

4-10-2004

Overview of Legal Systems in the Asia-Pacific Region: Thailand

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Recommended Citation

Triamanuruck, Ngamnet; Phongpala, Sansanee; and Chaiyasuta, Sirikanang, "Overview of Legal Systems in the Asia-Pacific Region: Thailand" (2004). *Overview of Legal Systems in the Asia-Pacific Region (2004)*. Paper 4.
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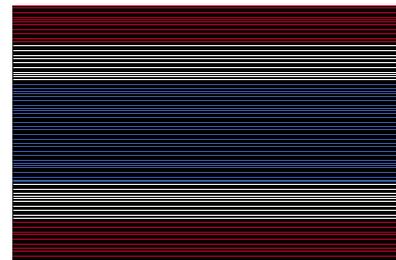
OVERVIEW OF LEGAL SYSTEMS IN THE ASIA-PACIFIC REGION

Jointly Presented By
THE ASIAN AMERICAN LAW STUDENTS' ASSOCIATION
 and **LL.M. ASSOCIATION**

Saturday, April 10, 2004
Harriet Stein Mancuso Amphitheater (G90)
Myron Taylor Hall ~ Cornell Law School

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Five horizontal bands of red (top), white, blue (double width), white, and red

THAILAND
(Capital:
BANGKOK)
Founding Member
of ASEAN

A unified Thai kingdom was established in the mid-14th century. Known as Siam until 1939, Thailand is the only Southeast Asian country never to have been taken over by a European power. A bloodless revolution in 1932 led to a constitutional monarchy.

- *GEOGRAPHIC DATA* – total: 514,000 sq km; water: 2,230 sq km; land: 511,770 sq km; slightly more than twice the size of Wyoming
- *RACE* – Thai 75%, Chinese 14%, other 11%
- *LANGUAGE AND LITERACY* – Thai, English (secondary language of the elite), ethnic and regional dialects
- *GOVERNMENT TYPE* – Constitutional Monarchy
- *ADMINISTRATIVE DIVISIONS* – 76 provinces (changwat, singular and plural)
- *LEGAL SYSTEM* – Based on civil law system, with influences of common law; has not accepted compulsory ICJ jurisdiction
- *ECONOMY* – Thailand has a free enterprise economy and welcomes foreign investment. Exports feature computers and electrical appliances. After enjoying the world's highest growth rate from 1985 to 1995 - averaging almost 9% annually - increased speculative pressure on Thailand's currency in 1997 led to a crisis that uncovered financial sector weaknesses and forced the government to float the baht. Increased consumption and investment spending pushed GDP growth up to 5.2% in 2002 despite a sluggish global economy.

OVERVIEW OF THE LEGAL SYSTEMS OF THE ASIAN-PACIFIC COUNTRIES

THAILAND

I. GENERAL DEMOGRAPHICS OF THAILAND

A. General Information

The Kingdom of Thailand or as well-known as “Thailand” is situated in Southeast Asia bordered by the coastlines, the Andaman Sea on the west coast and the Gulf of Thailand along the east coast.¹

The word “Thai” literally means “Free”. Accordingly, Thailand means the land of free. Thailand is one of the countries that have never been colonized by colonial domination. Therefore, Thai culture has been developing and polishing for centuries.² Additionally, Thailand is so-called the “land of smiles” which represents the characteristics and the attitudes of Thai people. They always smile for all occasions.

B. Politics

Thailand is a constitutional monarchy which has the King as Head of State. Like Western democracy concept, Thailand has a check-and-balance system. Under the present constitution, His Majesty the King BHUMIBOL or Rama IX has absolute power and exercises his legislative power through parliament, executive power through the cabinet headed by a prime minister, and judicial power through the courts. On January 6, 2001, the first general election under the new Constitution, promulgated in 1997, was held.³

C. Economy

Thailand’s economy grew gradually in the 1960s to 1970s century and rapidly expanded in the 1980s and 1990s by forces of exportation, tourism and foreign investment.⁴ It is renowned internationally as the world’s highest growth rate in 1985-1995.⁵ After enjoying those prosperous years, Thailand’s economy declined sharply due to “overconfidence in economy’s ability to continue to grow rapidly”⁶ and massive debt creation that leads to NPL. Those factors coupled with overall Asian financial crisis in the late 1990s loom to bubble burst of the economy in Thailand. Id. Considering such an economic situation, there was no way else but to float Thai Baht currency in 1997 and eventually to ask for International Monetary Fund (“IMF”)

¹ www.cia.gov

² <http://welcome-to.chiangmai-chiangrai.com/01culture.htm>

³ www.pbs.org

<http://www.asianinfo.org/asianinfo/thailand/politics.htm>

http://www.thailandoutlook.com/main_sector/capital/corporate/corp.asp

<http://www.thaiembdc.org/index.htm>

⁴ www.pbs.org

⁵ www.cia.gov

⁶ Chalongsob Sussangkarn, Thailand Development Research Institute, Thailand’s Debt Crisis and Economic Outlook, (1998)

assistance, with all the implied tough policy conditions including restructuring financial system and tightening legal standard. To date, Thailand is in the process of recovery from the financial crisis by number of measures such as setting up Thai Asset Management Corporation in order to accept and manage impaired debt and NPL in Thailand.

D. Race and Religion

Thailand is deemed to be Buddhism country. Up to 95% of people in Thailand are Buddhism. Yet there are other religions in our country including Muslim, Christianity and Hinduism. We use Thai language as our official language. However, there are four regional dialects in Thai language in different parts of the country. Substantial population in Thailand holds Thai nationality with certain percentage of Chinese and others.⁷

Although we have different types of language, several races and numbers of belief in religions, it is deemed to be the pride of Thailand that we never have religious or racial war in our country.

II. LEGAL SYSTEM OF THAILAND

A. Thailand as a Civil Law Country

“Thailand has a codified system of law” or known as civil law system country. The content of laws derived from laws of other countries with well-developed legal system. Most content of the law influenced by common law systems countries i.e. Great Britain. In addition, the code of law in Thailand was also drafted by impact of countries with codified system of law such as France, Germany and Japan as well as by effect of traditional and customary law of Thailand in the past.⁸

B. Structure of Legal System in Thailand

The new Constitution signed by His Majesty the King BHUMIBOL in 1997 is the highest and supreme law in Thailand. Major legislatives in Thailand include Code (e.g. Civil and Commercial Code, Penal Code, Civil procedures Code and Criminal Procedures Code), Acts of legislature (e.g. Securities and Exchange Act and Public Limited Company Act), Royal Decrees, Emergency Decree, Ministerial Regulations and other governmental notifications and regulations.

Since Thailand is a civil law system country, then process of enactment of laws and legislations in Thailand is somehow complicated. It takes time and requires several procedures. The enactment procedures briefly include proposal by the Cabinet for House of Representatives and House of Senate approval. If both House of Representatives and House of Senate approve on the proposal, then the proposed law will be submitted to the Prime Minister and later forwarded to His Majesty the King BHUMIBOL for approval respectively.

⁷ <http://www.cia.gov/cia/publications/factbook/geos/th.html>

⁸ Doing Business in Thailand: Legal Brief 2001 by Baker & McKenzie Bangkok Office (2001)

C. Judicial System in Thailand

The hierarchy of judicial system in Thailand consists of Court of First Instance, the Court of Appeal and the Supreme Court respectively. The Supreme Court is the highest court that has jurisdiction power over all 76 provinces in Thailand. This means decision of the Supreme Court establishes legal binding to all legal matters throughout the country. There are also numbers of specialized courts e.g. the Central Bankruptcy Court and the Central Intellectual Property and International Trade Court.⁹

III. LEGAL EDUCATION IN THAILAND

Unlike legal education in the United States, legal education system in Thailand is an undergraduate program. National University Entrance Examination conducted nationwide by the Ministry of University Affairs requires for all undergraduate programs which will be evaluated by a combination of achievement records from upper secondary school, test scores in main subjects and special subjects, interview and physical examination.¹⁰ Therefore, students who wish to attend reputable law schools must pass highly competitive National University Entrance Examination to earn Bachelor's Degree in Law or so called the "LLB".

Compare to numbers of law school in the United States, numbers of law schools in Thailand are not large. Most of the law schools are situated in the capital city, Bangkok. The Law School is equipped with various centers and divisions. Some of these are the Law and Development Research Centre, the Legal Aid Centre, Child Rights Asianet, the International Affairs Division, the Centre for the Data Bank of Business Crime, the Environmental Law and Development Centre, the Centre for Promotion of French Legal Studies, and the Indochina Law Centre.¹¹

Degree Program: Law degree programs in law school are Bachelor of law programs (LL.B.), Master of Law programs (LL.M.) and Doctoral Degree (Ph.D). Bachelor's Degree in Law typically requires four years of course work. The course works for first year classes will be basic core law courses as well as fundamental legal studies which is quite similar to first year courses in the United States. Later in upper classes, law students will be able to elect their field of interests. There are numbers of fields of expertise such as business commercial law, international law, criminal law etc. In terms of master law degree program, law school offers two types of programs i.e. Master of Law which is 2-3 years program with thesis requirement and Master of Law (Business Law) International program which is equivalent to LLM program in the United States. The LLM program is normally one year program. Lastly, the Doctoral Degree or Ph.D. will typically takes 3 years and also requires in-depth thesis paper.

Curriculum: The curriculum of law schools in Thailand is designed by faculty members who are well experienced in terms of academia, working practice as well as other aspects such as economy and politics. The curriculum in law school transcends

⁹ Doing Business in Thailand: Legal Brief 2001 by Baker & McKenzie Bangkok Office (2001)

¹⁰ www.unesco.org/iau/cd-data/th.rtf

¹¹ <http://www.law.chula.ac.th/en/02/thailand.html>

national boundaries, being cross-national and cross-cultural in character. Thus, to further enhance the quality of its academic interests and activities to the level of international criteria and standards and to keep up with rapid advancements, the university has tried to forge external networks and contacts. This generally involves formation of academic links with corresponding institutions abroad, with a view to facilitating academic exchanges and collaborative ventures.¹²

Teaching Method: Since Thailand is a civil law country, then our teaching method in law school differs from those of the United States. Law school classes in Thailand will mainly focus on code law and teaching approach in law schools in Thailand is not Socratic at all. Professors tend to structure the class to be merely lecture and discussion style. Faculty members in law schools mostly graduated abroad especially from well-developed legal system countries that greatly influenced Thai legal system such as the United Kingdom, the United States, France, Germany and Japan. Lectures in classroom given by law professors are conducted in Thai language. However, there are also fundamental non-legal and legal English classes for law students through out the law degree programs.

Size of Class: Size of classroom in law school in Thailand differs from law school to law school. It ranges from 200 students the smallest to 1,000 as the largest class. At the time of the establishment of the law school in Thailand, average of male law students are higher. But because of the movement of feminist organization in Thailand, more educational and professional opportunity had been offered to women. Nowadays, at least 60% of law students in the Bangkok are women.

Tuition fees: The tuition fees in law schools are not expensive in Thailand. The fees vary from university to university. Tuition fees for study of law degree programs in public institutions are approximately \$2,000 and approximately \$10,000 for private institutions.

Student life: Due to the fact that law degree program in Thailand is an undergraduate program, hence, average ages of law students are around 16-21 years of age. In addition, law degree program in Thailand normally takes around 4 years. Therefore, besides attending the class room, law students will have more time to spend together and they will have an opportunity to participate in extracurricular activities such as sport day, football matches among law schools and annual trip for all law school communities. Student life is merely relaxing and not as competitive as United State law school. One of the unique things that we have in our educational system is that students in universities including law schools mostly wear a uniform.

IV. LEGAL PROFESSION & LEGAL PRACTICE

The legal profession in Thailand can be divided into 3 categories namely: Thai Judges, Thai Public Prosecutors and Lawyers.

Judges in Thailand are recruited by the judicial commission and are appointed by His Majesty the King BHUMIBOL. Besides having certain qualifications such as

¹²

http://www.chula.ac.th/cuweb_en/about/index.html

being of Thai nationality, passing the Thai Bar Examination to become a Barrister-at-Law, is of at least 25 years of age, a candidate must pass a highly competitive examination given by the judicial commission. Once recruited, they have to be trained as judge-trainee for at least one year. Those candidates who complete the training with satisfactory result will be approved by the judicial commission and tendered to His Majesty the King BHUMIBOL for royal appointment to be a judge.¹³

Law graduates intend to be public prosecutors shall have qualifications required by the Regulation of Public Prosecutor Officers Act B.E. 2521 (A.D. 1978) such as having a Bachelor's Degree in law (LL.B), being of Thai nationality, being not less than 25 years of age, passing Thai Bar Association as well as passing the public prosecutor -trainee examination. After passing prosecutor-trainee examination, they will be called to participate in training and will be evaluated before appointment as Assistant District Public Prosecutor. Every public prosecutor-trainee must be trained by the Attorney-General Office for not less than one year and must be evaluated by the Public Prosecutor Committee to determine whether he/she has obtained appropriate knowledge and ability and has appropriate conduct to be appointed as an Assistant District Public Prosecutor.¹⁴

Unlike the United Kingdom, lawyers in Thailand are not divided into barristers and solicitors, nor are they required to pass a bar examination as they would be in the United States. To become a lawyer, the Lawyers Act B.E. 2528 (AD 1985) defines a lawyer as “a person who has been registered as a lawyer, and a license has been issued to him or her by the Law Society of Thailand.” Therefore, no one can become a lawyer or practice law in Thailand without an education in law, registration, and a license to practice.¹⁵ Most importantly, lawyers in Thailand are only reserved for Thai nationality.

Legal works for lawyers in Thailand varies and ranges from litigators, legal consultants, in-house legal counsels as well as legal officials. The vast majority of Thailand's lawyers and law firms are located in the capitol city of Bangkok. Law firms are generally set up under corporate and commercial law in types of either corporate, partnership or limited liability partnership. Law firms range in size from small and solo practices to large mega firms which are part of an international network. There are numbers of International Law Firms in Thailand such as Baker & McKenzie, Linklaters, Clifford Chance, Alan & Overy, Freshfields, Johnson Stokes & Master, White & Case, Tilleke & Gibbins.¹⁶

V. CONCLUSION

Each national flag has its own history and meaning that tells its own story. Thai flag has **five horizontal stripes**. From top to bottom, the colors are **red, white, blue, white, and red**. The five horizontal stripes of three colors have very significant meanings.

¹³ www.judiciary.go.th

¹⁴ Thailand's Legal System: Requirements, Practice, and Ethical Conduct by: Charunun Sathitsuksomboon Tilleke & Gibbins International Ltd. September 2001

¹⁵ Thailand's Legal System: Requirements, Practice, and Ethical Conduct by: Charunun Sathitsuksomboon Tilleke & Gibbins International Ltd. September 2001

¹⁶ <http://www.thailawforum.com/lawyer.html> : An overview of Thailand lawyers and law firms

The red stripes signify the life-blood of Thai people and stand for the unity of our nation. We have our own uniqueness; our own language, culture and legal system.

The white stripe symbolizes purity; the national religion, Buddhism. White is also chosen to be the color of Chulalongkorn university law school. It represents the justice in the legal system as well as ethic and integrity of legal professions and practice in Thailand.

The dominant blue stripe in the center, occupying one-third of the total area, symbolizes our King and our monarchy, the fundamental of our nation which play the important role in Thai people's life. The color also symbolizes the three branches power; Legislative, Executive, and Judicial.

These three concepts --- nation, religion and monarchy --- unite the Thai people which simply reflect the holistic viewpoint about our country and legal system as a whole. ¹⁷

¹⁷

<http://www.vec.ca/studentweb/12964/thaiflag.cfm> and <http://www.thaioregon.com/thailand/flag.htm>