Corruption has been rampant in Thailand for many decades. It has been one of the pretexts used by the Thai military to legitimise coups against civilian governments. Thailand's most recent coup, enacted by the National Peacekeeping Council (NPKC) in 1991, was justified by coup leaders on the grounds that members of Chatichai's government were greatly corrupted. A committee for asset inspection was formed to investigate the assets of 'unusually wealthy' ministers. The case ended with the Supreme Court annulling the NPKC's Order No. 26 on account of its unconstitutionality.

Following that, the movement for political reform became widespread among opinion leaders and the media. This led to the amendment of the 1991 constitution by the NPKC's nominated National Assembly, creating the 99-member Constitutional Drafting Assembly (CDA) to prepare a new constitution for reform. The drafting committee of the CDA was chaired by Anand Panyarachun, a former liberal Prime Minister. The drafting committee proposed three main directions for reform:

- increased people-participation in government at all levels, and stronger guarantees of human rights
- the creation of 'watchdog' agencies and emphasis on more transparent and accountable decisionmaking processes
- the creation of mechanisms to ensure government stability and efficiency.

After nationwide hearings and consultations, the CDA prepared a draft constitution which was sent to the joint sitting of both houses of Parliament
for consideration. Parliament voted to adopt the draft without amendment. The new constitution received royal assent and, with its publication in the Royal Gazette, came into effect on 11 October 1997.

This chapter highlights key constitutional institutions that have a direct or indirect mandate to fight corruption. It then assesses practical difficulties surrounding the creation and operation of these organisations.

**Depoliticisation of key constitutional institutions and procedural reforms**

It has been generally accepted that a holistic approach is needed to fight corruption. It has been pointed out that '[a]lthough anti-corruption strategies should focus on priorities, they should also be comprehensive. All the agencies designed to fight corruption—prevention, investigation, research, education and enforcement bodies—have to work in concert, harmonise their efforts and complement each other to develop one strategy' (Stapenhurst and Kpundeh 1999).

This holistic strategy highlights the institutional aspect of anti-corruption efforts. No single agency can effectively combat corruption alone. Various organisations need to be created and/or mandated to perform corruption-fighting tasks. The drafters of the present Thai constitution decided to adopt comprehensive institutional reform by creating new ‘watchdog’ agencies and modifying existing institutions’ methods of operation. This ‘national integrity system’ has, for the first time in Thai constitutional history, been installed to create a ‘clean’ government.

**The national integrity system in the Constitution**

The 1997 Constitution has been labelled the ‘anti-corruption constitution’ because it has created a comprehensive national integrity system. Within the constitutional innovations, there are eight ‘pillars’ of integrity, as presented in the national integrity system model developed by Langseth, Pope and Stapenhurst (1997) (Figure 11.1).

**Political will.** Political will, or the determination to fight corruption, is one of the pillars that creates good governance. Countries such as Hong Kong (Speville 1998) and Singapore (Quah 1988) that have been successful in fighting corruption are proof that political will is one of the most important factors.

Quah proposed a matrix to demonstrate four characterisations of government anti-corruption strategies, depending on commitment of political leaders and adequacy of anti-corruption measures. With strong commitment and adequate measures, the strategy is considered to be most effective. In contrast, weak commitment and inadequate measures will result
in a ‘hopeless’ strategy. Strong commitment with inadequate measures, and weak commitment with adequate measures will both yield ineffective strategies (Figure 11.2).

Quah (1988) concluded that Singapore had succeeded in minimising the problem of corruption because its anti-corruption strategy was characterised by several key features. These included

- commitment by the political leaders, especially Prime Minister Lee Kuan Yew, to eliminating corruption both within and outside the public bureaucracy
- adoption of comprehensive anti-corruption measures designed to reduce both the opportunities and need for corruption
- creation and maintenance of an anti-corruption agency with honest and competent personnel to investigate corruption cases and enforce the anti-corruption laws.

The Thai Constitution tends to follow these same principles. In respect of political will, the charter in Chapter V on Directive Principles of Fundamental State Policies sets forth various provisions to forge political will and to assess annual performance of political leaders in all governments in relation to the battle against misconduct in the administration of the country. These mandates are

- the duty of all governments to ensure rule of law, efficient and expedient administration of justice, and equal opportunity to justice (Section 75 § 1)
- the requirement for all governments to adopt and enforce moral and ethical standards for politicians and public officials in order to prevent corruption and misconduct and create efficiency (Section 77)
Figure 11.2 Matrix of anti-corruption measures

<table>
<thead>
<tr>
<th>Commitment of political leadership</th>
<th>Anti-corruption measures</th>
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<tbody>
<tr>
<td>Strong</td>
<td>Adequate</td>
<td>Effective strategy</td>
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<tr>
<td>Weak</td>
<td>Inadequate</td>
<td>Ineffective strategy I</td>
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<td></td>
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<td>‘Hopeless’ strategy</td>
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- the mandate to promote and encourage public participation in checking the exercise of state powers at all levels and in all decisionmaking processes (Section 76), including public participation in natural resource management and the protection of the environment (Section 79)
- the obligation to allocate sufficient funds to independent watchdog agencies (the Election Commission, the Ombudsman, the Constitutional Court, the National Human Rights Commission, the Courts of Justice, the Administrative Courts, the National Counter-Corruption Commission and the State Audit Commission) (Section 75 § 2)
- the requirement to adhere to the market economy and the mandate to deregulate, with prohibitions on the expansion of the public sector in the market (Section 87).

These requirements are to be guiding principles in legislating and forming policies and platforms for all Thai governments. They are not intended to be enforceable through courts of law. As the Constitution requires the government to state clearly in its declaration to the joint sitting of both houses at the beginning of its term the strategies and activities to enact these requirements, each newly elected government has to take these constitutional mandates seriously. Failure to do so will induce severe criticism from members of parliament (MPs) and the media for lack of commitment and clarity of purpose. This political sanction is important in forging political will.

Moreover, the Constitution imposes a duty on the government to submit an annual report to the joint sitting of both houses of Parliament indicating the results of its policy implementation, including a description of problems and obstacles encountered during the year. This accountability mechanism created by the charter seems to be very effective in promoting debate on the floor of the houses. The annual report also serves to draw the attention
of the media and the general public to the operation of government and provides a good incentive for the government and state agencies to review their plans and put more effort into achieving their mandates. Opposition criticism of the current government in the past two annual report joint sittings has been described by the press as the equivalent of a no-confidence debate.

In any case, improvements are possible in two areas. Before taking office, coalition parties should seriously prepare an action plan to address each mandate. Plans should identify attainable, manageable and measurable targets. The practice of allowing bureaucrats to draw up the plan (as is the case with the present government) should be strictly avoided, as such a practice allows bureaucrats’ agendas to prevail, as in the past. Both houses of Parliament should ask their relevant committees to monitor the initial declaration and the annual report. A monitoring system would enable the houses to effectively oversee agencies throughout the year.

**Administrative reforms.** The new constitution has brought about many reforms in the Thai public sector. There is now an emphasis on the duty to act impartially in compliance with the law in order to protect public interests and provide convenience and services to the public; in other words, the necessity of separating personal matters from the duty of office (Section 70). Conflict of interest provisions in the Organic Law on Counter Corruption, 1999 have been imposed on public office holders and their spouses (see Appendix 1). These include restrictions on concurrent and post-employment, prohibitions on contractual and monopolistic concession with the state and local governments, and restrictions on holding shares in corporations and on accepting gifts (Sections 100–103 and 122 of the Organic Law on Counter Corruption, 1999 and Sections 110, 118, 126, 128, 208 and 209 of the 1997 Constitution applying to MPs, senators and ministers). Prohibitions have been imposed on MPs and senators from interfering or intervening in the recruitment, appointment, reshuffle, transfer, promotion or elevation of salary scale of government officials. Members of parliament and senators who violate these provisions will be removed from office (Sections 111 and 128). The Constitution requires adherence to ethical codes by political figures and permanent staff of the state (Sections 77 and 191). Improvements have been made to the pension scheme for MPs, senators and ministers (Section 229 § 2). Finally, the requirement for an efficient system of administration to meet people’s needs has been recognised (Section 75).

**Parliament.** The third pillar of the national integrity system is the reformed Parliament. The changes are dramatic, to ensure more effective, efficient and accountable chambers.
The first feature that needs to be addressed is the Senate (the upper chamber). For many decades, appointment was the manner of selection for members of the Senate. The Prime Minister proposed a list of military officers, important public officials, and leading businessmen for royal approval. For this reason the Senate was considered a group of government ‘supporters’. The Prime Minister’s power to nominate was severely criticised for creating a ‘winner-takes-all’ situation. In addition to forming government, parties that won a majority in the lower house were entitled to distribute all senatorial posts among supporters. This encouraged particularly fierce competition in general elections, often manifested as vote-buying.

The drafters of the constitution decided that the upper chamber should be directly elected. However, the electoral mechanisms used to select members for the two chambers differ greatly. First, each candidate to the House of Representatives (the lower house) must be a member of a political party so that they can promote party discipline for the sake of efficiency and government stability. Lack of efficiency and stability have been serious impediments to the continuity of national management under the civilian regime. However, candidates for senatorial seats must not have any party affiliation. Those with past affiliation must have resigned from their parties at least one year before registering candidacy in a Senate election. This measure of depoliticisation was introduced to render senators non-partisan so that they could exercise their control over political figures and high-ranking officials more impartially (in this context, depoliticisation means a de-linkage of candidates from political parties).

Furthermore, while political campaigning is permitted during House of Representative elections, it is not allowed during Senate elections. Senate candidates are only permitted to ‘introduce’ themselves to the public using posters and pamphlets, the contents of which are prescribed by the Election Commission. The Election Commission also provides radio and television fora for candidates’ introduction. Although this method has been criticised as being unnatural, it resulted in less electoral spending than in previous elections, and an absence of the usual ‘mud slinging’ among candidates.

Constituencies for the Senate election are provincial and are typically multi-member, though some low-population provinces select only one senator. This contrasts with the single-member constituencies of MP elections. Despite the fact that many Senate election constituencies are multi-member, each elector has only one vote. For example, Bangkok has 18 senators but each voter can only cast one vote for the candidate of his or her choice. Though strongly criticised, this method offers advantages because it basically gives all citizens’ votes equal weight and allows the realisation of a pluralist Senate. Such pluralism is in sharp contrast to the majoritarian
politics of the House of Representatives (see Figure 11.3). The true representation of various groups within Thai society can help provide civil society groups—historically dominated by élites drawn from the bureaucracy, the military and big business—with a more equitable share of legislative and administrative power.

The constitution bars senators from running for two consecutive terms. This rule was instituted out of concern that senators' political ambition would induce them to affiliate discreetly with political parties. As compensation, the term of office for senators is six years, two years longer than for MPs. In addition, while the House of Representatives can be dissolved, the Senate cannot (Sections 126(3) and 130).

Senators are not eligible for appointment to ministerial posts or other political positions. A former senator may be nominated for such a position only after one year has elapsed since he or she vacated office. This prohibition aims to prevent the possibility of senators being bribed with offers of government positions (Section 127).

Efforts to de-link the Senate from party politics were undertaken to make the institution central in the fight against corruption. The Senate is armed with two important powers which the House of Representatives lacks.

- the power to vote for nomination of Constitutional Court judges, Supreme Administrative Court judges, Ombudsmen, members of the National Counter Corruption Commission, the State Audit Commission, and the National Human Rights Commission
- the power to impeach political figures, including the Prime Minister, ministers, MPs, senators, presidents of the constitutional control bodies mentioned above and other high-ranking officials. The impeachment power can only be exercised after an investigation is conducted by the National Counter-Corruption Commission which must recommend that the case for impeachment is a *prima facie* one. The vote for impeachment should receive the support of not less than 60 per cent of the Senate's 200 members.

Depoliticisation in this case theoretically guarantees impartiality and neutrality of the Senate in its quasi-judicial function.

Some political observers are not confident about this institutional neutrality, arguing that in reality many candidates would have links with the parties. Some candidates would be former MPs, many would seek support from parties' canvassers, and so on. Figure 11.4 shows an estimate of the possible affiliations between the senators elected on 4 March 2000 and political parties.
In fact, personal connections between some senators and MPs are natural. This, however, does not imply a direct link to the parties of those MPs. Even in cases where party connections exist, they will not be formal. No party line can be legally imposed on the theoretically free members of the Senate. In matters of little importance, lobbying by MPs and parties can occur. When the Senate is considering high profile issues, however, the public will be able to observe closely, and such pressure should prevail over secret affiliations. The proceedings of the CDA are an illustration of this safeguard. On important policies opposed by political parties, such as the incompatibility of ministerial function and parliamentary representative function, the majority of Assembly members who had personal ties with parties voted against the parties' preferred policies.

The House of Representatives—chamber of partisan politics. Unlike the Senate, the House of Representatives is designed to be a politically partisan institution. No candidate or MP is allowed to be independent from a political party. Strict party discipline stands as the ultimate sanction, through expulsion from the party and loss of the office of MP (Section 118(8)). This is intended to entrench the stability of Thai civilian governments which historically have an average term of office of 1.2 years.

**Figure 11.3 Senators' backgrounds by occupation**

![Bar chart showing senators' backgrounds by occupation](image)

**Note:** The figures may change following the election on 29 April 2000 election in which 78 seats will be contested again because the Election Commission disqualified the winners.

**Source:** Matichon, 6 March 2000.
The interesting feature of the election system is the combination of proportional representation and a simple majority system. One-hundred seats are allocated by proportional representation to candidates drawn from national party lists, and 400 seats are allocated on the basis of first-past-the-post single-member constituency contests. The aim of this innovation is to avoid vote-buying and electoral fraud. The party list system should be especially effective because the national constituency is too large to allow efficient voter bribery to take place.

Furthermore, compulsory voting is prescribed in order to render vote-buying more difficult—it makes it very difficult to buy all or even a majority of votes. Furthermore, in the past, ballot counting took place at the polling stations and was thus easily controlled by party canvassers. Now, ballot counting takes place at a central counting venue in each constituency, as specified by the Election Commission (Section 104 §4).

Two aspects of the 'rationalised parliamentary system' prescribed by the new constitution are particularly striking. The first is the incompatibility of ministerial and parliamentary function. Members of parliament who become ministers must resign from their offices as MPs within one month.
after the royal command of appointment is issued (Sections 118(7) and 204). MPs resigning from single-member constituencies are replaced through by-election. Resigning party-list MPs are automatically replaced by the next candidate on the list. In opting for this choice, the drafters of the constitution seemed to favour party-list MPs as ministerial appointees. This strict separation of powers adopted in the French Fifth Republic Constitution is, for Thais, a means of enhancing the monitoring function of the lower house over the government. The logic is simple: the controlled (ministers) cannot concurrently be the controllers (MPs). Moreover, this measure should contribute to government stability because rebelling ministers (not uncommon in Thailand’s coalition governments) will not have parliamentary seats to retreat to if they are sacked by the Prime Minister.

The second constitutional measure is the requirement that when accusing any minister of corruption, unusual wealth, malfeasance or intentional violation of the law or constitution, the opposition must first launch an impeachment accusation before submitting a motion of no-confidence to the House of Representatives (Sections 185, 186). This condition is laid down in order to avoid a frustrating situation where the opposition may present convincing evidence of ministerial corruption during a no-confidence debate, but the House still votes in support of the government and there are no lasting repercussions for seemingly corrupt ministers. Under the new mechanism the National Counter-Corruption Commission must become involved in the impeachment investigation, so, regardless of the outcome of the no-confidence vote, impeachment proceedings will take place and corrupt ministers will be subject to punishment.

‘Watchdog’ agencies. Before the new constitution came into force, all control institutions were quite politicised in the sense that political interference could be real and effective. For example, the Constitutional Tribunal was chaired by the speaker of the House of Representatives. The speaker of the Senate, the president of the Supreme Court, and the prosecutor general were ex officio members. Other members were elected by the sitting parliament and remained in office only during the life of that parliament. The Tribunal was, in this respect, more of a political institution with political biases than an impartial judicial body. The Counter Corruption and Malfeasance Commission (CCMC) and the Office of the Auditor General were under the Prime Minister’s responsibility. The Council of State, which decided on administrative disputes between individuals and state officers, was also under the Prime Minister’s direct control. In order to remedy this problem, the new constitution adopted four principles for the creation of watchdog agencies: comprehensiveness, depoliticisation and independence, reinforcement of powers, and checks and balances.
Comprehensive control institutions. Thailand has a huge bureaucracy which includes 15 ministries, 207 departments including public enterprises, and 2,668,000 public servants, as well as 585 acts of Parliament that enable these entities and officials to act. The risk of abuses of power resulting in violation of people's rights and freedoms is therefore high. Previous control agencies were limited to courts of law and the non-independent bodies mentioned above. It was therefore the task of the constitution to create a comprehensive system of control bodies that could oversee all aspects of state administration so as to uphold the principle of rule of law. Nine such bodies were established.

- The Election Commission (Sections 136-48)—empowered to organise and control elections at different levels, tasks which were formerly executed by the Ministry of the Interior which had long been accused of having a bias towards the party in power
- The National Counter Corruption Commission (Sections 297-302)—entitled to verify the asset and liability declarations made by political figures and high-ranking officials, and to conduct investigations into cases of unusual wealth, corruption, malfeasance in office and intentional violation of laws and the Constitution
- The Supreme Court of Justice's Criminal Division for Persons Holding Political Positions (Sections 308-11)—instituted to adjudicate cases in which political figures are declared *prima facie* corrupt or unusually wealthy by the National Counter-corruption Commission (NCCC). This first and last-instance criminal court is composed of nine Supreme Court judges elected by the plenary session of the Court; criminal procedure is inquisitional but bears due process to ensure the accused's right to self defense
- Three Ombudsmen (Sections 196-98) entrusted with the power to investigate cases where public officials are suspected of failing to perform their duties, or to have exercised powers beyond their official prerogative
- The State Audit Commission (Section 312) oversees and audits public spending of all public organisations including constitutional independent control institutions
- The National Human Rights Commission (Sections 199-200) investigates human rights violations by both public and private entities and reports to the Cabinet and Parliament
The Constitutional Court (Sections 255–70) controls the constitutionality of bills and acts of Parliament and is the supreme arbitrator in cases of constitutional disputes among constitutional bodies. The Administrative Courts (Sections 276–80) judge cases of illegalities committed by the administration or its agents. The Courts of Justice (Sections 271–75) judge civil, commercial and criminal cases. These independent bodies have different mandates and powers so as to avoid redundancy and duplication of jurisdiction. They have to work in concert to fight aberrant behaviours.

Depoliticisation and independence of watchdog agencies. Independence is a fundamental aspect of effective control institutions. To achieve independence, eradication of political interference is essential. Past failure proved that the work of the CCMC was quite deceptive. One of the reasons for the CCMC’s lack of achievement was that the institution was under the pressure and control of the government.

The new constitution tries to cope with this problem by depoliticising the process of nominating members of the watchdog agencies to make them independent vis-à-vis their clients. The selection process is basically the same for all these agencies. A depoliticised method of nomination. Members are chosen by a selection committee comprising, on one hand, representatives of political parties and, on the other, non-partisan judges or academics.

In the case of the NCCC, the selection panel consists of 15 persons: the president of the Supreme Court of Justice, the president of the Constitutional Court, the president of the Supreme Administrative Court, seven rectors self-selected from among all state higher-education institutions and five self-selected members from among all political parties that have at least one MP in the House (Section 297). The selection committee prepares a list of 18 qualified persons for submission to the Senate (Section 257 applied mutatis mutandis). After receiving the list, the Senate, through its investigation committee under Section 135, scrutinises past records and behaviours of the 18 candidates and then votes to select the nine most qualified persons to be appointed by the King as members of the NCCC. The vote is by absolute majority in the first round and by simple majority in the second round, which is necessary only if an absolute majority is not obtained in the first round.

This complicated method has two merits. It ensures the legitimacy of the selected members because they are chosen by the elected representatives of the Thai people in the upper house. In addition, it minimises political
interference and partisanship. This method proves to be effective and efficient because NCCC members selected in this way can perform their function freely without allegiance to parties.

**Guarantee of independence.** The constitution has various other mechanisms to ensure the independence of watchdog agencies. These include

- single-term, non-renewable offices of long duration: nine years for NCCC, seven years for Election Commission, six years for Ombudsmen, the National Human Rights Commission (NHRC) and the State Audit Commission

- incompatibility of these offices with other public and private offices (examples in Sections 139, 141, 256 and 258)

- an independent secretariat attached to each agency, entitled by organic laws to freely conduct personnel management, administration and financial operations without being bound by laws and regulations applied to the government (Section 270 for the Constitutional Court, Section 275 for Courts of Justice, Section 280 for Administrative Courts, Section 302 for NCCC, Section 327(8) for Election Commission, Section 330(4) for Ombudsmen, and Section 333(3) for State Audit Commission)

- the fact that sufficient funding for the operation of these agencies is prescribed by the Constitution for fear that the government and parliament may try to jeopardise the agencies' operations through budgetary constraint (Section 75 § 2)

- the chairmen of these bodies are in charge of the control and execution of the organic laws creating the bodies, to avoid political pressure.

**Reinforcement of powers and capacity.** The charter reinforces powers of the controllers. The Senate is empowered to impeach high-ranking politicians and officials. The Election Commission can annul elections which are not free and fair. The NCCC can freely conduct investigations in cases of unusual wealth or corruption, including verification of public figures' asset and liability declarations. The State Audit Commission can audit agencies under the government, the Parliament and all independent bodies.

Apart from powers specific to the functions of each agency, the watchdog agencies all have the power to order government agencies, officials, the police, prosecutors and courts to supply assistance and evidence as required in the course of agency activity. The penalty for non-compliance varies from disciplinary to criminal action.

**Checks and balances.** Bearing in mind the adage 'power corrupts, and absolute power corrupts absolutely', the drafters of the constitution did
not allow any agency to have supremacy without controls. Every watchdog agency is controlled under a comprehensive system of checks and balances.

All holders of office, including senators, ombudsmen, members of the NHRC and State Audit Commission, and judges of the Constitutional Court, the Supreme Administrative Court and the Supreme Court of Justice, must declare their assets and liabilities to the NCCC. Members of the NCCC must make asset and liability declarations to the president of the Senate. This method allows verification of declarations and the investigation of unusual wealth cases if declarers cannot justify unusual increases in their assets. Questionable assets are subject to confiscation by the Supreme Court of Justice’s Criminal Division.

All holders of offices are impeachable after investigation by the NCCC and a vote of impeachment by 60 per cent of the Senate. All holders of office may be charged with the criminal offence of malfeasance. Penalties for members or officials of the NCCC who are found to be corrupt are double those normally provided for by the law concerning such offences. All agencies and their officials are under the jurisdiction of other watchdog agencies—that is, the NCCC will be audited by the Supreme Administrative Court, and be controlled by the Ombudsmen and the Administrative Courts in matters of maladministration and illegal acts.

The classical notion of separation of powers into the three branches of the executive, the legislature and the judiciary is necessary but not sufficient. The Thai Constitution goes further in instituting a fourth branch—various constitutional controllers have been established in such a way as to give them legitimacy to control, and have been vested with substantial control powers with which to perform their duties. These bodies are the fourth power to be added to the Montesquieu Doctrine because they exercise substantial and effective checks and balances over the other three classical branches.

The judiciary. The Thai Constitution accounts for the importance of the judiciary as the central pillar of rule of law. The Constitution attempts to reform the judicial process in three respects: the destruction of monopoly control of judicial function by a single institution, reinforcement of the independence of the judiciary, and provision of an efficient and fair judicial process.

De-monopolisation of judicial powers. Formerly, the Courts of Justice monopolised judicial power over public and private law cases. This situation was unsatisfactory due to lack of expertise and delay in the judicial process. For example, cases disputing lower house election results took years to reach a conclusion. The majority of cases ended with the dissolution of the House and the dismissal of the cases on the grounds that there was no need to annul election results because dissolution had produced the same outcome!
To de-monopolise judicial power, the Constitution separates judicial functions to be vested in different jurisdictions. The Constitutional Court will be in charge of constitutional disputes, while the Administrative Court will adjudicate administrative cases opposing individual and state agencies, except for election cases, which are under the Election Commission's jurisdiction, and taxation cases, which are heard in the Courts of Justice. The Courts of Justice will have adjudicative powers different from those of the other two courts and will decide mainly private law and criminal cases.

This separation of judicial function ensures greater relevance and should improve the quality of decisions rendered, as well as creating a speedier process. The separation of functions also allows the possibility of comparative evaluation of the judicial processes and outputs from the three main court systems.

**Reinforcement of independence.** The independence of judges is the central feature of justice. The Thai Constitution reinforces this feature through various means, including:

- depoliticisation of judicial nomination. In this respect, the Courts of Justice have been recognised as being independent from political interference since their establishment. The Judicial Commission, which is vested with the power to appoint and promote judges to judicial offices, is composed solely of judges (Sections 274 and 279). Furthermore, there is no external appointment; all judges are career judges and their promotion is determined by seniority;

- sufficient remuneration for judges—in accordance with Section 253—and preventing application of the salary scale or emolument for civil servants. This is to ensure not only adequacy of salaries and emoluments, but also to prohibit the use of promotion criteria and schemes practiced in the civil service, which may jeopardise judges' security in office;

- installation of independent secretariats for the various courts (Sections 270, 275 and 280) and guarantee of adequate funding (Section 75 § 2) are required by the charter.

**Efficient and fair judicial process.** Good justice needs not only qualified and independent judges but also efficient and fair trial. The Constitution sets forth many principles for this purpose. Discriminatory process (Section 75) is prevented by not allowing special courts or special procedures for particular cases (Sections 234 § 2 and 235). A full quorum of judges is required in all types of cases; judges may not serve as judges in their own cases; only judges who sit and hear the full case are entitled to decide that case (Section 236). In performing their functions, judges are independent and must decide each case according only to the Constitution, the law and
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their consciences. Judges are not subject to any hierarchical or supervisory pressure. They cannot be transferred, removed or promoted without their prior consent (Section 249).

In criminal cases, suspects and accused are presumed innocent until proven otherwise. They are entitled to a speedy, continuous and fair trial (Section 241). They are also entitled to legal assistance from the state (Section 242) and to the opportunity for bail during the process, except in certain cases provided for by law. Even after final decision, the accused can have recourse to retrial if substantial new evidence emerges that can prove his or her innocence. In this case, the state must pay compensation to the wrongfully convicted party (Section 247). A detainee has the right to habeas corpus and, if he or she is proven innocent by the final decision of the court, he or she will be compensated by the state (Sections 240 and 246).

Injured persons and witnesses must be properly protected by the state (Sections 244 and 245). To ensure transparency in all cases where the public prosecutor decides to drop the prosecution, the injured person has the right to examine facts and opinions employed by the prosecutor and the police. This right is also granted to suspects and accused (Section 241 § 3, 4).

The three remaining pillars for integrity—public awareness, the media and the private sector—will be discussed in the next section.

Procedural reforms to enhance participation, transparency and accountability

Institutional reforms to create a comprehensive system of checks and balances may be ineffective if the work processes of the institutions lack people's participation, transparency and accountability. Introversion and internal collusion could make the institutions prone to failure. The Constitution tries to create an environment to help them survive and grow by opening up the process. There are three main directions in this endeavour.

Public awareness and public participation. In the new era, public affairs are the domain of all citizens, not only the government or state as the public provider of services. If the aim of public affairs is to improve the wellbeing of all citizens, then all citizens should be in a position to participate in those affairs.

Understanding this changing climate, the drafters of the constitution decided to place emphasis on public participation in public affairs at all stages of decisionmaking processes and at all levels of government from national to local.

Section 76 requires that the state shall promote and encourage public participation in policymaking, decisionmaking and planning processes, together with public involvement in controlling the exercise of state power.
Various types of public involvement are described in the Constitution. Access to public information is guaranteed in order to keep people informed of the progress of the ongoing process. This right has been exercised in many cases—disclosure of notes for the entrance examinations of various public schools and universities; disclosure of an NCCC investigation concerning a drug scandal; disclosure of contracts concluded by the Debt Restructuring Agency and foreign consultants; disclosure of letters of intent to the International Monetary Fund; and revelation of a toxic substances scandal in Hua-Hin, among others. Corruption, normally imbedded in a ‘closed and secret’ environment, should decrease with increased public access to information.

Freedom of expression is guaranteed so that censorship cannot be imposed. Closure of printing houses and radio and television stations is unconstitutional. Independence of reporters and columnists vis-à-vis employers in both the public and private sectors is guaranteed (Section 41). This should be the central part of free expression of facts and opinions through media. If the media is theoretically and practically free from state intervention, but falls into the hands of corrupt private owners or shareholders with only pecuniary interest, who will ensure ‘freedom of expression’—reporters or owners? If it is the latter, freedom of expression would only be freedom for them to propagate commercial and selfish interests! This situation is as undesirable as advocating government control of information.

In order to achieve impartial radio and television and eliminate government monopoly over these two media, Section 40 requires that transmission frequencies were to have been be redistributed by 11 October 2000. Redistribution is to be done with consideration for public benefit in education, culture, state security and other public interests. Television and radio broadcasting business should be conducted on a free, fair and competitive basis under the supervision of an independent regulatory body. The right to public hearing and consultation in decisionmaking processes that affect the interests of the people is assured (Sections 56, 59 and 60).

Autonomous civil service entities are created under the Constitution to provide public authorities with opinions on environmental impact assessment (Section 56 § 2) and law, regulations and measures to protect consumers (Section 57 § 2). Moreover, the National Economic and Social Advisory Council will be established to consult with the government on economic and social development plans (Section 88). Laws are now being drafted to establish advisory institutions to represent the relevant factions in civil society. Hopefully, the advisory institutions will contribute to more balanced decisions in important areas.
The Constitution guarantees that citizens have the right to propose bills to Parliament by producing a petition with the signatures of 50,000 voters. Local bylaws can also be initiated in this way (Sections 170 and 287). Civil society groups are now preparing at least two bills—one on public welfare and one on community forestry. This action bodes well as an indicator of this mechanism's effectiveness as an instrument for participatory democracy.

Co-management of the environment and natural resources is a central aspect of participation. The Charter enables at least five groups to be involved—individuals (Section 56 § 1), traditional local communities (Section 46), autonomous environmental organisations (Section 56 § 2), local administrations (Section 290) and the state itself. Section 79 stipulates clearly that the state shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity, together with protection of the quality of the environment. It is now clear that these affairs are no longer the domain of the government, but are public affairs that call for the involvement of all parties. The issue is now one of how to orchestrate these participatory efforts to achieve the goal of genuine co-management.

Lastly, the Constitution empowers voters to launch impeachment accusations against politicians and officials suspected of corruption, again through the 50,000-signature petition mechanism (Section 304). Similarly, this power can be exercised at the local level (Section 298). This power has already been exercised at the national level during a drug scandal. The result was the resignation from office of two accused ministers. In addition, all individuals who feel they are victims of maladministration, corruption or illegality are allowed to bring cases before the Ombudsman, the Administrative Court, the Court of Justice and the NHRC.

If the way is paved for public engagement, strong civil society organisations should lead the journey. In fact, Thailand is lucky enough to have a tradition of involving civil society in various important changes. The tradition is exemplified in the student uprising of October 1973 led by the Thailand Student Center, the Black May incident involving pro-democracy groups that led to the overthrow of General Suchinda's government in 1992, the political reform movement led by Dr Prawase Wasi and networks of the Central Organisation of Poll Watch, and very recently the network of Rural Doctors and People's Counter Corruption group that successfully revealed drug-procurement corruption. Moreover, a group of important opinion leaders has been formed as a national chapter of Transparency International. Led by former Prime Minister Anand, its task is to monitor and report corruption, and to protect good public
officials who do not yield to corrupt practices of their superiors or colleagues. It is hoped that joint citizen–state action will bring about changes in society.

**Transparency, accountability and the media.** The new Thai charter focuses on transparency and accountability at all levels. It prescribes freedom of information and freedom of expression. Furthermore, it imposes an obligation for disclosure of important information useful to fighting corruption, such as the assets and liabilities of the Prime Minister and other ministers, their spouses and children (Section 293 § 2). Already, six cases of false documentation in such declarations have been sent to the Constitutional Court by the NCCC. The Constitutional Court has judged three cases and the remaining three are pending, including that of Sanan Kachornprasart who has resigned from his posts of interior minister and deputy Prime Minister over the issue. False declaration is grounds for dismissal from office and imposition of a five-year ban from politics, in addition to any criminal penalties. Other information subject to disclosure includes voting records in Parliament, political parties’ expenditures and sources of income, including names of donors, and electoral spending by candidates and parties.

The media have an important role to play in monitoring information that can be disclosed and drawing public attention to questionable matters. A free press is therefore crucial because it can expose and make accountable those suspected of corruption. Figures suspected of corruption are obliged to defend their conduct before the public and the press. In many cases, public declarations and press interviews have been used as evidence in NCCC corruption investigations and as grounds for political debate during no-confidence motions in the lower house.

In practice, the press reveals most corruption cases in Thailand. Examples include mega-project kickbacks such as in the HDS project, and corrupt practices surrounding MPs’ fund for provincial development. Examination of daily newspapers indicates how strong and free the Thai press is in fighting corruption.

Three issues, however, should be addressed. First, a free press needs to exhibit responsibility and accuracy in reporting. Some newspapers do not distinguish between ‘news’ and ‘views’ and, by failing to do so, distort issues. Even worse, this failure can bring disgrace to innocent and honest persons. If reporters and columnists do not verify their information, innocent people’s reputations could be injured. It seems that two remedies can be effective—strong commitment by the press to a code of ethics sanctioned by an autonomous professional press association, and libel action in the courts. The Thai press has united to create the Press Council to address
grievances of individuals who believe they have been wronged. The Press Council has in many cases pointed out malpractices of their colleagues. Hopefully this institution can render members of the press more responsible for their statements.

Second, the commercial interests of the media should be monitored closely. Even if the media is free from state intervention, it may not be free from interference by owners or businesses with personal or institutional interests that may not coincide with the public interest. As an example, advertisers can exert influence on owners and reporters. For this reason, the new charter guarantees employees of the media freedom in their reporting of news and opinion in the hope that this can protect them from the private interests of their employers.

Third, corrupt practices by journalists should be carefully explored. Journalists, like all human beings, may be tempted by greed. Politicians and public figures try to befriend journalists by offering benefits such as travel, luxurious meals and gifts. This may bias reporting. Therefore, it is necessary that the Press Council enforce a code of conduct to discourage and punish corruption in the press.

Private sector and good corporate governance. Corruption often involves two principal actors—the government and the private sector. When cases involve the provision of goods and services, consumers are typically the victims. Private monopolies established through corrupt practices will take advantage of consumers. Business leaders who have access to high-ranking politicians and officials are able to offer ‘discreet support’ to parties in return for business advantages. Measures to discourage the corrupt practices of individual officials have already been discussed. To discourage corruption at the party level, the Constitution calls for a scheme for the state financing of political parties (Section 328 (5)). The Organic Law on Political Parties established the Fund for Political Party Development under the control and supervision of the Election Commission. Hopefully this mechanism, in conjunction with controls on party spending, can help free parties from dependence on private funding.

Even so, corruption in business cannot be eradicated without major reform of corporate governance. One reason for Thailand’s economic crisis was poor governance in the private sector. Corrupt directors and private auditors contributed to corporate weakness. Corporate governance reform should be a priority, especially for companies listed on the Stock Exchange of Thailand. Private auditors must overhaul their practices because only audit institutions with integrity can guarantee corporate transparency and accountability and protect shareholders.
Suggestions for improvement to the integrity system

While the pillars of integrity exist in Thailand, some improvements should be considered in order to ensure efficiency and effectiveness of the institutions. Qualitative changes in three areas will improve the integrity system engendered by the Constitution considerably. These areas are—institutional improvement, commitment to public and private sector reform, and enhancement of public awareness and involvement.

Institutional improvements

In order to make the eight pillars of integrity more effective, various strategies should be adopted.

Measures to ensure the integrity of watchdog agencies. The nine watchdog institutions should be improved to ensure they operate successfully. Though members of the watchdog agencies are chosen by the Senate, the selection process is still imperfect. Criteria by which the Senate assesses candidates proposed by the selection panels should be clear, open and impartial. Over the past two years, the Senate Investigation Committee has had no clear review criteria. Some candidates have been rejected merely because they were former constitution drafters. This was the case in the selection of Constitutional Court judges, where at least three prominent and well-respected scholars were rejected on these grounds (perhaps an act of revenge against those who abolished the nominated senate). Anonymous letters accusing candidates have been taken into consideration, and calumnies have also played an important role in undermining candidates.

Moreover, investigations were conducted—contrary to practice in the western world—in camera. Even the debate on the floor was secret for the purpose of protecting the dignity and reputation of the candidates! Questionable practices described above are known only because some senators have chosen to speak out. It is true that secrecy may protect candidates from public criticism, but it can also engender bias and abuse of power. We can hope that the newly elected Senate will amend rules and procedures to establish clear criteria for the scrutiny process as well as open that process up to ensure impartiality. This would further ensure that members of the watchdog agencies are truly honest and able to perform their important functions.

Remuneration and other emoluments are equally important for guaranteeing the integrity of control institutions. In Thailand, only senior watchdog organisation members elected by the Senate and nominated by the King are well paid. Most staff are paid according to the government pay scheme, which is inadequate. This creates the risk of anti-corruption officials
becoming corrupted themselves. The problem of inadequate pay should be addressed quickly before systematic corruption permeates the new system.

A continuous training program should be implemented to ensure high quality work skills. Technologies should be introduced to increase ease of work; millions of pages of asset and liability declarations can only be managed successfully with the help of information technology.

**Internal organisation of agencies.** Each agency should be designed to fulfil its multi-dimensional role. To this end, a number of specialist divisions should be present in each agency, such as

- a public relations division. Public relations and promotion campaigns are important in the prevention of malpractice and illegality. A public relations and campaign division (for example, the ICAC of Hong Kong) is needed to inform communities, the private sector and public officers about correct and clean behaviour.
- a coordination unit. This body should be created to network and work in concert with other bodies whose operations are related to the agency's function. Coordination units can help eliminate duplication of work and avoid potential conflict.
- a monitoring unit. The monitoring unit would oversee potential sources of corruption and conduct secret checks to gather information to suggest sui generis action by the agency.
- a research unit, which would supply facts, figures and policy options to support the policymaking process. Comparative studies of tools, practices and experiences of similar institutions in foreign countries would be valuable for improving agency performance. The research unit could also make suggestions for improving government processes to avoid corruption.

**Adequate staff and funding.** Staff and funding are critical factors in agency performance because control agencies cannot operate effectively without qualified personnel and adequate resources. Even though the Constitution requires sufficient funding for the watchdog agencies, the budgetary process is under the direct control of the government. The Budget Bureau under the Prime Minister's Office prepares all public expenditures for Cabinet approval. After approval, the budget is tabled in the lower house and government whips try to pressure coalition MPs to vote in support of the Budget Bill. Even at the committee stage, the Minister of Finance traditionally chairs the scrutiny committee. Traditionally, the government uses its majority in the House to control budget allocations to all state institutions, including Parliament and the overseeing institutions. Budgetary independence for the latter is more theoretical than real.
As long as this situation prevails, true independence and effectiveness of watchdog institutions is jeopardised. Serious correction measures must be taken immediately, beginning with revolving fund and standard unit cost together with block grant and direct access to Parliament as first priorities.

Adequate numbers of qualified personnel are also a success factor. Inadequacy results in delays in the work process. Unqualified personnel can damage cases under investigation. This problem is linked to inadequate funding and remuneration.

As an example of the staffing situation, the NCCC, with its wide mandate for combating corruption, has only 346 officials. This compares poorly with the ICAC of Hong Kong, which has approximately 1,200 staff. Furthermore, the number of personnel is not in proportion to the number of cases the NCCC has to investigate

- 5,741 asset and liability declarations of politicians and high-ranking officials
- 530 accusations launched against holders of public office
- 1,967 cases of corruption transferred from the now defunct CCMC
- 19 criminal cases transferred from investigation and prosecution police in the Supreme Court’s Criminal Division for Persons Holding Political Positions
- 73 cases of unusual wealth
- 48 urgent cases.

Furthermore, a law has been passed to criminalise cartel practices in government procurement of military supplies. The NCCC is charged with the cumbersome task of pursuing these cases even though this work may be more suited to public prosecutors.

Without adequate funding for new staff and an appropriate pay scale, it is difficult to imagine how the NCCC is to operate effectively. If the situation is not improved the NCCC risks being labeled a ‘paper tiger’—an appellation often assigned to the CCMC. In such a case the blame rests squarely on the shoulders of the government.

Priorities. Good strategies must be adopted in advance to cope with corruption. Prevention is likely to be more effective than suppression. Petty corruption is less problematic than large-scale corruption in huge government projects. Hence, piecemeal graft should draw the attention of overseeing institutions less than systematic corruption. Each agency should focus on meaningful and significant corrupt practices. The most severe forms of corruption should be attacked first.
Privatisation and decentralisation are two important areas for attention because they have great potential for harbouring corruption. Control institutions should coordinate and subscribe to the principle of division of labour in order to cope adequately with the potential corruption. 

**Transparency required.** Overseeing bodies must be prepared to open up the investigation process at appropriate times. The media and the general public must have the opportunity to observe important sessions so as to stay informed about what is going on. This practice, which has proven effective in Australia and Hong Kong, has two merits. It fosters public awareness through public debate, and it pre-empts undue pressure from powerful individuals or groups under investigation. Furthermore, public proceedings help protect the watchdog agency's staff from the temptation of corruption.

### Public sector reform accelerated

The success of the political reform movement, which resulted in the adoption of the Constitution against the will and interests of parliamentarians who nevertheless voted for it was the result of three factors—strong research back-up, public campaigning and public involvement, and political will.

Reform must be based on good strategies and produce mechanisms, tools and techniques to be adopted. Successes and failures from other countries serve as good examples. Research is fundamental for producing good policy options in any reform endeavour.

Public campaigns and involvement create awareness that, in turn, puts pressure on policymakers and prevents vested interests from resisting reform. The constitution drafting process involved wide public participation to raise public awareness and to put pressure on the government and Parliament to approve the draft despite their opposing interests. Political will comes at the end because it can be forged by public pressure.

In public sector reform, weakness stems from the fact that reform has been conducted only within the government circle. This is not conducive to good results because the reformed agencies and officials can stage active or passive resistance. Moreover, the reform package was not comprehensive. It would have been rejected if it had been too great an assault on the status quo and the vested interests of those involved. Thailand has been preaching administrative reform for a long time, but with limited results. In order to accelerate the process, continuous campaigning and public participation should be of the highest priority in order to overcome internal resistance and produce the political will to push for rapid reform.
Public awareness

Since corruption often involves two actors—the individual and the public official—both should be informed of the costs of corruption from legal and economic perspectives. In many cases, actors involved do not even realise that what they are doing is an act of corruption. For example, gifts offered without anything asked in return are considered customary and thus acceptable practice, regardless of worth and occasion. Personal relations between individuals and law enforcement officers are commonplace in Thailand’s patron-client oriented system. Worryingly, the study Corruption and the Thai Democracy (Pongpajjit and Pirijarongsan 1994) indicated that 70 per cent of those questioned thought that giving a minor tip after receiving a service is not a form of corruption.

The situation would improve if the public and officials were informed that these behaviours are illegal. Campaigns not only help prevent unintentional corruption but also to create new values. Subsequently, emphasis should be placed on continuous public relations campaigns at all levels. This has not yet been done to promote government anti-graft strategies and the overseeing agencies.

At the domestic level, indicators for integrity, participation, transparency and efficiency in various public agencies are one of the most powerful tools for drawing media and public attention. Indicators also enhance the image of agencies with good records and encourage all agencies to improve their services. Corrupt agencies are vulnerable because they are forced to reveal their service records. Unfortunately, most existing indicators are international ones. They measure on a comparative basis and, in the majority of cases, are predicated on subjective perception rather than objective evaluation. It is of the utmost importance that relatively objective tools be used in order to arm the media and the public against corrupt agencies.

Conclusion

Thailand has already gone a long way down the path of fighting corruption. Much, however, remains much to be done. This chapter does not suggest that the tasks are too difficult or too trivial to perform. Instead, it insists that there is interdependence between all eight pillars of integrity and that those pillars should function in concert. The Constitution is only the beginning of a new era. It is not, and cannot be, a perfect instrument unless it engenders a continuous process for improving efforts to end corruption.
Appendix 1

Excerpt from Organic Law on the National Counter Corruption Commission (Chapter 9)

Conflict between personal interest and public interest

Section 100 No state Official shall be allowed to do the following acts:

(i) to be a party or have an interest in the agreement entered into with a government agency in which the State Official acts as the official who has the powers to direct, supervise, control, audit or take legal action;

(ii) to be a partner or shareholder in a partnership or a company which has entered into the agreement with the government agency in which the State Official acts as the official who has the powers to direct, supervise, control, audit or take legal action;

(iii) to obtain concession or hold the concession from the State, a government agency, a state enterprise or local administration or entered into the contract with the State, a government agency, a state enterprise, or local administration which has a characteristic of monopoly, whether direct or indirect, or be a partner or a shareholder in a partnership or a company which obtains the concession or be a party to the above;

(iv) to have an interest as a director, consultant, agent, worker or employee of a private enterprise which is under the direction, supervision, controlling or auditing of the government agency in which the State Official acts as the official by the nature of the interest of private sector conflicts with the interest of public or government interest or affect the independent of the State Official.

State Officials who are prohibited from carrying out pursuant to the first paragraph shall be as prescribed by The National Counter Corruption Commission in Government Gazette.

The provision of the first paragraph shall apply to the spouse of the State Official pursuant to the second paragraph and the business of the spouse shall be considered as the business of that State Official.

Section 101. Section 100 shall apply to business activities of former State Officials who have vacated their offices within the last two years, mutatis mutandis with the exception of shareholdings not exceeding 5 per cent of total shares sold by a limited-liability public company, not a party in the
agreement entered into with a government agency under Section 100(2) licensed permitted by stock and stock market regulation.

Section 102. Section 102 shall not apply to a State Official carrying out the business in which they have the powers to direct, supervise, control, or audit limited companies or public companies limited assigned to perform duties in the limited company or public co., Ltd. where government agency has its shareholder or joint venture.

Section 103. State Officials shall not be allowed to receive assets or benefits from any person, apart from those given and receive within the law or rules, regulation by virtue of statutory provision law with the exception of assets or benefits justly received by according to rules and amounts issued by The National Counter Corruption Commission.

Provision in first paragraph shall apply to former officials for two years after the date of vacating office, mutatis mutandis.

Section 119. Any State Officials who intentionally fail to submit the declaration of assets and liabilities and its supporting documents to The National Counter Corruption Commission within issuing date of the organic law designated, or intentionally submit the same with false statements or conceal facts which should be revealed, shall be sentenced to imprisonment or fine not exceeding 10,000 Baht or imprison and fine.

Section 122 Any state official who violates the provisions in Section 100, Section 101 or Section 103 shall be sentenced to imprisonment not exceeding 3 years, or fine not exceeding 60,000 Baht, or imprisonment and fine.

In cases of wrongdoing in accordance with Section 100, third paragraph, if the State Official can prove him or herself innocent of, or unconnected with, the spouse's wrongdoing, that official shall be deemed not guilty.