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Ensuring a fair, effective and coherent disciplinary system for public officials in Thailand

This chapter reviews the disciplinary system for public officials in Thailand, with particular attention to fairness, policy coherence, institutional co-ordination and the use of data. Although Thailand has a solid foundation for enforcing integrity rules and standards, further reforms are required to improve its quality and introduce a more coherent approach to disciplinary processes. For example, Thailand may strengthen the corps of disciplinary investigators and leverage the use of data on sanctions.

Introduction

A comprehensive and advanced integrity framework seeking to curb corruption successfully cannot only rely on prevention and detection but should also invest efforts in developing an effective enforcement mechanism. Enforcing the integrity rules and standards is a necessary element to prevent impunity among public officials and to ensure the credibility of the integrity system as a whole. Effective responses to integrity violations, and the application of sanctions in a fair, objective and timely manner help ensure accountability and build the necessary legitimacy for integrity rules and frameworks to deter people from carrying out misconducts. Furthermore, a consistent application of rules within the public sector is an important message to citizens, which can inspire confidence in the government's ability to tackle corruption effectively and defend the public interest.

This chapter examines the role and effectiveness of the disciplinary system in Thailand as a key mechanism for enforcing public integrity standards. Drawing from international standards and norms, as well as international good practices, the chapter assesses the strengths and weaknesses of the current framework. The assessment is centred around the OECD Recommendation on Public Integrity (OECD, 2017^[1]) calling States to ensure that enforcement mechanisms – including disciplinary ones – provide appropriate responses to all suspected violations of public integrity standards by public officials. In light of this framework, the analysis focuses on:

- the extent to which integrity rules are applied fairly, objectively and timely among Thailand's public officials
- whether mechanisms for co-operation and exchange of information are effectively in place among all relevant institutions (i.e disciplinary departments of government agencies, the OCSC, the PACC, the NACC, the Police and the Public Prosecutor)
- how the disciplinary system of Thailand collects data, ensures its transparency and evaluates its performance.

Overview of disciplinary proceedings for public officials in Thailand

Public officials in Thailand are subject to different disciplinary regimes depending on their category. Specific procedures apply to police,¹ military, prosecutors and judges,² as well as for elected officials. The disciplinary regime for the majority of public officials not falling under these categories is determined in the Civil Service Act B.E. 2551 (2008), which covers officials hired and appointed to government service under its provisions. As far as local government officials are concerned, there is a specific law³ in place, however the disciplinary process is similar to the one described in the Civil Service Act.

Misconducts of public officials are usually identified through relevant allegations, which are received by different entry points. Investigations can be carried out by a multitude of actors with different responsibilities (see Table 1.1), depending on the entity receiving the allegation.

Table 1.1. Key actors of the disciplinary system in Thailand and their responsibilities

	Actor	Type of agency	Responsibilities	Legal framework
Policy design and implementation	Civil Service Commission	Statutory Board	<ul style="list-style-type: none"> Makes proposals and advises the Cabinet on policies and strategies regarding human resource management in the public sector Prescribes rules, directives regulations and guidelines for administration of human resource management in government agencies and other issues imposed by the Civil Service Act and related laws 	Civil Service Act, B.E. 2551 (2008)
	Office of the Civil Service Commission (OCSC)	Government agency reporting to the Prime Minister	<ul style="list-style-type: none"> Central agency for human resource (HR) standards, including civil service ethics, disciplinary enforcement, complaint handling, Code of Conduct for civil servants Responsible for developing laws and policies related to disciplinary enforcement Develops training and standards for disciplinary proceedings 	Civil Service Act, B.E.2551 (2008)
Investigations	National Anti-Corruption Commission (NACC)	Constitutionally independent agency	<ul style="list-style-type: none"> Carries out investigations related to the misconduct of public officials upon receiving relevant allegations Exclusively responsible for carrying out investigations related to serious corruption offences 	Organic Act on Counter Corruption, B.E. 2561 (2018)
Investigations	Office of the Public Sector Anti-Corruption Commission (PACC)	Government agency part of the executive branch, reporting to the Prime Minister	<ul style="list-style-type: none"> Carries out investigations related to the misconduct of public officials Investigations are carried out either upon receiving a relevant allegation or upon assignment from the NACC Reports the result of the investigations to the Public Sector Anti-Corruption Commission according to the Executive Measures in Anti-Corruption Act, B.E. 2551 (2008) and the additional amendment 	Executive Measures in Anti-Corruption Act, B.E. 2551 (2008) (and the additional amendment)
Investigations and imposition of sanctions	Government entities	Government agencies part of the executive branch	<ul style="list-style-type: none"> Heads of government entities (“supervising officials”) are responsible for disciplinary enforcement Upon receiving relevant allegations, a commission of inquiry is appointed to carry out the investigation Head of government entity (“supervising official”) examines the investigation findings and decides whether to impose a sanction or not 	Civil Service Act, B.E.2551 (2008)
Appeals	Merit System Protection Commission (MSPC)	Quasi-judicial body	<ul style="list-style-type: none"> Considers appeals submitted by public officials regarding disciplinary procedures affecting them; Reviews the merit of departments’ rules and regulations 	Civil Service Act, B.E.2551 (2008)
Appeals	Administrative Court of First Instance	Judicial court	<ul style="list-style-type: none"> Decides over appeals of MSPC rulings about complaints related to the treatment of civil servants by supervising officials. 	Civil Service Act, B.E.2551 (2008) Act on Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)
Appeals	Supreme Administrative Court	Judicial court	<ul style="list-style-type: none"> Decides over appeals of MSPC rulings related to the imposition of disciplinary sanctions. 	Civil Service Act, B.E.2551 (2008) Act on Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999)

Source: Developed by OECD.

The disciplinary process takes place within the government entities and follows the provisions of the Civil Service Act, B.E. 2551 (2008). Disciplinary offences are usually identified through complaints, discovery by the supervising official or investigations carried out by other institutions, such as the NACC and the PACC. Once a complaint is received or a misconduct is otherwise identified, the supervising official⁴ launches a preliminary investigation to determine whether the case has merit or not. The supervising official may undertake the preliminary investigation himself/herself, or assign a civil servant or relevant state official to undertake the preliminary investigation and file a report for taking into consideration (see Box 1.1). If there are reasonable grounds to move forward with the investigation of the case, the supervising official classifies the alleged misconduct as a serious or non-serious disciplinary offence, otherwise the case is dismissed.

Box 1.1. Stages and procedures of the disciplinary process within government agencies

The disciplinary process aims to collect evidence regarding the factual truth of an allegation. To that end, the commission of inquiry carries out the disciplinary investigation applying the principles of justice, fairness and timeliness through the following procedural steps:

1. Determination of approaches and points of investigation.
2. Notification of the accused person and explanation of allegation.
3. Asking the accused person whether he/she wishes to admit or deny.
4. Taking evidence from the party making the allegation.
5. Notifying the accused person of the summary of evidence in support of the allegation.
6. Interrogating the accused person.
7. Taking evidence from the accused person.
8. Examination of evidence from both sides and forming an opinion.
9. Preparation of an investigation report.

Source: (OCSC, 2014^[2]).

Once the investigation is completed, the commission summarises its findings and gathered evidence and shares it in a report with the supervising official. As a minimum, the investigation report includes the following information:

- summary of facts and evidence
- weighing of evidence
- opinion of the commission of inquiry.

As a final step, the supervising official decides whether to proceed with the imposition of a sanction or not. It should be noted that disciplinary sanctions can only be imposed by the respective government agency. An officer found guilty of a breach can lodge a complaint with the Merit System Protection Commission (MSPC) in order to appeal against the verdict. The MSPC carries out the appeal consideration or may appoint an appeals commission to examine the appeal. The ruling of the MSPC is binding for the supervising official. In case the public official disagrees with the MSPC ruling, a complaint can be filed at the Supreme Administrative Court, which is responsible for the final decision.

In light of this overview, the following section focuses on the mechanisms Thailand has in place for ensuring the fairness, objectivity and timeliness of disciplinary proceedings, as well as the co-operation, exchange of information and transparency within the disciplinary regime and across enforcement mechanisms.

Ensuring fairness, objectivity and timeliness

The types and classification of disciplinary breaches are clearly defined, supporting consistent application of the legal framework

The OECD Recommendation stresses the need for fairness, objectivity and timeliness in the enforcement of public integrity standards, calling on countries to apply these key principles in all relevant enforcement regimes. These three elements contribute to building or restoring the public's trust in standards and enforcement mechanisms, and are applied both at the level of investigations, as well as at the level of court proceedings and imposition of sanctions.

In Thailand, the Civil Service Act establishes the obligations for public servants and the competent authorities to address misconduct through disciplinary proceedings. Furthermore, the act establishes sanctions for public servants who commit disciplinary offences, which are distinguished between “serious breaches of discipline and “non-serious breaches of discipline”. As highlighted in Table 1.2, the classification of the offence affects the sanction imposed. Serious breaches of discipline cover mostly different types of fraud (i.e. false claims for stipends and official travel allowances, providing undue, etc.) and other criminal offences (e.g. gambling, consumption of intoxicating substances).

Table 1.2. Typology of misconducts and sanctions in Thailand

Type of misconduct	Type of sanction
Non-serious disciplinary breach	Depending on the case: <ul style="list-style-type: none"> • written reprimand • salary deduction • salary reduction Alternatively: Written parole or admonishment when there are reasons to refrain from punishment.
Serious disciplinary breach	<ul style="list-style-type: none"> • Dismissal • Expulsion depending on the gravity of the case

Source: Elaborated by OECD based on materials provided.

Thailand's sanctioning regime is quite comprehensive compared to other countries (see Box 1.2) covering different types of sanctions of administrative nature.

Box 1.2. Administrative disciplinary sanctions in selected OECD member and partner countries

OECD member and partner countries provide for these and additional types of sanctions including:

- Fines.
- Demotion in rank (France, Germany, Spain, and the United States).
- Salary reduction (Germany, the Netherlands) or withholding of future periodic salary increases (the Netherlands, United Kingdom).
- Compulsory transfer with obligation to change residence (France, Spain, United Kingdom).
- Compulsory retirement (France).
- Reduction or loss of pension rights (Germany – for retired officials, and Brazil).
- Reduction in right to holiday or personal leave (the Netherlands).

Sources: (OECD, 2017^[3]); (Cardona, 2003^[4]).

The Civil Service Act clearly sets the definition on “non-serious breaches of discipline” (Section 84) and also stipulates what consists of a “serious breach of discipline” (Section 85). Moreover, the OCSC manual on disciplinary proceedings (OCSC, 2014^[2]) provides helpful examples and descriptions of what constitutes a serious breach of discipline, further supporting the consistent application of the legal framework.

Furthermore, Section 42 (4) of the Civil Service Act underlines that disciplinary proceedings must be carried out justly and without prejudice. As such, the supervising official has to take into account the merit-based principle in every step of the disciplinary procedure, including the imposition of sanctions.

In terms of checks and balances, Section 103 of the Civil Service Act further states that, after a supervising official has ordered punishment, a report shall be submitted to the Ministerial Civil Service Sub-Commission or to the CSC. In the case where the Ministerial Civil Service Sub-Commission or the CSC finds that the disciplinary proceeding has not been correct or appropriate, the supervising official can be ordered to implement a correcting resolution by the Ministerial Civil Service Sub-Commission or the CSC, a mechanism further ensuring consistent application of the law.

Additional safeguards are needed to strengthen the integrity of supervising officials and ensure the fair imposition of sanctions

Disciplinary actions should only be taken based on the law and those enforcing the law should therefore act objectively. Objectivity should apply through all the phases of relevant proceedings. This might prove challenging in the disciplinary regime, where decisions – at least at the first instance level – are usually taken by quasi-judicial bodies, which are administrative in nature and do not enjoy same procedural guaranties as judicial authorities.

In Thailand, disciplinary decisions are taken by the supervising official in charge of hiring public officials according to Sections 57 and 90 of the Civil Service Act. This is usually the head of the government entity, who is responsible for the following:

- Determining the merit of the case and the nature of the disciplinary offence at the level of the preliminary investigation.
- Appointing the commission of inquiry responsible for conducting the formal disciplinary investigation.
- Deciding about the possible imposition of sanctions.

In the case of a non-serious breach of discipline, section 92 of the Civil Service Act provides that the supervising official may initiate disciplinary proceedings without any further procedural requirements. To notify the accused public official, a written record of the allegation (“statement of alleged wrongdoing”) is served stating the breach of discipline examined. In the case of an allegation of a serious breach of discipline, section 93 provides that a commission of inquiry must be appointed. Such an appointment of a commission of inquiry is considered a “statement of alleged wrongdoing” and is shared with the accused person to notify him or her about the alleged wrongdoing.

While the supervising official has wide discretionary powers, there are several checks and balances in place to ensure the integrity of the disciplinary process. First of all, the accused person can object to the composition of the inquiry commission if, for example, there is a personal involvement or connection with any of the commissioners or other causes that would prevent impartiality. Secondly, the public official sanctioned has the right to appeal the decision of the supervising official at two stages – first at the MSPC and then at the Administrative Court. Moreover, principles and guarantees of fairness are mentioned extensively in the OCSC Manual for Disciplinary Proceedings with the rule of law and the obligation to reach the truth of facts and reaching decisions with equality and without any favouritism being the key elements (OCSC, 2014^[2]).

Despite these checks and balances, challenges remain in practice in ensuring the integrity of the supervising official and the objectivity of decisions taken. Indeed, interviews with Thai stakeholders have indicated that the decision-making process is rather discretionary. To that end, procedural safeguards should be in place to guarantee that disciplinary actions are free from internal or external influence, as well as any form of conflict of interest.

As a minimum, these procedural safeguards can include the following components:

- Ensuring that personnel responsible for disciplinary proceedings are selected based on objective, merit-based criteria (particularly senior-level positions).
- Ensuring personnel responsible for disciplinary proceedings enjoy an appropriate level of job security and competitive salaries *vis-à-vis* their job requirement.
- Ensuring personnel responsible for disciplinary proceedings are protected from threats and duress so as to not fear reprisal.
- Ensuring personnel responsible for disciplinary proceedings have autonomy in the selection of cases to take forward.
- Ensuring personnel responsible for disciplinary proceedings receive timely training on conflict-of-interest situations and have clear procedures for managing them (OECD, 2017^[3]).

Establishing registries of trained disciplinary investigators or piloting “shared” disciplinary services would help improve the quality of disciplinary investigations

The commission of inquiry is the main investigatory body for disciplinary cases in government agencies and is responsible for gathering evidence with the purpose of verifying the facts and ensuring justice (see Box 1.1). The disciplinary investigation differs from the criminal procedure, which focuses on gathering evidence to support the prosecution’s allegation with less regard given to the evidence provided by the suspect or witnesses.

In carrying out disciplinary investigations, the members of the commission of inquiry are considered investigative officers under the Criminal Code with the duty to report facts, exercise discretion in determining the facts of the case, as well as in advising supervising officials on the imposition of sanctions. The main purpose of the commission of inquiry is to obtain factual proof with an obligation to hear both sides of an allegation. It is composed of at least three members: a chairman and two other commissioners. One commissioner is designated as the secretary. In the interest of the inquiry, there may be an assistant secretary. The qualifications of the members of the commission are the following:

- Being a civil servant.
- The chairman should be of at least equal or higher in hierarchy position as the accused person.
- At least one member of the commission should be a legal officer, a law graduate or a person who has completed training or possesses relevant experience.

Currently, there is no dedicated staff in government organisations responsible for dealing with disciplinary matters. The members of the commission of inquiry are appointed in rotation and depending on the technical expertise required for each case. Indeed, interviews with representatives of the OCSC have highlighted that public officials are reluctant in participating in commissions of inquiries for various reasons. First of all, there is the issue of personal relationships developed among colleagues in small government agencies. These types of personal relationships may endanger the independence of the investigative process. Moreover, duties related to disciplinary matters are often viewed as a “tick the box” exercise and are added on top of the daily workload of public officials. These issues directly affect the quality of the investigative process and the fairness of the disciplinary enforcement, which requires dedicated resources with adequate tools, specific skills and understanding in order to be effective and efficient.

According to information provided during fact-finding meetings, Thai government agencies suffer indeed a lack of personnel with appropriate expertise, such as a specialisation in disciplinary law and a background on disciplinary investigative techniques. This is a critical element to ensure the effectiveness of disciplinary proceedings. Ensuring training and building professionalism of enforcement officials not only limit discretionary choices, but also help address technical challenges, ensure a consistent approach and reduce the rate of annulled sanctions due to procedural mistakes and poor quality of investigations (OECD, 2020^[5]).

There are two options that Thailand could consider to overcome these bottlenecks, build knowledge on disciplinary matters and increase the capacity of the disciplinary enforcement system to respond to alleged integrity violations:

1. Consider establishing a registry of trained disciplinary investigators with appropriate legal and investigative background to ensure professionalisation and the quality of the disciplinary process: This approach would require investing efforts in a specialised training for disciplinary investigations and provide appropriate incentives for public officials with a fitting professional and academic background to participate. In that context, Thailand could strengthen the capacity of disciplinary investigators by creating specific job profiles that reflect the mandate and tasks required to carry out the investigations (OECD, 2020^[5]). Incentives could include a variety of options ranging from financial remuneration to certifications. As far as the specialised training is concerned the OCSC is developing a comprehensive training on disciplinary proceedings, which is being updated with a special course (2020-21) (see Table 1.3). It includes targeted modules on how to conduct disciplinary investigations covering a wide range of topics, such as investigation rules, accusation, determining sanctions, etc. The training should be obligatory for all public officials participating in investigative processes. This approach towards a standardised training would also ensure the consistency of investigations and limit potential discretions.

The OCSC and PACC would be best placed to lead the development and management of this registry.

Table 1.3. Overview of OCSC training on disciplinary investigations

General Course		Special Course (currently being updated)	
Subject/Topic	Duration (Hr)	Subject/Topic	Duration (Hr)
Purpose and guidelines for disciplinary process.	3	Psychology of investigation and recording.	6
Roles and Ethics of Disciplinary Actors.			
Civil Service Discipline	6	Techniques and art of investigation.	6
Investigation Rules and Procedures.	9	Writing an investigation report and preparation of Investigation Report	9
Accusation.	3	Disciplinary Seminar.	6
How to set Investigation issues/points.	3	Administrative issues Seminar.	3
Investigation techniques.	3		
Evidences Considering.	3		
Investigation Report Examination.	3		
Fault Consideration and Punishment Determination. Punishments.	3		
Principles of conducting an investigation report.	3		
Conducting investigations and reporting Investigation.	9		
The law of administrative affairs related to Civil Service Discipline.	3		
The law on Prevention and Suppression of Corruption.	3		
Important administrative cases regarding discipline and disciplinary action	3		
The law of Officials Liability for violation	3		
Protecting the moral system according to Civil Service Act B.E.2551 (2008)	3		

Source: Materials provided by OCSC.

The OCSC, as the main agency responsible for disciplinary matters in the public sector, as well as for developing guidance, standards and training could take the lead in this initiative in co-ordination with the government agencies. Currently, HR departments of government agencies collect information about potential members of the commission of inquiry and have developed a type of catalogue from which the members of the commission are selected to participate in disciplinary investigations. However, the same public officials end up carrying out the investigations because of the reluctance to participate. To that end, a centralised approach through developing job descriptions and a registry of trained investigators under the monitoring of the OCSC would be preferable.

2. Consider establishing shared disciplinary services under a centralised entity, in order to enhance the quality of disciplinary investigations and address resources limitations:

Disciplinary systems take many forms (Table 1.4). They may be the responsibility of a centralised entity or decentralised in all government entities. Many countries have mixed systems by which less serious offences are dealt with by the entity or agency to which the public official is attached, while serious offences are within a centralised body or tribunal (Bacio Terracino, 2019^[6]). Thailand follows a mixed system where serious corruption offences are dealt with by the NACC and/or the PACC, while government agencies retain the mandate regarding less serious disciplinary offences. However, as mentioned above, government agencies face serious constraints in effectively enforcing integrity standards related to the close relationships developed between public officials as well as a lack of resources. To address this challenge, Thailand could consider piloting shared disciplinary offices or “outsourcing” the mandate to conduct disciplinary investigations to one of the existing central anti-corruption agencies.

Table 1.4. Comparative overview of administrative procedures in selected countries

Country	Investigations and hearings	Sanctioning decisions	Enforcing sanctions
Brazil	1) Simplified <u>TCA procedure</u> for minor cases (including admission of guilt).	Line ministries for TCA and inquiries.	Line ministries and the National Disciplinary Board
	2) Formal <u>inquiry (sindicancias)</u> by line ministries for less serious offences.	Line ministries for TCA and inquiries.	
	3) Temporary PAD <u>commission</u> of three civil servants (administrative disciplinary process, PAD) for serious offences.	For serious offences, a PAD commission can propose the application of a sanction (including dismissal) to the line ministry and the National Disciplinary Board. These enforcing authorities cannot dissent from the PAD's proposition without proper justification.	
Germany	Individual line ministries	Individual line ministries	Individual line ministries
Hong Kong	ICAC	ICAC to provide recommendations	Individual line ministries
Mexico (under recent reforms under the National Anti-corruption System, secondary implementing legislation pending)	1) Internal control bodies (SFP, Ministry of Public Administration) for minor offences.	Internal control bodies (SFP, Ministry of Public Administration) for minor offences.	Individual line ministries
	2) Administrative Fiscal Tribunal (Tribunal Federal de Justicia Administrativa) for serious cases.	Administrative Fiscal Tribunal for serious cases	
Netherlands	Individual line ministries	Individual line ministries	Individual line ministries
Singapore	CPIB	CPIB to provide recommendations	Individual line ministries

Source: Adapted from (OECD, 2017^[7]).

As far as the shared model is concerned, several countries have been implementing similar approaches in the field of internal audit, to address challenges arising from reduced budgets. For example, the UK has been working on developing a shared audit services model by consolidating internal audit services, moving from the departmental structure to a single integrated audit service, the Government Internal Audit Agency (GIAA). The GIAA is responsible for providing individual departmental audit and assurance services across government and the development of the profession across government.

This model can be used in an adapted version for establishing dedicated but shared disciplinary offices in Thailand. The principle behind creating shared offices is to have sufficient numbers of disciplinary investigators grouped for the development of capabilities. Moreover, it results in various benefits deriving from the building of expertise, leading practices and improving the efficiency and quality of the overall system while reducing the financial cost (OECD, 2017^[8]).

Establishing reasonable timeframes for the conclusion of each step of the investigation is needed to ensure timeliness and efficiency

Fair and effective enforcement mechanisms depend on the timely initiation and conclusion of proceedings. This applies to pre-trial investigations as well as judicial court proceedings, and is equally relevant in criminal and disciplinary systems. In case of a serious disciplinary breach, the CSC Regulation on Disciplinary Proceedings, B.E. 2556 (2013) establishes a timeframe of 120 days to complete the investigation process, starting with the first meeting of the commission of inquiry (Table 1.5). In comparison, the period for the conclusion of the disciplinary process under the PACC is two years, starting from the reception of the allegation and including the imposition of sanctions.

Table 1.5. Duration of disciplinary investigation for a serious disciplinary breach in government agencies

Process	Duration
Once the order of appointment of the commission of inquiry is acknowledged: <ul style="list-style-type: none"> • Directions meeting • Notification and explanation of allegations 	
Taking evidence from the party making the allegation <ul style="list-style-type: none"> • Notice of allegation • Summary of evidence supporting the allegation 	
Taking evidence from the accused public officials <ul style="list-style-type: none"> • Resolution • Disciplinary investigation report • Submission of dossier 	
Total: 120 days	

Note: The timeframe may be extended as necessary for not more than 60 days (per extension). If the inquiry is not completed within 180 days, the person appointing the commission of inquiry must report to the Ministry CSSC.

Source: (OCSC, 2014^[2]).

Without specific timeframes for each step of the investigation, the risk of increased time pressure at the end of the investigative period emerges, jeopardising the quality of the investigation as a whole. Therefore, in order to ensure the timely advancement of the investigation, Thailand may set indicative or fixed maximum timeframes for each step of the investigation process. The OCSC and PACC would be best placed to lead the process of establishing the fixed maximum timeframes for each step of the investigation process.

In general, timeliness needs to be balanced with the inherent complexity that often comes with disciplinary proceedings and usually depends on the specific circumstances of each case. Therefore, it is difficult to

determine a threshold for the timely disciplinary enforcement of integrity standards and even for criminal enforcement international legal instruments have not established specific timeframes for what constitutes a “reasonable time”.

Both the disciplinary process followed within government agencies and within the PACC highlight that Thailand has been able to establish effective thresholds for the timely conclusion of the investigative process. However, as far proceedings in government agencies are concerned, these timeframes do not include the imposition of sanctions by the supervising official, which is not subject to any time limitations. This can lead to excessive delays in carrying out enforcement proceedings, undermine the rule of law and ultimately prevent access to justice. Lengthy processes for the imposition of sanctions may endanger the principle of legal certainty and the validity of evidence, which may deteriorate over time, and thereby prevent the accused from exercising their fundamental rights (OECD, 2017^[7]).

This is particularly the case in Thailand, where there is no statute of limitations for disciplinary misconduct and public official can be sanctioned even after leaving the government. According to Section 100 of the Civil Service Act B.E. 2551 (2008), amended in 2019, the supervising official has to impose the disciplinary sanction within 3 years as from the date that the public official left the government service. This practice may also implicate a potential waste of resources and time if proceedings are initiated, but never concluded creating a backlog of pending disciplinary cases. Indeed, if the sanction is never imposed or imposed very late this affects the whole appeal process before the MSPC and the administrative courts.

The lack of statute of limitations is not necessarily a disadvantage. In fact, several OECD member and partner countries, such as Brazil and Germany pose no formal statute of limitations, while in Mexico this is 3 or 7 years depending on the seriousness of the offence (OECD, 2017^[7]). However, thresholds should be in place to ensure at least the timeliness of disciplinary investigations. An effective approach would be to align the time thresholds of the government agencies to those of the PACC covering the whole process from initiation to imposition of sanctions. In that way, both timeliness, as well as the rights of the accused can be preserved.

Promoting co-operation and exchange of information among institutions and entities

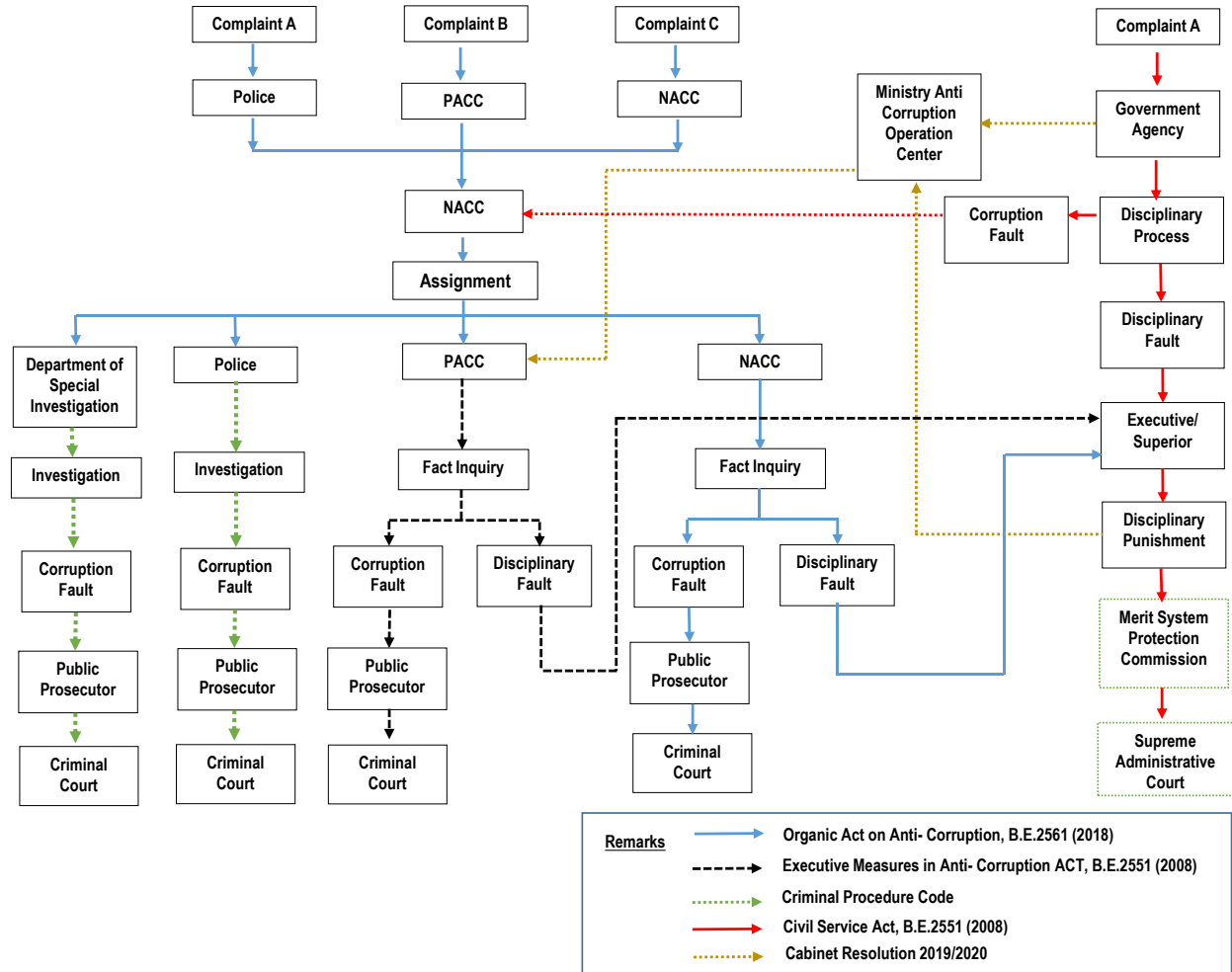
Streamlining the mandate for carrying out disciplinary investigations under the PACC would improve the co-ordination of disciplinary enforcement

In Thailand, allegations are received through different channels and a disciplinary investigation may be initiated by government agencies, the NACC and the PACC. The point of reception of each allegation and the type of the alleged offence determines the actor responsible for carrying out the investigation (see Table 1.1). Regardless of the point of reception, if the allegation concerns a serious corruption offence, the case is always referred for investigation to the NACC. Serious corruption offences are usually considered acts implicating criminal liability.

For all other allegations, the disciplinary investigation is conducted by the organisation that first received the allegation. This can be any government agency, the NACC or the PACC. Once the allegation is received, both the NACC and the PACC initiate preliminary investigation, during which investigators determine whether a serious corruption offence or a disciplinary offence has taken place. In that sense, criminal and disciplinary investigations run in parallel and do not affect each other, as a single act of a public official may be the source of both criminal and disciplinary responsibility

In case the investigation of the NACC or the PACC leads to a disciplinary offence, the case is referred to the respective government agency for further action and the imposition of sanctions. It should be noted that NACC or PACC investigation findings are binding for the government agencies.

Figure 1.1. Overview of disciplinary procedures for public officials in Thailand



Source: Developed by Thai public officials and OECD.

To avoid potential overlaps and duplication of efforts and achieve a more co-ordinated disciplinary enforcement, each of these actors could refer complaints relevant to misconduct of public officials to the PACC for further disciplinary investigation. In that way, NACC would keep a core mandate for the criminal investigations related to corruption, while all disciplinary investigations would be streamlined through the PACC and then referred to the respective government agency for disciplinary action. PACC would be the more suitable candidate to take on the lead role in disciplinary investigations considering that it has already built sufficient expertise and a wealth of available resources that the individual government agencies lack.

Enhancing the co-operation between actors involved in the disciplinary enforcement regimes, for example by promoting regular meetings to exchange good practices

Disciplinary systems involving many different actors and investigating entities require enhanced oversight and co-ordination to achieve effectiveness. This is the case in Thailand, where an allegation about the misconduct of a public official may lead to different procedural paths depending on the agency receiving it. Although a disciplinary investigation may be conducted by one agency and the sanction imposed by another, there is no formal mechanism promoting horizontal dialogue among them.

Co-operation between stakeholders involved in the disciplinary system helps ensure uniform application of integrity standards, address common challenges, as well as promote the exchange of good practices. This can be achieved by organising regular meetings among NACC, PACC and investigators of government agencies to enable dialogue and the exchange of good practices. This initiative would provide investigators of government agencies the opportunity to engage to peer learning exercises with NACC/PACC trained investigators and address commonly faced challenges.

To improve co-ordination and exchange of information, Thailand could consider the development of an electronic case management tool

In order to achieve greater levels of maturity with regards to co-ordination mechanisms, Thailand could consider the use of electronic tools (Box 1.3), which ensure the effective management of each case. Such tools enable the control and following up on information about administrative procedures against public officials. At the same time, they provide a comprehensive mechanism to manage all the steps of cases allowing all relevant actors to follow, access or submit information for the swift advancement of disciplinary cases. Moreover, the case management tool could enable interoperability with other state digital platforms (e.g. tax/asset/interest declarations, databases of public officials involved in public procurement contracts, HR databases, etc.) with the goal of facilitating the access to information that can be used as evidence during investigations. of specific bodies that should be determined by law and without prejudice to the laws and regulations regarding data protection and confidential information.

One caveat lies in the processing of the information and data collected. To be effective, data must be accurate and proportional to the purposes for which they are collected, therefore, they should be collected and processed fairly and lawfully. In practice, this means that the agencies allowed access to such tools should be determined by law and the information collected should be used without prejudice to the laws and regulations regarding data protection and confidentiality (OECD, 2020^[5]).

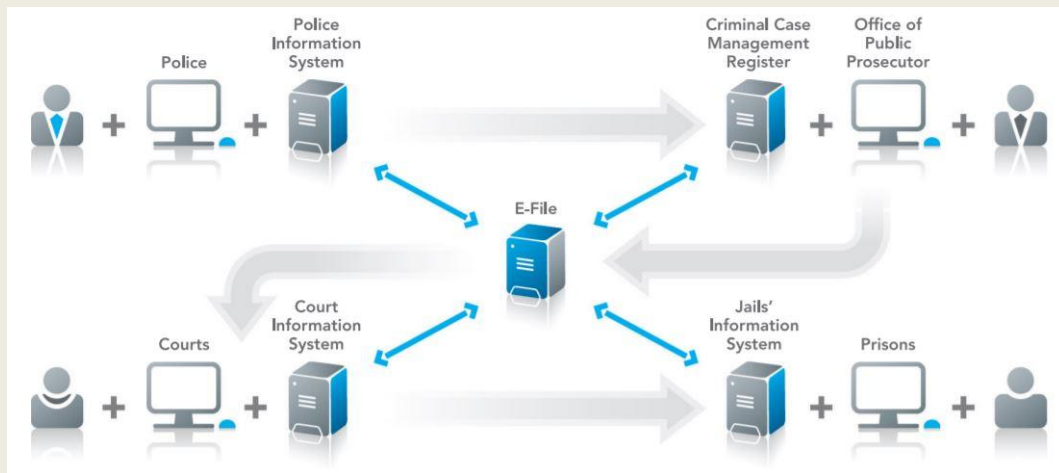
Box 1.3. CGU's Disciplinary Management System and the Estonian Court Information System (KIS)

One of the pillars of CGU's co-ordination function is the Disciplinary Proceedings Management System (Sistema de Gestão de Processos Disciplinares, CGU-PAD), a software allowing to store and make available, in a fast and secure way, the information about the disciplinary procedures instituted within public entities.

With the information available in the CGU-PAD, public managers can monitor and control disciplinary processes, identify critical points, construct risk maps and establish guidelines for preventing and tackling corruption and other breaches of administrative nature.

As for the Estonian Court Information System (KIS), when a court uploads a document to it, it is sent via a secure electronic layer for data exchange (the X-Road) to the e-File, a central database and case management system. The e-File allows procedural parties and their representatives to electronically submit procedural documents to courts and to observe the progress of the proceedings related to them. The document uploaded to the e-File is then visible to the relevant addressees, who are notified via email. After the addressee accesses the Public e-File and opens the uploaded document, the document is considered as legally received. KIS then receives a notification that the document has been viewed by the addressee or her/his representative. If the document is not received in the Public e-File during the concrete time-period the court uses other methods of service.

Figure 1.2. e-File and Court Information System



Source: CGU's website, www.gov.br/cgu/pt-br/assuntos/atividade-disciplinar; www.rik.ee/sites/www.rik.ee/files/elfinder/article_files/RIK_e_Court_Information_System%2B3mm_bleed.pdf; www.rik.ee/en/e-file.

Strengthening the co-ordinating role of the NACC to facilitate the exchange of information between the criminal and disciplinary regime and ensure a coherent approach to investigations

In Thailand, the disciplinary system works in parallel with the criminal one, as part of the wider framework for the enforcement of integrity standards. Authorities under one of those enforcement regimes may become aware of facts or information that are relevant to another regime, and they should swiftly notify them to ensure potential responsibilities are identified. Indeed, cross-agency co-ordination is particularly important during the investigative phase, where relevant information is often detected by agencies whose activity may be a source of both disciplinary and criminal responsibility. (Martini, 2014^[9]). A single act by a public official may also be the source of both criminal and disciplinary responsibility, so all relevant institutions should count on each other's collaboration in order to bring them forward following respective procedures.

The parallel procedures and the different procedural safeguards applying to each regime affect the investigations. Criminal investigations demand a higher level of guarantees regarding the suspect's rights, due to the intrusive nature of the investigative powers attributed to law enforcement authorities. Administrative investigations, on the other hand, involve a much lower level of interference with the rights of individuals and do not require the same safeguards (Cardona, 2003^[41]). While criminal and disciplinary enforcement systems have different objectives and functions, mechanisms should be in place to promote co-operation and exchange of information, which could be relevant to initiate or support each other's proceedings. This could take different forms, such as formalised notification mechanisms and rules to co-ordinate respective proceedings.

According to the information provided during the fact-finding interviews, the NACC already has some co-ordinating functions for initiating enforcement proceedings given that it is the only agency with the main mandate on criminal investigations. Under this role, it issues letters or requests to consult the relevant agencies. Despite the absence of any inter-agency co-ordination mechanism, Thai stakeholders have reported that the disciplinary and criminal regime run concurrently and do not affect each other. However, in many cases, the pending criminal investigations can delay the disciplinary process. To speed up procedures and ensure coherence of investigations across enforcement regimes, it is recommendable that Thailand develops co-ordination mechanisms to prevent the potential fragmentation of efforts and promote mutual learning and understanding (see Box 1.4). The NACC could naturally take the key co-ordinating role in bringing together all anti-corruption stakeholders (i.e. the Prosecutor General, the OCSC, the Ombudsman, the Anti-Corruption Centres, the State Audit Office and the internal audit departments of line ministries) to strengthen enforcement collaboration and establish channels for timely and continuous communication between them.

Box 1.4. Mechanisms to prevent fragmentation of efforts among enforcement regimes

Inter-agency agreements, memorandums of understanding, joint instructions or networks of co-operation and interaction are common mechanisms to promote co-operation with and between law enforcement authorities. Examples of this include various forms of agreements between: the prosecutors or the national anti-corruption authority and different ministries; the financial intelligence unit and other stakeholders working to combat money-laundering; or between the different law enforcement agencies themselves. These typologies of agreements are aimed at sharing intelligence on the fight against crime and corruption or carrying out other forms of collaboration.

In some cases, countries have launched formal inter-agency implementation committees or information-exchange systems (sometimes called “anti-corruption forums” or “integrity forums”) among various agencies; others hold regular co-ordination meetings.

In order to foster co-operation and inter-agency co-ordination, some countries have initiated staff secondment programs among different entities in the executive and law enforcement with an anti-corruption mandate, including the national financial intelligence unit. Similarly, some other countries placed inspection personnel of the anti-corruption authority in each ministry and at the regional level.

Source: (UNODC, 2017^[10]), State of Implementation of the United Nations Convention against Corruption Criminalization, Law Enforcement and International Cooperation.

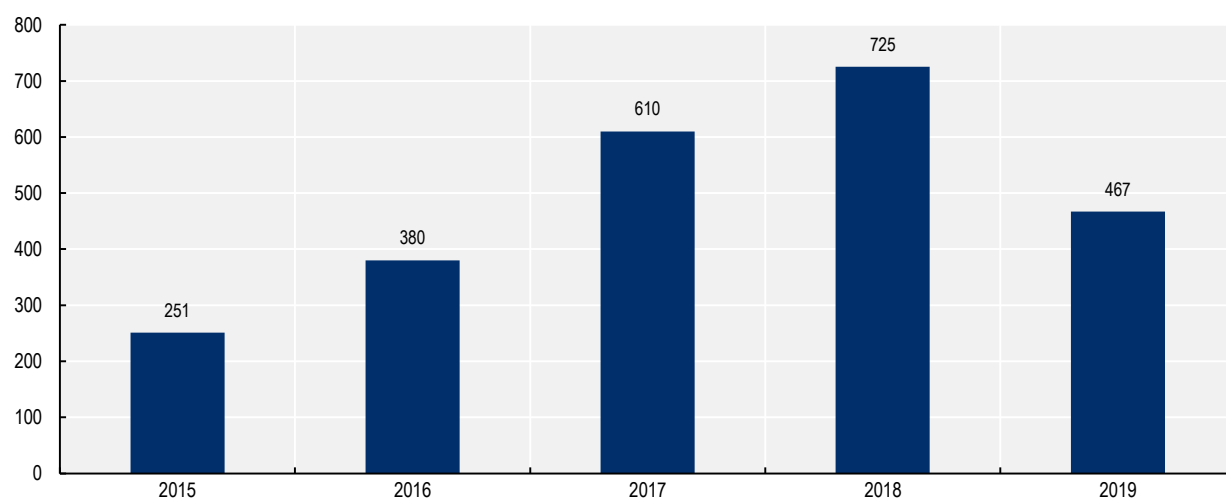
Encouraging transparency about the effectiveness of the disciplinary system and the outcomes of cases

Strengthening the monitoring role of the OCSC on disciplinary enforcement and developing a framework to measure the efficiency, fairness and quality of the disciplinary system

The collection and communication of data on enforcement can support the integrity system in many ways. Firstly, statistical data about the disciplinary sanctions imposed following the integrity violation provide insights into key risk areas, which can inform the development or update of specific policies as well as integrity and anticorruption strategies. Secondly, data can feed indicators used for monitoring and evaluating integrity policies and strategies, and can help assess the performance of the disciplinary system as a whole. Thirdly, data can inform institutional communications, giving account of enforcement action to other public officials and the public (OECD, 2018^[11]). Lastly, consolidated, accessible and scientific analysis of statistical data on enforcement practices enable the assessment of the effectiveness of existing measures and the operational co-ordination among anti-corruption institutions (UNODC, 2017^[10]).

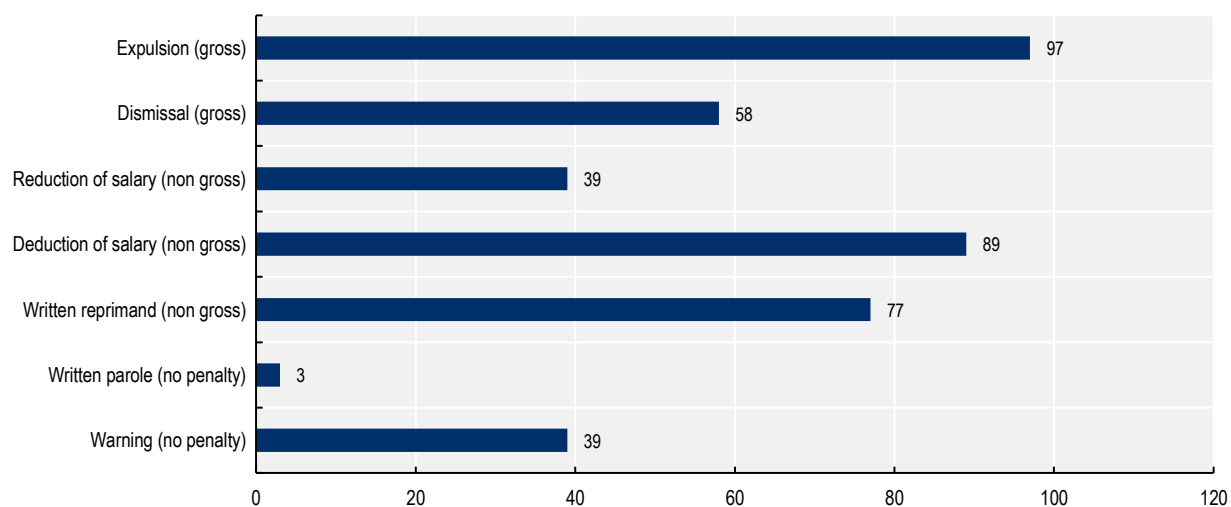
In Thailand, there is no standardised process regarding the collection of enforcement data. The OCSC collects several data from government agencies on imposed disciplinary sanctions (See Figure 1.3 and Figure 1.4). The data is further classified by gender and position of sanctioned public officials, as well as by offence. However, the data is not shared with the public. Upon request, the OCSC may compile information about disciplinary action taken and prepare it in writing for government agencies and interested parties. This practice is not applied by all government agencies. In comparison, the NACC may collect some data about disciplinary proceedings, which however are not publicly accessible due to confidentiality and national security reasons. In some cases, this information can be shared exceptionally upon individual request and only for the interests of the government service.

Figure 1.3. Total disciplinary sanctions issued by government agencies in fiscal years 2015-19



Source: Elaborated by OECD based on data provided by OCSC.

Figure 1 4. Types of sanctions, written paroles and warnings issued by government agencies in fiscal year 2019



Note: "No penalty" means that in the case of a minor disciplinary breach and existence of a cause for refraining from punishment, punishment may have refrained and a written parole or warning may be issued instead (Section 96 of the Civil Service Act). These are not sanctions.

Source: Elaborated by OECD based on data provided by OCSC.

Thailand could consider explicitly assigning to the OCSC the responsibility for collecting and processing statistical data in order to monitor the efficiency and effectiveness of the disciplinary system. This would be in line with the recommended strengthened co-ordinating role of the OCSC (see further analysis in "Promoting co-operation and exchange of information among institutions and entities" section). Given its access to information through its representatives at government agencies and its natural role to design, implement and follow up on disciplinary standards, the OCSC would be well placed to take on this responsibility.

The variety of information collected by the OCSC is already a commendable feature. The next step would be to leverage this exercise to collect data systematically, and to ensure transparency and accountability of the enforcement system. This can be achieved in two ways:

1. Making selected disciplinary information publicly accessible in an interactive and user-friendly way (open data) enabling its re-use and further analysis. In this context, Thailand could consider the practice of Colombia, which elaborated corruption-related sanctions indicators, (Observatorio de Transparencia y Anticorrupción, n.d.^[12]) and Brasil, which periodically collect and publish data on disciplinary sanctions in pdf and xls format. (CGU, n.d.^[13]).
2. Using the data to assess the effectiveness of the disciplinary enforcement system. Through further analysis, the data collected can help identify challenges and areas for further improvements within the disciplinary enforcement regime. The OCSC can make use of this information to enhance its monitoring and oversight activities and the overall effectiveness of disciplinary proceedings. Indeed, this type of data can be used to develop key performance indicators (KPIs) identifying bottlenecks and challenging areas throughout the procedures, but also setting measurable targets for achieving performance objectives.

Building on its current data collection practices, the OCSC could additionally collect data to design a comprehensive system for measuring the effectiveness, efficiency, quality and fairness of disciplinary proceedings. Several international organisations have developed relevant indicators (e.g. share of reported alleged offences taken forward, and average length of proceedings) for the justice system, which can be adapted to the needs and process of the disciplinary system (Council of Europe, 2018^[14]).

In co-operation with the PACC, the data can be used to inform integrity and anti-corruption policies. Moreover, they can help identify areas, sectors and patterns emerging from on-going investigations and sanctions imposed. More generally, data on disciplinary enforcement can be part of the broader monitoring and evaluation of the integrity system. Korea, for example, develops and takes into consideration for the monitoring and evaluation process two indexes related to both disciplinary and criminal corruption cases - the corrupt public official disciplinary index and the corruption case index – within the annual integrity assessment of public organisations. (Anti-Corruption and Civil Rights Commission, n.d.^[15]). Similarly, Thailand could use enforcement data to feed into its Integrity and Transparency Assessment (ITA).

Proposals for action

The analysis of the role and effectiveness of the disciplinary system in Thailand has shown that the country has a solid foundation in place for enforcing integrity rules and standards. However, further reforms are required to improve its quality and introduce a more coherent approach to disciplinary processes. The proposed reforms can be summarised as follows:

Ensuring fairness, objectivity and timeliness

- Consider creating additional safeguards to ensure the integrity of supervising officials and the fair imposition of sanctions.
- Consider establishing a registry of trained disciplinary investigators with appropriate legal and investigative background to ensure professionalisation and the quality of the disciplinary process.
- Consider establishing “shared” disciplinary offices under a centralised agency, in order to enhance the quality of disciplinary investigations and address resource limitations.
- Consider establishing reasonable timeframes for the conclusion of each step of the investigation is needed to ensure timeliness and efficiency.
- Consider aligning the time thresholds of the government agencies to those of the PACC covering the whole process from initiation to imposition of sanctions.

Promoting co-operation and exchange of information among institutions and entities

- Consider streamlining the mandate for carrying out disciplinary investigations under the PACC to avoid potential overlaps and duplication of efforts and achieve a more co-ordinated disciplinary enforcement.
- Consider enhancing the co-operation between actors involved in the disciplinary enforcement regimes, for example by promoting regular meetings to exchange good practices.
- Consider strengthening the co-ordinating role of the NACC to facilitate the exchange of information between the criminal and disciplinary regime and ensure a coherent approach to investigations.

Encouraging transparency about the effectiveness of the disciplinary system and the outcomes of cases

- Consider assigning the responsibility for collecting and processing statistical data to the OCSC in order to monitor the efficiency and effectiveness of the disciplinary system.
- Consider making selected disciplinary information publicly accessible in an interactive and user-friendly way (open data) enabling its re-use and further analysis;
- Consider using collected data to assess the effectiveness of the disciplinary enforcement system;
- Consider using enforcement data to inform integrity and anti-corruption policies as part of the broader monitoring and evaluation of the integrity system.

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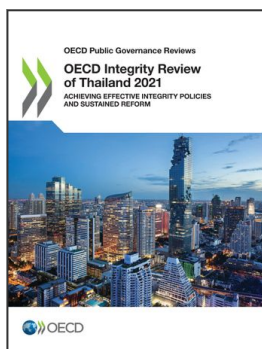
Notes

¹ National Police Act B.E. 2547 (2004).

² Act on Judicial Service of the Courts of Justice B.E. 2543 (2000).

³ Local Personnel Administration Act B.E. 2542 (1999).

⁴ A supervising official is usually a director general or above. The Civil Service Act defines the supervising official as the person authorised to make an instatement order under Section 57 of the Act (OCSC, 2014_[2]).



From:
OECD Integrity Review of Thailand 2021
Achieving Effective Integrity Policies and Sustained Reform

Access the complete publication at:
<https://doi.org/10.1787/e8949f1b-en>

Please cite this chapter as:

OECD (2021), “Ensuring a fair, effective and coherent disciplinary system for public officials in Thailand”, in *OECD Integrity Review of Thailand 2021: Achieving Effective Integrity Policies and Sustained Reform*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/d38de1de-en>

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