Chapter 5. Encouraging reporting of corruption in Thailand through stronger whistleblower protection

While provisions for whistleblower protection are cursorily mentioned in the Executive Measures in Anti-Corruption Act, B.E. 2551, and Penalty in Witness Protection Act, B.E. 2546, Thailand has no dedicated whistleblower protection law. To develop a stronger whistleblower protection mechanism to improve integrity in the public sector, this chapter discusses the value of developing legislation to address the issue of whistleblowing, suggesting a number of key features that need to be included, such as clear definition of wrongdoing and retaliation, multiple reporting channels, remedies for whistleblowers and monitoring of the law's implementation, with reference to good practices of OECD countries.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Encouraging integrity and an open organisational culture by detection and protection

Effective mechanisms for disclosing wrongdoing without fear of reprisal are at the heart of integrity in government. The protection of employees who disclose wrongdoing in the workplace ("whistleblowers") is thus an essential part of an organisation's system of promoting a culture of public accountability. In many countries, protecting whistleblowers is proving to be a crucial element in the reporting of misconduct, fraud and corruption. Employees who report wrongdoing may be subject to intimidation, harassment, dismissal and violence by their colleagues or superiors. In many countries, whistleblowing is even associated with treason or spying (Banisar, 2011[1]; Transparency International, 2009[2]). This may be the result of prevailing cultural conventions, which may also shape individual careers and internal organisational culture (Latimer and Brown, 2008[3]). Provisions that encourage whistleblowers to come forward must be set up, including: legal protection from retaliation, clear guidance on reporting procedures, and visible support and positive reinforcement from the organisational hierarchy.

Well-designed whistleblower frameworks in OECD countries clearly define the kind of wrongdoing that justifies protection and which provides both internal and external confidential channels for disclosing misconduct. Dedicated recipients are made accountable for ensuring the confidentiality of the whistleblower's identity and of the information communicated, as well as how they act upon such disclosures. Good practices in OECD countries often provide appropriate remedies that correct and compensate for the reprisals that ensue as a result of whistleblowers' disclosure of misconduct.

Thailand could consider developing a dedicated law to protect whistleblowers, in addition to existing witness protection arrangements

Thailand has no dedicated whistleblower protection legislation. The issue is partially covered by the Executive Measures in Anti-Corruption Act, B.E. 2551, and the Penalty in Witness Protection Act, B.E. 2546. Section 57 of the Executive Measures in Anti-Corruption Act, B.E. 2551, states that if the Office of Public Sector Anti-Corruption Commission (PACC) considers that whistleblowers are treated unfairly as a result of making a disclosure, PACC shall forward the matter to the Prime Minister who may consider instructing PACC on appropriate measures to protect them (Box 5.1). In addition, Section 103/2-103/5 of the Organic Act on Counter Corruption, B.E. 2542, and its amendment prescribe measures for protecting the person giving testimony or for whistleblowers. Such a person shall be deemed a witness entitled to protection under the laws on witness protection, along with the Regulation of the NACC Witness Protection, B.E. 2554, which prescribes the rules, procedures and conditions of witness protection in cases of corruption, unusual wealth and the inspection of assets and liabilities.

Box 5.1. Section 57 of the Executive Measures in Anti-Corruption Act, B.E. 2551

Section 57: In the case that the persons under Section 53 are State Officials, when the above-mentioned persons file an application with PACC, if such persons continue to perform their duties under the existing affiliations, such person may be retaliated against out of spite or unfairly treated, resulting from alleging or making statements, or giving clues or information, and PACC has considered and is of the opinion that there are grounds to believe that there may be above-mentioned grounds, PACC shall forward this matter to the Prime Minister for consideration, to instruct that the aforesaid persons be protected or whether there shall be any other measures to protect the aforesaid persons as the Prime Minister thinks fit.

Source: Executive Measures in Anti-Corruption Act, B.E. 2551.

These provisions currently lack such details as the definition of state officials and unfair treatments, the criteria upon which PACC should forward the case to the Prime Minister, and remedies for whistleblowers. Unclear boundaries and distinctions that are not explicitly explained can create confusion and a lack of confidence in the protection system, so that as a result, few whistleblowers may come forward to report wrongdoing.

In addition, the Executive Measures in Anti-Corruption Act, B.E. 2551, does not make a clear distinction between witness protection and whistleblower protection. Interviews with PACC officials also indicated that many public officials assume that the existing witness protection mechanism also covers whistleblowers, and that protective measures under witness protection may be sufficient for whistleblowers. Section 53 states that protective measures may be provided to the person making the allegation, the injured person, the filer of a motion or complaint, and the accuser, maker of a statement or anyone who gives any information in association with corruption in the public sector. Section 54 then states that in criminal cases, protective measures shall be provided to those defined by Section 53 under the laws on witness protection. The Regulation of the NACC Witness Protection, B.E. 2554, also has some provisions for witness protection in corruption cases. Legally speaking, some overlap is typical between whistleblowers and witnesses, because some whistleblowers may possess solid evidence and eventually become witnesses in legal proceedings (Transparency International, 2013[4]). When whistleblowers testify during court proceedings, they can be covered under witness protection laws. However, if the subject matter of a whistleblower report does not result in criminal proceedings, or if the whistleblower is never called as a witness, no witness protection is provided.

Given that whistleblowers are usually employees of the organisation where the reported misconduct took place, they may face specific risks that are not currently covered by the witness protection laws, such as demotion or dismissal. Whistleblowers may be retaliated against and lose their position because they may not be able to return to their workplace for personal and professional reasons. They can find themselves unemployed for a long period as a result of being ostracised from their professional community and network and potentially blacklisted from future employment within their field of work. In this regard, the typical measures provided under the witness protection law, such as relocation, police protection and changed identity, may not always be relevant in the case of whistleblowers.

To reinforce the provision underpinned by Section 57 of the Executive Measures in Anti-Corruption Act, B.E. 2551, and make a clear distinction between witness protection and whistleblower protection, Thailand could consider developing a dedicated whistleblower law, assigning to PACC responsibility for the implementation of such a law. Whistleblower protection can originate in a single dedicated law, or through a piecemeal approach stemming from provisions in various laws. Dedicated legislation is the preferable option, because the degree of protection afforded within the provisions of various laws tends to be less comprehensive. Protection provided for under dedicated legislation can provide clarity and help streamline processes and mechanisms involved in disclosing wrongdoing.

For this reason, dedicated whistleblower protection laws are coming into force in a growing number of OECD countries. Over the last decade, an increasing number of OECD countries have developed a specific legal framework to protect whistleblowers. OECD countries have established more dedicated whistleblower protection laws in the past five years than in the previous quarter-century (Figure 5.1).

Figure 5.1. Entry into force of dedicated whistleblower protection laws: A timeline

Source: (OECD, 2016[5]).

Thailand could consider developing a broader definition of whistleblowers

As a first step in developing a comprehensive whistleblower protection mechanism in Thailand, introducing a broader interpretation of the term whistleblower would make it possible to offer protection to a larger number of individuals. It is vital for Thailand to ensure that the coverage afforded to whistleblowers follows a "no loophole" approach, meaning that in addition to public officials and permanent employees in the private sector, specific categories of employees, often in grey areas, are explicitly designated as qualifying for protection. Such employees, for instance, should include those outside the traditional employee-employer relationship (e.g. consultants, contractors, trainees/interns, temporary employees, former employees and volunteers). In cases of public sector whistleblower protection provisions, a "no loophole" approach would signify that employees of state-owned or -controlled enterprises and statutory agencies also qualify for protection. While there are varying degrees of whistleblower protection in the public

sector across 26 OECD member countries (Table 5.1), many countries opt for providing protection to former employees, consultants and also temporary employees.

Table 5.1. Varying degrees of whistleblower protection in the public sector

	Employees	Consultants	Suppliers	Temporary employees	Former employees
Australia	●	●	●	●	●
Austria	●	❍	❍	●	●
Belgium	●	❍	❍	●	❍
Canada	●	●	●	●	●
Chile	●	❍	❍	❍	❍
Estonia	●	●	●	●	●
France	●	●	●	●	●
Germany	●	●	●	●	●
Hungary	●	●	●	●	●
Iceland	●	❍	❍	●	❍
Ireland	●	●	●	●	●
Israel	●	●	❍	●	●
Italy	●	●	❍	●	●
Japan	●	❍	❍	●	❍
Korea	●	●	●	●	●
Mexico	●	●	●	●	●
Netherlands	●	❍	❍	●	●
New Zealand	●	●	●	●	●
Norway	●	❍	❍	❍	❍
Portugal	●	●	●	●	●
Slovak Republic	●	❍	❍	❍	❍
Slovenia	●	●	●	●	●
Switzerland	●	❍	❍	●	❍

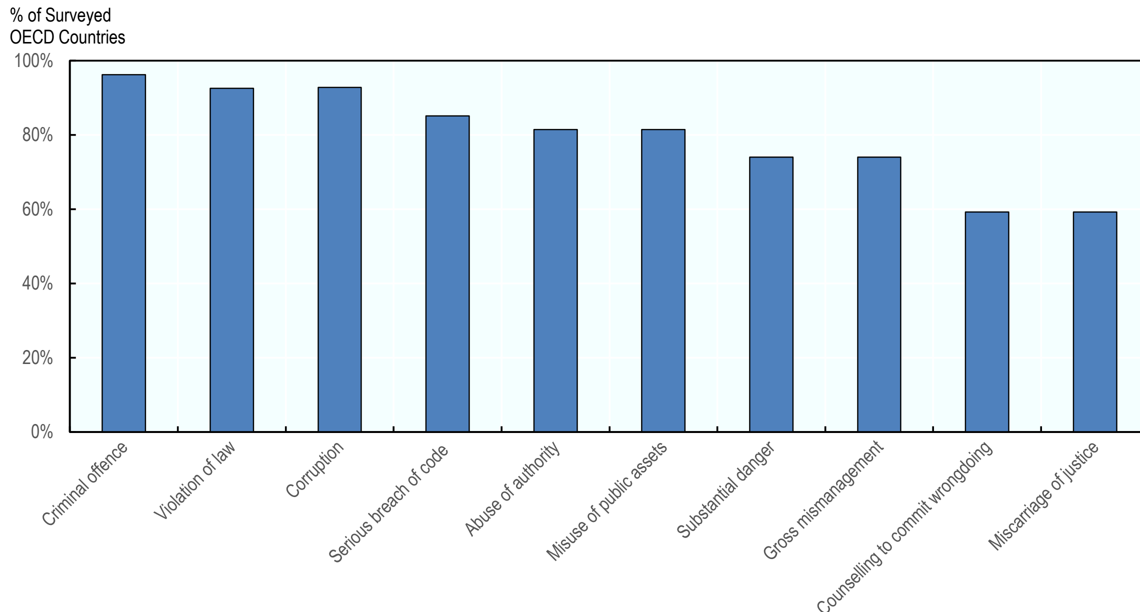
	Employees	Consultants	Suppliers	Temporary employees	Former employees
Turkey	●	●	❍	●	❍
United Kingdom	●	●	●	●	❍
United States	●	●	❍	●	●
Total OECD 26					
Yes: ●	26	17	13	23	17
No: ❍	0	9	13	3	9

Source: (OECD, 2016[5]).

Thailand could consider establishing a clear definition of the scope of disclosures that justify coverage under the whistleblower protection system

Another vital element for an effective whistleblower protection law is the precise classification of elements of disclosure that warrant protection. In Thailand, Section 53 of the Executive Measures in Anti-Corruption Act, B.E. 2551, specifies that protection is offered to those who disclose information on corruption in the public sector. While the provision of protection for whistleblowers who disclose acts of corruption is a key element of an effective whistleblower framework, disclosures of other types of wrongdoing should also be included (Figure 5.2). Individuals who witness or are aware of other types of wrongdoing, such as violations of the code of conduct or conflict-of-interest policies, gross waste or mismanagement, etc., could feel free to come forward to to the relevant authorities. Together, this would encourage the prevention not only of corruption in the public service, but of wrongdoing more generally.

Figure 5.2. Percentage of surveyed OECD countries providing protection for disclosure of specific categories of misconduct



Note: Respondents were asked the following question: "Which of the following wrongdoing constitutes a protected disclosure?"
Source: (OECD, 2014[35]).

In addition, PACC could consider establishing a clear definition of the scope of wrongdoing that could warrant coverage under the law. The lack of clarity can undermine the confidence that whistleblowers may have in bringing forward information about potential instances of corruption. To mitigate the likelihood of having whistleblowers come forward with information that may not qualify as protected disclosures, potentially exposing them to unnecessary risks and overburdening the intake system with non-applicable cases, PACC may wish to consider providing a detailed and balanced definition of potential wrongdoing. Establishing a clear classification of wrongdoing will also avoid situations where PACC and the officers responsible take the liberty of establishing their own definition of wrongdoings, which can lead to abuse, lack of consistency and much uncertainty as to whether protection will be granted from one case to the next.

The ideal balance should encourage reporting on a range of potential wrongdoing, without being so detailed that potential whistleblowers are not sure whether they would be afforded protection for disclosure of a particular wrongdoing. For example, the UK legislation provides a balanced approach, with a detailed definition, and spells out exceptions (Box 5.2).

Box 5.2. A detailed definition of protected disclosures in the United Kingdom

Part IV – A: Protected disclosure

43A: Meaning of "protected disclosure"

In this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B, which is made by a worker in accordance with any of Sections 43C to 43H.

43B: Disclosures qualifying for protection

(1) In this Part, a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of Subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part, "the relevant failure", in relation to a qualifying disclosure, means the matter falling within Paragraphs (a) to (f) of Subsection (1).

Source: UK Public Disclosure Act of 1998, Part IV-A to Employment Rights Act of 1996.

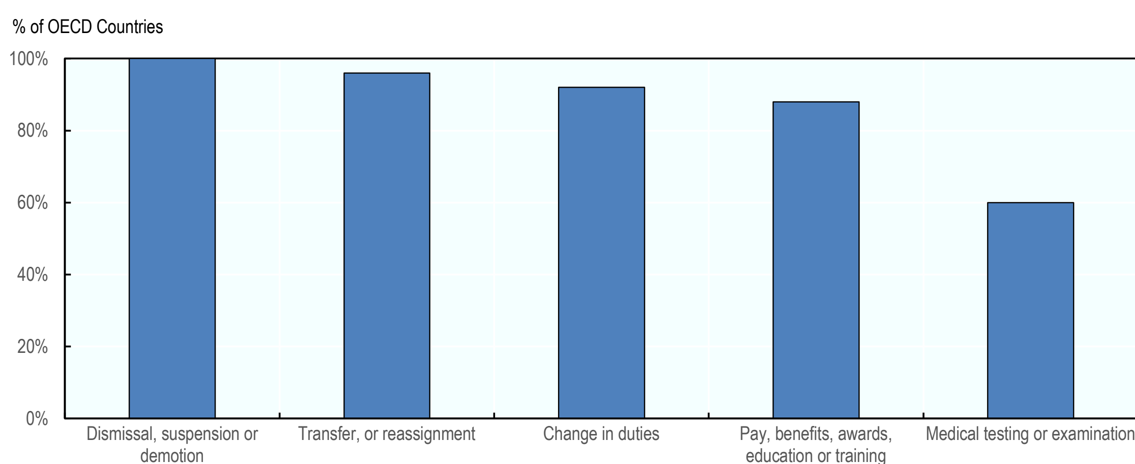
Thailand could establish a comprehensive overview of the types of retaliation against whistleblowers

To protect whistleblowers from reprisals, some countries have specified in their whistleblower protection laws the types of reprisals that are prohibited (Figure 5.3). In most surveyed OECD countries, retaliation such as dismissal, suspension or demotion,

transfer or reassignment, change in duties, and decrease of pay benefits, awards or training are specified and considered unlawful in their whistleblower protection laws.

In Thailand, the existing law does not specify the types of retaliation against whistleblowers that are considered unlawful. While Section 57 of the Executive Measures in Anti-Corruption Act, B.E. 2551, makes a reference to the protection of whistleblowers against "unfair treatment", this provision does not provide a clear definition of such treatment. When drafting a new dedicated whistleblower protection law, PACC could consider specifying the types and risks of retaliation against whistleblowers so that protection from prospective professional marginalisation can be mitigated.

Figure 5.3. Percentage of the OECD countries surveyed providing protective measures for each category of reprisals



Source: (OECD, 2014[35]).

As a concrete example, the law in Korea (Box 5.3) gives a comprehensive overview of the types of retaliation against whistleblowers that is considered unlawful. Moreover, threatening to take action can have the same effect on the whistleblower as actual retaliation. In Australia's whistleblower protection system, it is not only an offence to undertake an act of reprisal, but also to threaten to undertake an act of reprisal against a person for having made a public interest disclosure.

Box 5.3. Comprehensive list of types of retaliation against whistleblowers in Korea

The term "disadvantageous measures" means an action that falls under any of the following items:

- Removal from office, release from office, dismissal or any other unfavourable personnel action equivalent to the loss of status at work;
- Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions;
- Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will;
- Discrimination in performance evaluation, peer review, etc., and subsequent discrimination in the payment of wages, bonuses, etc.;
- The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, workforce or other available resources, the suspension of access to security information or classified information; the cancellation of authorisation to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower;
- Putting the whistleblower's name on a black list, as well as the release such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower;
- Unfair audit or inspection of the whistleblower's work, as well as the disclosure of the results of such an audit or inspection;
- The cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower.

Source: Korea's Act on the Protection of Public Interest Whistleblowers, Act No. 10472, 29 March 2011, Article 2 (6).

Thailand could consider developing a mechanism to sanction those who retaliate against whistleblowers

It is not enough to establish legislative mechanisms to protect whistleblowers from potential reprisals. To be effective, a whistleblower protection framework should also include penalties for those who retaliate against a whistleblower. In Thailand, there is no legal provision for sanctions for retaliation. When developing a new dedicated whistleblower protection system, PACC could consider introducing sanctions for retaliation in order to deter wrongdoers from intimidating or exercising reprisals against whistleblowers. Such an initiative may also serve to reinforce the message that reprisals against whistleblowers will not be tolerated.

In terms of penalties, the approach to applying penalties varies, even among OECD countries where the whistleblower protection systems are established by a dedicated whistleblower protection law (OECD, 2016[5]). For instance, Australia's whistleblower protection system invokes imprisonment for two years – or 120 penalty units,[1] or both – in case of reprisal against whistleblowers[2]; while in the United States, criminal sanctions are imposed against employers who retaliate against whistleblowers.[3] In Korea, the

punishment for retaliation varies depending on the type of reprisal that took place (Box 5.4). Regardless of the approach chosen, specifying a disciplinary course of action for those who take reprisals against whistleblowers can strengthen the robustness of the whistleblower framework and encourage those with information about potential wrongdoing to come forward.

Box 5.4. Sanctions for retaliation in Korea

Under Korea's Protection of Public Interest Whistleblowers Act, anyone whose actions fall into any of the following categories shall be punished by imprisonment for not more than two years or by a fine not exceeding KRW 20 million:

1. A person who implemented disadvantageous measures described in Article 2, Subparagraph 6, Item (a) [removal from office, release from office, dismissal or any other unfavourable personnel action equivalent to the loss of status at work] against a public interest whistleblower.

2. A person who did not carry out the decision to take protective measures confirmed by the Commission or by an administrative proceeding.

In addition, any person whose actions fall into any of the following categories shall be punished by imprisonment for not more than one year or a fine not exceeding KRW 10 million.

1. A person who implemented disadvantageous measures that fall under any of Items (b) through (g) in Article 2, Subparagraph 6 against the public interest whistleblower [(b) disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions; (c) work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will; (d) discrimination in performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.; (e) cancellation of education, training or other self-development opportunities; restriction or removal of budget, workforce or other available resources, suspension of access to security information or classified information; cancellation of authorisation to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower; (f) putting the whistleblower's name on a black list, as well as the release of such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower; (g) unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an audit or inspection; (h) cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower].

2. A person who obstructs public interest whistleblowing, etc., or forces a public interest whistleblower to rescind his/her case, etc., in violation of Article 15, Paragraph 2.

Source: Korea's Protection of Public Interest Whistleblowers Act No. 10 472, Chapter V, Articles 30 (2) and (3).

Thailand could consider establishing measures to preclude reporting in bad faith

Discouraging individuals from exploiting the system for personal reasons is also a key element of an effective whistleblower protection framework. Indeed, according to the United Nations Office on Drugs and Crime (UNODC) Technical Guide to the United Nations Convention Against Corruption, "good faith should be presumed in favour of the person claiming protection, but where it is proved that the report was false and not in good faith, there should be appropriate remedies" (UNODC, 2015[7]; UNODC, 2009[8]). Such measures include the removal or forfeiture of protections, such as confidentiality, and in some cases libel and defamation suits, fines or imprisonment.

In Thailand, reporting in bad faith may be subject to a penal code if any damage occurs as a result of such reporting. However, this is not explicitly stated in the Executive Measures in Anti-Corruption Act, B.E. 2551. In developing a dedicated whistleblower protection law, PACC could consider establishing measures to preclude reporting in bad faith. When considering measures to discourage bad-faith reporting, the key element of the offence of slanderous reporting lies not in the falsity of the allegation itself, but in the knowledge, on the day the allegation was made, that it was false. Box 5.5 contains examples from OECD member countries on how to preclude disclosures made in bad faith.

Box 5.5. Measures in place to preclude reporting in bad faith – examples from OECD member countries

A number of OECD countries have measures that remove protection of whistleblowers who disclose in bad faith:

- Korea's Act on the Protection of Public Interest Whistleblowers states that in the event that the public interest whistleblowing was brought forward, if the whistleblower knew or could have known that the information was false, it shall not be deemed a case of public interest whistleblowing.
- In Australia, the protections in the Public Interest Disclosure Act (PID Act)[2] do not apply to those knowingly making a statement that is false or misleading.
- The Anti-Corruption Act in Estonia also removes protections from those who disclose in bad faith. Specifically, it maintains that confidentiality shall not be respected.
- In Hungary, similarly, confidentiality is not ensured in such circumstances, and furthermore, if this bad-faith disclosure has caused unlawful damage or harm to the rights of others, the personal data of the individual who disclosed in bad faith may be disclosed upon request of the person or body entitled to initiate proceedings.
- In Israel, in addition to revoking the protection of individuals who report in bad faith and rendering it a disciplinary matter, an approach comparable to that of Hungary is applied, with respect to the individual who may have been harmed due to a disclosure made in bad faith. Specifically, the Court can render compensation in favour of an employer or another employee if a complaint was filed in bad faith.

Source: (OECD, 2016[5]).

Thailand could consider developing more detailed guidelines for remedies in the event of reprisals

Most whistleblower protection systems include remedies for whistleblowers who have suffered harm. Measures of this nature usually include all direct, indirect and future consequences of reprisal, and can vary from return to employment after unfair termination, job transfers or compensation, or punitive damages in the event that whistleblowers have suffered harm that cannot be remedied by injunctions, such as difficulties in seeking employment or inability to find a new job. Such remedies may take into account not only lost salary but also compensatory damages for pain and suffering (Banisar, 2011[1]).

In Thailand, Section 54 of the Executive Measures in Anti-Corruption Act, B.E. 2551, also makes a reference to remuneration to compensate damage against lives, bodies, health, reputation, properties or any right of the whistleblowers as a consequence of taking action or making statements or passing on information to PACC. However, this provision does not include any details. In drafting a dedicated whistleblower protection law, PACC could further specify such remedies for whistleblowers, to ensure that measures are in place in the event of reprisals.

For example, Canada's Public Servants Disclosure Protection Act (PSDPA) includes a comprehensive list of remedies (Box 5.6). Under UK law, the courts have ruled that compensation can be provided for suffering, based on the system developed under discrimination law (Banisar, 2011[1]). The total amount of damages awarded under the UK Public Interest Disclosure Act (PIDA) in 2009 and 2010 was GBP 2.3 million, the highest award being GBP 800 000 in the case of *John Watkinson v. Royal Cornwall Hospitals NHS Trust* (Public Concern at Work, 2011). The average PIDA award in 2009 and 2010 was GBP 58 000, by comparison with average awards of GBP 18 584, GBP 19 499 and GBP 52 087 in race, sex and disability discrimination cases respectively (Public Concern at Work, 2011).

Box 5.6. Remedies for public sector whistleblowers in Canada

To provide an appropriate remedy to the complainant, the Tribunal may, by order, require the employer or the appropriate chief executive, or any person acting on their behalf, to take all necessary measures to

(a) permit the complainant to return to his or her duties;

(b) reinstate the complainant or pay compensation to the complainant in lieu of reinstatement if, in the Tribunal's opinion, the relationship of trust between the parties cannot be restored;

(c) pay to the complainant compensation in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to the remuneration that would, but for the reprisal, have been paid to the complainant;

(d) rescind any measure or action, including any disciplinary action, and pay compensation to the complainant in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to any financial or other penalty imposed on the complainant;

(e) pay to the complainant an amount equal to any expenses and any other financial losses incurred by the complainant as a direct result of the reprisal; or

(f) compensate the complainant, by an amount of not more than CAD 10 000, for any pain and suffering that the complainant experienced as a result of the reprisal.

Source: Canada's Public Servants Disclosure Protection Act of 2005, 21.7 (1).

To ensure clear and robust reporting channels, Thailand could consider clearly identifying in the law both the internal and external reporting options for whistleblowers

Whistleblower protection systems often establish one or more channels through which protected disclosures can be made. These generally include internal disclosures, external disclosure to a designated body, and external disclosures to the public or to the media. A variety of channels need to be available to match the circumstances and allow whistleblowers to choose which channel they trust most to use.

First of all, employees who witness wrongdoing should be able to disclose information internally without fear of reprisal. Unimpeded access, free of reprimand and retribution, can pave the way for an open organisational culture between the discloser and management. This open culture should be established by management and be in force throughout the organisation. Organisations should operate on the premise that employees will come forward to management with disclosures of wrongdoing, and that management will support the individual's justification to disclose, and follow the measures in place to protect them and investigate the allegations appropriately. By being receptive to disclosures, and encouraging this as a method of detection, management can mitigate any damage to its reputation that may result if an employee discloses externally.

According to a recent study (Chokprajakchat and Sumretphol, 2017[9]), almost half of the civil servants in Thailand would not report misconduct, for several reasons. First, they are concerned about the consequences for informers and are not sure whether they will be

protected. Second, they are concerned about the misconduct of the management and they are not confident that the commanding officials will take the incidents seriously. In addition, they expressed concerns that the violators might not be punished and that the provisions of the Code are too abstract and not clear enough.

In Thailand, PACC currently acts as a designated agency for external disclosure under the Executive Measures in Anti-Corruption Act, B.E. 2551. PACC is responsible for managing a hotline (#1206) where citizens can report any corruption-related wrongdoing, and citizens can also email the PACC. As for internal disclosure channels, each Ministry has an Anti-Corruption Operation Centre responsible for dealing with any complaints relating to corruption. While these centres could provide relevant information and direct the whistleblowers to PACC, they are not mandated to provide an adequate response within a certain timeframe or to take appropriate action when a whistleblower comes forward. To establish an effective internal disclosure channel, PACC, together with other government agencies, could consider strengthening the capacity of the Anti-Corruption Operation Centres to deal with enquires from internal whistleblowers. Canada offers a good example of an internal reporting mechanism in which senior officers for disclosure promote a positive environment for disclosing wrongdoing and handle disclosures of wrongdoing by public servants within their organisation (Box 5.7).

In developing a dedicated whistleblower protection law, Thailand could consider ensuring alternative channels through which individuals may disclose information. Internal and external options operating concurrently could allow potential whistleblowers to choose where they would like to submit their disclosures.

For example, the UK has a tiered approach permitting disclosures to be made to one of the following tiers of persons: Tier 1 – internal disclosures to employers or Ministers of the Crown; Tier 2 – regulatory disclosures to prescribed bodies (e.g. the Financial Services Authority or Inland Revenue); and Tier 3 – wider disclosures to the police, media, members of Parliament and non-prescribed regulators. Each tier requires an incrementally higher threshold of conditions to satisfy for the whistleblower to be protected. This is intended to encourage internal reporting and for using external reporting channels only as a last resort.

Box 5.7. Internal reporting mechanisms in Canada

As provided under Sections 12 and 13 of the Public Servants Disclosure Protection Act (PSDPA), if public servants have information that could indicate serious wrongdoing, they can bring this matter, in confidence and without fear of reprisal, to the attention of their immediate supervisor, their senior officer for disclosure or the Public Sector Integrity Commissioner. The senior officer for disclosure helps promote a positive environment for disclosing wrongdoing and deals with disclosures of wrongdoing made by public servants within the organisation.

The senior officer's duties and powers within an organisation include the following, in accordance with the internal disclosure procedures established under the PSDPA:

1. Provide information, advice and guidance to public servants regarding the organisation's internal disclosure procedures, including the making of disclosures, the conduct of investigations into disclosures, and the handling of disclosures made to supervisors.
2. Receive and record disclosures, and review them, to establish whether there are sufficient grounds for further action under the PSDPA.
3. Manage investigations into disclosures, including determining whether to deal with a disclosure under the PSDPA, initiate an investigation or cease an investigation.
4. Co-ordinate handling of a disclosure with the senior officer of another federal public sector organisation, if a disclosure or an investigation into a disclosure involves that other organisation.
5. Notify the person(s) who made a disclosure, in writing, of the outcome of any review and/or investigation into the disclosure and on the status of actions taken as a result of the disclosure, as appropriate.
6. Report the findings of investigations, as well as any systemic problems that may give rise to wrongdoing, directly to his or her chief executive, with recommendations for corrective action, if any.

Source: Treasury Board of Canada Secretariat, https://www.canada.ca/en/revenue-agency/corporate/careers-cra/information-moved/code-integrity-professional-conduct-we-work.html.

To support a whistleblower protection system, Thailand could consider promoting a broad communication strategy, increasing awareness of the issue through various channels

An open organisational culture and whistleblower protection legislation should be supported by effective awareness-raising, communication, training and evaluation efforts. Employees and the public need to understand how whistleblowers are important in protecting the public interest by shedding light on misconduct prejudicial to the effective management and delivery of public services and ultimately, the fairness of the whole public service. An organisational culture of openness is vital, since it reinforces most incentives and protection measures for whistleblowers. Awareness-raising activities could for example include the publication of an annual report by a relevant oversight body or authority, including information on the outcome of the cases brought forward; the compensation for whistleblowers and recoveries that resulted from information provided by whistleblowers during the year; as well as the average time it took to process a case.

PACC could consider promoting a broad communication strategy, and increasing awareness efforts through various channels to create favourable social conditions for whistleblower protection. Better awareness of the issue can positively impact the perception and language of whistleblowing and also facilitate implementation of the law.

As part of the UK's awareness-raising activities, the Civil Service Commission includes a statement in staff manuals assuring members of the staff that it is safe to raise concerns (Box 5.8).

Box 5.8. Example of a statement to staff encouraging them to raise concerns

"We encourage everyone who works here to raise any concerns they have. We encourage 'whistleblowing' within the organisation to help us put things right if they are going wrong. If you think something is wrong, please tell us and give us a chance to properly investigate and consider your concerns. We encourage you to raise concerns and will ensure that you do not suffer a detriment for doing so."

Source: UK's Civil Service Commission: http://civilservicecommission.independent.gov.uk/wp-content/uploads/2014/02/Whistleblowing-and-the-Civil-Service-Code.pdf.

Comprehensive awareness-raising campaigns will counter any perception that blowing the whistle shows a lack of loyalty to the organisation. Well-targeted campaigns make clear that civil servants' loyalty belongs first and foremost to the public interest, and not to their managers. In other words, increasing the awareness of whistleblowing and whistleblower protection not only enhances understanding of these mechanisms, but is an important mechanism for improving the often negative cultural connotations linked to the term "whistleblower". Communicating the importance of whistleblowing from, for example, a public health and safety perspective can help improve the public view of whistleblowers as important safeguards of public interest, rather than as informants reporting on their colleagues (Box 5.9).

Box 5.9. 'Courage when it counts'

In 2013, the campaign "Courage when it counts" was launched by the Advice Centre in the Netherlands. The idea behind the initiative was to portray whistleblowers as vulnerable heroes who put their fears aside to come forward with disclosures of wrongdoing. As part of this campaign, a series of photographs of employees with the courage to speak out were put on display. The aim of these visual representations was to provide an alternative image to that of ringing bells, which usually frame reports on whistleblowers in the Netherlands.

Source: Advice Centre for Whistleblowers in the Netherlands (2013), Annual Report, www.adviespuntklokkenluiders.nl/wp-content/uploads/2015/03/advice-centre-for-whistleblowers-in-the-netherlands-annual-report-2013.pdf.

Reviewing existing whistleblower protection legislation can help evaluate its purpose and effectiveness

To ensure that the mechanisms in place fulfill the purposes for which they were introduced, countries should regularly review their whistleblower protection systems and the effectiveness of their implementation. If necessary, the legislation on which they are based can be amended to reflect the findings. Provisions regarding the review of effectiveness, enforcement and impact of whistleblower protection laws have been introduced by a number of OECD countries, including Australia, Canada, Japan and the Netherlands. Japan's whistleblower protection act specifically outlines that the Government must take the necessary measures, based on the findings of the review.

Once Thailand establishes a dedicated whistleblower protection law, PACC could start collecting data on the legislation, to evaluate its purpose, implementation and effectiveness. This can include information on i) the number of cases received; ii) the outcomes of cases (i.e. if the case was dismissed, accepted, investigated and validated); iii) compensation for whistleblowers and recoveries that resulted from information from whistleblowers; iv) awareness of whistleblower mechanisms; and v) the time it takes to process cases. This data, in particular information on the outcome of cases, can be used in the review of a country's legislation, to assess whether the framework is working effectively to protect whistleblowers in practice. Surveys can also be distributed among staff to review their awareness, trust and confidence in these mechanisms.

Proposals for action

- Thailand could consider developing a dedicated law to protect whistleblowers in the public and private sectors, in addition to existing witness-protection arrangements. PACC could be the institution responsible for implementing a new whistleblower protection law.
- In developing a dedicated law, Thailand could consider establishing a clear definition for whistleblowers of the types of wrongdoing that justify coverage under the whistleblower protection system, a comprehensive overview of the types of retaliation against whistleblowers, a mechanism to sanction those who retaliate against whistleblowers, measures to preclude reporting in bad faith, and the different types of remedies available to whistleblowers.
- Thailand could consider clearly identifying in the law the reporting options for whistleblowers, from internal to external. In this respect, the PACC and other government agencies could consider increasing the capacity of the Anti-Corruption Operation Centres to deal with enquiries from potential whistleblowers.
- Thailand could consider promoting a broad communication strategy and undertaking increased awareness efforts through various channels. PACC, together with NACC and other government agencies, could consider developing a broad communication strategy and initiating public information campaigns to create favourable social conditions for introducing a whistleblower protection mechanism.
- Once a dedicated law to protect whistleblowers is in place, Thailand could start collecting data on the application of the whistleblower protection legislation to evaluate its purpose, implementation and effectiveness. PACC could be the lead agency for this task.

Notes

[1] In Australia, penalty units are used to describe the fines payable under Commonwealth laws. By multiplying the AUS equivalent of one penalty unit, the fine for an offence is set.

[2] Australia's Public Interest Disclosure Act, Subdivision B, Part 2 – Section 19.

[3] The US Federal Criminal Code 18 U.S.C. §1513 (e) states that "whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both."

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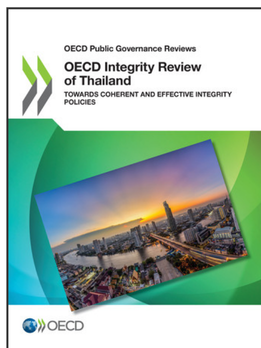

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