

# LEGAL SYSTEM IN THAILAND<sup>\*</sup>

*Tithiphan Chuerboonchai*  
*Faculty of Law, Chulalongkorn University*  
*12102007*

The Kingdom of Thailand was established more than seven hundred years ago under the reign by several dynasties (the present reign is Ratanakosin Dynasty) and had ever since been an absolute monarchy until 1932 when the "People Body" (i.e. a Revolutionary Group) seized the monarchic power from the King and issued the Provisional Constitution for the Administration of Siam, B.E. 2475 (1932) on 27 June 1932. Thereafter, Thailand has adopted a democratic regime of government with the King as the head of the State; with interruptions of several intermittent coup d'états between then and now (the last coup was staged in September 2006).

On her economic system, Thailand has adopted a market economy. This has been specifically prescribed in the Constitution. Currently, Thailand has population approximately 66 million people.

## 1. The Laws

On the legal system, Thailand is a civil law country. All laws are legislated in statutes or codes. The laws in Thailand are classified as follows:

### 1.1 The Constitution

The present Constitution, the Constitution of the Kingdom of Thailand (2550) is the eighteenth Constitution in the history of democracy in Thailand. It was drafted by the Constitution Drafting Committee and adopted by the Constitution Drafting Assembly, both of which were established under the 2006 Temporary Constitution of the Kingdom of Thailand and becomes effective from 24 August 2007.

The Constitution of the Kingdom of Thailand is the supreme law of the country. This has been stated in the Constitution specifically as follows:

***“The Constitution is the supreme law of the State. The provision of any law, rule or regulation, which is contrary to or inconsistent with this Constitution, shall be unenforceable.”***

The Constitution Court is charged with authority to determine whether the law is contrary to or inconsistent with the Constitution.

### 1.2 Statutes

At the statutory level, the laws in Thailand are divided into Code, Act and Emergency Decree. Currently, there are six Codes and more than six hundred Acts and Emergency Decrees.

Codes are codified by the legislative branch and consist of the following: the Civil and Commercial Code, the Penal Code, the Civil Procedure Code, the Criminal Procedure Code, the Land Code and the Revenue Code. The Civil and Commercial Code constitutes basic laws applicable to the private relationships and commercial transactions. It contains six Books, i.e. Book I: General; Book II: Obligations; Book III: Specific Contracts; Book IV: Property; Book V:

---

\* Adapted from the author's previous writing presented in an international conference in Japan, 2000.

Family and Book VI: Succession. The Penal Code contains provisions relating to criminal acts and penalty generally. The Civil and the Criminal Procedure Codes prescribe the process for the procedure on Civil and Criminal cases. The Land Code prescribes the types and the acquisition of the land in Thailand. The Revenue Code imposes tax liabilities in relation to income tax, value-added tax, specific business tax and stamp duty on persons concerned.

Acts are statutes passed by the National Assembly. The Acts are mostly considered as public law though they may contain certain provisions that would govern the private relationships as well. Most of them contain provisions in relation to criminal acts and penalty. In addition, various Acts impose criminal liabilities on the representatives of the juristic persons if the juristic persons are found guilty of certain illegal acts under the Acts. One common feature of the Acts is that the provisions in the Acts are concise. As such, the Acts will grant the implementing agency a broad power and authority to issue subordinate law.

Emergency Decrees are laws promulgated by the Executive Branch in an emergency circumstance that meets the criteria set forth in the Constitution. After the promulgation, the Emergency Decrees need ratification by the National Assembly. If the National Assembly does not ratify the Emergency Decrees, such Emergency Decrees will cease to be effective. However, such cessation does not affect acts previously undertaken under such Emergency Decrees.

Apart from the Code, Acts and Emergency Decrees, there are also laws promulgated by the coup d'état bodies. These laws were often named as a Revolutionary Decree, National Executive Order or the like and mostly had the same hierarchy as those of the Acts.

### 1.3 Subordinate Laws

Subordinate laws are laws issued by the Executive branch under the authority granted by the Acts, Emergency Decrees or the Revolutionary Decrees. They are in the form of Royal Decrees, Ministerial Regulations and Notifications, Departmental Orders, etc. The subordinate laws play a major role in the implementation of the public laws as they prescribe rules and procedures as well as details of the basic laws. At time, these subordinate laws were issued beyond the authority granted by the enabling provisions and frequently challenged in the Administrative Court.

## **2. Institutions**

Similar to other democratic countries, there are three main branches of government consisting of the National Assembly, the Council of Ministers and the Courts. These three institutes constitute the main vehicle in driving the economic and social development in Thailand.

### 2.1 The National Assembly

The National Assembly consists of the House of Representatives and the Senate. The House of Representatives consists of four hundred and eighty members, eighty of whom are elected on a proportion basis and the other four hundred members are elected on a constituency basis. The House of Representatives is charged with the duty of enactment of the Constitution and statutes; oversight of the administration of the Council of Ministers; approving certain matters as required by the Constitution, etc.

The Senate consists of one hundred and fifty members, (currently) seventy six of which is to be elected on a constituency (by Changwat or the province) basis and the remaining is to be publicly selected by the Selection Committee, established by the Constitution. The Senate is granted with authority to approve the proposed laws passed by the House of Representatives, to

appoint and remove persons to serve in certain independent bodies, committees or tribunal, and has the right to submit a motion for a general debate without a resolution to be passed.

## 2.2 The Council of Ministers (the Cabinet)

Under the present Constitution, the Cabinet consists of a Prime Minister and Ministers not exceeding thirty-five in number. The Prime Minister must be a member of the House of Representatives but there is no such requirement on the Ministers. The Cabinet is charged with the general functions of the Executive Branch.

## 2.3 The Courts

Thailand has adopted the dualistic court system, i.e. the courts of justice and the administrative courts.

The courts of justice have divided into three levels, i.e. the Courts of First Instances, the Courts of Appeal and the Dika Court (Supreme Court). The Courts of First Instances have further divided into general courts and specialized courts. The general Courts of First Instances are scattered around Thailand. The specialized courts, i.e. the Central Labor Court, the Children and Juvenile Courts, the Central Tax Court, the Central Intellectual Property and International Trade Court and the Bankruptcy Court, are mainly situated in Bangkok but have jurisdiction throughout the country. Upon judgment by the general Court of First Instances, the parties may appeal the judgment to the Court of Appeal and finally to the Dika Court. As to the specialized courts, the parties may appeal directly to the Dika Court. In appealing the cases, the parties may appeal both issue of facts and issue of laws. However, under the Constitution, the Dika Court may refuse to hear issues of laws and issues of facts that appealed to the Dika Court if it considers that the issues are insignificant. The courts of justice have jurisdiction over cases other than those fallen into the jurisdiction of the Constitution Tribunal, the Administrative Courts and the Martial Courts.

As to the Administrative Court, it is divided into the Administrative Courts of First Instances and the Supreme Administrative Court. The Administrative Courts have jurisdiction over the administrative cases which include certain categories of government contracts..

Apart from the courts of justice and the administrative courts, there still are another two courts, i.e. the Constitution Tribunal and the Martial Court. The Constitution Tribunal has jurisdiction over a complaint relating to a conflict of any provision of the law and the Constitution, etc. The Martial Court, having jurisdiction over the criminal cases committed by the military officer, is also divided into three levels, i.e. the Martial Courts of First Instances, the Appellate Martial Court and the Supreme Martial Court.

## 2.4 Constitution Bodies

The Constitution also establishes a number of Constitution bodies to carry out several supervisory and litigation functions, i.e. the National Counter Corruption Commission, the Election Commission, the Auditor General, the Ombudsman, the Attorney General, the National Human Rights Commission, the National Economic and Social Advisory Council.

## **3. Legal Process**

Under the Constitution, the draft statutes (the Bill) may be proposed either by the executive branch or by the members of the House of Representatives provided that if the bill concerns with the financial matter, it may be proposed only with the endorsement of the Prime Minister. In addition, the persons having the right to vote of not less than ten thousand in number

may submit a petition to the President of the National Assembly to consider laws relating to the rights and liberties of the Thai people and relating to the fundamental policies of the State. After approved by the House of Representatives, the Bill will be submitted to the Senate for consideration. Once the Senate approves the Bill, the Bill will be submitted to His majesty the King for His Highness's signature.

#### **4. Legal Education**

The legal education in Thailand may be divided into several levels as follows:

##### **4.1 Undergraduate Level**

The first law degree is granted at the undergraduate level. It normally takes four years to complete the program but three years for students enrolling in the law faculty that offers the first law degree to the graduate students. Chulalongkorn Law Faculty is one of the few law faculties that offer law as a second degree. The average maturity of the first year students in normal undergraduate law degree is approximately 16 to 17 years old. Currently, there are more than ten public law faculties offering class-room law studies and two public law faculties offering open or distant learning law study program. There are approximately forty private law schools around the country offering undergraduate law study program. Each year, there are approximately 10,000 students graduated from all law faculties.

##### **4.2 Admission to the Bar**

After students finish their first law degree, they may approach to take an exam for the admission to the Bar. There is no requirement for the students to sit in study. The qualifying exam divided into four sessions. Upon passing all the four sessions, the students will have an oral exam. If passed, the students will be admitted to the bar. It should be noted that the admission to the bar is not a pre-requisite to practise law though it is a pre-requisite for the qualifying examination for a judge trainee and a prosecutor trainee.

##### **4.3 Law Practice License**

As mentioned above, the admission to the bar is not a pre-requisite for law practice; the Lawyer Council of Thailand has adopted a license system whereby any law graduate in Thailand may apply for. To secure the license, the applicant must join a law firm as a trainee and pass the test conducted by the committee appointed by the Lawyer Council of Thailand.

##### **4.4 Graduate Study in Law**

There are currently more than ten public law faculties and a number of private law schools that offer law studies in graduate level. The graduate law studies usually take approximately two-year coursework and another one or two years to complete the dissertation. Most of the graduate programs are Thai program except few of them may offer international or English LL.M. program. Chulalongkorn Law Faculty with cooperation from University of Victoria of Canada, University of British Columbia of Canada and Kyushu University of Japan, is the first law faculty that offered LL.M. international program in Business Law.