

The Implementation of Deferred Prosecution Agreements in the Thai Legal System: Challenges and Prospects

การประยุกต์ใช้ข้อตกลงชะลอฟ้องในบริบทกฎหมายไทย: ศึกษาเปรียบเทียบกับระบบกฎหมายของสหรัฐอเมริกาและสหราชอาณาจักร

Nochaya Songsatit¹ and Tidarat Sinlapapiromsuk¹

โนชยา ส่งสถิต¹ และ จิตารัตน์ ศิลปภิรมย์สุข¹

¹Master of Law (LL.M.) in Business Law Faculty of Law, Chulalongkorn University

¹หลักสูตรนิติศาสตรมหาบัณฑิต สาขากฎหมายธุรกิจ (หลักสูตรนานาชาติ) คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย

Received: June 9, 2025

Revised: July 8, 2025

Accepted: July 9, 2025

Abstract

Deferred Prosecution Agreements (DPAs) have emerged as a crucial legal instrument in the fight against corporate crime across a number of advanced legal jurisdictions. This article presents a comprehensive analysis of both the legal foundations and practical applications of DPAs, with a particular focus on their potential integration into the Thai legal system. Through a comparative study of the DPA frameworks in the United States and the United Kingdom—each of which embodies distinct institutional models supported by robust legal infrastructures—this article highlights valuable lessons for Thailand. The study assesses the extent to which Thailand's existing legal structure could accommodate a DPA regime tailored to its unique procedural and institutional conditions. It begins by examining the current framework governing corporate criminal liability in Thailand, identifying key limitations such as the lack of prosecutorial discretion, procedural constraints in criminal investigations, challenges in judicial sentencing, and enforcement inefficiencies, particularly in cases involving bribery and corruption. Drawing from international case studies and legal best practices, the article proposes a structured DPA model for Thailand. The proposed framework seeks to align with the country's civil law tradition while embedding safeguards such as judicial oversight, institutional transparency, and enforceable compliance mechanisms to ensure both legal integrity and practical effectiveness.

Keywords: Deferred Prosecution Agreements; Corporate criminal liability; Anti-bribery law; Thai legal reform; Prosecutorial discretion; Judicial oversight

บทคัดย่อ

ข้อตกลงการชดเชยได้กลายเป็นเครื่องมือทางกฎหมายที่สำคัญในการจัดการกับอาชญากรรมของนิติบุคคลในหลายประเทศที่มีกฎหมายก้าวหน้า บทความนี้มุ่งวิเคราะห์เชิงลึกทั้งในมิติทางกฎหมายและการใช้ข้อตกลงการชดเชยและความเป็นไปได้ในการนำมาใช้ในกฎหมายไทย และวิเคราะห์เปรียบเทียบกับระบบชดเชยของสหรัฐอเมริกาและสหราชอาณาจักร ซึ่งต่างมีรูปแบบปฏิบัติที่มีลักษณะเฉพาะและมีหน่วยงานทางกฎหมายรองรับอย่างชัดเจน บทความฉบับนี้แสดงให้เห็นถึงแนวทางที่กฎหมายไทยสามารถรองรับกลไกของข้อตกลงชดเชยที่เหมาะสมกับบริบทภายในประเทศ โดยการวิเคราะห์ตามบทความเริ่มต้นด้วยการประเมินความรับผิดชอบทางอาญาของนิติบุคคลตามกฎหมายไทย รวมถึงข้อจำกัดด้านกระบวนการทางทบทวนและอำนาจของพนักงานอัยการ ตลอดจนดุลพินิจในการลงโทษผู้กระทำความผิดของศาล และปัญหาด้านการบังคับใช้ เฉพาะในกรณีที่เกี่ยวข้องกับการให้สินบน โดยอาศัยกรณีศึกษาและคดีความจากประเทศต่าง ๆ ทั่วโลก บทความนี้เสนอกรอบการดำเนินการนำข้อตกลงการชดเชยที่มีโครงสร้างชัดเจนและสอดคล้องกับระบบกฎหมายของไทย พร้อมทั้งรับรองการมีส่วนร่วมของศาล ความโปร่งใส และกลไกรับผิดชอบด้านการปฏิบัติตามข้อตกลงอย่างเป็นรูปธรรม

คำสำคัญ: ข้อตกลงการชดเชย; ความรับผิดชอบทางอาญาของนิติบุคคล; กฎหมายต่อต้านการให้สินบน; การปฏิรูปกฎหมายไทย; ดุลพินิจของพนักงานอัยการ; การกำกับดูแลโดยศาล



Introduction

Economic crimes committed by corporations continue to undermine fair market practices and erode public confidence in legal and regulatory systems. These offenses are inherently complex, often hidden within intricate corporate operations, making them difficult for enforcement authorities to investigate and prosecute effectively.

In response to these challenges, countries such as the United States and the United Kingdom have implemented Deferred Prosecution Agreements (DPAs)—legal instruments that empower prosecutors to postpone criminal proceedings contingent

Upon a company's agreement to fulfill specific conditions, such as paying fines, cooperating with authorities, and implementing internal compliance reforms. These agreements have been particularly successful in addressing corporate bribery while minimizing the disruptive impact of full-scale prosecutions.

Thailand, however, lacks a comparable mechanism. While the principle of corporate liability exists under domestic statutes like the Organic Act on Anti-Corruption B.E. 2561, the practical application of such laws remains limited. Public prosecutors operate under strict procedural constraints, with no authority to negotiate settlements or offer conditional non-prosecution. Sanctions available for corporate offenders—mainly monetary penalties and asset forfeiture—are often too modest to deter serious misconduct. Previous legislative efforts to establish a DPA-style framework have failed, largely due to concerns about institutional integrity and corruption risks.

This article explores the feasibility of introducing a DPA regime into the Thai legal system. Drawing on comparative insights from established DPA practices abroad, it proposes a tailored framework that balances legal enforceability with procedural transparency, prosecutorial discretion, and judicial supervision

to enhance corporate accountability in Thailand.

Legal Gaps in Thai Bribery Enforcement

Thailand's legal framework for addressing corporate crime, particularly bribery and corruption, remains underdeveloped compared to jurisdictions with established Deferred Prosecution Agreement (DPA) regimes. Thai public prosecutors lack authority to negotiate with offenders or implement pre-trial diversion mechanisms. Prosecutions depend entirely on police investigations, and decisions are limited to prosecution or non-prosecution under Section 143 of the Criminal Procedure Code. There is no statutory provision allowing prosecutors to defer prosecution in exchange for cooperation or compliance measures, except in limited contexts such as juvenile justice and narcotics cases.

Although a bill proposing a DPA-like mechanism was introduced in 2013, it was ultimately rejected due to corruption concerns. Thailand's anti-bribery legislation, notably Section 176 of the Organic Act on Anti-Corruption B.E. 2561, has improved by criminalizing bribery involving both domestic and foreign public officials, and holding juristic persons liable where internal controls are lacking. However, penalties are often too lenient to deter corporate misconduct, and enforcement remains constrained by procedural rigidity and insufficient prosecutorial discretion.

Cultural practices such as informal gift-giving ("sin nam jai") and relatively low public sector salaries further complicate anti-corruption efforts. While Section 176 mirrors provisions found in the U.S. FCPA and U.K. Bribery Act, Thailand's lack of a DPA mechanism undermines its practical effectiveness. Without the ability to negotiate compliance-based resolutions, Thai authorities face challenges in incentivizing

corporate reform and securing timely accountability for economic offenses.

The Role of Deferred Prosecution Agreements in Modern Corporate Crime Enforcement

A Deferred Prosecution Agreement (DPA) is a formal legal instrument established through an agreement between a prosecuting authority and a corporate defendant, under which the initiation or continuation of criminal proceedings is suspended for a specified period. During this deferral period, the corporate entity obligated to meet certain conditions, which typically include acknowledging the factual basis of the alleged misconduct, paying monetary penalties, cooperating fully with ongoing investigations, and adopting or enhancing internal compliance and governance measures.

Should the corporation fulfill all obligations within the agreed timeframe, prosecutors may choose to discontinue the case. Conversely, a breach of the agreement permits resumption of prosecution.

DPAs have emerged as an effective legal alternative to traditional criminal prosecution in cases involving complex forms of corporate misconduct, such as bribery, fraud, money laundering, and regulatory breaches. They offer a dual function: promoting accountability while facilitating internal corporate reform. By avoiding the adversarial nature and potential systemic impact of full criminal trials, DPAs provide a balanced approach that supports both enforcement objectives and economic stability.

Jurisdictions such as the United States and the United Kingdom have adopted DPAs as central components of their anti-corruption and corporate enforcement regimes, particularly under statutes like the Foreign Corrupt Practices

Act (FCPA) and the UK Bribery Act 2010. In these settings, DPAs allow enforcement agencies to impose meaningful sanctions without causing disproportionate harm to shareholders, employees, or the broader economy—outcomes that may otherwise result from a corporate conviction. Beyond deterrence and proportionality, DPAs serve broader public policy goals. They streamline the resolution of complex litigation, reduce costs for both the state and corporate defendants, and facilitate prompt compensation for victims.

Moreover, they provide incentives for companies to develop stronger compliance programs and embed ethical practices within their organizational culture. As such, DPAs represent a shift in modern criminal justice systems toward pragmatic, reform-oriented enforcement models, particularly in the context of corporate and white-collar crime.

Deferred Prosecution Agreements in the United States: Prosecutorial Discretion and Corporate Compliance

In the United States, Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) are non-statutory tools used by prosecutors to address corporate crime. Their use is guided by the U.S. Attorney's Manual and reflects significant prosecutorial discretion. Originally intended for minor offenses, DPAs have become central to resolving complex cases, particularly under the Foreign Corrupt Practices Act (FCPA).

A DPA allows prosecutors to suspend charges against a corporation in exchange for the fulfillment of certain conditions. These typically include monetary penalties, full cooperation with investigations, and improvements to internal compliance programs. If the company complies,

the case is dismissed; if it fails, prosecution may proceed.

The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) jointly enforce the FCPA. Since the early 2000s, DPA use has grown significantly, accompanied by increasing penalties and stronger corporate governance requirements. Policy measures such as the Yates Memorandum and the DOJ's Corporate Enforcement Policy underscore the emphasis on accountability and cooperation.

The U.S. DPA model is characterized by minimal judicial oversight, voluntary disclosure incentives, and flexible terms. It prioritizes efficient resolution, mitigates economic fallout, and encourages proactive corporate reform without resorting to lengthy trials. This approach reflects a pragmatic balance between enforcement and rehabilitation, reinforcing corporate compliance through negotiated accountability.

Deferred Prosecution Agreements in the United Kingdom: Judicial Oversight and Legal Integrity in Corporate Enforcement

In the United Kingdom, Deferred Prosecution Agreements (DPAs) have become a central tool for addressing corporate bribery, particularly under the Bribery Act 2010. Introduced through the Crime and Courts Act 2013 and operational since 2014, the U.K.'s statutory DPA regime applies exclusively to corporate entities and emphasizes judicial oversight to ensure transparency and fairness. A DPA allows prosecutors—specifically the Serious Fraud Office (SFO) and the Crown Prosecution Service (CPS)—to suspend criminal charges against a corporation in exchange for compliance with strict terms, including financial penalties, cooperation with ongoing investigations, and improvements to anti-bribery compliance

systems.

The U.K. DPA process consists of three stages: negotiation, judicial approval, and enforcement. Before offering a DPA, prosecutors must meet both evidential and public interest thresholds. Upon successful fulfillment of the terms, proceedings are discontinued. However, non-compliance may result in the resumption of prosecution. The requirement for judicial approval of both initial agreements and any modifications ensures procedural transparency and proportionality.

Unlike the U.S. system, where prosecutorial discretion is dominant, the U.K. approach integrates a more formal judicial role in assessing the fairness of outcomes. This structural difference enhances public trust and reinforces the legitimacy of negotiated resolutions. Taken together, the U.S. and U.K. models provide contrasting but complementary insights for jurisdictions like Thailand, which are considering the adoption of DPA frameworks to promote corporate accountability while ensuring due process and legal integrity.

Comparative Analysis of DPAs in the U.S. and U.K.

The Deferred Prosecution Agreement (DPA) frameworks in the United States and the United Kingdom share a common purpose: to resolve corporate criminal cases—particularly bribery—without the full consequences of a criminal trial, while promoting institutional reform. However, their legal structures and operational mechanisms diverge significantly, reflecting differing legal traditions.

In the United States, DPAs operate without a formal statutory foundation. They are governed by internal prosecutorial guidelines, such as the

U.S. Attorney’s Manual, and are implemented primarily by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). U.S. prosecutors hold substantial discretion to negotiate agreements, often without court intervention. Judicial oversight is minimal, as illustrated in *United States v. Fokker Services B.V.*, where the court affirmed the DOJ’s autonomy in prosecutorial decision-making. While this model promotes efficiency and allows for swift resolution of complex cases, it has been criticized for lacking transparency and meaningful external accountability.

In contrast, the United Kingdom established its Deferred Prosecution Agreement (DPA) regime through statute—Section 45 and Schedule 17 of the Crime and Courts Act 2013—with judicial oversight as a fundamental safeguard. The Crown Court must approve all DPAs through a two-stage process. First, at the preliminary hearing (held privately), the judge assesses whether entering into a DPA is in the interests of justice. Second, at the final hearing (held publicly), the court must declare the agreement “fair, reasonable, and proportionate” before it becomes legally binding.

Judicial oversight extends beyond approval. If a breach is alleged or the parties wish to amend the agreement, court authorization is again required. The judge ensures that enforcement remains aligned with the original terms and public interest. This continuing scrutiny distinguishes the U.K. model from more discretionary systems like that of the United States and reinforces transparency, legitimacy, and accountability in resolving corporate crime. It also builds public trust in non-trial resolutions and prevents undue leniency in high-stakes economic offenses.

The most significant distinction between the two models lies in the role of the judiciary. The U.S. system favors prosecutorial discretion and efficiency, while the U.K. model emphasizes judicial review and transparency. Both approaches offer benefits and trade-offs. The U.S. model is quicker and more flexible, whereas the U.K. model reinforces public trust through procedural safeguards.

Adapting International DPA Mechanisms for Thailand's Anti-Bribery Strategy

To address persistent challenges in corporate bribery enforcement, Thailand should adopt a Deferred Prosecution Agreement (DPA) regime tailored to its legal context. While Section 176 of the Organic Act on Anti-Corruption B.E. 2561 (2018) imposes liability on juristic persons that fail to prevent bribery, its impact is undermined by procedural rigidity and the absence of prosecutorial flexibility. Currently, prosecutors are limited to either pursuing full prosecution or dropping charges altogether, with no legal mechanism for conditional settlement or reform-based resolution.

Drawing from the United States, Thailand could benefit from granting prosecutors discretion to defer charges in exchange for corporate cooperation, financial penalties, and internal compliance reforms. The United Kingdom provides a complementary model through structured judicial oversight. There, DPAs require court approval at both the preliminary and final stages, ensuring transparency, public accountability, and legal integrity.

A Thai DPA statute should clearly define eligible offenses—such as bribery, fraud, and

money laundering—and empower agencies like the Office of the Attorney General and the National Anti-Corruption Commission to negotiate agreements. Judicial review would safeguard fairness, prevent abuse, and enhance public confidence in non-trial resolutions. Provisions should include compliance monitoring, independent audits, and publication of court-approved agreements, subject to confidentiality safeguards.

By integrating prosecutorial discretion with judicial supervision, Thailand can create a DPA framework that encourages voluntary disclosure, deters corporate misconduct, and strengthens its alignment with international anti-corruption standards.

Conclusion

Deferred Prosecution Agreements (DPAs) represent a modern enforcement tool that balances legal accountability with corporate reform. While Thailand has made progress through Section 176 of the Organic Act on Anti-Corruption, the absence of a DPA mechanism limits prosecutorial flexibility and hampers effective bribery enforcement. Drawing from the U.S. and U.K. models, Thailand can adopt a hybrid framework that permits conditional settlements while ensuring judicial oversight. This approach would promote transparency, encourage voluntary disclosures, and reduce the burdens of prolonged litigation. A well-designed DPA regime would strengthen corporate compliance, enhance prosecutorial efficiency, and align Thailand's anti-corruption strategy with international legal standards and public expectations.



References

- Action Fraud. (2012). *Fraud costs the UK over £73 billion, says the national fraud authority*. Retrieved from <https://www.actionfraud.police.uk/news/fraud-costs-the-uk-over-73-billion-says-the-national-fraud-authority>
- Bisgrove, M., & Weekes, M. (2014). *Deferred prosecution agreements: A practical consideration*. Retrieved from <https://www.6kbw.com/wp-content/uploads/2015/07/Deferred-Prosecution-Agreements.pdf>
- Breier, T. (n.d.). *Anti-corruption in Thailand*. Retrieved from <https://www.globalcompliancenews.com/anti-corruption/anti-corruption-in-thailand/>
- Bronitt, S. H. (2024). *Regulating deferred prosecution agreements: Payoffs and pitfalls*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4599634
- Clifford Chance Thailand. (2017). *Criminal liabilities of directors*. Retrieved from <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2017/02/thailand-criminal-liabilities-of-directors.pdf>
- The Commissioners of the National Anti-Corruption Commission. (2017). *Guidelines for internal control measures for juristic persons in preventing bribery of public officials, foreign officials, and international organization officials (p. 4)*. Retrieved from https://www.opm.go.th/opmportal/multimedia/watchaon/Guidelines/%E0%B8%84%E0%B8%B9%E0%B9%88%E0%B8%A1%E0%B8%B7%E0%B8%AD_th.pdf
- Damrongkulnan, W. (2017). New regulation for suspension of the determination of punishment and suspension of the infliction of punishment. *Ramkhamhaeng Law Journal*, 6(2), 118.
- Feldman, S. (2016). *United States v. Fokker Services B.V.* Retrieved from <https://www.quimbee.com/cases/united-states-v-fokker-services-b-v>
- Gibson, D., & Crutcher, LLP. (2023). *2022 year-end FCPA update*. Retrieved from <https://www.gibsondunn.com/wp-content/uploads/2023/03/2022-year-end-fcpa-update.pdf>
- Kititatsanasorchai, W. (n.d.). *Since litigation is imminent, what is the rationale for postponement?* Retrieved from <https://www3.ago.go.th/nitivajra/pre-trial-diversion/>
- Langton, L. (2007). Can general strain theory explain white-collar crime? A preliminary investigation of the relationship between strain and select white-collar offenses. *Journal of Criminal Justice*, 35(1),
- Likasitwatanakul, S. (2022). *Criminal liability of legal entities and their representatives*. Retrieved from <https://alumni.law.tu.ac.th/news/692d228d-d0eb-48f1-9182-329462ffccf7/detail>
- Miralis, D. (n.d.). *The key advantages and disadvantages of a DPA scheme*. Retrieved from <https://ngm.com.au/bribery-corruption-lawyers/dpa-scheme/>
- Offices of the United States Attorneys. (2022). *Mission and functions*. Retrieved from <http://www.justice.gov/usao/eousa/mission.html>
- Sudti-autasilp, B. (2008). *Corporate crime and the criminal liability of corporate entities in Thailand*. Retrieved from https://www.unafei.or.jp/publications/pdf/RS_No76/No76_11PA_Sudti-autasilp.pdf

Susaorat, T. (2019). Deferred prosecution agreement and the efficiency of this method: Comparison and analysis between the UK and the US. *Judiciary office magazine: Dulapa*, 62(1), 6.

Tilleke & Gibbins. (2022a). *An overview of criminal litigation in Thailand*. Retrieved from <https://www.tilleke.com/insights/an-overview-of-criminal-litigation-in-thailand/>

Tilleke & Gibbins. (2022b). *Overview of anticorruption laws in Thailand*. Retrieved from <https://www.tilleke.com/insights/overview-of-anticorruption-laws-in-thailand/>

