LAD CASE STUDY

Thailand's Collective Action Coalition Against Corruption

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ABOUT LAD

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Thailand's Collective Action Coalition Against Corruption

Political violence flared once again in Thailand in 2010 as the army splintered and protests shut down the capital for weeks on end. Corruption, long a part of daily life for Thai citizens and businesses, flourished amid such instability. The World Bank warned that rampant bribery and regulatory disarray were impeding growth and scaring off foreign investment. The government was more concerned with its own day-to-day survival, but some business leaders had had enough.

Twenty-seven of Thailand's largest companies announced the formation of a new anti-corruption coalition in November 2010, with support and organizational backing from the Thai Chamber of Commerce, international partners like the Center for International Private Enterprise, and a pioneering corporate governance NGO—the Thai Institute of Directors (IOD). The initiative, called the Collective Action Coalition Against Corruption (CAC), was motivated by the idea that corruption is a supply-and-demand problem. It might take decades for the government to crack down on the demand side—bribe-seeking public officials—but the private sector could address the supply side immediately by refusing to pay.

The spokesperson for this idealistic and heretofore taboo campaign was the president and CEO of the IOD, Charnchai Charuvastr. Relying on charisma and a voluminous rolodex built over years leading and advising some of Thailand's biggest companies, Charuvastr personally convinced dozens of CEOs to commit to the CAC clean business pledge (Appendix 1). Little more than a solemn promise to avoid bribery going forward, the declaration nevertheless garnered significant publicity for its list of eminent signatories and its totally novel approach in a country where bribery was widely accepted as the price of doing business.

Then in February 2011, just as CAC was building momentum and the country lurched towards fresh elections, Charuvastr suffered a sudden heart attack and died. The Thai business community eulogized an inspirational colleague and CAC mourned the loss of its leader and champion.

Into the void stepped Dr. Bandid Nijathaworn, a former Bank of Thailand official and the new president of the IOD. When Nijathaworn arrived at CAC, which was housed within IOD for the time being, he inherited one part-time staff member, a white paper, and a short explanatory PowerPoint presentation. He found CAC healthy but rudderless—a collection of well-meaning executives and a toothless declaration. Meanwhile, corruption was as intransigent as ever. Nijathaworn faced a daunting challenge: how can CAC turn lofty words into real impact?

Background

Thailand's modern history is marked by a series of coups and counter-coups as the military, parliament, and general population negotiated with the powerful monarchy for control of the country. The first decade of the 21st century was an especially tumultuous period as five successive prime ministers faced insurrections, elections, and martial law on the heels of the punishing Asian financial crisis.

Thailand's economy expanded steadily throughout the decade, although gains were mostly concentrated in the booming capital and within enormous patronage networks. Nevertheless, key indicators like the Gini Coefficient, which measures income inequality, and secondary school enrollment showed signs of improvement as the national GDP grew around 5% each year.[i]

However, local and international experts warned that extensive corruption was impeding faster and more sustainable growth. More than a third of 1,000 Thai business leaders rated corruption as "disastrous" in a 2010 survey and half said corruption reduced their company's revenue by more than 20% the previous year.[ii] Transparency International's landmark Corruption Perception Index consistently ranked Thailand in the lower half of countries worldwide[iii] and the World Bank's Good Governance Indicators survey put Thailand in the second-lowest quartile for Control of Corruption every year since 2005.[iv] [v] A Thai government study found that bribe payments occurred more often than not for land development licenses and customs clearances in 2009.[vi] "It felt like we were reaching a breaking point," recalled one Thai CEO.[vii]

The government had taken some steps to address the corruption issue prior to 2010. The Counter Corruption Act of 1975 established the Office of the Commission of Counter Corruption, but that office remained understaffed and politicized for the next two decades. The 1997 Constitution outlined a new National Counter Corruption Commission and the Organic Act on Counter Corruption of 1999 gave the NCCC organizational independence. The offices of the Public Sector Anti-Corruption Commission, the Department of Special Investigation, and the Auditor General of Thailand also have anti-corruption mandates.

These public bodies have launched many inquiries over the years, but they were subject to massive intimidation campaigns and generally bogged down in interminable investigations. The corruption scandals continued unabated, including graft charges throughout the decades-long construction of Bangkok's new airport and millions of dollars of bribes paid by Rolls Royce to Thai Airways for aircraft engine contracts between 1991 and 2005.[viii] These blockbuster stories played out alongside more quotidian street level corruption like phony traffic stops, which one Bangkok resident called "daily and unavoidable."

Thailand's public sector morass and difficult business climate further encouraged corruption. There were 200,000 regulations on the books in Thailand in 2011 and 30,000 different licenses were required for various activities.[ix] Every license and regulation represents a potential opportunity for an official to solicit a bribe or demand a favor in return for approval, expedition, or non-enforcement.[x] According to the OECD, "there is a negative correlation between how economies rank in indicators of regulatory quality and indicators on corruption."[xi]

An especially egregious example of the regulatory bind is found in the Bangkok construction sector. Heavy trucks like cement mixers and backhoes are essential for most construction work, but they are not allowed on Bangkok's congested streets between 9:00am and 6:00pm. Loud construction noise, however, is prohibited overnight from 6:00pm until 8:00am. Taken together, these two laws either forbid significant construction work in Bangkok or require officials to look the other way, generally for a fee.[xii]

These frustrations mixed with many others in the 2010 demonstrations that shook Bangkok. Protesters demanded early elections and the return of former Prime Minister Thaksin Shinawatra, who had been overthrown in a 2006 military coup fueled in part by corruption charges. Thaksin supporters, wearing red shirts, squared off against the military and the yellow-shirted anti-Thaksin bloc. A series of increasingly violent confrontations left dozens of protesters dead and brought the capital to a standstill that infuriated many residents. The military had crushed the protest camps by late May, but the underlying grievances only deepened.

Collective Private Action

The perception that 2010 marked a turning point was strengthened when the 14th International Anti-Corruption Conference selected Bangkok as the host city. The world's premier anti-corruption event is often also a catalyst for local action, and 2010 was no different. At the urging of the US-based Center for International Private Enterprise (CIPE) and some well-known academics, Charuvastr convened a few colleagues at the Thai Chamber of Commerce to discuss outside-the-box ideas to tamp down on corruption in Thailand.[*]

The small group was taken by the proactive, voluntary private sector approach presented by Alexander Shkolnikov, CIPE's director for policy reform. The founding documents were drafted over several late-night meetings in the following weeks. Through guided group discussion led by Shkolnikov, it was decided that a "certifying coalition" would be the most effective project structure. CIPE then helped IOD and its other local partners to design a strategic plan around this project concept, using CIPE's work in other countries as a guide.

Membership in the coalition was to have two components: an initial pledge to conduct business in a totally clean manner, and a list of steps and safeguards that companies should undertake to ensure compliance with the pledge. The group decided that the coalition would operate on the honor system, at least initially, to ease the high barrier to entry and assuage members' oversight fears.

CAC launched with considerable fanfare and media attention on November 9, 2010. Alongside IOD and the Thai Chamber of Commerce, six other prominent business associations joined as co-founders and 27 companies signed the pledge at the buoyant inauguration. Among the names

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[*] In 2010, the Thai National Anti-Corruption Commission (NACC) contacted John Morrell, then a Program Officer at CIPE, to request assistance in launching a "private sector collective action" initiative against corruption in Thailand. CIPE agreed to become a technical advisor for the collective action project, supported by funding from the National Endowment for Democracy, a U.S.-based private, nonprofit foundation.

were heavyweights in the Thai economy like Pfizer Thailand, the energy giant PTT, and Central Pattana, the country's largest public retail property development group.

Charuvastr passed away in February 2011, less than three months after CAC was unveiled. He had gotten CAC off the ground, but much of the work and plans for the future had existed solely in Charuvastr's head. He left behind a skeleton staff borrowed from IOD and a lone CAC consultant on a short-term contract to build press. It was a moment of reckoning for the nascent coalition.

New Leader, Same Balancing Act

Dr. Bandid Nijathaworn is appointed President and CEO of the IOD in July of 2011 and quickly sets his sights on CAC. Nijathaworn is well-known in Thai corporate and financial circles having served at the Bank of Thailand for twenty years, including six as the Deputy Governor for Monetary and Financial Stability. He is also a university lecturer and public intellectual with a regular column on the economy in one of Thailand's most important newspapers. Nijathaworn is well aware of the scope and economic costs of Thailand's corruption problem by the time he arrives at IOD.

Nijathaworn immediately grasps the central challenge of the CAC model: it must be sufficiently robust to eliminate the risk of corruption among members and convince external observers of its merits, but the requirements must not be so burdensome that companies would be scared off. Costs for member organizations include potential losses if some business had relied on bribe payments previously, but also include the time and money companies must devote to auditing current practices and potentially establishing new procedures in line with the lofty CAC standard.

These latter administrative costs can be significant. For example, it took a dedicated working group within the Siam Cement Group (SCG)—an early CAC signatory and one of the largest companies in Southeast Asia—more than two years to bring the company and its many subsidiaries into compliance with CAC's certification checklist. SCG Internal Audit Director Anuwat Jongyindee noted that SCG had an anti-corruption Code of Conduct and other good governance procedures in place long before CAC, but simply unearthing and matching existing protocols with their appropriate CAC checklist items required countless meetings with representatives from every SCG office and business unit. The process took even longer for "high risk" departments with more government contact points like Procurement, Sales, and Mining. Jongyindee's team ultimately performed a full internal audit before they felt confident making the CAC certification.[xiii]

Nevertheless, Nijathaworn believes that the self-verification requirement is too lenient on member companies. "I looked at it and thought that self-assessment is weak," Nijathaworn said. CAC is totally reliant on companies' good faith to adhere to their pledge and ensure that the supporting safeguards are in place. "I am from a capital market background where credibility is very important. This process lacks credibility," Nijathaworn said. "For now, it's a photo op."

Growing the Coalition

At the same time, Nijathaworn must demonstrate progress by expanding the coalition. CAC's potential impact relies on uniting the entire private sector to stop paying bribes. If only a few companies refuse, contracts will simply be redistributed to their bribe-paying competitors and the net effect on corruption will be minimal. The founding member organizations took a risk by sticking their necks out alone with the promise that others would soon follow. Nijathaworn was in part responsible for delivering on this promise.

The CAC team gets the same two questions from every potential new member: What's in it for me? And what if my competitors don't join? It is tempting to respond with moral arguments and long-term visions, but shareholders and corporate boards are concerned first and foremost with profit.

A medium-sized Bangkok construction company epitomized this dilemma. The CEO was enthusiastic about the coalition and desperate to stop paying "tea money" to the scores of bribe-taking government officials that are involved in every project, from neighborhood construction supervisors who rope off the sidewalk to the material wholesalers who provide the rebar and cement. The CEO explained that corruption starts with the Terms of Reference for the project: "It is written so the qualifications fit only one company, the one who pays the highest bribe." This is when the real bidding occurs. "I want to be a good boy, but if I don't pay, I won't get work," the CEO said.

Nijathaworn and his team work the phones through the summer of 2011 and develop a persuasive response to the first question: what's in it for me? Joining CAC is an opportunity to gain positive press and burnish your company's reputation, Nijathaworn tells CEOs. It is something to spotlight in SEC filings and quarterly reports. It can also reduce the business risk that corruption entails both domestically and internationally. The CAC self-certification checklist is, after all, amended from the minimum standard that companies must meet to avoid criminal liability in U.K. bribery cases. Finally, bribes are a real expense that reduce net profits.

The second question about competitors not joining is more difficult. CAC has no short-term response to this fear, aside from emphasizing that the coalition will continue to grow and the member can reap some of the aforementioned benefits as an early adopter in the meantime.

Gathering Options

The CAC team spends the summer of 2011 brainstorming solutions to a long list of challenges. Nijathaworn also reaches out to PwC and other well-established auditors and experts for advice.

External Certification

The first idea centers on the somewhat flimsy self-verification process. "If certification is too easy, there's no point in doing this project at all," Nijathaworn says. He reaches out to Rapee

Sucharitakul, a retired Stock Exchange of Thailand board member and well-known business leader, to draft a compliance checklist.

Rapee sets to work drafting protocols and standards based on Transparency International's Adequate Procedures Checklist (APC) for private companies to comply with the U.K. Bribery Act. Rapee and the CAC team slowly winnowed the 231 APC questions down to a more manageable 71. It was clear, for example, that Thai companies would find it very difficult to ensure clean practices by the "agents" or middlemen acting on their behalf, so the group dropped those questions from the list. The group consulted with business leaders, the Thai Chamber of Commerce, and CIPE experts on other tricky points (see Appendix 3 for final checklist).

The team also proposes an external validation requirement to ensure that the company is adhering to this checklist. After signing the pledge, the company would have 18 months to complete an audit of its anti-corruption safeguards, performed either by an external auditor or the company's independent internal audit board. The member organization would also have to electronically submit all supporting regulations and procedures for a final compliance check by a CAC audit committee.

This proposal would raise the stakes considerably for member organizations. Not only would the application require significantly more administrative work and expense, but the company also opens itself to potential public humiliation if it makes the initial pledge and then fails the subsequent audit or misses the strict deadline. Some advisors worry that this is asking far too much for a voluntary initiative and would hurt coalition growth. Many others argue that external verification is imperative to gain credibility, ensure substantive changes, and avoid the "photo op" trap (see Appendix 2 for CAC certification process).

Expanding or Splitting the Checklist

CAC also considers expanding the questionnaire to bring it in line with international standards. The initial CAC standards were a compromise meant to "jump start" the process, but there is concern that a lower benchmark leaves big loopholes open for member companies. A bribery scandal involving a CAC member would make the CAC seal look like ineffective window-dressing.

Furthermore, CAC counts some large conglomerates and multinationals among its members today. Companies doing business abroad are already bound by the stricter U.S. and U.K. anti-bribery regulations, while companies interested in expanding internationally are looking carefully at these foreign procedures. Perhaps CAC should raise the bar at least to the international standard so the CAC certification is not beneath multinationals' standard operating procedures and expanding companies are spring-boarded into international compliance.

Alternatively, CAC could develop two or three different checklists to tailor scrutiny to the size and field of the applicant organization. Small and medium enterprises were already complaining to Nijathaworn's team that the existing checklist is too extensive and many of the questions irrelevant to their operations. Several CEOs requested a SME checklist that made more sense for them.

Training Courses

CAC staff and advisors are wondering whether companies have the requisite skills and knowledge to adhere to the existing CAC requirements and the litany of proposed changes. Furthermore, corruption is a behavior problem, Nijathaworn repeats to his staff. It requires a change in mindset, not just a change in rules and regulations. "So how do we change mindsets?" his staff asks.

Training courses could help leaders and compliance officials undertake the key procedural, organizational, and psychological shifts. A C-level course might focus on ethical leadership and communication, but would leaders sign up and commit their time to this exercise? A compliance course might delve into best-practices around anti-corruption safeguards and procedures, but who would design the curriculum and teach the course? Would companies pay for trainings, or would CAC have to find funding to subsidize the activities? Nijathaworn and colleagues mull the options, costs, and benefits.

Sectoral Approach

Who will be first to join from a new field? Nijathaworn was pondering the tragedy of the commons problem when he had an idea: why not target associations instead of specific businesses? CEOs were reticent to join CAC before their competitors, fearful of sacrificing competitive advantage. However, if the entire industry signs up to CAC at once, the problem vanishes. It would be small-scale collective action as a means of promoting large-scale collective action.

But it might be more difficult to convince an association to be forward leaning, as associations normally defer to their members and work conservatively, by consensus. If Nijathaworn was to pursue this plan, he would need to start with a "low hanging fruit"—a field that he knows well and one that might find the CAC requirements manageable.

Government and Public Advocacy

"Corruption is like two hands clapping," Nijathaworn muses. The bribe-paying private sector is one hand and the bribe-taking government is the other. Perhaps CAC should work on both hands at once. It is unrealistic to expect CAC to solve the corruption problem alone, so should CAC take its case and collective voice to the government sooner rather than later? Regulatory reform, for example, is a more powerful anti-corruption tool than any at CAC's disposal. Other countries have raised public officials' salaries, increased the transparency of contract bidding, published agencies' spending online, and much more. CAC could mount a campaign for any of these initiatives, or a new program that no other government had tried before. One CAC staff member suggested TripAdvisor for Corruption—an online database where the public could log on and "rate" corrupt public officials or processes, creating a crowdsourced map of corrupt hotspots.

Nijathaworn and the CAC also found themselves in the midst of general public despair about the prospects of corruption and improving government performance generally. Political crises

continued unabated and the public seemed weary. "It is a hopeless time," said an IOD staff member. CAC was founded to work in boardrooms and back offices; the public campaign was the purview of the civil society Anti-Corruption Organization of Thailand (ACT) and others. However, CAC has already established itself as a national force and Nijathaworn himself is a well-known corporate governance commentator. Together, they could surely reach a wide audience with a more positive message.

Decision Time

By August 2011, Nijathaworn faced a key juncture. He had been recruited to lead IOD but his first month was spent almost entirely on the CAC project. IOD was committed to CAC and its international partners were excited, but it was time for action. There was pressure internally and externally to increase membership; Nijathaworn himself was worried about gaining credibility.

From a one-page memo and a few PowerPoint slides, he and his small team had assembled many potential next steps—expand the certification checklist, create different tiers, or require external validation; target entire sectors through associations or continue working on CEOs via personal channels; provide one or more training workshops; pivot to public or government advocacy; or none of the above.

The first leadership transition is always a crucible, and CAC's was no different. What should Nijathaworn do?

Appendices

Appendix I: CAC CEO Clean Business Declaration

Signatory companies agree to:

1. Assess corruption risks, implement anti-corruption policies and compliance programs,
2. Share internal policies, experiences, and best practices,
3. Reach out to industry peers, suppliers, and other stakeholders to expand coalition network

Source: http://www.thai-cac.com/

Appendix 2: CAC Certification Process

Certification Process

Complete 71 question checklist to ensure that anti-corruption mechanism is in place

Get verification from qualified external auditors or audit committee

Submit application and supporting e-doc to CAC for approval

Get certification within 18 months after declaration

Renew certification process every 3 years

Comply to "Incident Management Process"

Enterprise with Integrity

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Note: "Incident Management Process" is a new procedure that dictates the appropriate response to charges of illicit business practices.

Source: http://www.thai-cac.com/

Appendix 3: CAC Evaluation Checklist

	Core Indicators
1	Does the company have a stated formal policy of zero tolerance of bribery?
2	Has the policy of zero tolerance of bribery been formally approved by the Board?
3	Does the company have a definition of what it means by bribery?
4	Is the definition comprehensive, covering bribery in any form which might result in improper influence including any gifts or services, cash or in-kind, bribery of public officials and private-to-private bribery?
5	Does the company prohibit managers and employees from soliciting, arranging or accepting a bribe for the employee's benefit or that of the employee's family, friends, associates or acquaintances?
6	Does company have a Code of Conduct or equivalent policy document which includes an explicit statement of the no-bribes policy?
7	Does the company have an externally reported statement of policy of zero tolerance of bribery?

8	Is there an expressed commitment to implement a Programme to counter bribery (i.e. values, code of conduct, detailed policies and procedures, risk management, internal & external communication, training & guidance, internal controls, oversight monitoring and assurance)?
9	Does the company have a formal Programme to implement its policy of zero-tolerance of bribes?
10	Has the Programme been formally approved by the Board?

11	Is the Programme documented? (with a system of document control for the principal policies and procedures)

12	In developing the Programme was a risk assessment carried out to determine the extent of the risk of bribery to the business?
13	If a risk assessment was carried out, is the Programme tailored to reflect the specific bribery risks identified?
14	Does the company have a description of the anti-bribery Programme (eg. a brochure setting out in some detail guidance for employees or business partners on how the company's no bribery policy should be compiled with)?

15	Does the company have an externally reported statement that the company's policy is to be consistent with anti-bribery laws of Thailand?[5]

16	Is there a written policy covering political contributions whether made directly or indirectly?	
17	Does the company have a definition of political contributions?	
18	If the policy is not to make political contributions, does the company have procedures to prevent political contributions being made?	

. . .

70	Is there a procedure for senior management to periodically report the results of Programme reviews to the Audit Committee, Governance Committee, or the Board?	
71	Is there a procedure for prompt reporting of any issues or concerns to senior management and the Board?	

Source: http://www.thai-cac.com/

Endnotes

[i] World Bank, Development Research Group, 2016

[ii] Thai IOD Business Survey, 2010

[iii] Transparency International, Corruption Perception Index 2011

[iv] The World Bank Group, Worldwide Governance Indicators 2016

[v] Chudasri, Darana. "World Bank sees no progress on Thai Corruption," *Bangkok Post*. 30 September 2009. Bangkok, Thailand.

[vi] Ibid.

[vii] Personal Communication, 6 September 2017

[viii] Peel, Michael. "Rolls-Royce scandal puts Thailand military rulers under spotlight." *Financial Times*. 24 January 2017. Bangkok, Thailand.

[ix] Janvatanavit, Kulvech. Personal Interview, 8 September 2017.

[x] "Major Thai firms vow to join anti-graft fight." *The Nation*. 10 November 2010. Bangkok, Thailand.

[xi] OECD, "Regulatory policy: improving governance." July 2012.

[xii] Personal interview, 5 September 2017

[xiii] Personal interview, 4 September 2017