and the 4-5 months duration of the case. In 2016, there were 142 witnesses/victims of trafficking under the protection of MSDHS and 254 non-victim witnesses under the protection of the Rights and Liberties Protection Department.⁷²

g. Class actions

In December 2015, the Civil Procedure Code was amended to give employees the right to bring class actions against their employer for breach of contract or breach of labour laws. Each member of the class must possess the same rights against the employer in relation to the same common facts in order to bring a class action suit. Class members have no right of appeal on the basis of error of law or fact.

Subsequent regulations issued by the government give the court the power to allow, inquire into, terminate, or define the scope or characteristics, of a class action. However, if the court accepts a claim as a class action, the judgment will bind all members of the class action except those who opt out of the class action within the specified periods during the proceedings.

A large number of victims of trafficking do not trigger the protections set out above for a number of reasons, including inconsistencies in the application of the definition of human trafficking, a lack of knowledge and skills in identifying and dealing with victims of trafficking

⁷⁰ Thailand's Country Report on Anti-Human Trafficking Response 2016, p. 57.

⁷¹ "Lao Migrants To Be Witnesses in Thai Human Trafficking Case", Radio Free Asia, <http://www.rfa.org/english/news/laos/lao-migrants-to-be-witnesses-in-thai-human-trafficking-case-08282015130327.html>.

⁷² See note 65.

on the part of those responsible for enforcing the laws, and alleged corruption amongst law enforcement officials and at all levels of government. Further, the way in which persons identified as victims of trafficking must be treated differs markedly to those identified as “illegal aliens”. For example, the Thailand-Cambodia MOU requires Thailand to provide safe shelter, health care and access to legal assistance to victims of trafficking who are women and children (and their immediate families). Such benefits are not required to be provided to those found to have entered Thailand illegally. Consequently, victims are often classified as illegal immigrants, not as victims of trafficking who must be rescued and compensated.

The 2014 Report, the 2015 Report and the 2016 Report all highlight the lack of specialised services for child victims of trafficking, despite half to three-quarters of identified victims of trafficking being under the age of 18. There are even fewer services available to children whose families have been complicit in their involvement in human trafficking, or whose families cannot be identified. Where specialised services such as shelters do exist, they tend to focus on female victims of trafficking (both women and girls). Fewer specialised services are targeted at meeting the needs of men and boys.

Whilst many different authorities are involved in identifying and dealing with victims of trafficking, this can create issues due to the different, often conflicting, approaches taken by the various authorities. For example, children of victims of trafficking (or children who themselves are victims of trafficking) are notionally subject to anti-human trafficking legislation, child protection legislation, and immigration legislation. In such circumstances, immigration legislation tends to prevail, potentially resulting in a situation where child protection laws are not complied with. Consensus on the most appropriate approach for handling victims of trafficking is needed to ensure the best outcome for such victims.

There are a number of mechanisms, committees, offices and focal points that support the Thai government’s efforts to combat human trafficking, including:

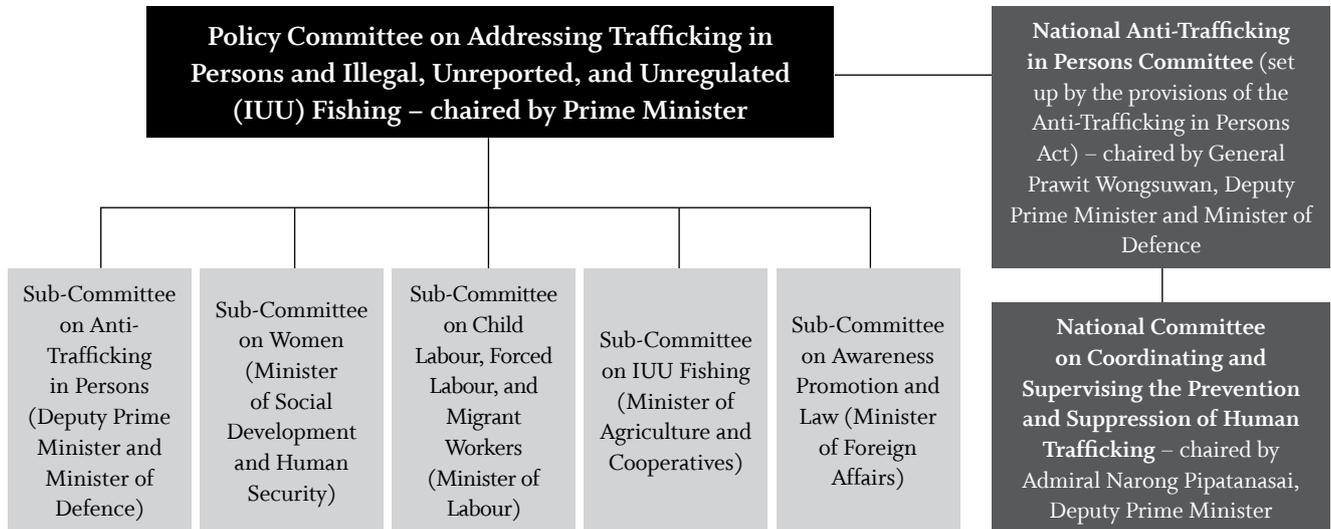
1. Thai COMMIT (Coordinated Mekong Ministerial Initiative Against Trafficking) Taskforce, chaired by the Permanent Secretary of the MSDHS;
2. National Anti-Trafficking in Persons Committee (the “**ATP Committee**”);
3. The Prevention and Suppression of Human Trafficking Committee, chaired by Deputy Prime Minister;
4. Sub-committee on Suppression of Human Trafficking, chaired by the Minister of Interior;
5. Ad Hoc Sub-committee on Increasing Effectiveness of Human Trafficking Prosecution, chaired by a senior public prosecutor;
6. Special Sub-committee on Enhancing Cooperation with NGOs and Civil Society.
7. Fair Justice Center or Damrongdhama Center under the Ministry of Interior (centres for resolution of small problems);
8. MSDHS Center to Solve Human Trafficking Problems for Women and Children;
9. Sub-committee on Fisheries and IUU;
10. Shrimp Sustainable Supply Chain Taskforce; and
11. Command Center for Combatting Illegal Fishing.

One of the drivers of change across the counter-trafficking measures implemented by the Thai Government is the National Anti-Trafficking in Persons Committee, set up pursuant to Section 15 of the Anti-Trafficking Act and chaired by the Deputy Prime Minister. The “Competent Official”, namely the Office of the Permanent Secretary for Social Development and Human Security, is the secretariat of the Anti-Trafficking in Persons Committee and the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (the “**CMP Committee**”). The ATP Committee and CMP Committee are in charge of developing a system of prevention and suppression of human trafficking, including effectively providing services and safety protection to victims of trafficking, preparing the due appropriations of the annual budget, and providing personnel for carrying out duties. A requirement that at least half of the qualified members of the CMP Committee be female was removed in the 2015 amendments to the Anti-Trafficking Act. The diagram⁷³ below sets out the new national structure, committees and sub-committees that the Prime Minister has appointed since 2014.

73 Thailand’s Country Report on Anti-Human Trafficking Response 2016, p. 19.

Diagram 2: Inter-Agency Bodies

Inter-Agency Bodies



Question 6. Can victims of trafficking be criminalized for crimes committed as a direct result of their trafficking {e.g. is a victim of sexual exploitation able to be tried and found guilty under laws against prostitution}?

By law, victims of trafficking in Thailand cannot be convicted of crimes that they committed as a direct result of being trafficked such as the offence of entering, leaving, or residing in the Kingdom without permission under the law on immigration, giving a false information to the official, forging or using a forged travel document under the Penal Code, offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or offence of being an alien working without permission under the law on working of the alien (Section 41 of the Anti-Trafficking Act). The rationale behind this is that they are injured persons who must be rescued, rehabilitated, and compensated. However, the inquiry official can take criminal proceedings against any trafficked person with the written permission of the Minister of Justice.

In practice, there are still problems in law enforcement which occur due to the lack of training/understanding of the enforcement officers, and ignorance and/or fear on the part of victims of trafficking. For example, a victim may be forced to not tell the truth about the trafficking, and as a result the enforcement officer does not or cannot proceed with the investigation, and the victim of trafficking is considered to be culpable for the offences committed as a result of having been trafficked. The 2016 Report recognises this as an issue, pointing to flaws in the victim identification procedures and efforts to arrest and “soft-deport” immigration violators as reasons that victims of trafficking may be re-victimized and treated as criminals.

Question 7. If a person is found to have been trafficked into the country, and is without legal status, is that person likely to be imprisoned and/or repatriated?

The Anti-Trafficking Act applies to all persons who are victims of human trafficking offences, whether or not such persons have legal status in Thailand. Therefore, if such persons are found to have been trafficked into Thailand, trafficking victims are only repatriated once witness examination has concluded. However, the Anti-Trafficking Act also provides protection to the victims such that custody or repatriation can be done with specific conditions, as discussed in the responses to questions 5 and 6 above. Nonetheless, persons with no legal status in Thailand can be more prone to persecution than those with legal status because they do not have passports or identification cards, which can render them stateless, and result in their rights of access to judicial processes being limited.

The 2014 Report identifies that in 2013, the Thai government issued 128 work permits or visas that allowed foreign victims of trafficking to temporarily remain and work in Thailand during the course of human trafficking-related legal proceedings (compared to 57 in 2014 and 58 in 2015). As mentioned in response to question 5 above, initially, victims and witnesses would be promptly repatriated after their cases reached verdicts. This period of stay has been extended twice in the year 2016 to two years. This extension is intended to encourage victims to voluntarily assist in the investigation and prosecution of trafficking cases as well as providing foreign victims and witnesses legal alternatives to deportation by not only granting employment status, but also temporary residency to victims who wish to stay and work in Thailand after their witness examination process has concluded.

With regard to repatriation, the Anti-Trafficking Act stipulates that the Competent Official shall undertake to have a victim of trafficking who is an alien return to their country of residence or domicile without delay. The exception to this is where such person is allowed permanent residency in Thailand under the Immigration Act, or where the person has been granted relief to stay in Thailand by the Minister of the Interior.

Question 8. If a person is repatriated to that state, having been found to have been trafficked to a third country, is that person liable to be imprisoned for acts considered as criminal {i.e. prostitution, traveling without documents} but which were a direct result of her having been trafficked?

Under the Prevention and Suppression of Prostitution Act, a person is guilty of an offence if they procure, seduce or takes away another person for the prostitution of that person, even if the offending conduct takes place outside of Thailand. However, as the Prevention and Suppression of Prostitution Act does not cover crimes that have occurred in a third country, and prostitution overseas is not an offence under the Penal Code, the trafficked person cannot be imprisoned for prostitution that takes place outside of Thailand upon their return to Thailand.

Under the Immigration Act, any person entering into or departing Thailand must enter and leave by way of immigration check points or designated landing stations or areas. The Immigration Act clearly states that anyone entering or departing the country is bound to conform to the requirements of the Immigration Act, and non-compliance can result in imprisonment and/or a fine. However, under the Penal Code, the illegal departure from Thailand must be a deliberate act of the person departing. Therefore, a trafficked person that has departed from Thailand illegally but involuntarily will not be subject to the penalties in the Immigration Act.

CHAPTER THREE: ANALYSIS OF LAWS

Question 9. Are the penalties/punishments of those found guilty of trafficking sufficiently stringent?

The Anti-Trafficking Act now prescribes penalties of 4 to 12 years' imprisonment for human trafficking, which is quite stringent compared to other crimes in Thailand, and consistent with the penalties for serious offences such as rape. Further, as set out in the response to question 1 above, where the human trafficking results in severe injuries or death, more severe penalties apply, including the death penalty in the most serious cases (despite the recommendation of the now dissolved Law Reform Commission of Thailand that the death penalty be abolished).

Despite the apparent strength of the Anti-Trafficking Act, low rates of prosecution and conviction have historically typified a lack of enforcement of these laws. The lack of enforcement may also be attributed to a lack of knowledge and skills in key areas such as how to identify, locate, and protect victims of human trafficking on the part of police officers, judges, prosecutors, immigration officials and labour inspectors. Allegations that Government Officials have been involved in human trafficking plays a significant role in reducing the level of cooperation between victims and the authorities, and difficulties in obtaining sufficient evidence to support a prosecution, which only makes enforcement of the law more difficult. Moreover, high cost, time, fear of human traffickers and other barriers in legal proceedings often serve to deter a victim from cooperating with authorities in a prosecution. Other relevant factors in the low rate of prosecution of human trafficking cases are a lack of collaboration between police and prosecutors, frequent personnel changes in law enforcement and prosecution teams, and the granting of bail to suspected offenders who then leave Thailand to avoid prosecution, and corruption (see Section C, below).

The time taken for a prosecution to be finalised is a significant issue in Thailand. Of the cases finalised in 2014, 90 took less than 1 year, 27 took 1-2 years, and one took 2-3 years.⁷⁴ In December 2014, the President of the Supreme Court of Thailand issued judicial guidelines asking judges to avoid unnecessary delays in adjudicating cases involving human trafficking. The guidelines provide that verdicts should be delivered within 6 months of the date of the first witness examination. Where there is an absolutely crucial reason to delay, judges can seek an extension for a further 6 months. In 2015, 43% of human trafficking cases were concluded within 6 months, though others still took two years or more to conclude.⁷⁵

The Attorney-General issued new directives in 2016 in order to speed up the indictment of human trafficking cases. The March 2016 regulation was issued for the public prosecutor to improve their performance in filing cases and for more careful consideration of bail or delay requests, which have helped cases to proceed more rapidly. Another regulation, issued on 9 December 2016, instructs the public prosecutor to file all human trafficking cases to its special unit, the Department of Anti-Human Trafficking, for consideration.

In conjunction with this, the Human Trafficking Case Division of the Criminal Court began operating in August 2015 to deal with human trafficking cases (along with two other new divisions, one to handle drug-related cases, and one to handle corruption cases) and fast track conviction of trafficking in persons offenders, as these cases will not have to line up in a regular channel just like other criminal cases. The Supreme Court guidelines will be applied by this new division. As a result, among 330 cases ruled by the Criminal Court, 163 cases or about 50% took less than 6 months to process, a small improvement from the previous year.⁷⁶

Recent human trafficking cases involving Rohingya and other migrant victims, which centered on 72 suspects, have been transferred to this new court.⁷⁷ The move was approved by the Supreme Court because the cases involved a transnational criminal gang and many state officials. The Human Trafficking Criminal Procedure Act (see the response to question 1(a) above) also has the objective of streamlining prosecution practices in human trafficking cases. In addition, the Thai Constitution is currently being reviewed, and some of the matters under consideration are timeliness in judicial processes, justice in due course, and clear and transparent guidelines for legal procedures.

⁷⁴ US Department of State, *Trafficking in Persons Report 2015*, p.332.

⁷⁵ US Department of State, *Trafficking in Persons Report 2016*, p.366.

⁷⁶ Thailand's Country Report on Anti-Human Trafficking Response 2016, p. 168.

⁷⁷ "Human trafficking cases transferred to new court", *The Nation*, <http://www.nationmultimedia.com/news/national/aec/30270615>.

Question 10. Are the penalties/punishments of those found guilty of violence against women {i.e. domestic violence and violence against employees, such as domestic workers} sufficiently stringent?

a. Domestic Violence

The Domestic Violence Act aims to protect both men and women from domestic violence and sets out penalties for those who engage in acts of domestic violence. The maximum penalty is 6 months imprisonment and/or a THB6,000 fine. An offender may also be charged with an offence under the Penal Code, such as causing bodily harm which attracts a penalty of imprisonment up to 2 years and/or a THB4,000 fine.

The penalties under the Domestic Violence Act are not considered to be sufficiently stringent to protect women from domestic violence in Thailand, particularly when compared to the maximum prison sentences that apply under the Penal Code.

Further, the nature of the penalties compromises litigants by focusing on the maintenance of a family relationship (e.g. by a court ordering rehabilitation, counseling or public service as a penalty) more than the prevention of further domestic violence.

b. Violence against Employees

Whilst the Ministerial Regulation No 14 (2012) on the Protection of Domestic Workers has ensured recognition of domestic work as an occupation, and extended some of the rights that employees have under the Labour Protection Act to domestic workers, there are no specific laws in relation to violence against domestic workers (or any other employees) in Thailand beyond the general obligations set out in the OSHE Act. Such matters would therefore be subject to the penalties for offences against life and body of other persons under the Penal Code.

Offences under the Penal Code attract maximum prison sentences of one to 10 years. Those penalties may be considered stringent enough to deter employers from engaging in violence against employees.

Question 11. What are the numbers/ratio of investigations, prosecutions and convictions of traffickers {and is there a difference in the likelihood of investigation, prosecution or conviction between cases in which an individual has trafficked another for the purposes of forced labour, and those who have trafficked another for the purposes of sexual exploitation}?

The weak implementation and enforcement of anti-trafficking laws has resulted in a deep disparity between the law and their application. As highlighted throughout this Legal Gap Analysis, the absence of appropriate policies and procedures to implement the anti-trafficking laws in the past has been a significant contributing cause of this low identification, investigation, prosecution and conviction rate.

	2013 ⁷⁸	2014 ⁷⁹	2015 ⁸⁰	2016 ⁸¹
Victims identified	N/A	595	720 (982 according to Thailand's Country Report in 2015)	824
Cases investigated	674	280	317	333
Prosecutions	483	155	242	301
Convictions	230	104	241 (205 according to Thailand's Country Report in 2015)	268

As can be seen, after declining in 2014, the number of identified victims, investigations, prosecutions and convictions all rose in 2015. This inconsistency is attributed to a change in the investigative approach of the Royal Thai Police, with a new focus in 2014 on networks of human traffickers rather than individual instances of human trafficking, in conjunction with the effects of new measures such as more efficient migrant registration meaning that there were fewer undocumented workers. With more streamlined procedures, effective coordination and collaboration between the various agencies – law enforcement and more, coupled with the use of money laundering laws by AMLO and administrative powers by the MOI to target offenders and beneficiaries while also speeding up the prosecution and conviction process through the new Human Trafficking Case Division of the Criminal Court, the number of victims identified, cases prosecuted and offenders convicted should rise across the board.

The terms of imprisonment being dealt to convicted traffickers has also increased: in 2015, 64% of convictions resulted in prison sentences greater than five years, up from 29% in 2014, and 84% of convictions resulted in prison sentences greater than three years, up from 68% in 2014.⁸² The number also rises in 2016 where 90.7% of convictions resulted in imprisonment over 2 years, 57.1% results in imprisonment over 5 years and 20.5% resulted in imprisonment over 10 years.⁸³ The increased proportions indicate the seriousness of the authorities in tackling the cases and the effective coordination process from the police through the prosecutors to the courts.

It is important that inspectors are trained to recognise factors that may indicate human trafficking other than the individuals being held in captivity (e.g. debt bondage). This is particularly the case for forced labour, which is perceived to be more prevalent than human trafficking involving sexual exploitation, yet is the subject of fewer investigations/prosecutions. The low number of investigations into forced labour, and in particular the low conversion rate of investigations into prosecutions in forced labour cases, indicates that much more is still to be done in this area in particular.

There are now specialised trafficking in persons agencies at each stage of the criminal justice process:

1. Royal Thai Police: Anti-Human Trafficking Division;
2. Ministry of Justice: Department of Special Investigation - Anti-Human Trafficking Centre;
3. Department of Provincial Administration: Special Task Force;
4. Office of the Attorney-General: Department of Anti-Human Trafficking; and
5. Criminal Court: Human Trafficking Case Division.

Thailand is the first South-East Asian nation to have specialised agencies at each stage of the criminal justice process, and it is hoped that having experts trained in the area will result in greater inroads being made into the prevalence of human trafficking in Thailand.

⁷⁸ Thailand's Trafficking in Persons 2014 Country Report 2014, p. 47; US Department of State, Trafficking in Persons Report 2015, p.332.

⁷⁹ *Id.*

⁸⁰ US Department of State, Trafficking in Persons Report 2016, p.365.

⁸¹ US Department of State, Trafficking in Persons Report 2017, p.389.

⁸² See note 80.

⁸³ Thailand's Country Report on Anti-Human Trafficking Response 2016, p.48.



SECTION B

MONEY LAUNDERING AND HUMAN TRAFFICKING

Question 1. What (if any) is Thailand's specific anti-money laundering legislation?

The primary legislation dealing with anti-money laundering in Thailand is the Anti-Money Laundering Act. The Anti-Money Laundering Act was first introduced by the government in 1999 and amendments to the Act were made in March 2008, broadening the overall scope of criminal liability and increasing powers to conduct investigation and seizures. In 2015, a range of further amendments were made which are particularly relevant to human trafficking (the “2015 AML Amendments”).⁸⁴

This legislation establishes the statutory offence of money laundering premised upon the financial support of certain underlying enumerated crimes (known as predicate offences). As part of the 2015 AML Amendments, human trafficking was added as a predicate offence under the Anti-Money Laundering Act.

The Anti-Money Laundering Office (“AMLO”) was established in 1999 as a result of the Anti-Money Laundering Act. One of the AMLO’s main missions and objectives is to undertake all possible measures to stop money laundering.⁸⁵ The AMLO is responsible for conducting investigations leading to the seizure and forfeiture of assets acquired with the proceeds from the commission of a predicate offence. The 2015 AML Amendments resulted in the AMLO being moved from the MOJ and placed directly under the Prime Minister. The Transaction Committee is also established by the Anti-Money Laundering Act, and its main duties are to audit transactions involved in the commission of a predicate offence and to stop the transactions if needed, and to supervise the independence and neutrality of the AMLO and its Secretary General.

Whilst the primary Thai government agency responsible for regulating and enforcing Thailand’s anti-money laundering laws is the AMLO, other Thai government agencies are involved, such as the Ministry of Finance, the Securities Exchange Commission, the Bank of Thailand and the National Anti-Corruption Commission (“NACC”).

Ministerial Regulations were promulgated by the Prime Minister under the Anti-Money Laundering Act and they outline the anti-money laundering/counter-terror financing procedures for regulated parties such as financial institutions to follow.

The other key relevant legislation aimed at anti-money laundering is the Counter Terrorism Financing Act B.E. 2556 (2013) (“CTFA”).

Under a policy put forward by the AMLO to raise the Thai anti-money laundering and combating the financing of terrorism regime to international standards, a National Strategy for anti-money laundering and counter-terror financing was introduced to cover a period of five years from 2010 to 2015.⁸⁶

a. Anti-Money Laundering Act

1. Money Laundering

The Anti-Money Laundering Act proscribes financially supporting certain enumerated crimes (“predicate offences”) of which there are now 21, and provides penalties for both violators and financial co-conspirators of such crimes at the same level. The statute imposes restrictions and requirements on government officials, corporations, and individuals.

Under the Anti-Money Laundering Act, it is a crime to transfer, convert or receive the transfer of funds or property arising from the commission of predicate offences for the purpose of concealing the source of such funds.⁸⁷

The most relevant predicate offences are those relating to sexual offences and trafficking in persons, which includes offences:⁸⁸

- relating to human trafficking under the Anti-Trafficking Act;
- relating to sexuality under the Penal Code, particularly in respect of procuring, seducing, enticing or taking away for an indecent act a woman or a child for the sexual gratification of another;

84 Anti-Money Laundering Act (No. 5) B.E. 2558 (2015).

85 See the website of the AMLO at <http://www.amlo.go.th/amlofarm/farm/en/index.php?lang=en>.

86 The National Strategy is available on the AMLO website: http://www.amlo.go.th/amlofarm/farm/en/index.php?option=com_content&view=article&id=11363&Itemid=554370.

87 Section 5 of the Anti-Money Laundering Act provides that any person who: (1) transfers, receives the transfer, or changes the form of an asset involved in the commission of an offence, for the purpose of concealing or disguising the origin or source of that asset, or for the purpose of assisting another person either before, during, or after the commission of an offence to enable the offender to avoid the penalty or receive a lesser penalty for the predicate offence; or (2) acts by any manner which is designed to conceal or disguise the true nature, location, sale, transfer, or rights of ownership, of an asset involved in the commission of an offence; or (3) obtains, possesses, or uses an asset, knowingly at the time of obtaining, possessing or using such asset, that it is the asset connected with the commission of a predicate offence, shall be deemed to have committed a money laundering offence under the Anti-Money Laundering Act.

88 Section 3 of the Anti-Money Laundering Act.

- of trafficking children or minors;
- under the Prevention and Suppression of Prostitution Act, particularly in respect of procuring, seducing, enticing or kidnapping persons for their prostitution;
- relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;
- relating to malfeasance in office or malfeasance in judicial office under the Penal Code, or malfeasance or dishonesty in carrying out official duties under other related laws; and
- relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits.

Therefore, for example, a person who earned money from human trafficking would be liable under the Anti-Money Laundering Act.

Under the Anti-Money Laundering Act, both individuals who commit or attempt to commit a money laundering offence, as well as those who serve as an accomplice in such commission, are considered to commit the offence. Financial institutions must ensure that they do not launder money that has been used during the commission of a predicate offence.

The Anti-Money Laundering Act was amended in 2008 with the aim of broadening the overall scope of predicate offences, increasing the powers to conduct investigations and seizures, and to address government corruption.

The Anti-Money Laundering Act was further amended in 2009 to expand the range of businesses subject to its reporting requirements beyond just financial institutions to include non-financial businesses, such as jewellery traders, car dealers, and real estate brokers, so as to encapsulate the broader scope of potential avenues for money laundering. Amendments to the Anti-Money Laundering Act in 2013 expanded the scope of the legislation's application (to include predicate offences committed outside of Thailand), expanded the list of predicate offences, and set out additional duties on the Anti-Money Laundering Board and the AMLO.

2. Suspicious transaction reporting

The Anti-Money Laundering Act imposes due diligence and reporting obligations on government entities, financial institutions and various other parties to report, among others, suspicious activities.

There are also requirements on such regulated parties to report certain transactions which may relate to money laundering. In particular, when a transaction is made with a regulated party, the regulated party shall have the duty to report that transaction to the AMLO without delay if it appears (either at the time of the transaction or subsequently) that such transaction is a:

- cash transaction exceeding the threshold prescribed in the Ministerial Regulation; or
- transaction connected with an asset worth more than the value prescribed in the Ministerial Regulation; or
- suspicious transaction, whether it is the transaction under either of the above points or not. A “suspicious transaction” means a transaction in respect of which there are reasonable grounds to believe that it is conducted to avoid the application of the Anti-Money Laundering Act, or a transaction connected or possibly connected with the commission of a predicate offence or a terrorist financing offence, notwithstanding the transaction being single or multiple, including any attempts to conduct such a transaction”.⁸⁹

For example, when a transaction involves cash in an amount equal to or exceeding THB2 million, such information as the nature and date of transaction, type and amount of currency involved and details of payee or beneficiary must be reported to the AMLO.

3. Know Your Client (“KYC”) requirements

The Ministerial Regulation Prescribing Rules and Procedures for Customer Due Diligence B.E. 2556 (2013), issued in connection with the Anti-Money Laundering Act, sets out the customer due diligence, or KYC, requirements that apply to financial institutions in Thailand.

In general, financial institutions are required to verify the original version of all identification documents for individual clients (e.g. passport or identity card). In respect of legal entities, financial institutions are required to obtain company registration documents, and to examine the type of business, the source of any high value transactions, and any unusual characteristics. Identification documents should be examined and verified for persons authorised to establish the legal entity's business relationship, directors authorised to conduct transactions, and the ultimate beneficial owner of the legal entity.

These KYC requirements should be undertaken at the time of the client's first transaction with the financial institution, when carrying out a transaction involving THB700,000 or more (either in a single transaction or multiple transactions), when carrying out a wire or electronic transfer of THB50,000 or more, when there is a suspicion of money laundering or terrorist financing, and any time there are doubts about the veracity or adequacy of previously obtained identification information.

Simplified measures apply to low-risk customers, and enhanced requirements apply in respect of high-risk customers. Factors that indicate a customer is high-risk include complex shareholding structures, designation as a high-risk customer by the AMLO,

⁸⁹ Section 3 of the Anti-Money Laundering Act.

undertaking a high-risk profession, being a politically exposed person, or conducting the business relationship or transactions in unusual circumstances. Risk also arises through geography, where a customer resides, engages in work, has source income, or conducts transactions in an area or country deemed high risk by the Secretary General.

4. Sanctions for violations

Offences carry potentially large fines and prison sentences. Individuals may be fined or imprisoned; and corporations may be issued large fines. Additionally, executives of corporations which have violated the Anti-Money Laundering Act may be subject to personal liability through fines and/or imprisonment. In an effort to combat concerns regarding government corruption, under the Anti-Money Laundering Act government officials who violate the law may receive twice the punishment prescribed by law; and should those officials who are charged with enforcing the Anti-Money Laundering Act violate it, they may receive punishment three times that otherwise prescribed by law.

For those who commit the crime of money laundering, the Anti-Money Laundering Act provides for a term of imprisonment of between one and ten years and/or a fine of between THB20,000 and THB200,000 for individuals; and fines between THB200,000 and THB1 million for juristic persons. There are also sanctions attaching to any failure to comply with the statute's reporting requirements – a fine of up to THB500,000 and a daily fine of up to THB5,000 through the period of the violation.

Under the Anti-Money Laundering Act, the Thai authorities may also seize any property that they reasonably believe was used or acquired in violation of the Anti-Money Laundering Act. The property owner has the burden of proving that the property was legitimately acquired.

As a result of the 2015 AML Amendments, the AMLO was given the power to freeze assets with a court order during a human trafficking investigation, and to allocate a portion of the seized assets to victim compensation.

b. Enforcement

According to the United States Department of State Country Reports on Terrorism for 2014, in 2014 “two unlicensed money changers were shut down and charged by the Bank of Thailand, which is revising its regulations to tighten control of similar financial activities. While AMLO did not identify and freeze terrorist assets of sanctioned individuals and organizations in 2014 in accordance with relevant UN Security Council Resolutions including 1267, 1988, and 1373, it froze USD581 in assets of one person designated on Thailand’s domestic list as an individual engaged in terrorist financing activities. The case was being scrutinized by AMLO’s litigation division at year’s end”.⁹⁰

In 2016, the AMLO investigated and confiscated assets in 9 human trafficking cases and seized over THB784 million (USD21.91 million). This represents an increase of 414% from 2015 (THB210 million or USD5.87 million).⁹¹ Currently all of the 9 cases are with the civil court. These funds were not known to be used for the restitution of trafficking victims or dedicated to other protection measures.

c. CTFA

The CTFA together with subordinate laws came into effect in early 2013. The CTFA creates a process for the maintenance of a list of “designated persons” whom there are grounds to believe have been involved in terrorism (or are acting on the instructions of those who are involved in terrorism). The AMLO may publish the list of designated persons and require the designated persons (and the reporters or the persons possessing property of the designated persons) to take certain actions such as suspending the property-related actions of the designated persons and requiring the designated persons to provide the AMLO with information such as that concerning certain property the actions relating to which have been suspended.

The AMLO is in the process of revising the CTFA in order to quicken the designation process.⁹²

90 US Department of State Country Reports on Terrorism 2014, available at <http://www.state.gov/j/ct/rls/crt/2014/226832.htm>

91 US Department of State, Trafficking in Persons Report 2017, p.388.

92 Global Security Country Report on Terrorism 2015, http://www.globalsecurity.org/security/library/report/2015/c-rprt-terrorism_2014-02b.htm.

Question 2. Where Thailand has ratified regional or international anti-money laundering conventions does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligation?

Please see the analysis regarding Thailand's compliance with the key commitments set out in Schedule 4. Please note that Thailand has made reservations in respect of various commitments. Generally, it may be considered that Thailand has domestic legislation which complies with the principles and framework of the conventions, however, the implementation/enforcement of the legislation is inadequate.

a. International and regional conventions

In summary, Thailand is a signatory to the:

1. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (“**Vienna Convention**”), which Thailand ratified in 2002.

The Vienna Convention obliges state parties to criminalise trafficking activities relating to narcotic drugs and psychotropic substances, including the laundering of the proceeds. The Anti-Money Laundering Act creates the offence of money laundering and one of the predicate offences included in the Anti-Money Laundering Act is an offence relating to narcotics under the law on narcotics control or the law on measures for the suppression of offenders in offences relating to narcotics.

2. International Convention for the Suppression of the Financing of Terrorism, which Thailand ratified in 2004.
3. Palermo Convention, which Thailand ratified in October 2013.

As a state party to the Palermo Convention, Thailand has an obligation to define as predicate offences the offences identified as such in the Palermo Convention. The Anti-Money Laundering Act is designed to implement the key money laundering-related obligations that Thailand has under the Palermo Convention by creating the offence of money laundering based on the predicate offences discussed in response to question 1 above. The Financial Action Task Force (the intergovernmental policy-making body which sets the globally accepted standards in relation to anti-money laundering, and develops and promotes policies to combat money laundering and terrorist financing)⁹³ (“**FATF**”) and, on the basis of the 2007 Thailand Mutual Evaluation Report, the assessors, identified a wide range of deficiencies. However, at the FATF Plenary meeting on 16 February 2013, it was concluded that Thailand had made progress. Thailand was therefore removed from the list of countries with strategic anti-money laundering/counter-terrorism financing (“**AML/CTF**”) deficiencies by the FATF in June 2013.

Additionally, Thailand has adopted a number of measures for international co-operation in the effort to combat global money-laundering. In particular, it is a member of the regional anti-money laundering group, the Asia Pacific Group on Money Laundering (“**APG**”), as well as the Egmont Group of Financial Intelligence Units, an international group of Financial Intelligence Units (“**FIUs**”). Thailand has also signed a Memorandum of Understanding Concerning the Exchange of Financial Intelligence Related to Money Laundering (“**AML MOU**”) with 43 countries.⁹⁴

b. APG

Thailand is a founding member of the APG, a regional body founded in 1997 in Bangkok, consisting of 40 members and a number of international and regional observers including the United Nations, the International Monetary Fund (“**IMF**”) and the World Bank. The APG is an associate member of the FATF. Although Thailand is not a member of the FATF, it is obliged to report the progress of implementation in compliance with AML/CFT international standards.

The APG, in conjunction with the FATF and other regional bodies, constitute an affiliated global network which seeks to combat money laundering and the financing of terrorism globally.

The APG uses the set of standards established by the FATF known as the FATF's Forty Recommendations as its principle guidelines for the implementation of effective AML/CTF standards. The FATF Forty Recommendations standards have been accepted internationally as the global policy benchmark for AML/CTF measures. They set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. FATF reviewed and revised the Forty Recommendations into a new comprehensive set of standards in 2004, including a further nine recommendations (“**FATF 40+9 Recommendations**”).

⁹³ More information about FATF, <http://www.fatf-gafi.org/home/>.

⁹⁴ For the list of countries with whom Thailand has signed the MOU, see the website of the AMLO, <http://www.amlo.go.th/index.php/th/>.

Thailand was assessed against the FATF 40+9 Recommendations by the IMF on behalf of the APG in February 2007 with the Detailed Assessment Report (“**DAR**”) adopted in July 2007, obtaining a compliance score of 31%. The DAR contained 147 recommended actions for improving Thailand’s AML/CTF regime.⁹⁵

Since that time, with the adoption of the Anti-Money Laundering Act and the CTFA, Thailand is considered to have made improvements in its AML/CTF regime. This has resulted in the FATF removing Thailand from its public statement in respect of countries with insufficient progress in AML/CTF, though a follow-up DAR has not yet been carried out. According to the press release issued by the Ministry of Foreign Affairs of Thailand:

“On 12 March 2013, the President of the Financial Action Task Force on Money Laundering (FATF) submitted a letter to the Minister of Justice informing that Thailand has been removed from its public statement categorising the country as a jurisdiction with insufficient progress in addressing the deficiencies of its Anti Money Laundering/Counter Financing of Terrorism (AML/CFT) Strategy. Publication of the FATF public statement aims to caution its Member States to increase their scrutiny in engaging in financial transactions originating from or flowing to country listed therein. The removal of Thailand from the FATF public statement resulted from the country significant progress in complying with FATF’s recommendations, specifically by enacting the Anti-Money Laundering Act (No. 4) B.E. 2556 (2013) and the Counter Terrorism Financing Act B.E. 2556 (2013), both of which recently came into force on 2 February 2013.”⁹⁶

The FATF itself stated that:

“The FATF welcomes Thailand’s significant progress in improving its AML/CTF regime and notes that Thailand has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in February 2010. Thailand is therefore no longer subject to FATF’s monitoring process under its on-going global AML/CTF compliance process.”⁹⁷

The Onsite visit for the mutual evaluation of Thailand was conducted in November 2016 and the draft mutual evaluation report will be considered at the APG plenary in July 2017.

c. Egmont Group of Financial Intelligence Units

Thailand is a member of the Egmont Group of Financial Intelligence Units, an informal network of FIUs which meet regularly to find ways to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise.⁹⁸

The goal of the Egmont Group of Financial Intelligence Units is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and the financing of terrorism, and to foster the implementation of domestic programs in this field.

d. AML MOU

Thailand has signed the AML MOU with 43 countries. The intention of the AML MOU is to aid cooperation in combating cross-border money laundering as well as assisting in preventing and eliminating illegal money circulation.

95 See the National Strategy for Combating Money Laundering and the Financing of Terrorism 2010 to 2015, p.16, http://www.amlo.go.th/amlo-intranet/media/k2/attachments/NationalZStrategiesZEn_1.pdf.

96 “FATF removes Thailand from Public Statement on Money Laundering/Financing of Terrorism”, 1 May 2013, <http://mfa.go.th/main/en/media-center/14/34910-FATF-removes-Thailand-from-Public-Statement-on-Mon.html>.

97 “Improving Global AML/CFT Compliance: On-going process - 21 June 2013”, <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/compliance-june-2013.html>.

98 See more information on the Egmont Group, <http://www.egmontgroup.org>.

Question 3. What legislation exists to address money-laundering arising as a result of human trafficking?

The Anti-Money Laundering Act is the primary legislation in Thailand which exists to address money-laundering arising as a result of human trafficking. It does so by expressly including human trafficking under the Anti-Trafficking Act as a predicate offence for money laundering. A range of other trafficking-related offences are also predicate offences under the Anti-Money Laundering Act, as mentioned in the response to question 1 above.

The Anti-Money Laundering Act also penalises whoever commits a money laundering offence, even if the offence is committed outside Thailand, and such persons shall receive the penalty in Thailand, as provided in the Anti-Money Laundering Act, if:

1. either the offender or co-offender is a Thai national or resides in Thailand;
2. the offender is an alien and has taken action to commit an offence in Thailand, or has taken action that is intended to have consequences in Thailand, or the Royal Thai Government is an injured party; or
3. the offender is an alien whose action is considered an offence under the laws of the State where the offence is committed, and if that individual appears in Thailand and is not extradited under the Extradition Act, Section 10 of the Penal Code shall apply *mutatis mutandis*.

Representatives of the AMLO will in future sit on an interagency taskforce directed at eliminating human trafficking in Thailand. The AMLO's role will be to investigate, trace and seize assets of suspected traffickers.

Question 4. Are the penalties/punishments of those found guilty of money-laundering sufficiently stringent?

Under the Anti-Money Laundering Act, an offender who commits a money laundering offence will be subject to imprisonment of between one and 10 years and/or a fine of between THB20,000 and THB200,000.

In any case where an offender is a juristic person such as a corporation, such juristic person will be subject to a fine of between THB200,000 and THB1 million, and the directors, manager or any person responsible for the business operation of such juristic person will also be subject to imprisonment of between one and 10 years and/or a fine of between THB20,000 and THB200,000 unless such persons can prove that they were not involved in committing the offence.

Such penalties may, on their face, be considered sufficiently stringent compared to penalties for other similarly serious offences.

Question 5. What are the numbers/ratio of investigations, prosecutions and convictions of traffickers for money laundering offences?

According to the 2014 annual report of the AMLO (the most recent report available publicly on the AMLO website)⁹⁹ covering the fiscal year from 1 October 2013 to 30 September 2014:

- AMLO pursued cases related to assets connected with the commission of predicate offences and initially examined transaction reports or information related to 456 transactions;
- the Transaction Committee gave a written order assigning officers to examine transactions or assets of 23 cases involving the trafficking of women and children. It also gave a written order freezing or seizing assets in one case involving trafficking of women and children (of unspecified value), and endorsed the filing of a petition to the Public Prosecutor into one such case;
- the Public Prosecutor filed a petition to the court in respect of one case of trafficking in women and children; and
- the Court of First Instance gave two orders that assets be vested in the state in cases of trafficking of women and children (of unspecified value).

As set out in Section A above, 280 human trafficking cases were investigated in 2014. Details of each of those cases were submitted to the AMLO to consider seizure of assets, and resulted in 107 cases of money laundering being investigated. In 2015, the AMLO investigated 40 cases of money laundering alleged to be connected with human trafficking. Four of those cases were dropped, and the others remained pending. In one significant case, the Secretary of the AMLO issued an order impounding 121 items valued at approximately THB32 million, in connection with an investigation into trafficking of Rohingya persons from Myanmar to Malaysia via Thailand.¹⁰⁰ As a result of that investigation, 9 persons were arrested, including one person identified as the “mastermind” of the human trafficking operation. Eventually, the total amount seized by the AMLO in connection with this investigation was THB210 million. The AMLO was also able to provide evidence of financial transactions for use in the prosecution of criminal offences relating to human trafficking.

In 2016, the AMLO investigated and confiscated assets in 9 human trafficking cases. Currently all of the 9 cases are with the civil court.¹⁰¹ The Royal Thai Police has now made it compulsory to refer all human trafficking cases to the AMLO to conduct financial investigations in parallel with criminal case. This should help increase the number of investigations, prosecutions and convictions.

Whilst anti-money laundering is clearly another area in which the Thai government is making progress, it faces significant hurdles, such as the predominance of the cash economy (which makes tracing transactions difficult), a lack of staff who are trained in anti-money laundering matters, and the cost to private enterprises of installing and maintaining sophisticated anti-money laundering systems.

⁹⁹ <http://www.amlo.go.th/amlofarm/farm/en/files/AnnualReport57.pdf>

¹⁰⁰ <http://www.mfa.go.th/main/contents/files/media-center-20150430-161606-980768.pdf>

¹⁰¹ See note 2.



SECTION C

CORRUPTION AND HUMAN TRAFFICKING

Question 1. What {if any} are Thailand's specific anti-corruption legislation?

Much of the legislation that deals with corruption in Thailand focuses on corrupt conduct involving officials. There is no bribery offence in relation to private individuals under Thai law. The exception to this is the Anti-Trafficking Act, which allows for the possibility of bribery between two private individuals.

The key specific anti-corruption legislation in Thailand is:

1. the Organic Act on Counter Corruption B.E.2542 (1999) (the “**Anti-Corruption Act**”);
2. the Act on Offences Committed by Officials of State Organs or Agencies B.E. 2502 (1959) (“**Offences Committed by Officials Act**”);
3. the Penal Code B.E. 2499 (1956) (the “**Penal Code**”);
4. the Executive Measures in Anti-Corruption Act B.E. 2551 (2008); and
5. the Corruption Criminal Procedure Act B.E. 2559 (2016)¹⁰² (the “**Corruption Procedure Act**”).

Significant amendments were made to the Anti-Corruption Act in 2015 (“**2015 OACC Amendments**”), seeking to bring Thailand into compliance with the United Nations Convention Against Corruption (“**UNCAC**”).

One of the flaws in the multi-legislation approach is that offences under different pieces of legislation are investigated and prosecuted by different bodies. In case of investigations conducted by the NACC under the Anti-Corruption Act, where the NACC passes a resolution that the alleged persons committed criminal offence(s), the NACC President shall submit a report, documents and opinion to the Attorney-General. When the Attorney-General has received the report and documents together with the opinion from the NACC and considers that such documents are not so complete as to justify the institution of a prosecution, the Attorney-General shall inform the NACC for further proceeding. In this instance, the incomplete items shall, at the same time, be fully specified. In this case, the NACC and the Attorney-General shall appoint a working committee consisting of representatives of each side in an equal number, for the purpose of collecting full evidence and furnish it to the Attorney-General for instituting the prosecution. In the case where such working committee fails to arrive at a conclusion as to the prosecution, the NACC shall have the power to initiate the prosecution of its own motion or appoint an attorney to institute the prosecution on its behalf. However, it is the Royal Thai Police who investigate offences under the Penal Code, and only the public prosecutor can bring a prosecution.

a. Anti-Corruption Act

The Anti-Corruption Act penalizes bribery, abuse of public power, “unusual wealth”, or “unusual increase of assets” of state official (e.g. any person in a political position, government official, employees of state agencies and/or state enterprises, any person authorised to exercise state authority, and those who have been released from being state officials for less than two years).

The Act encourages the reporting of suspected corruption by providing protections for whistleblowers such as safehouses, police escorts, monetary allowances, and change of name. These protections are available to both whistleblowers and their close family members. The NACC also can award prizes to whistleblowers that report corruption, provide evidence of corruption, or testify in corruption proceedings.

The 2015 OACC Amendments significantly strengthen the Anti-Corruption Act. Key changes include:

1. Extending coverage of the Anti-Corruption Act to foreign state officials¹⁰³, being those who work in Thailand for foreign government agencies or foreign government state enterprises, and international organisation officials¹⁰⁴, being those who work in Thailand for international organisations. Note that it still does not apply to those who work in Thailand for foreign private companies.
2. Introduction of strict liability for corporations that benefit from a bribe by a “related person”, regardless of whether that person had authority to act on behalf of the corporation or not. A “person related to a juristic person” includes its employees, agents, affiliate companies and any other person acting for or on behalf of it. Whilst this is a strict liability offence, it is a defence for the

¹⁰² See the Corruption Criminal Procedure Act (in Thai), available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2559/A/086/1.PDF>.

¹⁰³ Defined as “any person holding a legislative, executive, administrative or judicial office of a foreign country, and any person exercising a public function for a foreign country, including for a public agency or public enterprise, whether appointed or elected, whether holding a permanent or temporary position, and whether being paid a salary or other compensation”.

¹⁰⁴ Defined as “any person working in an international organization or any person who is authorized by such international organization to act on behalf of that international organization”.

corporation to show that it had in place “appropriate internal control measures” (a concept which is not defined) to prevent the bribe being made or received. Corporations found guilty are subject to a fine of one to two times of the damage incurred by, or benefit received from, the bribe. However, note that there is still no criminalization on bribes being paid or offered by one private corporation to another private corporation.

3. Increasing penalties to include imprisonment for five to twenty years, life imprisonment, the death sentence, and fines of THB100,000 to THB400,000. The precise penalty to be applied will be determined based on the damage to Thailand caused by the conduct.
4. Prescribing suspension of prescription periods where the alleged culprit or defendant has absconded during the prosecution or consideration of the court, the period in which such alleged culprit or defendant absconds shall not be counted towards the prescription period, and when the final decision has been made to penalize the defendant, if the defendant absconds during the final sentence to penalize, the provisions of Section 98 of the Penal Code shall not apply.
5. Broadening the investigatory powers of the NACC to include the power to:
 - a. investigate foreign officials and international organisation officials, and then either refer them to the public prosecutor or bring action against them directly;
 - b. inquire and decide on the offences under the NACC’s authority which is committed outside of Thailand, provided that cooperation for the purposes of inquiry and decision shall be in accordance with laws for such purposes such as offences involving bribery by Thai officials overseas; and
 - c. proceed as per the request for an assistance from a foreign country in relation to a corruption case that the Central Authority under the Mutual Legal Assistance in Criminal Matters Act B.E. 2535 (1992) refers to the NACC for further proceeding, or the consideration for granting an informal assistance to a foreign country on a corruption case.
6. Extending the courts’ powers to issue orders for:
 - a. confiscation of money or benefits received by a person found guilty of an offence;
 - b. confiscation of money which is offered as a bribe; and
 - c. payment into court of an amount equal to the value of the benefits received.

b. Offences Committed by Officials Act

The Offences Committed by Officials Act mostly replicates the corruption-related provisions under the Penal Code. The types of conduct of the officials which are criminalized are:

1. unlawfully soliciting or accepting property/benefits in exchange for the performance or non-performance of acts in the official’s official capacity;
2. performing or not performing acts in the official’s official capacity in consideration for property/benefits solicited or accepted prior to assuming office;
3. unlawfully performing or not performing an official duty so as to impair another;
4. dishonestly performing or not performing an official duty;
5. dishonestly appropriating, or dishonestly allowing another to take away, property that the official is in charge of purchasing, creating, administering or keeping safe; and
6. importuning or encouraging another to provide or obtain property/benefit for the official’s sake or for a third party in abuse of the official’s authority.

c. The Penal Code

Unlike the Anti-Corruption Act and Offences Committed by Officials Act, the Penal Code only deals with bribery of officials, not private citizens. It also only applies to Thai officials, not to foreign officials.

Pursuant to the Penal Code, any official who accepts or agrees to accept any undue benefit for performing or refraining from performing any of his or her functions, whether wrongfully or not, commits an offence. Likewise, any person who offers any property, asset or any undue benefit to an official in an attempt to persuade him or her to act contrary to his or her function, commits an offence. A third party who receives the undue benefit in consideration for an official being persuaded to perform or not to perform any of his or her functions is also deemed to have committed an offence.

Under the Penal Code there is no corporate liability, so it is possible for an employee to be prosecuted for bribery offences, whilst the employer company avoids any sanction.

Schedule 3 contains details of the relevant provisions of each of the above laws.

d. The Corruption Procedure Act

The Criminal Court for Corruption and Malfeasance Cases (the “**Corruption Court**”) began operating on 3 October 2016. The new court has jurisdiction over criminal cases in which: state officials are charged with malfeasance in office or irregularities; state officials are charged with money laundering or violations of laws on bidding and joint ventures between private and government sectors; individuals are charged with giving, receiving, or demanding bribes and intimidating, coercing, or using influence to force state officials to act or not to act in accordance with the Penal Code; and individuals are charged with deliberately refusing to declare assets, falsely declaring assets, or covering up assets that should have been declared.¹⁰⁵

The Corruption Procedure Act¹⁰⁶ sets out provisions that significantly enhance the effectiveness of the judicial process when it comes to dealing with corruption cases in the Corruption Court. Key provisions include:

1. Trial will use the Inquisitorial System without delay;
2. The Attorney-General, prosecutors, Chairman of the NACC or NACC committee can bring corruption claims as plaintiffs and in these cases the Corruption Court can rely on the reports and investigations that were conducted by these parties as part of the fact finding;
3. The Corruption Court has the authority to order a trial in absentia for limited reasons;
4. In the event that a defendant has absconded during the prosecution or consideration, the statute of limitations for corruption offenses shall not include such period; and
5. The Division of Corruption and Malfeasance of the Court of Appeal will consider appeals and order of the Court of first instance.

In addition to the above laws, the Prime Minister can make orders under the powers granted to him by section 44 of the interim Constitution. Under that provision, the Prime Minister can issue any order considered necessary to “strengthen public unity and harmony” or to “prevent any act which undermines public peace and order”. This power has recently been relied upon to take disciplinary action and direct tax investigations against state officials and private persons involved in graft cases.¹⁰⁷

105 “NLA approves bill to create criminal court deal to deal exclusively with corruption cases”, Pattaya mail, <http://www.pattayamail.com/thailandnews/nla-approves-bill-create-criminal-court-deal-exclusively-corruption-cases-139656>.

106 See note 102.

107 “Thailand: Anti-Corruption Law Penalties Extended to Foreigners, Library of Congress, <http://www.loc.gov/law/foreign-news/article/thailand-anti-corruption-law-penalties-extended-to-foreigners/>.

Question 2. Where Thailand has ratified regional or international anti-corruption conventions does its legislation comply with those that would be needed in order to ensure that it can, in theory, meet its obligation?

Several of the international conventions and regional commitments described in Schedule 2 make reference to anti-corruption measures.

Thailand also ratified the UNCAC in 2011. UNCAC seeks to prevent and combat corruption, support international cooperation in preventing and fighting corruption, and promote integrity, accountability and proper management of public affairs and property. As discussed above, the recent amendments to the Anti-Corruption Act were specifically aimed at increasing Thailand's implementation under the UNCAC.

Full details of Thailand's commitments or obligations under these conventions and agreements, and commentary on Thailand's implementation is set out in section 2 of Schedule 4.

Question 3. How does the existing legislation address corruption arising as a result of human trafficking particularly in relation to bribery allegations against government officials, police/immigration officers?

There is a range of corruption-related conduct that is prohibited under the Anti-Trafficking Act. For example:

1. demanding, accepting, or agreeing to accept property or any other benefit in order to help an offender of trafficking in persons not to be punished;
2. giving, offering or agreeing to give property/benefits to a trafficked person or witness to induce them to not provide information to an investigation or to not give evidence in court, or to provide information in court that is false;
3. giving, offering, demanding, accepting, or agreeing to give/accept property/benefits to an official to induce them to do, not do, or delay doing, any act contrary to that official's duty under the Anti-Trafficking Act; and
4. forcing, coercing, threatening, compelling, deceiving, or using any other means to cause an official to do, not do, or delay doing, any act contrary to that official's duty under the Anti-Trafficking Act.

The Administrative Measures to Prevent Public Official's Involvement in Human Trafficking, which came into effect since 2015, sets out a code of conduct for public officials as well as disciplinary and legal punishments for wrongdoers. In 2016, the government filed criminal charges against 10 officials, as compared to 34 officials in 2015. It investigated and charged 10 police officers allegedly complicit in sex trafficking crimes.¹⁰⁸ From January to March 2017, the government investigated an additional six police officers and one local politician allegedly complicit in trafficking crimes.¹⁰⁹ Of the 34 officials initially investigated in the previous years, two were convicted of human trafficking charges and one was convicted of procurement.¹¹⁰ In addition to the criminal investigation, the AMLO investigated the properties of 22 out of 45 officials involving in trafficking in persons. In 2016, the Civil Court ordered the seizure of assets from 2 officials worth a combined THB11.1 million (USD0.31 million) and 3 official cases are pending investigation in Civil Court worth a combined THB33.9 million (USD0.97 million). All 5 officials are still going through criminal trials.¹¹¹

108 US Department of State, Trafficking in Persons Report 2017, p.389.

109 *Id.*

110 *Id.*

111 Thailand's Country Report on Anti-Human Trafficking Response 2016, p.61.

Question 4. Are the penalties/punishments of those found guilty of corruption sufficiently stringent?

Corruption has been identified as one of the primary linkage to human trafficking in Thailand. This contributed Thailand to be classified in the Tier 3 ranking in the 2015 Report. Some of the corrupt conduct described in the 2015 Report includes officials selling Rohingya persons to fishing vessels, removing Rohingya persons from detention and selling them to brokers, protecting brothels and commercial sex venues from raids and inspections, and using information from witness interviews to weaken trafficking cases. A similar tone continues in the 2016 Report and the 2017 report, which identifies that “corruption continues to undermine anti-human trafficking efforts”. One of the biggest issues facing Thailand in this regard is the fact that its efforts so far are still not enough due to the extent of corruption.

The penalties for engaging in corrupt conduct in Thailand is very stringent. Such penalties include life imprisonment or the death penalty, depending on the conduct involved and the offence with which the individual is charged. However, as described in response to question 5 below, there have historically been low levels of prosecution in relation to acts of corruption, and even lower rates of conviction.

a. Anti-Corruption Act

Under the Anti-Corruption Act, as amended by the 2015 OACC Amendments, the penalties depend on the nature of the offences involved, varying from imprisonment for five to twenty years, life imprisonment, the death penalty and/or a fine of THB100,000 to THB400,000.

b. Offences Committed by Officials Act

The penalties under this legislation are very high. For most offences, the penalty is 5 to 20 years’ imprisonment, or life imprisonment, and a fine of THB2,000 to THB40,000.

However, for the offences described at (1) and (6) in response to question 1(b) above, the above penalties apply, but with the death penalty also an option available to the Court in sentencing. The death penalty has not been used to date in relation to bribery offences.

The offences described at (3) and (4) in response to question 1(b) above attract lower penalties: 1 to 10 years’ imprisonment and/or a fine of THB2,000 to THB20,000.

c. The Penal Code

Under the Penal Code, a person found guilty of offering an undue reward to an official can be subject to up to 5 years’ imprisonment and/or a fine of up to THB10,000. Where the offeree is a judicial officer or public prosecutor or investigator, this increases to a maximum of 7 years’ imprisonment and a fine of up to THB14,000. An official found guilty of any corruption offence can be liable for life imprisonment and/or a fine of up to THB60,000.

Any property or benefits given or taken as a result of corrupt activities will be forfeited. Additionally, indirect benefits derived from corruption could also be reclaimed.

d. The Anti-Trafficking Act

Where the offence committed is helping an individual not to be punished for a human trafficking offence, the offender is guilty of human trafficking, and attracts penalties as such. That is, 4 to 12 years’ imprisonment and a fine of THB400,000 to THB1,200,000 or more severe penalties (up to and including the death penalty) where the victim of human trafficking is severely injured or dies.

Where the offence committed has the effect of obstructing an investigation (i.e. the conduct set out at (2) to (4) in response to question 3 above), the penalty is up to 10 years imprisonment and a fine of up to THB200,000.

Question 5. What are the numbers of investigations, prosecutions and convictions of government officials, police officers; and immigration officials for corruption?

a. NACC

The NACC investigates allegations of corruption involving persons holding political positions and high ranking government officials.

It has the power to investigate, collect evidence, compel the production of documents, compel oral evidence, and furnish a report and opinion to the Attorney-General. In addition, in certain circumstances, the NACC is able to seek account information from banks to assist in tracing transactions of suspected corrupt activities.

In 2013, the NACC and the Royal Thai Police signed an MOU in relation to the protection measures to be provided to witnesses in cases involving corruption. Under the terms of the MOU, the NACC will provide the Royal Thai Police with the names of the persons requiring protection and the period for which they require protection, and the Royal Thai Police will provide effective protection to the witness. However, more effective witness protection measures are still needed.

In 2014, the NACC's budget was increased in order to fund an additional 700 employees to investigate corruption in Thailand. In addition, the MSDHS has set up a hotline and email address for people to report information related to corrupt acts or suspected involvement of government officials in human trafficking. The MSDHS passes on the information collected from the hotline and email address to the NACC for investigation.

b. Office of the Public Sector Anti-Corruption Commission ("PACC")

The PACC investigates allegations of corruption involving government officials that do not fall within the jurisdiction of the NACC (i.e. those below a particular rank). It has the same investigative powers as the NACC, though it does not have the power to seek account information from banks.

A Centre to Combat Corruption has been established by the PACC, with responsibility for strategies and action plans to prevent and tackle corruption and misconduct. Another recent initiative of the PACC has been the introduction of the 'Dial 1206' hotline to report suspected corruption.

c. Prosecution activity

As part of the Thai government's new 'zero tolerance' approach to corruption, law enforcement agencies are required to report suspected corrupt conduct to the NACC or the PACC, and those agencies have been instructed to fast track human trafficking and corruption cases, and to do so in a transparent manner. As discussed in response to question 1 above, a new division of the Criminal Court was established in June 2015 to handle corruption cases. It is expected that this will increase the efficiency with which corruption cases are dealt.

One example of the new approach paying dividends is the dismantling of a network of corrupt government officials in late 2014. Seven officials and five civilians were arrested as a result, and a number of police officers were moved to other stations in an attempt to break up the network.¹¹² In another case, two high level officials were accused of smuggling Cambodian workers into Thailand. Whilst there was insufficient evidence to arrest the officials, they were judged to be highly incompetent and moved to inactive posts, pending sufficient evidence being gathered to lay charges against them.¹¹³ However, despite a number of arrests being made, most cases are yet to be finalised, and many have resulted simply in the official concerned being moved into an inactive posting, with no criminal penalty.

The number of cases involving corruption in relation to human trafficking activities in 2014 is reported to be¹¹⁴:

1. 8 arrests of government officials:
 - a. 4 police officers;
 - b. 1 navy officer;
 - c. 2 local level government officials; and
 - d. 1 social and human development officer.
2. 5 ongoing prosecution cases; and
3. 11 police officers subject to internal disciplinary procedures.

¹¹² See note 2.

¹¹³ *Id.*

¹¹⁴ Thailand's Trafficking in Persons 2014 Country Report, p.50.

According to the 2016 Report, there were seven officials charged in 2014, but that only two of those charges resulted in conviction during 2015, with the other cases still pending. 34 government officials were charged for involvement in human trafficking in 2015, including several mid to high level officials. A further five cases of officials taking bribes from entertainment venues were investigated. This is typical of the slow prosecution process which the new corruption court is seeking to address.

Corruption remains one of the most significant barriers to Thailand reducing its levels of human trafficking. More robust investigation of corruption is required, however corruption within the police force means that investigations are often insufficient and may continue to prove to be so. Further allocation of resources to fight corruption should assist, however the ultimate test of whether Thailand can improve in this respect is how well it follows through on its recent commitments to improve.

Police General Paween Pongsirin, the most senior Royal Thai Police corruption investigator into human trafficking, recently sought asylum in Australia because he feared for his life after investigating the mass grave of a group of victims of human trafficking.¹¹⁵ He was transferred against his will to the south of Thailand where he alleges the traffickers he was investigating are influential and senior police were involved in human trafficking. His investigation was, in his opinion, closed prematurely, although it resulted in over 150 arrest warrants being issued.¹¹⁶

Cases such as this highlight the systemic difficulties facing Thailand, and the significant hurdles still to be overcome.

115 "Revealed: Thailand's most senior human trafficking investigator to seek political asylum in Australia", The Guardian, <https://www.theguardian.com/world/2015/dec/10/thailands-most-senior-human-trafficking-investigator-to-seek-political-asylum-in-australia>.

116 *Id.*



SCHEDULE 1

Domestic Legislation Relevant to Human Trafficking

1. The Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008) (as amended)

– Section 4: relevant definitions

“Child” means any person under eighteen years of age.

“Exploitation”

Repealed by the 2017 Anti-Trafficking Act. The definition is now under Paragraph 2 of Section 6.

“Forced labour or service”

This definition is now under Paragraph 3 of Section 6.

“Organized Criminal Group” means a structured group of three or more persons, notwithstanding being formed permanently or existing for a period of time, and no need to have formally defined roles for its members, continuity of its membership or a developed structure, acting in concert with the aim of committing one or more offences punishable by a maximum imprisonment of four years upwards or committing any offence stipulated in this Act, with the aim to unlawfully obtain, directly or indirectly, property or any other benefit.

– Section 6: Human trafficking offences

A person who does any of the following acts for the purpose of exploitation is guilty of trafficking in persons:

- (1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or
- (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.

If the act is construed for the purposes of exploitation, such person will commit the trafficking offense.

Exploitation pursuant to Paragraph 1 means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, enslave or slave-like, forced labour or service, causing another person to be a beggar coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.

Forced Labour or Service pursuant to Paragraph 2 means compelling the other person to work or provide service by any methodology as follows:

- i. putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person;
- ii. by means of intimidation;
- iii. use of force;
- iv. confiscation of identity document or bonded by debt of such person or others; and
- v. putting such person into the coerce situation.

– Section 7: Assisting trafficking in persons is also an offence

Any persons who commit the following acts shall be adjudicated with the same punishment as the principal of the trafficking offense:

- (1) supporting the commission of an offence of trafficking in persons;
- (2) aiding by contributing property, procuring a meeting place or lodge, for the offender of trafficking in persons;
- (3) assisting by any means so that the offender of trafficking in persons may not be arrested;
- (4) demanding, accepting, or agreeing to accept a property or any other benefit in order to help the offender of trafficking in persons not to be punished;
- (5) inducing, suggesting or contacting a person to become a member of the organized criminal group, for the purpose of committing an offence of trafficking in persons.

– Section 8: Preparing to commit trafficking in persons

Preparing to commit an offence set out in section 6 renders a person liable to one-third of the punishment of the section 6 offence.

– Section 9: Conspiring to commit trafficking in persons

Where two or more people conspire to commit an offence set out in section 6, they will be liable to no more than one-half of the punishment of the section 6 offence.

– Section 10: Commission of trafficking in persons by organized criminal groups

Where a section 6 offence is committed by 3 or more persons or by at least one member of an organized criminal group, the section 6 punishment will be increased by one-half. In such a situation, if the section 6 offence is committed to traffic a person into or out of Thailand unlawfully, the section 6 punishment will be doubled.

Where a section 6 offence is committed by a member of an organized criminal group, every member of the group who knows and connives of the offence will be liable for the offence, even if not personally involved in its commission.

– Section 11: Commission of offence outside of Thailand

Commission of a section 6 offence outside of Thailand renders a person liable for the punishment for a section 6 offence in Thailand.

– Section 12: Commission of offence by a person purporting to be an official

A person who commits an offence under the Act by professing to be an official and exercising the functions of an official without having the power to do so will be liable for double the penalty of the offence.

– Section 13: Commission of an offence by an official

Where an offence is committed by a person in their capacity as an official, that person will be liable to double the penalty of the offence.

– Section 27: Powers and duties of competent official

Competent official has the power (subject to the limitations set out in the provision) to:

- (1) summon persons to provide statements, documents or evidence;
- (2) search a person, with his/her consent, where there is a reasonable ground to believe that the person is a trafficked person;
- (3) search any conveyance where there is a reasonable ground to suspect that it holds evidence or a trafficked person;
- (4) enter any dwelling place or a premise, to search, seize or attach, when there is a reasonable ground to believe that it holds evidence of trafficking in persons, or to discover and rescue a trafficked person therein. Only available where the delay caused by obtaining a search warrant would likely cause the evidence to be removed, concealed or destroyed, or the person to be assaulted, relocated or concealed.

– Section 29: Temporary custody of a suspected trafficked person

Where it is considered necessary for the benefit of clarifying information in relation to human trafficking, or necessary for the protection of a person, the competent official may temporarily take a person into his custody for up to 24 hours where there are reasonable grounds to believe that the person is a victim of trafficking. The person must be held in an appropriate place, which must not be a detention cell or prison. The 24 hour period can be extended by up to 7 days with the approval of the Court.

– Section 33: Provision of assistance to a trafficked person

The Ministry of Social Development and Human Security is required to consider the provision of assistance as appropriate to a victim of trafficking, including food, shelter (in either a primary government shelter or private welfare centre), medical treatment, physical and mental rehabilitation, education, training, legal aid, return to the country of origin or domicile, and assistance with legal proceedings to claim compensation. In determining what is appropriate, consideration will be given to the person's human dignity, gender, age, nationality, race, and culture. The opinion of the trafficked person is to be sought.

– Section 34: Notification of right to claim compensation

A trafficked person must be notified at the first opportunity of their right to claim compensation and their right to legal aid.

– Section 36: Protection of trafficked persons

The competent official shall provide protection to the trafficked person under his care, regardless of where such person stays, and whether it is prior to, during or after the proceedings. In so doing, the safety of the family members of a trafficked person shall also be taken into account.

In the event of the trafficked person making a statement or testifying as a witness in relation to a human trafficking offence, the trafficked person, as a witness, shall be protected according to the laws regarding the protection of witnesses in a criminal case.

If a trafficked person has to return to his or her country of residence or domicile, or if the family members of the trafficked person live in another country, the competent official shall coordinate with the relevant government or private agency in such country, with a view to providing ongoing protection for the trafficked person and family members in that country.

– Section 37: Assisting the trafficked person to stay in Thailand

For the purpose of prosecuting an offender, providing medical treatment, rehabilitating the trafficked person, or claiming for compensation, the competent official may assist the trafficked person to get permission to stay in Thailand temporarily and be temporarily allowed to work.

– Section 39: Thai nationals trafficked outside of Thailand

Once he/she determines that a person trafficked outside Thailand is of Thai nationality, the competent official will take whatever steps are necessary to have the person returned to Thailand without delay, having consideration to the safety and welfare of the person.

Similar protections apply in respect of: aliens given temporary permission to remain in Thailand where that permission has not yet expired; aliens with permission to remain in Thailand under the Immigration Act; and aliens with no identity documents but where there is a reasonable ground to believe that the person has (or used to have) lawful domicile or residence in Thailand, upon verification of that status.

– Section 44: Use of the Anti Trafficking in Persons Fund

The money and property in the Anti Trafficking in Persons Fund shall be used for the limited purposes set out in this section, including provision of assistance described in sections 33, 36 and 39, and preventing and suppressing trafficking in persons.

– Section 52: Penalties for trafficking in persons

Section 6 offence (i.e. trafficking in persons): imprisonment for 4 to 12 years and a fine of THB400,000 to THB1,200,000.

Where the section 6 offence involves a child aged over 15 but under 18: imprisonment for 6 to 15 years and a fine of THB600,000 to THB1,500,000.

Where the section 6 offence involves a child aged under 15, or the disability or person with mental impairment: imprisonment for 8 to 20 years and a fine of THB800,000 to THB2,000,000.

– Section 53: Penalties where offence is committed by a juristic person

Section 6 offence (i.e. trafficking in persons): fine of THB1 million to THB5 million.

Where the section 6 offence is committed by a juristic person, and involves a director or manager or responsible person: imprisonment for 6 to 12 years and a fine of THB600,000 to THB1,200,000.

– Section 53/1: Penalties for offences causing serious injury or death

Section 6 offence (i.e. trafficking in persons) causing serious injuries: imprisonment for 8 to 20 years and a fine of THB800,000 to THB2,000,000 or life sentence.

Section 6 offence (i.e. trafficking in persons) causing death: imprisonment for life or the death penalty.

– Section 54: Penalties for obstructing an investigation into trafficking of persons

The penalty for obstructing an investigation, inquiry, prosecution or criminal proceedings in relation to trafficking in persons in the following ways is imprisonment of up to 10 years and/or a fine of up to THB200,000:

- (1) giving, offering or agreeing to give property/benefits to a trafficked person or witness to induce them to not provide information to an investigation or to not give evidence in court, or to provide information in court that is false;
- (2) forcing, coercing, threatening, compelling, deceiving, or using any other means to cause a trafficked person or witness not provide information to an investigation or to not give evidence in court, or to provide information in court that is false
- (3) interfering with documents or evidence, fabricating or making false documents or evidence that is used in criminal proceedings, or using false documents in criminal proceedings;
- (4) giving, offering, demanding, accepting, or agreeing to give/accept property/ benefits to a specified official to induce them to do, not do, or delay doing, any act contrary to that official's duty under the Act;
- (5) forcing, coercing, threatening, compelling, deceiving, or using any other means to cause a specified official to do, not do, or delay doing, any act contrary to that official's duty under the Act.

2. The Human Trafficking Criminal Procedure Act B.E. 2559 (2016)

– Section 8

Trafficking in person cases shall be speedy and shall use the inquisitorial system. Where no provision in the Human Trafficking Criminal Procedure Act (2016) indicates otherwise, the Criminal Procedural Code, the Civil Procedural Code, and the Provincial Procedural Law shall apply *mutandis mutatis*.

– Section 9

For pre-trial deposition, the preliminary examination, or trial proceedings, if it is not reasonably possible to have witnesses testify in court, upon the party's request or the court's discretion, the court may allow the witnesses to testify remotely from another court, or any official office or other place, whether it is located within or outside the country. Witness testimony shall be conducted through teleconference technology that is specifically for the delivery of motion picture and sound. Testifying through the teleconference as such shall be deemed to be akin to testimony conducted in the courtroom.

– Section 33

Trial proceedings and witness examination shall be conducted in the presence of the defendant/s.

When the court deems appropriate, for the purposes of a speedy trial in particular, the court has authority to assess and examine a witness in the absence of the defendant if any of these following circumstances is present:

- (1) The defendant is sick or has a valid reason, only if the defendant has a lawyer and the court allows the defendant absence from the trial proceedings;
- (2) The defendant is a juridical person, and the court has already issued an arrest warrant of its manager or representative, but such person is still at large;
- (3) The defendant flees from the court's jurisdiction, and the court orders the arrest, but the defendant is still at large;
- (4) During the trial or witness examination, the court orders the defendant to leave the court room because the defendant obstructs the trial proceedings, or in an event the defendant leaves the courtroom without the court's permission.

– Section 38 Appeal the Verdict

Appeal of the Court of First Instance verdict shall be submitted to the consideration of the Human Trafficking Division of the Appellate Court within 30 days after the verdict is read or presumably read.

– Section 39

In an event that the defendant who is not incarcerated appeals the verdict, the defendant may file the appeal only if he makes an appearance before the court official while submitting his appeal.

– Section 43 Appeal the Appellate Court Decision to the Supreme Court

The appeal of the Appellate Court Decision or order shall be submitted to the Supreme Court consideration through the Court of First Instance within 30 days from the date that the Appellate Court's decision has been read or is presumed to have been read. The petition shall specify the reason why the Supreme Court should accept into its consideration in accordance with Section 45.

– Section 44

Quorum of the Supreme Court shall be appointed by the Supreme Court President and shall comprise of one Supreme Court's Vice-President, and three justices.

The decision on the petition shall be rendered by majority vote.

3. The Penal Code B.E. 2499 (1956)

– Section 282: Indecency

Offence: in order to gratify the sexual desire of another person, procures, seduces or takes away, a person with or without his or her consent for an indecent act.

Penalty: imprisonment of one to 10 years and a fine of THB2,000 to THB20,000.

Penalty where the offence involves a person over 15 but under 18: imprisonment of 3 to 15 years and a fine of THB6,000 to THB30,000.

Penalty where the offence involves a person not over 15: imprisonment of 5 to 20 years and a fine of THB10,000 to THB40,000.

Offence: in order to gratify the sexual desire of another person, obtains the person who is procured, seduced or taken away, or supports in the commission of such an offence.

Penalty: as above, based on the age of the victim.

– Section 283: Indecency for another person by deception, threat or force

Offence: in order to gratify the sexual desire of another person, procures, seduces or takes away, a person for an indecent act by using deceitful means, threat, an act of violence, unjust influence, or coercion by any other means.

Penalty: imprisonment of 5 to 20 years and a fine of THB10,000 to THB40,000.

Penalty where the offence involves a person over 15 but under 18: imprisonment of 7 to 20 years and a fine of THB14,000 to THB40,000, or imprisonment for life.

Penalty where the offence involves a person not over 15: imprisonment of 10 to 20 years and a fine of THB20,000 to THB40,000, or imprisonment for life, or the death penalty.

Offence: in order to gratify the sexual desire of another person, obtains the person who is procured, seduced or taken away, or supports in the commission of such an offence.

Penalty: as above, based on the age of the victim.

– Section 283-2: Indecency related to a child

Offence: takes away a person over 15 but under 18 for an indecent act with the consent of the person.

Penalty: imprisonment of up to 5 years or a fine of up to THB10,000, or both.

Penalty where the offence involves a person not over 15: imprisonment of up to 7 years or a fine of up to THB14,000, or both.

Offence: conceals the person who is taken away.

Penalty: as above, based on the age of the victim.

Taking away a person over 15 but under 18 for an indecent act with the consent of the person, and concealing that person, are compounding offences (i.e. the offender is able to negotiate with the prosecutor to have the charges dropped in exchange for paying compensation).

– Section 284: Takes away another person for indecent act

Offence: takes away a person for an indecent act by using deceitful means, threat, an act of violence, unjust influence or coercion by any other means.

Penalty: imprisonment of 1 to 10 years and a fine of THB2,000 to THB20,000.

Offence: conceals the person who is taken away.

Penalty: as above.

The above offences are compounding offences.

– Section 286: Prostitution

Offence: Any person over 16 who subsists on the earning of a prostitute, even it is some part of their income.

Penalty: imprisonment of 7 to 20 years and a fine of THB14,000 to THB40,000, or imprisonment for life.

Offence: for a person who has no other apparent or sufficient means of subsistence to:

1. reside or habitually associate with one or more prostitutes; or
2. take board and lodging, or receive money or other benefits arranged by a prostitute; or
3. help any prostitute in a quarrel with her customer.

Penalty: unspecified.

This section shall not apply to any person who receives maintenance from a prostitute who is bound to give maintenance according to law or morality.

– Section 295: Bodily harm offence

Offence: causes injury to another person's body or mind.

Penalty: imprisonment for up to 2 years or a fine of up to THB4,000, or both.

– Section 296: Special cases of bodily harm

Offence: commits bodily harm in circumstances prescribed by Section 289.

Penalty: imprisonment for up to 3 years or a fine of up to THB6,000, or both.

– Section 297: Grievous bodily harm

Offence: commits bodily harm causing the victim grievous bodily harm.

Grievous bodily harm involves:

1. loss of sight;
2. loss of hearing;

3. cutting of the tongue or loss of the sense of smell;
4. loss of genital organs or reproductive ability;
5. loss of an arm, leg, hand, foot, finger or any other organ;
6. permanent disfiguration of the face;
7. abortion;
8. permanent insanity;
9. infirmity or chronic illness which may last throughout life; and
10. infirmity or illness causing the sufferer to be in severe bodily pain for over 20 days or to be unable to follow ordinary pursuits for over 20 days.

Penalty: imprisonment of 6 months to 10 years.

– Section 298: Special cases of grievous bodily harm

Offence: commits grievous bodily harm in circumstances prescribed by Section 289.

Penalty: imprisonment of 2 years to 10 years.

– Section 299: Mob punishment for grievous bodily harm

Offence: grievous bodily harm caused by an affray in which 3 or more persons are engaged, whether the victim be a participant in the affray or not.

Penalty: imprisonment of up to 1 year or a fine not exceeding THB2,000, or both (whether the person is a participant in the affray or not).

Defence: if a participant in the affray can show that he or she acted in order to prevent the affray or in lawful defense.

– Section 300: Grievous bodily harm as a result of negligence

Offence: as a result of negligence, causes grievous bodily harm to another person.

Penalty: imprisonment of 3 years or a fine of up to THB6,000, or both.

– Section 309: Extortion

Offence:

1. extorts another person to do or not do any act; or
2. causes another person to suffer by putting him or her in fear of injury to life, body, liberty, reputation or property of himself or another person; or
3. commits violence so that another person does or does not do any act or suffers such thing,

Penalty: imprisonment of up to 3 years or a fine of up to THB6,000, or both.

Offence: if the offence is committed by making use of arms, or by 5 persons or more participating, or it is committed to compel a person to execute, revoke, damage or destroy any document of right.

Penalty: imprisonment of up to 5 years or a fine of up to THB10,000, or both.

Offence: if the offence is committed by alluding to the power of a secret society or criminal association, whether it exists or not.

Penalty: imprisonment of 1 to 7 years and a fine of THB2,000 to THB14,000.

– Section 310-312: Penalties for illegal detention

Offence: detains or confines another person, or deprives another person of their liberty, and makes the person do an act for them or any other person.

Penalty: imprisonment of up to 5 years and a fine of up to THB10,000.

– Section 311: Detention by negligence

Offence: by negligence causes another person to be detained, confined or deprived of their liberty.

Penalty: imprisonment of up to 1 year or a fine of up to THB2,000, or both.

Offence: if the commission of the offence causes death or grievous bodily harm to the person detained, confined or deprived of liberty.

Penalty: as provided in Section 291 or 300.

– Section 312-1: Slavery

Offence: to enslave a person or to cause the person to be in a position similar to a slave, bringing into or sending out of the Kingdom, removing, buying, selling, disposing, accepting or restraining any person.

Penalty: imprisonment of up to 7 years and a fine of not more than THB14,000.

– Section 312-2: Child slavery

Offence: if the commission of the offence according to Section 310-2 or Section 312 is committed to a child over 15 but under 18.

Penalty: imprisonment of 3 to 10 years and a fine of up to THB20,000.

Offence: if the commission of the offence causes bodily harm or mental harm to the victim.

Penalty: imprisonment of 5 to 15 years and a fine of up to THB30,000.

Offence: if the commission of the offence causes grievous bodily harm to the victim.

Penalty: imprisonment of 7 to 20 years or life imprisonment.

Offence: if the commission of the offence causes death to the victim.

Penalty: imprisonment of 15 to 20 years, or life imprisonment, or death.

– Section 312-3: Taking a child

Offence: dishonestly accepting, disposing, procuring, seducing, or taking away a person over 15 but under 18 with the person's consent.

Penalty: imprisonment of up to 5 years, or a fine of up to THB10,000, or both.

Penalty where the victim is under 15: imprisonment of up to 7 years, or a fine of up to THB14,000, or both.

– Section 316: Arranging for confinement or kidnapping

Offence: arranges for the person who is taken away, restrained or confined to regain his liberty before the judgment of the Court of First Instance without receiving grievous bodily harm and without being in imminent danger to life.

Penalty: not less than one-half of the penalty that would otherwise apply.

– Section 317: Kidnapping a child under 15

Offence: without reasonable cause, takes away a child under 15 from the parent, guardian or person looking after such child.

Penalty: imprisonment of 3 to 15 years and a fine of THB6,000 to THB30,000.

Offence: dishonestly buys, disposes of, or accepts, such a child.

Penalty: same as the person who takes the child away.

Offence: if the offence is committed for gain or an indecent purpose.

Penalty: imprisonment of 5 to 20 years, and a fine of THB10,000 to THB40,000.

– Section 318: Kidnapping a person over 15 but under 18

Offence: takes away a minor over 15 but under 18 from the parent, guardian or person looking after such minor against the will of the minor.

Penalty: imprisonment of 2 to 10 years and a fine of THB4,000 to THB20,000.

Offence: dishonestly buys, disposes of or accepts such a minor.

Penalty: same as the person who takes the minor away.

Offence: if the offence is committed for gain or indecent purpose.

Penalty: imprisonment of 3 to 15 years, and a fine of THB6,000 to THB30,000.

– Section 319: Sexual trafficking

Offence: takes away a minor over 15 but under 18 from the parent, guardian or person looking after such minor for gain or indecent purpose with the consent of the minor.

Penalty: imprisonment of 2 to 10 years and a fine of THB4,000 to THB20,000.

Offence: dishonestly buys, disposes, or accepts such a minor.

Penalty: same as the person who takes such minor away.

– Section 320: Human trafficking outside country

Offence: by using fraudulent or deceitful means, threat, violence, unjust influence or any other means of compulsion, takes or sends a person out of Thailand.

Penalty: imprisonment of 2 to 10 years or a fine of THB4,000 to THB20,000, or both.

Offence: if the offence is committed and the person taken or sent out is to be under the power of the other person unlawfully, or is abandoned in a helpless condition.

Penalty: imprisonment of 3 to 15 years and a fine of THB6,000 to THB30,000.

– Section 321: Compoundable offences

The following are compoundable offences: Section 309, first paragraph; Section 310, first paragraph; and Section 311, first paragraph.

4. The Child Protection Act B.E. 2546 (2003)

– Article 24: Duties and authorities of State Officers

Permanent Secretaries, Provincial Governors, District Chiefs, and Assistant District Officers, as heads of sub-districts or administrative heads of local administration organizations, have a duty to protect the safety of children living in the areas under their jurisdiction. That duty applies regardless of whether or not the children have parents or guardians.

Those State Officers also have the authority and duty to supervise and inspect nurseries, remand homes, welfare centres, safety protection centres, development and rehabilitation centres, and observation centres within their jurisdiction. Findings of the inspections shall be reported to the Bangkok Metropolis Child Protection Committee or the Provincial Child Protection Committee.

Those State Officers shall also have the same authority and duties as those of ‘Competent Officials’ under this Act.

– Article 26: Forbidden acts

The following conduct is forbidden, regardless of whether the child consents. Where the conduct attracts a greater penalty under another law, that greater penalty will apply.

- 1) Committing or omitting to do acts which result in torturing a child’s body or mind;
- 2) Intentionally or neglectfully withholding things that are necessary for sustaining the life or health of a child under the person’s guardianship to the extent which would be likely to cause physical or mental harm to the child;
- 3) Forcing, threatening, inducing, encouraging or allowing a child to adopt behaviour and manners which are inappropriate or likely to be the cause of wrongdoing;
- 4) Advertising in the media or any other means of information dissemination to receive or give away a child to any person who is not related to the child, save where such action is sanctioned by the State;
- 5) Forcing, threatening, inducing, encouraging, consenting to, or acting in any other way that results in a child becoming a beggar or living on the street, or using a child as an instrument for begging or committing crimes, or acting in any way that results in the exploitation of a child;
- 6) Using, employing, or asking a child to work or act in such a way that might be physically or mentally harmful to the child, affect the child’s growth, or hinder the child’s development;
- 7) Forcing, threatening, using, inducing, instigating, encouraging, or allowing a child to play sports or commit any acts indicative of commercial exploitation in a manner which hinders the child’s growth and development or constitutes an act of torture against the child;
- 8) Using or allowing a child to gamble in any form or enter into a gambling place, brothel, or other place where children are not allowed;
- 9) Forcing, threatening, using, inducing, instigating, encouraging or allowing a child to perform or act in a pornographic manner, regardless of whether the intention is to obtain remuneration or anything else;
- 10) Selling, exchanging or giving away liquor or cigarettes to a child, other than for medical purposes.

Penalty: imprisonment for up to 3 months or a fine of up to THB30,000, or both (see Article 78 below).

– Article 30: Authority and duties of the competent official

The Competent Official has the following authority and duties relevant to human trafficking:

- 1) To enter and search homes, establishments or vehicles during daylight hours where there is reason to suspect that an act of torture, detention or unlawful care has been committed against a child. Where there is reason to believe that a child may be harmed mentally or physically, or be taken to another place which would make it difficult to trace and rescue such child, if action is not taken immediately, a competent official has the power to enter outside of daylight hours;

- 2) To question a child when there is reason to suspect that the child is in need of welfare assistance or safety protection. If necessary to better provide or arrange welfare assistance and protection, the child may be brought to the office of the competent official to obtain information about the child and his/her family, including any person the child is living with. Such action must be taken without undue delay, and the child may not be detained for more than 12 hours. When such a period of time has elapsed, the provisions under clause (6) shall apply. During the time that the child remains in custody, he or she shall be provided for and, if ill, receive medical care;
- 3) To issue a letter summoning a child's guardian or any other person to testify or give statements on the living conditions, behaviour, health and family relationships of the child;
- 4) To issue a written order to submit documents or evidence regarding the child's living conditions, education, employment or behaviour to (a) a child's guardian; (b) a child's employer; (c) the business operator, owner, possessor of a place where the child works or used to work, or lives or used to live; (d) the owner, possessor, or keeper of a place at which the child is studying or used to study; or (e) the person in charge of protecting the child's safety;
- 5) To enter the residence of a child's guardian, place of business of the child's employer, the child's place of education, or the place with which the child is concerned or connected, during daylight hours, to interview persons living in such places and gather information or evidence concerning the child's living conditions, family relationships, level of care, character, and behaviour; and
- 6) To restore a child to his or her guardian with recommendations or a warning to the guardian to bring up the child in the right manner to enable the child to develop properly.

– Article 41: Obligation to report and subsequent powers of entry

If a person witnesses or becomes aware of conduct which leads them to believe that an act of torture has been committed against a child, they shall promptly notify or report that to a competent official, administration official, police officer, or State Officer referred to in Article 24. A person who makes such a notification or report in good faith will not be held liable for any civil, criminal or administrative action that results, and will receive protection.

When a competent official, administration official, police officer or State Officer has received such a notification, or witnessed or become aware of conduct which leads him or her to believe that an act of torture has been committed against a child, he or she shall have the power to enter and inspect such place and separate the child from the child's family in order to provide protection to the child at the earliest opportunity.

– Article 78: Penalty for violating Article 26

Any person who violates Article 26 shall be liable to a term of imprisonment of up to 3 months or a fine of up to THB30,000, or both.

5. The Prevention and Suppression of Prostitution Act B.E.2539 (1996)

– Section 6: Association in a prostitution establishment

Offence: associates with another person in a prostitution establishment for the purpose of prostitution of himself or herself or another person.

Penalty: imprisonment for up to 1 month or a fine of up to THB1,000, or both.

The offender is not guilty if the offence is committed under compulsion or an influence which cannot be avoided or resisted.

– Section 8: Offences involving children

Offence: in order to gratify his or her sexual desire or that of another person, has sexual intercourse or acts otherwise against a person over 15 but under 18 in a prostitution establishment, with or without his or her consent.

Penalty: imprisonment for 1 to 3 years and a fine of THB20,000 to THB60,000.

Penalty if the offence is committed in relation to a child under 15: imprisonment for 2 to 6 years and a fine of THB40,000 to THB120,000.

The offender is not guilty if the offence is committed in relation to one's own spouse, and not to gratify the sexual desire of another person.

– Section 9: Procuring, seducing or taking away a person for prostitution

Offence: procures, seduces or takes away any person for the prostitution of such person, even with her or his consent, and irrespective of whether the acts are committed within or outside Thailand.

Penalty: imprisonment for 1 to 10 years and a fine of THB20,000 to THB200,000.

Penalty if the offence is committed against a person over 15 but under 18: imprisonment for 5 to 15 years and a fine of THB100,000 to THB300,000.

Penalty if the offence is committed in relation to a child under 15: imprisonment for 10 to 20 years and a fine of THB200,000 to THB400,000.

Penalty if the offence is committed by means of fraud, deceit, threat, violence, the exercise of undue influence, or coercion against her or his will in any manner whatsoever: a one-third heavier penalty.

Offence: in order to bring about prostitution, admits a person known to him or her as having been procured, seduced or taken away, or supports the commission of the offence.

Penalty: as above, based on the age of the victim.

– Section 12: Compelling another to engage in prostitution

Offence: detains or confines another person, or by any other means, deprives such person of their liberty, causes bodily harm to them, or threatens to commit violence against them in order to compel them to engage in prostitution.

Penalty: imprisonment for 10 to 20 years and a fine of THB200,000 to THB400,000.

Offence: if the commission of the offence results in grievous bodily harm to the victim.

Penalty: imprisonment for life.

Offence: if the commission of the offence results in death of the victim.

Penalty: death penalty or imprisonment for life.

Offence: supports the commission of the offence.

Penalty: as above, as if the person had committed the offence.

Offence: if the offender or supporter is an administrative or police official or a competent official or an official of a Primary Admittance Centre or an official of a Protection and Occupational Development Centre.

Penalty: imprisonment for 15 to 20 years and a fine of THB300,000 to THB400,000.

– Section 39: Powers and duties of the Competent Official

The competent official shall have the following powers and duties:

(1) to enter and inspect entertainment establishments to determine whether or not offences have been committed;

(2) to take persons who have been seduced or coerced against their will to engage in prostitution, and who agree to receive protection and occupational development, to the inquiry official.

6. The Labour Protection Act B.E. 2541 (1998)

– Section 23: Working hours

Maximum daily work hours is 8, maximum weekly hours is 40, (except where the work is potentially hazardous to health and safety, then the maximums are 7 and 42 respectively).

Where the characteristics or nature of the work mean it is not possible to fix start/finish times, daily hours must not exceed 8, and weekly hours must not exceed 48.

– Section 28: Weekly holiday

Employees must have at least one day off per week, with a maximum interval of 6 days between days off.

Employees working in hotels, transportation, forestry, or the countryside can accumulate their days off over a period of 4 weeks, provided that the days off are taken within that 4-week period.

– Section 30: Annual leave

After one year of consecutive employment, an employee is entitled to 6 days' annual leave, taken at the direction of the employer or by agreement between employee and employer. If not taken, annual leave can be carried over. Employees who have worked for less than one year will have a pro rata entitlement.

– Section 38: Restrictions on duties of female employees

Female employees are not permitted to perform any of the following work:

(1) Mining or construction work which must be done underground, under water, in a cave, in a tunnel or a shaft in a mountain, unless the characteristics of the work do not pose a hazard to the health or the body of the female employee;

(2) Work performed on a scaffold more than 10 metres from the ground; and

(3) Production or transportation of explosives or inflammable materials.

– Section 39: Restrictions on duties and working hours of pregnant employees

Pregnant female employees cannot work between 10pm and 6am, cannot work overtime, cannot work on holidays, and cannot do any of the following work:

- (1) Work connected with vibrating machinery or engines;
- (2) Work which moves along or goes off together with a vehicle;
- (3) Work involving heavy lifting; and
- (4) Work performed inside a ship.

– Section 44: Prohibition on child labour

Children under 15 years cannot be employed.

– Section 45: Conditions for employing a child over 15 but under 18

When employing a child under 18, the employer must:

- (1) Report the employment to the Labour Inspection Officer within 15 days of the employment commencing;
- (2) Maintain a record of the conditions of the employment at the workplace or office;
- (3) Report the termination of the employment to the Labour Inspection Officer within 7 days of the employment ending.

– Section 47: Restrictions on working hours of children

Children over 15 but under 18 cannot work between 10pm and 4pm without the written permission of the Director-General (except for children performing in a movie, play, or similar exhibition, in which case, appropriate rest must be provided).

– Section 49: Restrictions on duties that can be assigned to children

Children over 15 but under 18 must not perform the following work:

- (1) Smelting, blowing, casting or rolling of metals;
- (2) Metal stamping;
- (3) Work connected with heat, cold, vibration, noise and light the levels of which are different from normal levels, which could be hazardous;
- (4) Work connected with hazardous chemicals;
- (5) Work connected with microorganisms, which could be viruses, bacteria, moulds or other germs;
- (6) Work connected with poisonous materials, explosives or inflammable materials, except for work in service stations;
- (7) Driving or controlling forklifts or cranes;
- (8) Work which uses electric or motorized saws;
- (9) Work done underground, under water, in a cave, in a tunnel or a shaft in a mountain;
- (10) Work connected with radiation;
- (11) Cleaning machinery or engines whilst in operation; and
- (12) Work on a scaffold more than 10 metres from the ground.

– Section 50: Restrictions on locations at which children can be employed

Children over 15 but under 18 are not permitted to work in the following places:

- (1) An abattoir;
- (2) A casino;
- (3) A dance, folk dance or ronggeng hall; and
- (4) A place which sells and provides food, alcohol, tea or other beverages, with hostesses to serve customers or with places for resting or sleeping or with massage services for customers.

– Section 53: Equal pay regardless of gender

Employees will be paid the same for work which has the same characteristics and quality when the amount of work is the same, regardless of their gender.

– Section 76: Restrictions on deductions from wages

A boss shall not make deductions from wages, overtime pay, holiday pay, or holiday overtime pay unless it is for the purpose of:

- (1) paying income tax or other monies prescribed by law;
- (2) paying trade union dues;
- (3) paying the debts of a savings cooperative, or debts which are for the beneficial welfare of the employee, where the employee's consent has been obtained in advance;
- (4) providing guarantee money under Section 10, or compensation to the employer for damage caused by the employee deliberately or due to gross negligence, where the employee's consent has been obtained;
- (5) depositing money for the employee in a savings fund by agreement with the employee.

The maximum deduction under any one of (2) to (5) is 10% of the wages in that pay period, and in any case no more than 20% of the employee's wages can be deducted in total, unless the employee's consent has been obtained.

– Section 139: Authority of the Labour Inspection Officer:

The Labour Inspection Officer has the following authority:

- (1) To enter a place of work or business operations during working hours to inspect working conditions and terms of employment, take photographs, make copies of employment documents, collect samples of materials or products for analysis in connection with work safety, and carry out other actions in order to obtain facts for the implementation of the Act;
- (2) To issue letters asking employers, employees or other persons to provide explanations of facts or to send things or documents;
- (3) To issue written orders requiring employers or employees to comply with the Act.

7. The Immigration Act B.E. 2522 (1979)

– Section 11: Entry and exit via checkpoints

Entry into and departure from Thailand must be via immigration checkpoints or designated landing stations/areas.

Penalty: imprisonment for up to 2 years and a fine of up to THB20,000, but in the case of a Thai citizen, only the fine will apply (see section 62).

– Section 12: Persons prohibited from entering Thailand

The following persons are prohibited from entering Thailand (only those with the potential to relate to human trafficking listed below):

1. Those without a genuine and valid passport or equivalent travel document;
2. Those with a genuine and valid passport or equivalent travel document, but without a visa (unless they are not required to hold a visa);
3. Those without sufficient means to live after entering;
4. Those who enter as a labourer or to use other physical skills, who do not have skills training, or work in violation of Ministerial Regulations.
5. Where there is reason to believe that the person's entry into Thailand is to be involved in prostitution, the trading of women or children, drug smuggling, or other types of smuggling which are contrary to the public morality.
6. Those who have been deported by either Thailand or a foreign country; or whose right of stay in Thailand or a foreign country has been revoked; or who has been sent out of Thailand by the competent official at the expense of Thailand (unless exemption is given on an individual special case basis – see section 17).

– Section 17: Exemption from compliance with the Act

In certain special cases, the Minister, by the Cabinet approval, may permit any person or group of persons to stay in Thailand under certain conditions, or may consider exemption from being in conformity with the Act.

– Section 19: Approval to stay temporarily subject to conditions

The competent official has the authority to allow a person who would otherwise be forbidden from entering Thailand to enter and stay at an appropriate place, if the person promises to present himself to the competent official at a specified date, time and place, or if the person pays a bond or bond and security. The competent official can also detain the person at any place, and call any other person whose statement may be useful to give evidence.

If there is reason to suspect that a person has entered Thailand for the purpose of, or taking part in, prostitution, trading women or children, or smuggling, or where a woman or child has been given the authority provided for above, the competent official may

require the person to attend their local police station within a prescribed period of time after arriving, and on a regular basis, though not less than at 7 day intervals.

– Section 53: Power to revoke permission to stay

If it is later discovered that a person entered Thailand for the purpose of prostitution, trading women or children, or smuggling, the matter will be submitted to the Immigration Commission. If the Immigration Commission recommends revoking the person's right to stay in Thailand, the matter will be considered by the Minister.

– Section 58: Undocumented entry

A person who does not have a valid and genuine passport or equivalent travel document, and has no identification as required by the Law on Alien Registration, is considered to have entered Thailand in violation of this Act.

– Section 59: Power of arrest

The Director General has the authority to arrest anyone who violates this Act. The Director General also has the authority to issue a subpoena, search warrant, or arrest warrant, and to search, detain, or arrest, and authority to conduct an inquiry into offences under this Act.

– Section 62: Penalty for breach of section 11

Failing to comply with section 11 attracts a penalty of imprisonment for up to 2 years and a fine of up to THB20,000. If the person committing the offence is a Thai citizen, the penalty is a fine of up to THB20,000.

8. The Alien Working Act B.E. 2551 (2008)

– Section 7: Limitations on work, working area and period of work

Limitations on the types of work, working area, and period of work of aliens will be set by Ministerial Regulation taking into account national security, job opportunities for Thai citizens, and the level of demand for alien labour that is necessary for the development of Thailand.

– Section 13: Aliens who may apply for a work permit

A work permit can be applied for by an alien who is not eligible to apply for a section 9 permit by reason of:

- (1) being deported under the law on deportation, but is allowed to work at any place in lieu of deportation or while awaiting deportation;
- (2) having immigrated into or stayed in Thailand without permission under the Immigration Act, but is allowed to stay in Thailand temporarily while awaiting deportation under the law on immigration;
- (3) being without nationality as a result of the Announcement of the National Executive Council No. 337 (13 December B.E. 2515) or by other laws;
- (4) being born in Thailand but not being entitled to Thai nationality by the provisions of the Announcement of the National Executive Council No. 337 (13 December B.E. 2515); or
- (5) being born in Thailand but not being entitled to Thai nationality by the provisions of the law on nationality.

– Section 15: Compulsory contributions to Alien Repatriation Fund

A person with a section 13 work permit must make payments to the Alien Repatriation Fund to cover the cost of their eventual repatriation, and the employer is required to deduct those payments from the employee's salary. The amount of the payments will vary between nationalities based on the cost of repatriation to each country.

Once the employee has made the complete payment for his or her nationality, no further payments are required.

9. The Anti-Money Laundering Act B.E. 2542 (1999) (as amended)

– Section 3: definition of 'predicate offence'

"Predicate offence" means (only those relevant to this Gap Analysis are included):

- (2) relating to human trafficking under the law on prevention and suppression of human trafficking or offense of sexuality under the Penal Code only in respect of procuring, seducing, taking away or accepting for an indecent act of man or woman for sexual gratification of others, or offense of taking away a child or a minor only in respect of profit seeking or for an indecent act or dishonestly buying, disposing of or accepting such a child or minor, or offense under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offense relating to being an owner, keeper or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;

- (5) relating to malfeasance in office or malfeasance in judicial office under the Penal Code, offense under the law on offenses of officials in State organizations or agencies or offense of malfeasance in office or corruption under other laws;
 - (17) offence relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits.
- Section 5: Any person who: (1) transfers, accepts a transfer of or converts the asset connected with the commission of an offense for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or (2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offense or the acquisition of rights therein; (3) obtain, possess or use asset, knowingly at the time of obtaining, possessing or using of such asset, that it is the asset connected with the commission of predicate offense; shall be said to commit an offense of money laundering.
 - Section 7: In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable: (1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense, (2) providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense. In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.
 - Section 8: Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.
 - Section 60: Any person who commits an offense of money laundering shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or both.

10. The Prevention and Suppression of Transnational Organised Crime Involvement B.E. 2556 (2013)

- This Act responds to the lack of domestic legislation which deals with the investigation and measures against organised crime (the party of three or more people who together commit serious offences which would be subject to an imprisonment of 4 years or a more severe penalty) which is conducted in more than one State.
- This Act fills in a legal gap in the existing Thai legislation which does not efficiently provide for the prosecution of persons committing the offence of participating in transnational organized criminal groups. The Act implements the UN Convention on Anti-Transnational Crime (UNTOC) which Thailand ratified in 2013.

11. The Witness Protection Act B.E. 2546 (2003)

– Section 3: Definitions

“Witness” means a person who commits himself/herself to be present at, or testify at, or give evidence to a competent official for, an investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness.

“Security” means security in life, body, health, liberty, honour, property or any lawful rights of the witness, before, or at the time of, or upon becoming, a witness.

– Section 6: Witness protection

Where a witness loses his or her security, appropriate witness protection measures will be put in place. Police protection may be one of those measures, subject to the witness consenting.

Other protection measures may include providing a safe place for the witness, and change of name/family name, domicile, identification, or other information that would reveal the identity of the witness.

– Section 8: Special protection measures

Special protection measures may be available to witnesses in the following types of cases:

- (1) Narcotic drugs, money laundering, anti-corruption, or customs laws;
- (2) National security under the Penal Code;
- (3) Sexual offences relating to the luring of a person for the sexual gratification of another under the Penal Code;
- (4) Criminal offences relating to organised crime under the Penal Code; and
- (5) Those punishable with at least 10 years of imprisonment.

– Section 15: Compensation

Where a right in relation to the life, body, health, liberty, honour, property, or other rights, of a witness, his/her husband, wife, progenitor, descendant or other person with a close relationship to the witness is impaired as a result of the witness becoming a witness, the person is entitled to compensation.

Compensation will not be provided if the witness has refused protection under section 6.

12. The Royal Ordinance on Fisheries B.E. 2558 (2015)

– Section 4: The purposes of this law include protecting the welfare of seamen and preventing all forms of forced labour in the fisheries sector, with due regard to the following objectives (amongst others):

- (1) to provide effective means for preventing, deterring and eliminating IUU fishing, as well as unlawful labour practices in the fisheries sector; and
- (2) to ensure legal working conditions and the welfare of workers in all areas of the fisheries sector.

– Section 31: Any person wishing to undertake freshwater fishing in public domain of the State, by using a fishing gear prescribed by the Director-General must obtain a license issued by a competent official

– Section 36: Any person wishing to engage in commercial fishing must obtain a commercial fishing license issued by the Director-General or a person designated by the Director-General.

The issuance of a license pursuant to paragraph one shall be executed specifically for a particular fishing vessel. The number and type of fishing gears authorized for the purposes of fishing operation, areas in which fishing operations are to be undertaken, the maximum allowable catch of aquatic animals allowed for fishing operations or the period during which fishing operations are allowed shall also be specified on the license in alignment with the fishing capacity and the maximum sustainable yield of aquatic animals for the purposes of sustainable fisheries stipulated in the Fisheries Management Plan.

– Section 37: A commercial fishing licensee must provide an occupational safety and hygiene system, as well as provide proper working conditions for seamen as prescribed by Ministerial Regulation.

– Section 48: Any person wishing to use a Thai vessel for the purposes of fishing outside Thai waters shall submit an application for a license to fish outside Thai waters to the Director-General or a person designated by the Director-General.

The issuance of a license pursuant to paragraph one shall be executed specifically for a particular fishing vessel. The number and types of fishing gears authorized for the purposes of fishing operation shall also be specified on the license. If an applicant wishes to engage in a fishing operation in an area under the jurisdiction of coastal state, the Director-General or a person designated by the Director-General may accord authorization therefor only when the applicant is able to present proof of a right to engage in fishing operations in the waters of any such coastal state, and when there is clear evidence that the applicant for the license is in a position to comply with the laws, rules and measures of the coastal state or the international organisation concerned.

13. The Royal Ordinance Concerning Rules on Bringing Migrant Workers to Work with the Employers in the Kingdom B.E. 2559 (2016)

English translation is currently unavailable.

14. Beggar Control Act B.E. 2559 (2016)

English translation is currently unavailable.

15. Skill Development Promotion Act B.E. 2545 (2002)

– Section 29: The Minister with the recommendation of the Committee shall require the business operator engaging in the business in any type, size and area to make contributions towards the Fund at the rate fixed as per Section 30. In the case the operator as prescribed above has already provided training under Chapter 1, the employee has been registered for and passed the national skill standard testing under Chapter 2 or the employee has obtained skill and knowledge certification under Chapter 2/1, such operator is not required to make contributions towards the Fund pursuant to the rules prescribed by the Committee.

– Section 30: In collecting the contribution from the business operator under Section 29, the Minister with the recommendation of the Committee has power to prescribe the rate of contributions of not higher than one percent of the wage paid in the year prior to the year the contribution spans, and the procedure of payment.

16. Provident Fund Act B.E. 2530 (1987) and Provident Fund Act (No. 4) B.E. 2558 (2015)

– Section 10: At each payment of wages, the employee shall pay his savings into the fund through the employer's deduction from wages, and the employer shall pay the contribution into the fund at the rate prescribed in the fund's article, provided that the rate so prescribed shall not be less than two per cent but not more than fifteen per cent of the wages.

The employees and the employer may agree to pay the savings and contribution into the fund at the rate higher than that specified in the first paragraph upon approval of the Minister.

The employer shall remit the amounts mentioned in the first paragraph into the fund

within three business days from the date of payment of wages. If the employer remits the savings or the contribution into the fund later than three business days, the employer shall pay a surcharge into the fund during the period of delay at the rate of five percent per month of the amount of savings or contribution whose remittance is delayed.

- Section 23(2): In cases where any employee's membership terminates due to his retirement as specified in the fund's article or his resignation at the age of no less than 55 years old, if such employee declares his intention to receive installment payments from the fund, the fund manager shall make such payments from the fund as intended by the employee who shall maintain his membership for the period of time specified by the fund's articles. The employee and his employer, however, shall not make further payments of savings or contribution respective to such employee. In this regard, receipt of payment from the fund shall be in accordance with the criteria specified by the registrar.
- Section 23(3): In cases where any employee's membership terminates upon the end of his employment for whatever reasons, such employee shall be entitled to maintain the whole amount of the benefits he is entitled to receive within the fund as well as his membership. Such employee and his employer, however, shall not make further payments of savings or contribution respective to such employee during the period of time as specified in the fund's articles, provided that the period so specified in the fund's articles shall not be less than ninety days from the date on which his employment ends.
- Section 37: Any employer who fails to comply with Section 15 shall be subject to a fine not exceeding twenty thousand baht.

SCHEDULE 2

Compliance with International Conventions and Regional Commitments

1. International Obligations

Title	Obligations	Extent of compliance with obligations
<p>1) UN Convention against Transnational Organised Crime (the “Palermo Convention”)</p> <p>Thailand signed the Palermo Convention on 13 December 2000 and ratified it on 17 October 2013. The Palermo Convention became effective for Thailand on 16 November 2013.</p> <p>Three protocols under the Palermo Convention (the “Palermo Protocols”):</p> <ul style="list-style-type: none"> – Protocol against the Smuggling of Migrants by Land, Sea and Air (Thailand signed this Protocol on 18 December 2001 but has not ratified it) – Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition (Thailand is not yet a party, however, this is not related to human trafficking). – Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Thailand signed this Protocol on 18 December 2001 and ratified it on 17 October 2013. This Protocol became effective for Thailand on 16 November 2013.) 	<p>The Palermo Convention and the Palermo Protocol obligate ratifying states to introduce national trafficking legislation, which reflects the principles in the Palermo Convention and Palermo Protocol, including:</p> <ul style="list-style-type: none"> – ensuring that victims of trafficking are protected from deportation or return where there are reasonable grounds to suspect that such return would represent a significant security risk to the trafficked person or their family; – considering temporary or permanent residence in countries of transit or destination for trafficking victims in exchange for testimony against alleged traffickers, or on humanitarian and compassionate grounds; and – providing for proportional criminal penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by state officials. 	<p>Compliant</p> <p>Thailand’s Anti- Trafficking in Persons Act B.E. 2551 (2008) (“Anti-Trafficking Act”) is the key legislation that criminalises human trafficking activities and imposes severe penalties (including the death penalty in the most severe cases) for those found guilty of offences relating to trafficking in persons.</p> <p>The penalties in the Anti-Trafficking Act apply not only to those who engage in trafficking of persons, but also those involved in carrying out or preparing to carry out such acts (e.g. supporting or aiding trafficking in persons). More severe penalties apply where the trafficking involves children and where persons involved are officials.</p> <p>The Anti-Trafficking Act also prescribes various protections and assistance measures for victims of trafficking, reflecting the principles in the Palermo Convention and the Palermo Protocol.</p>

Title	Obligations	Extent of compliance with obligations
<p>2) Convention on the Rights of the Child (“CRC”)</p> <p>Thailand signed and became a State Party to the CRC on 27 March 1992. The CRC became effective for Thailand on 26 April 1992.</p> <p>Thailand has made reservations under the CRC and signed the following Protocol:</p> <ul style="list-style-type: none"> – Optional Protocol and the Sale of Children, Child Prostitution and Child Pornography (Signed on 11 January 2006 and became effective for Thailand on 12 February 2006) 	<p>The CRC defines the child as “every human being below the age of 18 years...”.</p> <p>The provisions of the CRC relevant to child trafficking require State parties to, for example:</p> <ul style="list-style-type: none"> – take measures to combat the illicit transfer and non-return of children abroad and to promote the conclusion of bilateral or multilateral agreements or accession to existing agreements; and – undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular, take all appropriate national and bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, and the exploitative use of children in pornographic performance and materials. 	<p>Compliant</p> <p>Thailand has concluded bilateral measures with various neighboring countries to prevent the inducement or coercion of a woman or a child to engage in any unlawful sexual activity and such measures also address related issues such as labour migration. However, those measures may not have specifically and clearly articulated the policies and programs in respect of children.</p> <p>Non-compliant</p> <p>The Thai Penal Code stipulates as a sexual offence and criminalises an offender who has sexual intercourse with a child not yet over 15 years of age and not being his own wife or husband, whether such child has consented or not.</p> <p>However, if the child consented to the offence and the court grants them permission to get married, the offender shall not be subject to the penalty, or if the court grants them permission to get married during the time while the offender is still serving his/her sentence, the court shall release such offender.</p> <p>This exception from strict liability may be deemed as non-compliance with Thailand’s commitments under the CRC.</p>
<p>3) Convention of the Elimination of All Forms of Discrimination Against Women (“CEDAW”)</p> <p>Thailand signed and became a State Party to the CEDAW on 9 August 1985. The CEDAW became effective for Thailand 8 September 1985.</p> <p>Thailand signed and ratified the Optional Protocol to the CEDAW on 14 June 2000.</p>	<p>For the purpose of the CEDAW, the term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.</p> <p>Generally, the CEDAW requires that State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure the equality of men and women in education, employment, voting rights, participation in the formulation of government policy, holding of public office, etc.</p> <p>The Optional Protocol provides for procedures with regard to the treaty or address a substantive area related to the treaty. This includes the Communications and Inquiry Procedures where it allows, inter alia, investigation of substantial abuses of women’s human rights by an international body of experts.</p>	<p>Compliant</p> <p>The fundamental principle that men and women shall have equal rights is endorsed by the 2007 Constitution of Thailand and the equality of humans is recognised more broadly in the 2014 interim Constitution of Thailand, which partially repealed the 2007 Constitution following the coup on 20 May 2014.</p>

Title	Obligations	Extent of compliance with obligations
<p>4) International Covenant on Civil and Political Rights (“ICCPR”)</p> <p>Ratified by Thailand on 29 October 1996.</p>	<p>In relation to trafficking in persons, the key rights of persons in Thailand are:</p> <ul style="list-style-type: none"> – freedom from slavery and servitude; – freedom from forced or compulsory labour; – liberty and security of person, and the right to take legal proceedings if that liberty is denied; – liberty of movement and freedom to choose their residence; – to be deported lawfully if they are in Thailand unlawfully; and – protection from forced marriage, and equality of rights and responsibilities of spouses in a marriage. 	<p>Compliant</p> <p>Thailand’s Constitution and other legislation referred to in Section A of this Gap Analysis generally ensure Thailand’s compliance (on paper at least) with the provisions of the ICCPR listed here. However, as is discussed, one of the key issues in relation to trafficking in persons in Thailand at present is forced labour.</p> <p>Non-compliant</p> <p>There are some question marks over Thailand’s compliance with the forced marriage requirements of the ICCPR (see comments in 1, above). However, given that these expressly require ‘consent’, it may also be argued that the marriage in such a situation is not ‘forced’.</p>
<p>5) Forced Labour Convention</p> <p>Ratified by Thailand on 26 February 1969.</p>	<p>Parties to the Forced Labour Convention are required to prohibit the use of forced labour (subject to 5 exceptions) in all sectors and regardless of the nature of the work.</p> <p>Forced labour is defined as being “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.</p> <p>An additional Protocol to the Forced Labour Convention was adopted by the ILO in June 2014 (and will come into force in November 2016). That Protocol requires member states to take a range of additional measures to prevent and eliminate forced labour, including having appropriate legislation and reporting on its compliance with the Protocol.</p>	<p>Compliant</p> <p>Thailand has committed to compliance with the Forced Labour Convention, despite in 2014 voting for the option of a ‘recommendation’ (which would not be binding) instead of a ‘Protocol’. Thailand was the only member state to vote against the adoption of the Protocol, and later reversed its stance (though is yet to ratify the Protocol).</p> <p>The Anti-Trafficking Act expressly includes “forced labour or service” in its definition of “exploitation” (see Appendix 1, above). In this respect, Thailand is generally compliant with the Forced Labour Convention, though again it is noted that the compliance may be more theoretical than in practice given the comments in Section A of this Gap Analysis.</p>
<p>6) Abolition of Forced Labour Convention</p> <p>Ratified by Thailand on 2 December 1969.</p>	<p>This Convention supplements the Forced Labour Convention by prohibiting forced labour in situations that were not prohibited by the Forced Labour Convention (e.g. punishment for strikes and for holding certain political views).</p>	<p>Compliant</p> <p>See 5 above.</p>
<p>7) Minimum Age Convention</p> <p>Ratified by Thailand on 11 May 2004.</p>	<p>Thailand is required to pursue a policy to abolish child labour effectively and to progressively raise the minimum age for commencing work.</p> <p>The minimum age should be specified as no less than 15 years of age, or 18 years for work which “is likely to jeopardise the health, safety or morals of young persons”.</p>	<p>Compliant</p> <p>Thailand complies with the Minimum Wage Convention by way of the Labour Protection Act.</p>

Title	Obligations	Extent of compliance with obligations
<p>8) Worst Forms of Child Labour Convention</p> <p>Ratified by Thailand on 16 February 2001.</p>	<p>Thailand is required to take action to prohibit and eliminate the worst forms of child labour. These are specified to include:</p> <ul style="list-style-type: none"> – all forms of slavery, including the sale of a child, trafficking of children, debt bondage, and forced labour; – commercial sexual exploitation of children, including both prostitution and pornography; – using, procuring or offering a child for use by others in illegal activities, including the production and trafficking of drugs; and – work that is likely to jeopardise the health, safety or morals of children. 	<p>Compliant</p> <p>Thailand satisfies the requirements of this Convention through various legislation, including the Anti-Trafficking Act, the Constitution, the Prevention and Suppression of Prostitution Act, the Penal Code, and the Labour Protection Act.</p>
<p>9) Occupational Safety and Health Convention</p> <p>Ratified by Thailand on 23 March 2016</p>	<p>Parties to this Convention shall formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment whereas the aim of this policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.</p>	<p>At present, Thailand is in the process of drafting/developing relevant legislation, whereas the National Plan on Occupational Safety, Health and Environment for 2002 – 2016 is being revised for a second edition for 2017 – 2021.</p>
<p>10) Maritime Labor Convention</p> <p>Ratified by Thailand on 7 June 2016</p>	<p>This Convention outlines seafarers’ rights, such as fair terms of employment, health protection, welfare measures and decent working and living conditions onboard ships.</p>	<p>The Convention entered into force on 7 June 2017, one year after its ratification.</p>

2. Bilateral/Regional Commitments

Title	Commitments	Extent of compliance with commitments
<p>1) Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Memorandum of Understanding on Cooperation against trafficking in persons in the Greater Mekong Sub-Region between the Governments of the Kingdom of Cambodia, the People’s Republic of China, the Lao People’s Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam (29 October 2004)</p>	<ul style="list-style-type: none"> – Greater regional cooperation, including preparation of a Sub-regional Action Plan. – Implement and enforce appropriate legislation to tackle trafficking in persons in the region. – Protect and reintegrate victims of trafficking through suitable measures. – Adopt effective preventive measures to reduce the incidence of trafficking in persons. <p>The fourth Mekong Sub-regional Plan of Action (2015-2018) was finalised in April 2015 as a result of the COMMIT MOU.</p>	<p>Compliant</p> <p>The Anti-Trafficking Act generally satisfies the requirements of the MOU.</p>

Title	Commitments	Extent of compliance with commitments
2) Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Cooperation to Combat Trafficking in Persons, Especially Women and Children (13 July 2005)	To collaborate in providing protection to victims of human trafficking, contacting the families of victims, and returning victims to their families.	<p>Compliant</p> <p>The Anti-Trafficking Act has provisions in connection with the protection provided to victims and the return of victims to their countries of domicile or citizenship.</p>
3) Memorandum of Understanding Between the Government of the Lao People's Democratic Republic and the Government of the Kingdom of Thailand on Labour Cooperation (18 October 2002)	<p>Scope of cooperation where both parties will apply necessary measures includes:</p> <ul style="list-style-type: none"> - appropriate employment procedures; - effective measures for the return of labour after termination of employment contracts, or for those returning home as a result of repatriation programme, by the sectors concerned of the parties; - proper labour control by the two parties; and - the prevention and suppression of illegal migration, trafficking and employment. 	<p>Compliant</p> <p>The Ministry of Labour of Thailand is responsible for ensuring Thailand's compliance with this MOU, and has issued specific regulations to deal with labour from Lao PDR, Myanmar, Cambodia and Vietnam. It has also developed regulations regarding registration of migrant workers.</p> <p>Non-compliant</p> <p>Effective measures for the return of labour after termination of employment contracts may need to be developed. Currently, the Civil and Commercial Code (Section 586) generally requires employers to pay the cost of the return journey of employees who have been brought from outside of Thailand, provided that the contract has not been terminated by reason of fault of the employee and the employee returns within a reasonable period of time.</p>
4) Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation to Combat Trafficking in Persons (31 May 2003)	Similar to 2 above	Similar to 2 above
5) Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Cooperation in the Employment of Workers (31 May 2003)	Similar to 3 above	Similar to 3 above
6) Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Establishment of Transit and Reception Center for Victims of Trafficking and Other Vulnerable Groups (26 August 2016)	<ul style="list-style-type: none"> - Cooperate in three main areas of political and security, economic, and socio-cultural issues. - Upgrade border checkpoints and the enhancement of bilateral cooperation in the fields of trade and investment, energy, labor, agriculture, and the environment. 	This MOU was signed under a year ago. Significant steps are yet to be taken in several of these areas.

Title	Commitments	Extent of compliance with commitments
7) Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (24 April 2009)	Similar to 2 above	Similar to 2 above
8) Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers (21 June 2003)	Similar to 3 above	Similar to 3 above
9) Agreement Between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (24 March 2008)	Similar to 2 above	Similar to 2 above
10) Memorandum of Understanding between the Government of the Socialist Republic of Viet Nam and the Government of the Kingdom of Thailand on Labour Cooperation (23 July 2015)	<ul style="list-style-type: none"> – Promoting and developing cooperation between Thailand and Vietnam in relation to labour. – Promote sound labour policies and practices. – Improve capacities and capabilities of both countries. – Enhance skills of manpower and social security. – Strengthen transparency and efficiency in the process of sending and receiving workers between the two countries. 	Significant steps are yet to be taken in several of these areas.
11) ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children (29 November 2004)	Undertake concerted efforts to effectively address the emerging regional problem of trafficking in persons, particularly women and children.	Whilst Thailand is in compliance (either fully or partially) with some of the commitments under this Declaration, and making substantial improvements, there are some significant areas of non-compliance (e.g. distinguishing victims of human trafficking from perpetrators).
12) ASEAN Treaty on Mutual Assistance on Criminal Matters (2004)	<ul style="list-style-type: none"> – To provide the widest possible measure of mutual legal assistance in criminal matters to the other nations involved in this treaty. – Thailand has to designate Central Authority to make and receive requests pursuant to this treaty. 	Thailand cooperates with ASEAN nations on a range of matters, including corruption and anti-money laundering. The 2015 Kuala Lumpur Declaration on Combatting Transnational Crime reaffirmed the ASEAN nations' commitment to the Treaty on Mutual Assistance in Criminal Matters.

Title	Commitments	Extent of compliance with commitments
13) ASEAN Declaration on the Protection & Promotion of the Rights of Migrant Workers (13 January 2007)	<ul style="list-style-type: none"> - Countries of origin and destination are called on to ensure the dignity of migrant workers by outlining their obligations in the areas of: (i) protection from exploitation, discrimination, and violence; (ii) labour migration governance; and (iii) the fight against trafficking in persons. - The receiving states and the sending states shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers. 	Whilst Thailand may have been non-compliant in the past, significant steps towards compliance have been made in recent years, including the relaxation of visa requirements for migrant workers, implementation of One Stop Service Centres, amendments to the Anti-Trafficking Act, and the introduction of the 2016 Begging Act.
14) ASEAN Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004)	<ul style="list-style-type: none"> - To promote an integrated and holistic approach to eliminate violence against women by formulating mechanisms focusing on the four areas of concerns of violence against women. - Thailand will intensify efforts to develop and/or improve existing legislative, educational, social measures and support services aimed at the prevention of violence against women. 	<p>Whilst Thailand may be generally compliant, there are some gaps which could be filled.</p> <p>The Labour Protection Act specifically deals with the employment of women and children. Thailand has a Human Rights Plan on Women, and a Women's Role Development Fund. Further, specifically in the context of human trafficking, the MSDHS shelters offer women an opportunity to work in the shelter if they do not wish to work outside the shelter.</p>
15) ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN (2013)	<ul style="list-style-type: none"> - Strengthen and, where necessary, enact or amend national legislation for the elimination of violence against women and violence against children. - Strengthen partnerships with external parties at international, regional, national and local levels. - Strengthen the capacity of law enforcement officers, policy makers, social workers, health personnel, and other stakeholders with regards to the protection of women and younger treatment. 	Similar to 14 above.
16) ASEAN Convention on Trafficking in Persons ("ACTIP") (2015) Ratified by Thailand on 24 July 2016	The objectives of the ACTIP are to prevent and combat trafficking in persons, to ensure just and effective punishment of traffickers, to protect and assist victims of trafficking, and to promote cooperation amongst the Member States in meeting those objectives.	The recent amendments to the Anti-Trafficking Act demonstrate Thailand's commitment to satisfying its obligations under the ACTIP. However, better enforcement of those laws is required in order to achieve compliance.
17) Memorandum of Cooperation between the Government of Japan and Thailand concerning the Exchange of Information for the Purpose of Preventing and Combating Trafficking in Persons	The purpose of this Memorandum is for Thailand and Japan to cooperate to exchange information regarding victims and suspects of human trafficking to support the investigation and prosecution of human trafficking cases in Thailand and Japan.	Not applicable

SCHEDULE 3

Domestic Anti-Money Laundering and Anti-Corruption Legislation Relevant to Anti-Trafficking

A. Anti-Money Laundering

The Anti-Money Laundering Act B.E.2542 (1999) (as amended) (the “Anti-Money Laundering Act”)

- Section 3: “predicate offence” means:
 - (2) relating to human trafficking under the law on prevention and suppression of human trafficking or offense of sexuality under the Penal Code only in respect of procuring, seducing, taking away or accepting for an indecent act of man or woman for sexual gratification of others, or offense of taking away a child or a minor only in respect of profit seeking or for an indecent act or dishonestly buying, disposing of or accepting such a child or minor, or offense under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offense relating to being an owner, keeper or manager of a prostitution business or establishment or being a controller of prostitutes in a prostitution establishment;
 - (5) relating to malfeasance in office or malfeasance in judicial office under the Penal Code, offense under the law on offenses of officials in State organizations or agencies or offense of malfeasance in office or corruption under other laws;
 - (17) offence relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits.
- Section 3: “Suspicious transaction” means a transaction with reasonable grounds to believe that it is conducted to avoid the application of this Act, or transaction connected or possibly connected with the commission of a predicate offense or terrorist financing offense, notwithstanding the transaction being single or multiple, and shall include an attempt to conduct such a transaction.
- Section 5: Any person who: (1) transfers, accepts a transfer of or converts the asset connected with the commission of an offense for the purpose of covering or concealing the origin of that asset or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or (2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the asset connected with the commission of an offense or the acquisition of rights therein; (3) obtain, possess or use asset, knowingly at the time of obtaining, possessing or using of such asset, that it is the asset connected with the commission of predicate offense; shall be said to commit an offense of money laundering.
- Section 6: Any person who commits an offense of money laundering shall, even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that: (1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand; (2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person; or (3) the offender is an alien and the act so committed is an offense under the law of the State in whose jurisdiction the act occurs, provided that such person remains his or her appearance in the Kingdom without being extradited in accordance with the law on extradition. For this purpose, Section 10 of the Penal Code shall apply *mutatis mutandis*.
- Section 7: In an offense of money laundering, any person who commits any of the following acts shall be liable to the same penalty as that to which the principal committing such offense shall be liable: (1) aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense, (2) providing or giving money or asset, a vehicle, place or any article or committing any act for the purpose of assisting the offender to escape or to evade punishment or for the purpose of obtaining any benefit from the commission of the offense. In the case where any person provides or gives money or asset, a shelter or hiding place in order to enable his or her father, mother, child, husband or wife to escape from being arrested, the Court may inflict on such person no punishment or lesser punishment to any extent than that provided by law for such offense.
- Section 8: Any person who attempts to commit an offense of money laundering shall be liable to the same penalty as that provided for the offender who has accomplished such offense.
- Section 49: ...in the case under paragraph one, if there is a fact that there are damaged persons caused by the predicate offence, the Secretary-General shall request the public prosecutor to also file a petition to the court for an order to return or repay the value of assets connected with the commission of the offence to the damaged persons instead of forfeiting to the state. When there is such return or repayment order under this paragraph, the Office shall proceed in accordance with the order without delay.
- Section 60: Any person who commits an offense of money laundering shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or both.

- Section 61: Any juristic person who commits offenses under Section 5, Section 7, Section 8 or Section 9 shall be liable to a fine of two hundred thousand Baht to one million Baht. Any director, manager or person responsible for the conduct of business of the juristic person under paragraph one who commits the offense shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand Baht to two hundred thousand Baht or to both unless that person can prove that he or she takes no part in the commission of the offense of such juristic person.

B. Anti-Corruption

1. Organic Act on Counter Corruption B.E.2542 (1999)

- Section 19: Powers and duties of the NACC

The NACC has the following powers and duties:

- (1) to inquire into facts, prepare a summary, and prepare an opinion for the Senate or the Prosecutor General (whichever is applicable to the circumstances);
- (2) to inquire and decide whether a State official has become unusually wealthy or has committed an offence of corruption, malfeasance in office, or malfeasance in judicial office;
- (3) to inspect the accuracy and actual existence of assets and liabilities of State officials and inspect any change in the assets and liabilities of persons holding political positions;
- (4) to prescribe rules with respect to the determination of positions and classes or levels of State officials obliged to submit an account showing particulars of their assets and liabilities;
- (5) to prescribe rules and procedures for the submission of particulars of assets and liabilities of State officials, Prime Minister, and Ministers;
- (6) to submit and publish annual inspection and performance reports to the Council of Ministers, House of Representatives and Senate;
- (7) to propose measures, and make opinions or recommendations to the Council of Ministers, National Assembly, Courts or State Audit Commission to improve the performance of government services, and to formulate action plans or projects for Government agencies, State enterprises or other State agencies to control corruption, malfeasance in office, and malfeasance in judicial office;
- (8) to refer matters to the agency concerned to make a request to the Court for an order or judgment cancelling or revoking a right or document of title in respect of which the State official has given approval or granted permission conferring the rights or benefits or issued the document of title to a particular person in contravention of the law or official regulations to the detriment of the Government service; and
- (9) to take action with a view to preventing corruption and building up attitudes concerning integrity and honesty, and to take such action as to facilitate public participation in counter corruption.

- Section 25: Powers of the NACC

The NACC has the following powers:

- (1) to order a Government official, Government agency official or employee, State agency, State enterprise, or local administration, to perform all such acts as are necessary for the performance of duties of the NACC, or to summon relevant documents or evidence from any person, or to summon any person to give statements or testimony for the purpose of a fact inquiry;
- (2) to seek a warrant to enter a home, business, vehicle, or other place for the purpose of inspecting, searching, seizing or attaching documents, property or other evidence;
- (3) to request a Government agency, State agency, State enterprise, local administration or private agency to carry out a particular act for the purpose of the performance of the NACC's duties, the conduct of a fact inquiry, or the making of a determination by the NACC; and
- (4) to make regulations regarding rewards payable under section 30.

- Section 26: Powers of the NACC in relation to criminal proceedings

In taking criminal proceedings against a State official, the NACC has the following powers:

- (1) to inquire into facts and gather evidence so that the facts can be known, the offence can be proved, and the offender can be prosecuted and punished; and
- (2) to seek arrest and custody warrants for persons who appear to be offenders, or against whom the NACC has resolved that an allegation has a prima facie case, for the purpose of referring the person to the Prosecutor-General for further action.

– Section 30: Rewards

A person will be entitled to a reward if they provide information or facts about the assets or liabilities of an alleged culprit that leads to the assets under investigation devolving to the State by order of the court.

A person will still be entitled to a reward if they are a principal, instigator, aider or abettor in the wrongdoing of the State official.

– Section 43: When the NACC will conduct a fact enquiry

Subject to section 44, the NACC shall conduct a fact inquiry in the following circumstances:

- (1) the President of the Senate refers the matter to the NACC after a petition is lodged requesting the Senate to pass a resolution removing the alleged culprit from office;
- (2) the injured person lodges a request with the NACC for the purpose of taking legal proceedings against the alleged culprit;
- (3) an allegation is lodged with the NACC for the purpose of enabling the property to devolve on the State;
- (4) there is a reasonable cause to suspect that a State official has become unusually wealthy or has committed an offence under section 88;
- (5) an allegation is made to the NACC against a State official under section 84.

– Section 44: When the NACC will NOT conduct a fact enquiry

The NACC shall not conduct a fact inquiry in the following circumstances:

- (1) the matter to be inquired into is a matter in respect of which the NACC has completed its fact inquiry and there is no fresh evidence;
- (2) there is an ongoing inquiry against the alleged culprit regarding the same circumstances.

– Section 66: Complaints about political officials

Where an injured person alleges that the Prime Minister, a Minister, a member of the House of Representatives, a senator or any other political official has become unusually wealthy, or committed an offence of malfeasance in office under the Penal Code, or malfeasance in office or corruption under other law, the injured person shall lodge a written request with the NACC.

– Section 69: Section 66 complaint leads to fact enquiry

The NACC will conduct a fact enquiry when a section 66 request is correctly and duly received.

– Section 84: Complaints about other state officials

An allegation of corruption, malfeasance in office or malfeasance in judicial office against a State official who does not fall within the scope of section 66 must be submitted to the NACC in writing and signed. The allegation must be made whilst the alleged culprit is a State official or within 2 years of them ceasing to be a State official.

– Section 88: Section 84 complaint leads to fact enquiry

The NACC will conduct a fact enquiry when a section 84 request is received or when it has reasonable cause to suspect that any State official has committed an offence of corruption, malfeasance in office, or malfeasance in judicial office.

– Section 118: Penalty for non-compliance with NACC order under section 25

Offence: fails to comply with an order of the NACC under section 25(1).

Penalty: imprisonment for up to 6 months or a fine of up to THB10,000, or both.

– Section 124: Penalty for making a false complaint

Offence: submits a request under section 66, or allegation under section 84, knowing that there is no circumstance indicative of that person's unusual wealthiness or no commission of an offence of malfeasance in office under the Penal Code or under other laws, or makes a false allegation or presents false evidence.

Penalty: imprisonment for up to 3 years or a fine of up to THB60,000, or both.

2. Act on Offences Committed by Officials of State Organs or Agencies B.E. 2502 (1959)

– Section 4: Property-related corruption

Offence: an official in charge of the purchase, creation, administration or safekeeping of any property and, either for his own sake or for the sake of another, dishonestly appropriates such property or dishonestly allows another to take that property away.

Penalty: imprisonment for 5 years to 20 years, or for life, and a fine of THB2,000 to THB40,000.

– Section 5: Importuning or encouraging provision of property/benefits

Offence: an official, in abuse of his official authority, importunes or encourages another to provide or obtain any property or benefit, either for his own sake or for the sake of a third person.

Penalty: imprisonment for 5 years to 20 years, or for life, and a fine of THB2,000 to THB40,000, or to death.

– Section 6: Soliciting/accepting property/benefits in exchange for acting/not acting

Offence: an official, either for his own sake or for the sake of a third person, unlawfully solicits, accepts or promises to accept any property or benefit in exchange for the performance of or refrain from any act in his official capacity, whether such act is in breach of his official duty or not.

Penalty: imprisonment for 5 years to 20 years, or for life, and a fine of THB2,000 to THB40,000, or to death.

– Section 7: Property/benefits received prior to taking up office

Offence: an official performs, or refrains from performing, any act in his official capacity, in consideration for any property or benefit which he has solicited, accepted or promised to accept prior to assuming his office.

Penalty: imprisonment for 5 years to 20 years, or for life, and a fine of THB2,000 to THB40,000.

– Section 11: Performing (or not) duties to impair another, dishonestly performing (or not) duties

Offence: an official unlawfully performs, or refrains from performing, his official duty so as to impair another, or dishonestly performs, or refrains from performing, his official duty.

Penalty: imprisonment for 1 year to 10 years, or a fine of THB2,000 to THB20,000 or both.

3. Penal Code B.E. 2499 (1956)

– Section 147: Misappropriation

Offence: an official having the duty of purchasing, manufacturing, managing or keeping anything, dishonestly misappropriates the same for his own or the other person, or dishonestly allows another person to misappropriate it.

Penalty: imprisonment for 5 to 20 years, or for life, and a fine of THB2,000 to THB40,000.

– Section 148: Coercing or inducing property or other benefit

Offence: an official, by a wrongful exercise of his functions, coerces or induces any person to deliver or to procure property or any other benefit for the official or another person.

Penalty: imprisonment for 5 to 20 years, or for life, and a fine of THB2,000 to THB40,000, or both.

– Section 149: Demanding/accepting property/benefit for exercising (or not) function

Offence: an official, member of the State Legislative Assembly, member of the Changwat Assembly, or member of the Municipal Assembly, wrongfully demands, accepts or agrees to accept for himself or another person, property or any other benefit in exchange for exercising or not exercising any of his functions, whether such exercise or non-exercise is wrongful or not.

Penalty: imprisonment for 5 to 20 years, or for life, and a fine of THB2,000 to THB40,000, or death.

– Section 150: Property/benefits received prior to appointment

Offence: an official performs, or refrains from performing, any of his functions in consideration of property or any other benefit he demanded, accepted or agreed to accept before being appointed to his post.

Penalty: imprisonment for 5 to 20 years, or for life, and a fine of THB2,000 to THB40,000.

- Section 157: Wrongfully exercising (or not) functions resulting in injury, dishonestly exercising (or not) functions

Offence: an official wrongfully exercises, or does not exercise, any of his functions, causing injury to any person, or dishonestly exercises, or does not exercise, any of his functions.

Penalty: imprisonment of 1 to 10 years, or a fine of THB2,000 to THB20,000, or both.

- Section 159: Property-related corruption

Offence: an official, having the duty of looking after and keeping anything or document, wrongfully removes, damages, destroys or renders useless a seal or mark stamped or affixed by the official on such thing or document in the exercise of his functions as evidence of seizing or keeping such thing, or allows another person to do so.

Penalty: imprisonment for up to 5 years, or a fine of up to THB10,000, or both.

- Section 165: Preventing or obstructing execution of law and order

Offence: an official with the duty to execute law and order prevents or obstructs the execution of law and order.

Penalty: imprisonment for up to 1 year, or a fine of up to THB2,000, or both.

4. The Corruption Criminal Procedure Act B.E. 2559 (2016)

English translation is currently unavailable.

5. The Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008)(as amended)

- Section 7: Assisting trafficking in persons also an offence

Offence: demands, accepts, or agrees to accept, property or any other benefit in order to help a person who has committed trafficking in persons to not be punished.

Penalty (section 52): imprisonment for 4 to 12 years, and a fine of THB400,000 to THB1,200,000.

- Section 13: Commission of offence by an official

Offence: commits an offence under this Act as a member of the House of Representatives, member of the Senate, member of a Local Administration Council, Local Administrator, Government Official, employee of the Local Administration Organization, employee of an organization or a public agency, board member, executive, or employee of a state enterprise, or an official or board member of any organization under the Thai Constitution.

Penalty: twice the punishment stipulated for the offence.

Offence: commits an offence under this Act as a member of the Committee, member of a Sub-Committee, member of any working group, or competent official.

Penalty: three times the punishment stipulated for the offence.

- Section 52: Penalties for trafficking in persons

Trafficking in persons: imprisonment for 4 to 12 years and a fine of THB400,000 to THB1,200,000.

Where the offence involves a child aged over 15 but under 18: imprisonment for 6 to 15 years and a fine of THB600,000 to THB1,500,000.

Where the offence involves a child aged under 15, or the disability or person with mental impairment: imprisonment for 8 to 20 years and a fine of THB800,000 to THB2,000,000.

- Section 54: Penalties for obstructing an investigation

The penalty for obstructing an investigation, inquiry, prosecution or criminal proceedings in relation to trafficking in persons in the following ways is imprisonment of up to 10 years and a fine of up to THB200,000:

- (1) giving, offering or agreeing to give property/benefits to a trafficked person or witness to induce them to not provide information to an investigation or to not give evidence in court, or to provide information in court that is false;
- (2) forcing, coercing, threatening, compelling, deceiving, or using any other means to cause a trafficked person or witness not provide information to an investigation or to not give evidence in court, or to provide information in court that is false;
- (3) giving, offering, demanding, accepting, or agreeing to give/accept property/benefits to a specified official to induce them to do, not do, or delay doing, any act contrary to that official's duty under the Act;
- (4) forcing, coercing, threatening, compelling, deceiving, or using any other means to cause a specified official to do, not do, or delay doing, any act contrary to that official's duty under the Act.

SCHEDULE 4

Compliance with Anti-Money Laundering Conventions and International Anti-Corruption Conventions

1. Anti-Money Laundering

Title	Obligations	Extent of compliance with commitments
<p>UN Convention against Transnational Organised Crime (the “Palermo Convention”)</p> <p>Thailand signed the Palermo Convention on 13 December 2000 and ratified it on 17 October 2013. The Palermo Convention became effective for Thailand on 16 November 2013.</p>	<p>See 1) of Schedule 1.</p> <ul style="list-style-type: none"> – More specifically in relation to anti-money laundering framework, Article 6 of the Palermo Convention requires each State Party to adopt legislative and other measures as may be necessary to establish money laundering activities prescribed in the Convention as criminal offences. – Article 7 of the Palermo Convention requires each State Party to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies susceptible to money laundering in order to deter and detect all forms of money laundering, which regime shall emphasise requirements for customer identification, record-keeping and the reporting of suspicious transactions. 	<p>Compliant</p> <p>Thailand’s Anti-Money Laundering Act criminalises money laundering activities and includes a comprehensive list of predicate offences associated with organized criminal group as well as measures to combat money laundering in accordance with the principles of the Palermo Convention.</p> <p>The by-laws of the Anti-Money Laundering Act and the Bank of Thailand’s notifications set out comprehensive requirements and measures for banks and non-bank financial institutions to comply with in respect of transaction reporting requirements (including customer identification), record retention requirement, and reporting of suspicious transactions.</p>

2. Anti-corruption

Title	Obligations	Extent of compliance with commitments
<p>1) UN Convention against Transnational Organised Crime (the “Palermo Convention”)</p> <p>Thailand signed the Palermo Convention on 13 December 2000 and ratified it on 17 October 2013. The Palermo Convention became effective for Thailand on 16 November 2013.</p>	<p>See 1) of Schedule 1.</p> <p>In relation to corruption, the Palermo Convention requires each State party to:</p> <ul style="list-style-type: none"> – adopt legislative and other measures as may be necessary to establish corruption activities prescribed in the Palermo Convention as criminal offences; and – adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials. 	<p>Compliant</p> <p>The 5 pieces of legislation described in Schedule 3 criminalise various corruption activities, consistently with the principles of the Palermo Convention.</p> <p>The legislation also provides significant penalties for individuals who are involved in corrupt conduct, in particular in relation to corruption involving officials.</p> <p>Recently announced measures, such as increased funding of the NACC, reflect the Thai government’s new zero tolerance approach to corruption.</p>
<p>2) UN Convention against Corruption (“UNCAC”)</p> <p>Thailand signed the UNCAC on 9 December 2003 and ratified it on 1 March 2011.</p>	<p>The UNCAC requires each State party to:</p> <ul style="list-style-type: none"> – establish a body or bodies that prevent corruption; – adopt such legislative and other measures to establish bribery as a criminal offence; and – develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. 	<p>Compliant</p> <p>The Anti-Corruption Act establishes the NACC, which investigates allegations of corruption involving elected officials, and government officials at or above a particular rank. In addition, the PACC was established to investigate allegations of corruption involving government officials that do not fall within the jurisdiction of the NACC.</p> <p>The 5 pieces of legislation described in Schedule 3 criminalise various types of corrupt conduct, including bribery.</p> <p>Recent initiatives have sought to have greater public participation in identifying corrupt conduct, such as the ‘Dial 1206’ hotline set up by the PACC, and the telephone hotline and email address set up by MSDHS to receive complaints of corrupt conduct.</p>

