Legal Protection Measures for Whistleblowers reporting on Corruption in Thailand

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Abstract
This study explored the legal process and procedures for protecting whistleblowers reporting corruption in Thailand by using documentary research to focus on the comparative studies, and the Delphi Technique which involved a feasibility study on implementing such policies. Data were collected from a group of executives and experts in whistle-blowing protection laws and anti-corruption measures. Statistical analysis was conducted to find median and inter-quartile range for measuring the subjects’ opinions on policy implementation. The results show that Thailand should focus on legal protection measures for whistleblowers reporting on corruption, particularly on the definitions of whistle-blowing and whistleblower, protection models (life safety, confidentiality, waiver of legal liability, protection from retaliation and reserving an accomplice as a witness) and rewarding systems to be consistent with the UNCAC context and TI Principles for whistleblower legislation.

Keywords: Corruption, Whistleblower, Legal Protection Measures, Thailand.

Introduction
Corruption is currently one of the critical problems disrupting the nation’s progress and the well-being of the general public. Such a problem is evolving from the corruption that previously prevailed among public agencies, particularly where state officials, politicians, and administrators involved in the administration engage in corrupt practices. The increasing severity of corruption problems have created immense impacts both domestically and overseas, raising quite a concern concerning the gravity of corruption in countries all over the world. Consequently, many agencies such as the Organization for Economic Cooperation and Development (OECD), the APEC Anti-Corruption and Transparency Working Group (APEC – ACT) established by APEC and the United Nations have decided to collaborate on combating corruption. In particular, the United

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Nations Corruption Against Corruption (UNCAC), which was ratified by the United Nations General Assembly on October 31, 2003, Resolution No. 58/4, and allowed the signing of the UNs Convention Against Corruption effective as of December 14, 2005 onward (Panitat, 2012). Thailand became a signatory to the UNCAC on 9 December 2003 and ratified the UNCAC on 1 March 2011. Furthermore, Thailand is acting as one of the states to sign the Anti-Bribery Convention of OECD, including the country and the teamwork of the APEC Anti-Corruption and Transparency Working Group (APEC- ACT) which requires strict adherence to rules as specified in this convention.

Currently, anti-corruption operations in Thailand have deployed two main agencies to be responsible for this matter directly; these are the Office of National Anti-Corruption Commission (NACC) and the Office of Public Sector Anti-Corruption Commission (PACC).

The Office of National Anti-Corruption Commission (NACC) was established in accordance to the Constitution of the Kingdom of Thailand B.E. 2540 (1997) with the intention of reforming politics. The NACC is the main agency investigating the use of state power under the anti-corruption legislation, namely, the Organic Act on Counter Corruption B.E. 2542 (1999). The law aims to fight against corruption through asset inspection, preventing and suppressing it by investigating corrupted politicians and other state officials, including other measures for preventing and suppressing corruption, enhancing attitude and values in honesty as well as allowing the public to participate in anti-corruption (NACC, 2002). The Office of the NACC has been established and in operation since November 17, 1999 onward.

The Office of the Public Sector Anti-Corruption Commission (PACC) was established in accordance with the Executive Measures in Anti-Corruption Act B.E. 2551 (2008) by having its organization structure composed of the Public Sector Anti-Corruption Commission and the Office of the Public Sector Anti-Corruption Commission responsible for the prevention and suppression of corruption in the public sector. The PACC is the center to liaise between the relevant state agencies in charge of setting up measures to prevent and suppress corruption in the administration with responsibilities for cases done by officials ranking lower than the Division Director and including proposing policies, measures and developed action plans for the prevention and suppression of corruption in the public sector. The above are also responsible for making recommendations to effectively amend laws, rules or other measures for anti-corruption by coordinating with the Office of the NACC.

Perhaps one of the reasons for the ongoing severity of corruption in Thailand is that most of the anti-corruption activities in Thailand are focused on suppression instead of prevention (Sawang Boonchalerrnvipas et al., 2000). However, careful consideration of international anti-corruption efforts reveals the emphasis on both prevention and suppression of corruption, particularly the provisions shown in Chapter 2 of the UNCAC that clearly states preventive measures covering policies and practice on anti-corruption. The increasing movement in the EU (European Union) that focuses on the private sector and auditing state affairs as shown in the transparency campaign for “Blowing the Whistle Harder”, a study on the preventive measure of whistle-blowing in the European Union. The protection of whistleblowers is a key mechanism toward effective anti-corruption and building confidence among whistleblowers who are usually afraid of retaliation by
influential figures, not only by threat but also violence which makes them afraid of informing the authorities (Office of the National Anti-Corruption Commission, 2007).

According to the statistical records on complaints by the Office of the Public Sector Anti-Corruption Commission in the 2013 fiscal year (PACC, 2016), whistleblowers tend to send anonymous letters with incomplete information such as not identifying names or dividing perpetrators or unclear offenses or unclear nature of offenses, including not identifying the name of the whistleblower. In the above year, the number of incomplete anonymous letters amounted to 357 cases from a total of 4,513 cases or 7.91 percent. This may result from the fear of influential figures commenting on corruption or threats potentially resulting in a serious threat to whistleblower safety and welfare. Therefore, effective protection for whistleblowers can lead to full participation among various sectors, including state officials, in whistle-blowing. As mentioned earlier, corruption problems cannot be effectively solved with suppression measures alone. Without serious preventive measures on a continual basis, especially on whistleblowers, who can be the key mechanisms for strengthening civil society in investigating corruption and leading to prevention of corruption. This includes collaboration with the public sector in suppressing corruption effectively. Therefore, it is essential that Thailand explore its existing legal protection for whistleblower reporting on corruption that it is sufficiently effective to meet international standards.

**Research Objectives**

- To study the direction of legal protection measures for whistleblower reporting on corruption at the standard level.
- To prepare legal protection measures for whistleblower reporting on corruption in Thailand.
- To study the feasibility of implementing legal measures to protect whistleblowers based on No. 2 as stated in the policy.

**Research Conceptual Framework**

This research has set a conceptual framework for legal protection measures for implementation as protection policy for whistleblowers in Thailand (Table 1). This conceptual framework is the result of an extensive literature review undertaken by the researcher based on the legal resources or guidelines available at international levels such as the United Nations Convention against Corruption–UNCAC, 2003 and Transparency International’s International Principles for Whistleblower Legislation, etc. A content analysis was also performed to identify major elements on legislative measures as a framework for the entire study, which resulted in the following research methodology.

**Research Methods**

This research applied both qualitative research and the Delphi Technique:

- Qualitative research was used in the documentary search for analysis and summarized from laws in Thailand related to legal protection for whistleblowers reporting on corruption, including studies on the provision of the United Nations Convention against Corruption–UNCAC, 2003, direction to establish legal protection measures for whistleblowers reporting corruption, practical applications of international organization and various legal measures.
Table 1. Research Conceptual Framework for Legal Protection Measures for implementation as Protection Policy for Whistleblowers in Thailand

<table>
<thead>
<tr>
<th>Definition</th>
<th>Model for legal protection of whistleblowers reporting corruption</th>
<th>Rewards</th>
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| ❖ Whistle-blowing  ❖ Whistleblowers | ❖ Safety protection  
• Protection for individuals, family members and acquaintances  
• Life and safety  
• Compensation for damages  
❖ Confidentiality  
• Identification of individuals, family members and acquaintances.  
• Residence  
• Information on corruption from whistle-blowing.  
• Steps for effective protection.  
❖ Waiver from legal responsibilities  
❖ Protection from retaliation  
❖ Reserving an accomplice as a witness | ❖ Monetary  
❖ Praise  
❖ Apologies from persons responsible for retaliation  
❖ Employment Promotion/Rehiring |

The Delphi Technique was applied to the questionnaires distributed to the senior executives of the agencies relevant to anti-corruption, namely, senior executives from the Ministry of Justice, court, prosecutors, executives and experts in the anti-corruption field to set up the legal protection measures. Significantly, this research study with human participants was reviewed and approved all data collection procedures and protocols including the questionnaires by the Institutional Review Board (IRB), namely, the Committee for Research Ethics (Social Sciences), Faculty of Social Sciences and Humanities, Mahidol University, before beginning the research.

The sample comprised a total of 21 executives and field experts in which the number of samples coincided with the research findings of Thomas T. Macmillan who recommended that samples should not be under 17 persons in order to avoid potential error and remain constant at a margin of error equaling 0.02. (Cited Kasaem Boon-oan, 1979, P. 28). The researcher conducted one-on-one interviews with the executives, using close-ended questions on the questionnaire in Part 1 on demographic data, namely, gender, age, educational level, position, division and location of workplace, work experiences in anti-corruption and whistleblower protection/witnessing in criminal cases. In addition, Part 2 contained the subjects’ opinions on the legal protection for whistleblowers and the feasibility of policy implementation whereas Part 3 contained the recommendations to push forward for policies and other relevant issues. The outcomes from the final responses of the subjects that had been collected were subjected to analysis to obtain the median and interquartile range (Penporn Chainapong, 1993, pp. 57-58).
Research Outcomes

The findings combine information from the documentary research and the outcomes of the Delphi Technique, which can be described as follows:

Documentary Research Findings

The documentary research was done by collecting relevant laws and provisions, operational manuals, statistical rewards, operational outcomes and academic literature from relevant agencies in Thailand. The findings after the analysis of the legal framework for whistleblower protection at the international standard level suggest that Thailand has not established specific legal protection for whistleblower reporting corruption. Furthermore, no definitions for whistleblower and whistle-blowing have been established. However, the Witness Protection Law, namely, the Witness Protection Act B.E. 2546 (2003), are applied for whistleblowers reporting on corruption who are referred directly from the anti-corruption agencies to receive protection under the responsibility of the Witness Protection Bureau, Rights and Liberties Department, the Ministry of Justice. The anti-corruption agencies are the Office of National Anti-Corruption Commission (NACC) and the Office of Public Sectors Anti-Corruption Commission (PACC). These agencies provide legal protection for whistleblowers as if they were witnesses entitled to the legal protection provided in criminal cases due to the laws applied by both agencies in defining the word “witness”, which also includes whistleblowers based on the Organic Act on Counter-Corruption B.E. 2542 (1999) and the Executive Measure in Anti-Corruption Act B.E. 2551 (2008).

In addition, whistleblower and whistle-blowing, have been defined by studies on protective measures as specified in the legal framework in the following five areas: 1. Safety protection; 2. Confidentiality; 3. Waiver of Liability; 4. Protection from Retaliation and 5. Reserving an Accomplice as a Witness. According to the findings, current Thai laws include the protection of safety, confidentiality, and retaliation for whistleblowers and preventive measures against retaliation for state officials only. The laws do not provide protection for other whistleblowers; moreover, there are no laws to promote employment/rehiring, particularly for whistleblowers reporting corruption in their own divisions and subjecting to retaliation until they are unable to keeping working in that place. Furthermore, none of the laws protect the whistleblowers in civil or criminal lawsuits or any disciplinary actions resulting from whistle-blowing as though whistleblowers are revealing organization secrets. Only the Securities Exchange rules provide protection for whistleblowers reporting violations of stock trading by using inside information to manipulate the market. As for detaining petty wrongdoers as witnesses, but no provisions have been made for the prevention or penalties for witnesses who recant statements or fail to testify. Under the condition, accomplice witnesses must not be charged or prosecuted to become legal witnesses under the law that prohibit plaintiffs to name defendants as witnesses or forbid defendants from giving self-incriminated statements. With regards to legal measures on rewards, Thailand already has established laws to reward whistleblowers such as praise or honor certificates, promotion for state officials and bribes or rewards in cases involving unusual wealth, and investigations of assets and liabilities of politicians based on anti-corruption legislation, the Organic Act on Counter Corruption B.E. 2542 (1999). The reward is usually 10 percent of confiscated assets or fines received, but reward amounts actually range from 10-30 percent as stated in the Securities and Exchange Commission (SEC) of Thailand regulations.
Research with the Delphi Technique

After the researcher had performed the literature review, the framework was applied in the preparation of a questionnaire with the Delphi Technique in which the data derived from Delphi Technique came from a sample of 21 research subjects comprised of high-level executives and specialists for three rounds. The findings of the questionnaires are as follows:

Whistle-blowing / Whistleblowers on Corruption

According to the findings, 42.85 percent of the sample did not recognize the need to amend existing laws and mentioned that the problems related to practice should be resolved whereas 42.85 percent also recommended amendments to existing laws. Moreover, only 14.28 percent of the respondents recommended that Thailand pass new laws.

Nevertheless, all 21 participants agreed on the definitions of whistle-blowing as follows:

- Whistle-blowing on misconduct by state officials and other parties involved from all public, private and social sectors.
- Providing the facts related to corruption or information necessary for combating corruption.
- Whistle-blowing information must include the information on who did it, when, what and how with ample evidence leading to an investigation and bringing the perpetrator to justice with or without revealing the whistleblower's identity, but with only sufficient information to proceed further as specified in No.1.

All 21 respondents also agreed on the definition of whistleblowers, who can be any individual reporting on corruption in all sectors, including residents living in Thailand and abroad, because corruption may have taken the form of transnational crimes and not be limited to criminal cases. Nevertheless, some information could benefit the general public such as lobbying for the position of minister or in cases involving ethical, moral and disciplinary offenses as well as other legal violations to punish those involved in corruption or those who cause corruption. For example, the state official who advances in position by buying that position can become a witness if he failed to obtain the promised position to accuse the official accepting the bribe.

Protection Model

The legal framework for whistleblower protection is composed of the following: 1. Safety Protection; 2. Confidentiality; 3. Waiver of Legal Liability; 4. Protection from Retaliation and 5. Reserving an Accomplice as a Witness. The results are as follows:

Safety Protection

The data collected from 21 questionnaire respondents reveal that the respondents agreed with all three areas of safety in the following: 1. Protection for individuals, family and members and acquaintances (95.23%); 2. Life and safety (85.71%) and 3. Compensation for damages (80.95%). As for the protection period, the respondents mentioned that it should be judged case-by-case by stating that each whistleblower might have different reasons, depending on the conditions related to safety in life, assets,
reputation and freedom of whistleblowers requesting protection. Most of the participants agreed on short-term and long-term protections with various opinions as stated below.

Short-term Protection
- Protection starting from the beginning to the end of the case.
- Protection for 3 months and during the early phase of seeking facts for 3-6 months
- A year during the inquiry and prosecution.
  - General measures with protection not exceeding 6 months.
  - Specific measures with protection not exceeding 1 year.

Long-term Protection
- Continuous protection such as after court has passed judgment or until the whistleblower feels safe (life, body and assets).
- From the inquiry level until the case enters the court and eventually ends.
- For 6 months and up, depending on the type of crime, intensity and extent of damages in the corruption cases as well as other situations associated with requests for protection. Assessing the situation based on the fact, periodically, if the informant is still under threat.
- Protection lasts no longer that needed or when those in need of justice are satisfied.
- Periodic follow-ups are required to see if the whistleblower is still under threat; this situation may end within 5-6 months.
- Two years at the inquiry level.
- Two to three years following court judgment.
- Based on the real situation, not exceeding a year.

Confidentiality
The respondents generally agreed with the legal framework on the measures for confidentiality proposed by the researcher in four aspects of well-kept confidential information as follows:

- Identities of individuals, family members and close acquaintances (80.95%).
- Both residential and workplace addresses (90.47%).
- Information on corruption acquired from the whistleblower (85.71%).
- Effective confidentiality undertaking during the whistleblower protection (85.71%).

One participant gave reasons for the closure of all information regarding the whistleblower reporting officials’ corruption, stating that it is necessary to ensure the safety of whistleblowers, who may be under threats, and eventually seek protection from the agencies involved. In addition, the respondents suggested a double degree of penalties for those who reveal the identity of a whistleblower because it may result in threats to the whistleblower's life. The penalties should extend to those people who have informed the authorities of whistleblower whereabouts.
Protection from Legal Liability
In all, 52.38 percent agreed with the protection, regardless of the prosecution. Some disagreed with the protection from lawsuits that may not require protection if the pre-bargaining is arranged to delay prosecution.

Protection from Retaliation
In all, 90.47 percent of the subjects agreed with protection from retaliation committed by the employer/supervisor/co-workers. And the vast majority of the respondents agreed with such measures as those stated in the Executive Measures in Anti-Corruption Act B.E. 2551 (2008) and already covered by Sections 52, 54, 57 and 58, which are the same as those in the Organic Act on Counter-Corruption BE. 2542 (1999) of the Office of the NACC. However, the Witness Protection Act B.E. 2546 (2003) had not arranged for the provision of protection for a witness from retaliation such as ordering a transfer. Although the Office of the National Anti-Corruption Commission and the Office of Public Sector Anti-Corruption Commission have the power to act, if they fail to act on time or accurately, the witness protection may not be effective. In cases involving witnesses who have received death or other threats from an employer, the witness may feel discouraged and the officer may have to work hard. Thus, the Witness Protection Bureau has the power to perform tasks in witness protection such as moving the witness out of the risk area because the supervisor can bully, threaten or rescind certain rights.

Reserving an Accomplice as a Witness
In all, 71.42 percent of the respondents agreed with protection measure on reserving an accomplice as a witness. At present when a person committed a crime, the prosecutor must not file the suit if he wants to keep that person as the witness. For the case of detaining a person as a witness, none of the suits should be filed. As mention in Executive Measures in Anti-corruption Act B.E. 2551 (2008), an accomplice witness must be possessed by the following three main principles 1. Such a person must not be perpetrator 2. Voluntarily and 3. Unable to find the witness or evidence to prove the action.

Rewarding
The respondents agreed on the framework for proposed legal protection measures to reward the whistleblower in the following three ways: 1. Giving monetary rewards (66.66%); 2. Promoting employment or rehiring (57.14%) and 3. Giving praise to the whistleblowers reporting on corruption (80.95%). Most of the respondents agreed that rewards should be given secretly.

Certain respondents suggested establishing guidelines for rewards from 10 to 30 percent of the total among of confiscated assets or fines. One respondent stated that consideration should be given to whether or not it is worth offering rewards, because some cases might involve the accused being caught right away. 57.14 percent agreed with promoting employment or returning work status concerning safety and comfortable working conditions in the same place. Nevertheless, 95.23 percent disagreed with apologies from the person responsible for retaliation because the offenders will be punished by the court anyway.
Feasibility of Implementation

When asking about respondents' opinions on the feasibility of implementing the legal framework to protect whistleblowers in the policy, all of the respondents agreed that implementation is feasible since it coincides with UNCAC 2003, including the Constitution of the Kingdom of Thailand (interim) B.E. 2557 (2014) and numerous Thai laws such as the Administrative Act B.E. 2534 (1991), the Royal Decree on Criteria and Procedures for Good Governance B.E. 2546 (2003), the Executive Measures in Anti-Corruption Act B.E. 2551 (2008), the Organic Act on Counter-Corruption B.E. 2542 (1999) (amended B.E. 2550 (2007) and No. 2 B.E. 2554 (2011)) , including the order of National Council for Peace and Order No. 69/2557 in the anti-corruption and misconduct measures. Therefore, the direction for legal amendments covering the whistleblower should be clear for setting up a new organization to protect whistleblowers. Moreover, there should cooperation among the agencies involved in the anti-corruption and witness protection fields in drafting the laws.

Discussion

According to the findings, the legal measures the researcher obtained from the study on the current legal protection measures for whistleblower reporting on corruption in Thailand, including the responses questionnaire collected by applying the Delphi technique can be discussed as follows:

1. Definition

The findings on the definition of whistle-blowing and whistleblowers are that Thailand does not have specific laws to protect whistleblowers and none of the existing laws or rules provide meanings for whistle-blowing and whistleblowers. The only definition is for a witness “to cover the whistleblower in anti-corruption laws”.

Conversely, the United Nations Convention against Corruption 2003 defined the term of a person reporting on those who have committed offenses as stated in Article 33 that require each state party to consider domestic laws appropriate for protecting whistle-blowing reporting on corruption on good faith with reasonable grounds and relief for whistleblowers concerning unfair practices. The definition of the whistleblower and his/her entitlement to protection is quite as important as the protection of the whistleblower in being able to support the concept of public participation to engage in evaluation or follow-up on the performance of state agencies according to Cohen and Uphoof (1980). The concept of Crgton (2000, cited in Tawilwadee Bureekul, 2008) is similar to an earlier concept that mentioned how peoples' participation must be done independently, voluntarily and equally with same rights to proper treatment.

In this connection, the findings from the Delphi Technique suggest that all 21 respondents highly agreed that the definition of whistleblower should be stated and should include whistle-blowing on corruption in all sectors, both domestic and overseas, regardless of identity, whether or not the whistleblower would like to be revealed. Whistleblowers must provide information or facts to be given to officials or have solid evidence to report on corruption. In order to have proper protection for whistleblowers, Thai laws should amend the Witness Protection Act B.E. 2546 (2003), Section 3, in the definition of “witness” to cover whistleblowers reporting on corruption.
2. Protection Model

The findings on legal measures of protection indicate that Thailand, as one of the state parties to the UNCAC, provides protection for whistleblowers who have received unjust treatment, which is quite different from TI principles that provide protection from all sorts of retaliation. Nonetheless, the researcher proposed a Thai legal framework and constructed a questionnaire to question the opinions of the executives and specialists through the application of Delphi Technique Round 1. The findings suggest that the researcher agreed with five legal measures on protection as follows: 1. Safety Protection; 2. Confidentiality; 3. Waiver of Legal Liability; 4. Protection from Retaliation and 5. Reserving an Accomplice as a Witness.

3. Safety Protection

In prosecuting corruption cases, the whistleblower or person reporting corruption may receive threats in many forms, including threats to life and safety. Therefore, it is vital that powerful division authorized by laws to combat corruption protect whistleblowers, so they can feel at ease and thus able to provide helpful information to bring perpetrators to justice. Protection of safety is, therefore, a preventive measure to shield the potentially leading to the apprehension of perpetrators and promoting efficiency in preserving rights and common interests (Taweekiet Menakasit & Sihanat Prayulrat, 2005).

Article 33 of the UNCAC only specifies protection for whistleblowers reporting on corruption in good faith and on reasonable grounds to authorized officials so the whistleblower can receive protection from unjust treatment. After comparison of the UNCAC with Thai laws, the findings suggest that protection has already been arranged for different individuals, including the whistleblowers, by believing that these people are witnesses who are entitled to protection based on witness protection law. When these people are referred to other agencies, whistleblowers should receive protection as stated in the Witness Protection Act B.E 2546 (2003) which defines “safety” as security for life, body, sanitation, freedom, reputation, assets or other rights of witnesses before, during and after becoming a witness. However, the Office of the PACC is capable of providing initial protection for whistleblowers. Such initial protection for whistleblowers is similar to the regular protection measured in the Witness Protection Act B.E. 2546 (2003).

4. Confidentiality

To provide effective confidential protection, one must take into account the effectiveness of vital steps/procedures. No matter how visible the provision to guard the security of a whistleblower’s information, without proper process or operational procedures to protect the secret or well-kept documentary system, information can leak out any time. This concept coincides with the concept of the Official Information Act B.E. 2540 (1997) in Section 16 which states, “For the sake of practical clarity as to whether or not and on what conditions official information may be disclosed to any person and for the sake of expediency in having measures preventing its leakage, a State agency shall determine measures for the protection of such information in accordance with the Rule on Official Secrets Protection issued by the Council of Ministers.” After considering the control theory of Walter Reckless (1961), it was found that individuals choose whether to commit or not commit crimes, depending on two main factors, namely, internal barriers and external barriers, both of which come from different external
surroundings. As perpetrators are brought to justice with concrete operations and whistleblowers are effectively protected, society will eventually be able to acknowledge the effectiveness of law enforcement. At the same time, potential perpetrators would be afraid to commit crimes due to the high risk of facing complaints and arrests; then they would decide not to pursue corruption (Suthee Argatlerk cited in Taweekiet Menakasit, 2005). Therefore, the establishment of this process is essential to guarding whistleblowers’ confidential information because security and persecution of cases might be affected with impact on approaches to anti-corruption campaigns.

Considering existing Thai laws, although there are no specific laws on whistleblower protection, clear connections with anti-corruption laws and witness protection laws are revealed that can be adapted or enforced to coincide with the content of the Official Information Act of Thailand in giving the people the right to access the state’s operational affairs, allowing the distribution of state operations with the public, provided that such actions would not jeopardize informant safety or case prosecution. In the case of the protection of the assigned agency, such cases also prohibit exposure. The findings from the questionnaire suggest that the participants agreed with the confidential protection as stated in all four of the aforementioned areas in which Thai laws have already arranged protection.

5. Waiver of Liability

Being relieved from legal responsibilities or entitled to legal protection is an extremely significant mechanism in arranging effective protection for whistleblowers. As seen in Thai law, although there are some protective measures, these fail to cover whistleblowers reporting on corruption. The available protection only specifically arranges for witnesses in criminal cases in both the public and private sectors. However, the Stock Exchange of Thailand has established clear policies and procedures for whistle-blowing in accordance with the principles of administrative rules for managing corporations listed on the Stock Exchange, namely, the rules of stockholders in the Stock Exchange of Thailand coupled with other protective measures for retaliation or bullying that affect the portion and responsibility in the workplace, including the keeping of secrets.

Nonetheless, there have not been any legal protection measures for whistleblowers in terms of waiver of liability, which is quite different from overseas where visible laws have been established to protect whistleblowers. For instance, Malaysia has a specific law, namely, the Whistleblower Protection Act 2010, for combating corruption and other offenses, encourages whistleblowers to report corruption and inappropriate behavior in the public and private sectors. The protection is done to keep whistleblowers’ information confidential with safety protection and damage compensation, including protection from civil and criminal cases as well as disciplinary actions (informants must be honest with well-grounded reasons).

The Delphi Technique questionnaire was used to collect data from samples related to the legal framework on whistleblower protection. The opinion survey indicates the plausibility of legal protection or legal immunity for application with Thai legal protection for whistleblowers. The findings suggest that samples strongly agreed on protective measures for whistleblowers reporting on corruption in terms of facing lawsuits, particularly on trade secrets or contract/regulations, to protect company interests.
6. Retaliation

Considering the nature of corruption by state officials, the findings suggest that the majority of wrongdoings falls into the category of White Collar Crimes of Edwin H. Sutherland who explained that the abuse of power to commit offenses against the state creates conflicts of interest or disagreement between personal and public interests (NuanchunTasumachai, 1999). Moreover, the use of the patronage system in Thailand where there is both giver and taker reciprocating with one another has led to corruption in which the system has loopholes for authorities to access benefits. Therefore, only those familiar with corruption procedures or corporate employees involved in the scheme have good insight, knowledge and truth on corruption. However, a person who informs high ranking officials may be under extreme risk for retaliation if working closely with or related to the perpetrator. Therefore, legal protection in the aforementioned issues is essential to make whistle-blowing with an effective protective system where authorized officials can find concrete evidence to prosecute cases fairly.

Hence, effective protection of whistleblowers should include concrete measures for protection in cases involving potential retaliation by extending protection to all agencies experienced in whistle-blowing. The final answers of the respondents in the third round strongly agreed on protection for whistleblowers at risk for retaliation or bullying at work (supervisors, executives, co-workers) as well as extending protection to other sectors and covering not only state officials. The respondents unanimously agreed that policies should build up confidence among state and private officers who intend to report corruption to ensure fair treatment.

7. Reserving an Accomplice as a Witness

Thai laws on reserving accomplices as witnesses are considered a rather complicated issue, even with the Witness Protection Act B.E. 2546 (2003) established by the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Article 244, “An individual who turns witness in a criminal case is entitled to receive protection, appropriate practice and suitable compensation from the state as enacted by laws.” According to the Witness Protection Act B.E. 2546 (2003), the definition for “Witness” in Article 3 is an individual with knowledge of the facts who may be an employee, authorized inquiry officer or authorized investigation officer on a criminal case, and the authorized prosecution officer or Court in the prosecution of criminal cases, including specialists. As seen in the Constitution of the Kingdom of Thailand B.E. 2540 (1997), witnesses are only protected in criminal cases where they are entitled to appropriate treatment and compensation. After the declaration of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Article 40 (4) and 40 (5) was amended, the Amendment on Article 40 (3) added the victim, accused and defendant to the list of individuals entitled to legal protection. At present, there are no amendments to the Witness Protection Act to include all individuals mentioned in the Constitution of the Kingdom of Thailand B.E. 2550 (2007), particularly Article 40 (4), which is directly related to the laws on detaining witnesses, because it includes the rights of victims, accused parties, plaintiffs, defendants, third parties, stakeholders and witnesses in cases where verbal statements can be avoided due to potential self-incrimination. However, if the aforementioned person is party to a crime, then the person will be compelled to become a witness against himself. In addition, the issues of practicing in compliance with the law has made provisions to detain perpetrators.
as witness, except cases involving perpetrators who have violated the Prevention and Suppression of Transnational Organized Crime Involvement Act B.E. 2556 (2013) in which the law is implemented based on the United Nations Against Transnational Organized Crime that adopted by the UN General Assembly on 15 November 2000, in Section 3, which states that collaboration is useful to case prosecution in Section 23 and Section 24. In Section 23, as authorized, the attorney general is authorized to order, not to executive, a defendant in all causes or certain cases. Furthermore, the Narcotics Act B.E. 2522 (1979), Article 100/2 states that, if the court finds any perpetrator willing to provide significant information that would be extremely useful in catching an administrative, police, or investigative officer in narcotics cases, the court will impose lesser sentences than the lower set rate for suppressing narcotics.

This provision concurs with the direction of the UNCAC; the only difference is in local practice acting as the movement because no laws have been provided for detaining witnesses. Therefore, there is no prosecution on perpetrators who have collaborated with an investigation and provided state evidence, thereby enabling extension of the case to apprehend the ringleader, when the prosecutor was once ordered not to prosecute the case; in other words, the case cannot be brought back for prosecution. When an accomplice witness has recanted a statement or given a false statement, the charge on the accomplice witness would be on giving a false statement. Furthermore, there is protection for witness depositions potentially allowing someone to bring the lawsuit back (Ornpreeya Thongnaenuan and Piyanuch Potavanich (no date) as in the Anti-Corruption Legislation Organic Act on Counter Corruption B.E. 2542 (1999), Article 103/6, that authorizes the NACC to take into account the cases of accomplice individuals or accused parties as witnesses without prosecution. In the Organic Act on Counter Corruption B.E. 2544 (2001), Section 11 Paragraph 2, states that an accomplice witness who fails to show up to testify or appears to testify, but withholds useful information or provides an incriminated statement is not eligible for detaining a witness and the detention must be ended. This includes the statement in the Executive Measures on Anti-Corruption Act B.E 2551 (2008). Article 58 has content that is similar to Article103/6 of the Anti-Corruption Act as previously mentioned. Furthermore, after considering the declaration of the PACC and the NACC on their rules concerning procedures, methods and conditions in reserving individuals including accomplices as witnesses stating that the reserved witness must be informed that he/she will be served a subpoena to testify in court. Once the witness fails to show up to testify or gives useless information or incriminated statements, the detention will end. Nevertheless, there have not been any measures for penalties for putting a previously accomplice witness back on trial. In reality, the accomplice witness should receive protection, but this measure is costly and must be considered carefully. Moreover, penalties should be imposed on individuals or accused parties who have recanted statements or given incriminated statements.

The related laws are the Criminal Procedure Code, Article 232, which prohibits plaintiffs from naming defendants as witnesses or giving incriminated statements. In addition, Article 135 prohibits inquiry officers from motivation, promises or threats, deception, torture or force. Article 226 states that individuals who become witnesses must not be motivated, given promises or subjected to threats. Police Sub-Lieutenant Vallop Vongsuwan (no date) recommended an addition to the Criminal Procedure Code, Article 232, Paragraph 2, “For fairness in cases without witnesses, the inquiry officer together with either of the perpetrators could become a witness in the case” or the prosecution
might be separated by handling the witness case first in which the sentence may be reduced or pending. Next, the perpetrator could return as a witness in court, so the perpetrator is the witness without defendant status. This waive from the principle of self-incrimination or naming the defendant as a witness based on the Criminal Procedure Code, Article 232, includes the subsequent protection of the victim. As for the case of whistleblowers involved in crime by reporting corruption and later coming in to testify in court, these whistleblowers should receive protection and cannot be prosecuted again. The agreement might involve compensating the victim or amending the Criminal Procedural Code to protect the whistleblower from subsequent lawsuits or prosecution.

The questionnaire respondents mentioned the setup of legal measures to protect accomplice witnesses due to the amendment of the Witness Protection Act B.E. 2546 (2003) to cover this issue, because perpetrators were previously accomplice as witnesses and prosecutors declined to prosecute. A group of subjects unanimously agreed that the aforementioned law needed to be amended to match the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and extended to other individuals entering the judicial system. Protection and treatment should be applied to all because some suspects might be falsely accused. Therefore, all suspects should be given the chance to confirm innocence, especially in corruption cases where some state officials might be unwillingly to perform an action, but do so out of fear of influential power.

8. Reward

With regards to human needs, the findings indicate that the praise given to whistleblowers comes from the public and can fulfill Maslow’s Need No.4, but slightly different from the concept of Free Will in the Classical School of Criminology. The findings suggest that whistle-blowing is not something that everyone decides to do, because the risks associated with whistle-blowing are relatively high. Therefore, the decision about whether or not to engage in whistle-blowing relies on costs and benefits based on rational choices and high-risk whistle-blowing on corruption, which is a risky action due to high risks for potential harm to informants and leading to prosecution and lawsuits. If a perpetrator is a supervisor or a powerful figure in the organization, it is very likely that the whistleblower may face various types of retaliation. In addition, individual intrinsic factors include a belief in honesty with a public mind and focus on intense public motivation for a person to do the right thing. Next, monetary and other rewards should be another incentive for promoting public awareness of the benefits of whistle-blowing. Even after comparison with the confiscated assets, the rewards seem worthy of cost, particularly rewards in corruption cases.

Considering whistleblower protection overseas, the findings suggest that many countries have already put this concept into practice. For example, the U.S.A. amended the 2010 Dodd-Wall Street Act that earlier specified rewards to any whistleblower in stock trading or insider-trading cases. Additional awards are included by giving 10 to 30 percent of the value of confiscated assets to whistleblowers who can provide information leading to the arrest and prosecution of perpetrators in corruption cases valued at over 1 million USD. In such cases, the U.S. Securities and Exchange Commission (SEC) is authorized to pay out rewards as high as 10-30 percent from the confiscated amount. In 2013, rewards amounting to nearly 14 million USD were paid out (SEC Press Release: SEC Awards more than 14 million USD to Whistleblowers, 2013-209). Moreover, South
Korea has paid rewards to whistleblowers and the Anti-Corruption & Civil Rights Commission (ACRC) can authorize payments as high as two million USD. This is the result of receiving direct reports enabling officers to pursue cases and seize the assets of perpetrators or being able to collect more money, including reducing state expenses. However, rewards are not limited to confiscated assets, because there are different laws in many countries (www.reuters.com). Nonetheless, the focus is still on the disclosed information of whistleblowers, including the distribution of financial rewards to whistleblowers living abroad. Moreover, the rewards, financial gains and other protection measures seem larger than the costs. When a whistleblower views the benefits of whistle-blowing to exceed the costs, it is easier to make the decision to report to the responsible agencies involved in anti-corruption. On the contrary, the responsible agencies or the government should focus on public interests rather than cost reduction or increased state revenues in deciding whether it is worthwhile to pay rewards. The concern is not only the country’s interests, but also incentives aimed in a positive direction as well as forming social trends to deter potential wrongdoers from corruption due to the high risk of being apprehended.

Conclusion

Table 2. Legal Protection Measures for implementation as Protection Policy for Whistleblowers in Thailand

<table>
<thead>
<tr>
<th>Definition</th>
<th>Model for legal protection of whistleblowers reporting corruption</th>
<th>Rewards</th>
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<tr>
<td>Whistle-blowing</td>
<td>Safety protection</td>
<td>Monetary</td>
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<td>Whistleblowers</td>
<td>• Protection for individuals, family members and acquaintances</td>
<td>Praise</td>
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<tr>
<td></td>
<td>• Life and safety</td>
<td>Employment Promotion/</td>
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<td></td>
<td>• Compensation for damages</td>
<td>Rehiring</td>
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<td></td>
<td>Confidentiality</td>
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</tr>
<tr>
<td></td>
<td>• Identification of individuals, family members and acquaintances.</td>
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<td></td>
<td>• Residence</td>
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<td>• Information on corruption from whistle-blowing.</td>
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<td></td>
<td>• Steps for effective protection.</td>
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<td>• Waiver from legal responsibilities</td>
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<td>• Protection from retaliation</td>
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<td>• Reserving an accomplice as a witness</td>
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</table>

In conclusion, as a result of the documentary research, the researcher set a legal protection framework to ask 21 subjects about opinions in three rounds by using the Delphi technique. The findings yielded by the application of the Delphi technique in
Round 1 indicated that the research participants agreed with the legal framework, but omitted the issue of apologies. As for Round 2, the issues of amending the laws to cover the definitions of safety protection, confidentiality, waiver of legal liabilities, protection from retaliation, reservation of an accomplice as a witness and the need for a reward system were addressed. Nonetheless, some disagreed on the amendment of the Witness Protection Laws to cover reserving an accomplice as a witness and the amounts of monetary rewards to whistleblowers. In Round 3, the subjects still confirmed the same answers as in Round 2. Overall, there was more agreement on the amendment of laws to cover reserving an accomplice as a witness (over 50%), including issues on rewards (also over 50%).

Therefore, Thailand should set legal protection measures after surveying the opinions of the subjects based on the findings of the documentary research (Table 2). Nevertheless, when the proposed legal protection measures in the framework were compared with the legal protection measures for implementation as protection policy for whistleblowers in Thailand as a result of the Delphi Technique, existing Thai laws, even those without specific laws on whistleblower protection, were found to have a clear connection with anti-corruption laws and witness protection laws that can be adapted or enforced to coincide with the content of the UNCAC and TI Principles on legal protection for whistleblowers, particularly concerning the safety protection model. On the contrary, some legal protection measures need to be considered for improvements such as legal measures on the definitions of whistleblower and whistle-blowing, reserving an accomplice as a witness for court proceedings, protection from retaliation, waivers of legal liability and a reward system.

Significantly, in order to effectively combat corruption, Thailand should strengthen its legislation to properly protect whistleblowers reporting on corruption and to be on par with international standards by adopting the previously mentioned legal protection measures based on the findings of the present study to identify areas for reform and propose further steps toward strengthening effective and comprehensive whistleblower protection laws in Thailand.

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