

THAILAND'S LEGAL SYSTEM: REQUIREMENTS, PRACTICE, AND ETHICAL CONDUCT

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Thailand, with its King as Head of State, bases its judicial and legal systems on the democratic nation's Constitution,¹ which recognizes four courts: the Constitutional Court, the Courts of Justice, the Administrative Court, and the Military Court.

The responsibilities of each court vary. The Constitutional Court renders judgment or decision on the constitutionality of the provisions of law and other powers as provided for in the Constitution and other laws. The Administrative Court tries and adjudicates administrative disputes between the private sector and State organs concerning the issue of abuse of power by such State organs.² The Military Court tries and adjudicates cases involving persons within its jurisdiction as prescribed by the Act for the Organization of the Military Court B.E. 2498 (AD 1955). The Courts of Justice try and adjudicate all cases except those specified by the Constitution or other laws to be within the jurisdiction of other courts.

The Courts of Justice are classified into three levels: the Courts of First Instance, the Courts of Appeal, and the Dika Court (Thailand's Supreme Court). The Courts of First Instance are trial courts that consist of general courts,³ juvenile and family courts, and specialized courts.⁴ All cases commence at a Court of First Instance. Appeals against Court of First Instance judgments shall be filed with the Court of Appeals, subject to certain restrictions. The Supreme (Dika) Court has jurisdiction over cases appealed from the Court of Appeals, subject to certain restrictions provided by the Civil Procedure Code, Criminal Procedure Code,⁵ and other procedural laws/codes applicable for proceedings carried out in the specialized courts, i.e. in the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

¹The present Constitution, the Constitution of the Kingdom of Thailand B.E. 2540 (AD 1997), was drafted by the Constitution Drafting Assembly composed of members selected from each province throughout the country as well as academics in public law, politics, and public administration, for a total of 99 members. It was the first time the Thai people had an opportunity to draft the entire Constitution on their own.

²The establishment of the Constitutional Court and the Administrative Court resulted from the provisions of the current Constitution of the Kingdom of Thailand B.E. 2540 (AD 1997).

³The general court is an ordinary court which has the duty to try and adjudicate criminal and civil cases and consists of Civil Courts, Criminal Courts, Provincial Courts, and Kwang Courts.

⁴At present, there are four types of specialized courts: the Labor Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

⁵The Courts of Appeal and the Supreme (Dika) Court are not trial courts and, as a general rule, no new evidence can be introduced after a trial in a Court of First Instance has been completed unless these courts so order. Appeal Court and Dika (Supreme) Court appeals are based on questions of law and, to a limited extent, questions of fact. In civil actions involving Baht 50,000 or less, no appeal can be made on a question of fact, unless one of the Court of First Instance judges dissents or certifies that reasonable grounds exist for the Appeal Court to consider questions of fact. In civil actions involving Baht 200,000 or less, no Dika (Supreme) Court appeal can be made on a question of fact, unless one of the Appeal Court judges dissents or certifies that reasonable grounds exist for the Dika (Supreme) Court to consider questions of fact.

Thailand generally follows the civil law system. However, one must realize that Thailand belongs to the civil law system only by the fact of its codification. The contents of the codes are as varied as the major legal systems of the world.⁶

This article is divided into three sections: (1) a brief overview of Thailand's courts and legal system, (2) the Practice of Law in Thailand, which looks at the prerequisites a person must achieve before applying to be licensed and registered as a lawyer,⁷ judge or public prosecutor in Thailand, and (3) Legal Education: The Institute of Legal Education of Thai Bar Association, which summarizes the requirements and the roles of the Institute of Legal Education of the Thai Bar Association.

II. THE PRACTICE OF LAW IN THAILAND

This section is divided into three parts: (A) Thai Lawyers: Membership, Requirements, and Regulations, which discusses the requirements for candidates who want to practice law in Thailand; (B) Thai Judges: Membership, Requirements and Regulations, which explores the requirements and conditions a candidate must meet in order to become a judge in Thailand; and (C) Thai Public Prosecutors: Membership, Requirements and Regulations, which explores the requirements and conditions a candidate must meet in order to become a public prosecutor in Thailand.

A. Lawyers: Membership, Requirements, and Regulations

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. 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.

The Law Society of Thailand⁸ operates to promote, educate, and supervise its members. To become a member of the Law Society of Thailand, an individual must meet certain educational requirements and be a lawyer as defined in the Lawyers Act. Educational requirements for membership in the Law Society of Thailand are that a candidate must have obtained a Bachelor's Degree in law (LL.B) or an Associate Degree in law or a certificate in law equivalent to a Bachelor's

⁶See David Lyman, “An Insight into the Functioning of the Thai Legal System”, Thai-American Business Magazine, Jan-Feb 1975). The following is a quotation from the said article: “*Most of the Thai lawyers of the time had been trained in England but they recognized the disadvantages of the Common Law system for their country. So Thailand picked the best of both systems and began the process of adapting them to the Thai situation. The result is that the penal law is Italian, Indian, French, and Japanese inspired; the Civil Law greatly influenced by French, German, and Swiss law; the Commercial Law primarily British; the Law of Evidence founded on an English model; the Civil and Criminal Procedure Codes being taken from their English and French counterparts; while the courts were organized along the lines of French courts of law. All of these Codes were also influenced by Thai customs and heritage of the period but were also quite democratic in tenor.*”

⁷Please see Section II (A) for definition of “lawyer” under the Lawyers Act B.E. 2528 (AD 1985). To appear in court and to prepare any plaint, motion, petition, or appeal for the Court, a license to become a lawyer from the Law Society of Thailand must be obtained.

⁸The Law Society of Thailand was legally established in 1985. The organizational structure of the Law Society of Thailand, its Board of Governors and members, its objectives, and its powers and duties, are prescribed by the Lawyers Act B.E. 2528 (AD 1985).

Degree or Associate Degree, from an educational institution accredited by the Law Society of Thailand. Further, the individual must also be a member of the Thai Bar Association.⁹

To be registered and to obtain a lawyer's license, in most cases the candidate must complete training in professional ethics and the basic principles of advocacy and the legal profession. The training course, run by the Institute of Law Practice Training of the Law Society of Thailand, is usually divided into two terms. In the first term, the candidate has to learn the theory of case conduct and professional ethics for not less than 90 hours. In the second term, he/she must practice working in a qualified law office for at least six months. An examination will be held at the end of each term. After completion of the training course, a candidate may apply for membership in the Law Society of Thailand.¹⁰ An exception to the training course is given to candidates who have been an apprentice in a law firm for over a year and have passed an examination specified by the Board of Governors of the Law Society of Thailand.

Being a member of the Law Society of Thailand means a lawyer (member) must abide by the code of ethics, called the Regulation of the Law Society of Thailand on Lawyer's Ethics B.E. 2529 (AD 1986), which is overseen and supervised by the Committee on Professional Ethics.¹¹ The types of professional and ethical conduct described are:

- a) ethical conduct in court and towards the court, which generally means a lawyer can not refuse to represent a defendant when asked to do so by a judge in a criminal case UNLESS the lawyer has a justifiable reason, or act in any way that shows disrespect to the court, or act in contempt of court or to a judge, and/or cooperate directly or indirectly to forge documents or evidence.
- b) towards the client: a lawyer can not encourage litigation without justifiable cause, threaten and/or mislead the client, and/or make false promises and/or reveal client's secrets and/or abandon a case intentionally.
- c) towards fellow lawyers: a lawyer can not try to take another lawyer's client UNLESS there is consent by the previous lawyer, or there is justified cause to believe that the

⁹Please see below under Section III the classes of membership in the Thai Bar Association.

¹⁰Section 35 of the Lawyers Act B.E. 2528 (AD 1985) provides as follows:

"Section 35. An applicant for registration and a License shall have the following qualifications: (1) being of Thai nationality; (2) being at least twenty years of age; (3) having a Bachelor's Degree or an Associate Degree in law or a certificate in law equivalent to a Bachelor's Degree or Associate Degree from an educational institute accredited by the Law Society of Thailand, and must be a member of the Thai Bar Association; (4) not being a person of indecent behavior or delinquent morals or a person whose conduct is indicative of dishonesty; (5) not being imprisoned by a final judgment; (6) never having been imprisoned by a final judgment for an offence which, in the Board's discretion, will impair the integrity of the profession; (7) not being bankrupt by a final judgment; (8) not having an ailment which is contagious and repugnant to the public; (9) not being physically disabled or mentally infirmed which may cause professional incompetence; (10) not being a government official or a local government official with permanent salary and position except a political official."

¹¹Sections 54 and 55 of the Lawyers Act B.E. 2528 (AD 1985) provide as follows:

"Section 54. There shall be appointed a Committee on Professional Ethics composed of a Chairman, a Vice-Chairman and at least 7 other Committee members fixed by the Board.

Each Committee member shall be appointed by the Board from a pool of lawyers having the following qualifications:

- (1) *Having been a lawyer for a total period of not less than 10 years.*
- (2) *Never having been subject to any disciplinary action or penalty on account of professional misconduct or excluded from the Register."*

"Section 55. The appointment of the Committee members under Section 54 shall be effective only upon an approval of the Chancellor."

client has already withdrawn the former lawyer, or that the former lawyer has already rejected the client's case.

- d) towards litigants in general: a lawyer can not make promises to people or pay them to bring in clients or to advertise legal service fees, or to advertise in a boastful way names, qualifications, position, residence, or office.
- e) personal behavior: a lawyer should not behave contrary to good morals or jeopardize the good name of the legal profession.
- f) appropriate attire: a lawyer shall dress modestly. A male lawyer shall wear suits of solid and somber colors (e.g. white, black, gray, blue); a female lawyer shall wear dresses in modest solid colors.

All members of the Law Society of Thailand must abide by the above Regulations. A breach constitutes professional misconduct. If any lawyer violates any of the professional ethics prescribed under the said Regulations, it may result in any of the three types of penalties: probation, suspension of practice not exceeding three years, or deletion of name from register.¹²

A lawyer's license is usually valid for 2 years from the date of issuance. Such a license can be renewed within 90 days prior to its expiration. To avoid periodic renewal, lawyers may apply for a "lifetime membership".

Regarding termination of a lawyer, the following matters can result in a lawyer's losing membership in the Law Society of Thailand:

- (1) death;
- (2) notification of termination of practice;
- (3) failure to renew lawyer's license;
- (4) removal of name from register; or
- (5) disbarment.¹³

¹² Section 64 of the Lawyers Act B.E. 2528 (AD 1985) provides as follows:

"Section 64. An injured party or a lawyer may bring charge against another lawyer on account of breach of professional ethics. The charge must be made in writing to the Chairman of the Committee.

The right to bring charge under paragraph one shall be extinguished upon the lapse of one year after the knowledge of the breach and the alleged offender have become known to the person possessing such right, provided that the charge is brought within 3 years after the breach.

A withdrawal of the charge brought under the first paragraph shall terminate the case of breach of professional ethics only if such withdrawal is approved by the Committee's resolution passed by affirmative votes of not less than half of the total Committee members."

Generally, when a charge of professional misconduct is filed against any particular lawyer, the Committee on Professional Ethics will appoint an investigation team consisting of not less than 3 lawyers to investigate the case, and if they decide that the charge is a valid one, the case will be sent before the Disciplinary Committee consisting of at least 9 of its members. If the Disciplinary Committee decides that the facts established constitute unethical conduct, the Disciplinary Committee, with an order from the Board of Governors of the Law Society of Thailand, is empowered to decide and order according to the gravity of the offence, parole, suspension of practice for not more than 3 years, or deletion of name from register.

¹³Section 44 of the Lawyers Act B.E. 2528 (AD 1985)

B. Judges: Membership, Requirements and Regulations

The present Thai Constitution requires that case hearings shall be conducted by a full quorum of judges as prescribed under the applicable laws. Thai judges are governed by the Regulation of the Judicial Service Act B.E. 2543 (AD 2000). The Judicial Service Commission¹⁴ is the governing body responsible for the appointment, promotion, transfer, and removal of judges, and has disciplinary power over them.

Generally, there are three kinds of examination for a candidate who wants to be a judge-trainee: an open examination, a knowledge test, and a special selection exam. To apply for examination, a candidate must meet the following qualifications:

- (a) holds Thai nationality.
- (b) be not less than 25 years of age.
- (c) upholds the democratic regime according to the Constitution with good faith.
- (d) be an ordinary member of the Thai Bar Association.
- (e) not having ignominious or immoral conduct.
- (f) not being insolvent.
- (g) not being under suspension or having temporarily resigned pursuant to the Regulation of the Judicial Service Act or other laws.
- (h) not having been expelled, dismissed or removed from official service, any state agency or state enterprise.
- (i) not being imprisoned by a final judgement, except for an offence committed through negligence or as a result of a petty offense.
- (j) not being incompetent or a quasi-incompetent person, or a person of unsound mind or mental disorder or having a body or mental condition inappropriate for being a judge, or having a disease, as prescribed by the Regulation of the Judicial Service Commission.
- (k) having passed physical and mental examinations by a committee of doctors, consisting of not less than three; the report of such committee shall be approved by the Judicial Service Commission.¹⁵

In addition, each candidate for an open examination shall obtain education and work experience as follows:

¹⁴Under Section 36 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000), the Judicial Service Commission shall consist of: (1) the President of the Supreme Court, as chairman; (2) 12 qualified members of all levels of Courts, four persons from each level (i.e., the Supreme Court, the Appeal Court and the Court of First Instance); and (3) 2 qualified members who are not and were not judicial officials and who are elected by the Senate.

¹⁵Section 26 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000).

- (1) having a Bachelor's Degree in law (LL.B.), or having a law degree or certificate from a foreign country, not lower than Bachelor's Degree (compared and approved by the Judicial Service Commission).
- (2) passing the Institute of Legal Education of Thai Bar Association examination.
- (3) having not less than two years experience as registrar, deputy registrar, official receiver, executing officer, probation officer, public prosecutor, officer of the Judge Advocate General Department, lawyer, or other legal profession prescribed by the Judicial Service Commission.¹⁶

For the knowledge test, a candidate shall have education and work experience as follows:

- (1) having passed the Institute of Legal Education of Thai Bar Association examination.
- (2) having one of the following qualifications:
 - a) having a law degree or certificate from a foreign country, with a curriculum of not less than three years, not lower than Bachelor's Degree (compared and approved by the Judicial Service Commission), or having a Ph.D. in the field of law from a Thai university accredited by the Judicial Service Commission.
 - b) having a law degree or certificate from a foreign country, with a curriculum of not less than two years, or combined curricula being not less than two years, not lower than Bachelor's Degree (compared and approved by the Judicial Service Commission), and having not less than one year experience in the legal profession prescribed by the Judicial Service Commission.
 - c) having a Master's Degree in law (LL.M.) from a Thai university accredited by the Judicial Service Commission and having not less than one year experience in the legal profession prescribed by the Judicial Service Commission.
 - d) having a Bachelor's Degree in law (LL.B.), with honors and having been a lecturer in law in a public university for not less than five years.
 - e) having a Bachelor's Degree in law (LL.B.), having been an official of the Office of the Courts of Justice in the field of law, prescribed by the Judicial Service Commission, for not less than six years, and having good conduct approved by the Secretary-General of the Office of the Courts of Justice.
 - f) having a Master's Degree or Ph.D. in a field prescribed by the Judicial Service Commission, having a Bachelor's Degree in law (LL.B.), and having not less than three years experience in the legal profession or other professions prescribed by the Judicial Service Commission.
 - g) having a Bachelor's Degree or its equivalent in a field prescribed by the Judicial Service Commission, having not less than ten years experience,

¹⁶Section 27 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000).

being expert in such professions prescribed by the Judicial Service Commission, and having a Bachelor's Degree in law (LL.B.).¹⁷

For special selection consideration, a candidate shall have the following qualifications:

- (1) having one of the following:
 - a) being or having been in the past, a Professor or Deputy Professor in a public university.
 - b) being or having been in the past, a lecturer in law in a public university for not less than five years.
 - c) being or having been in the past, a government official not lower than director or equivalent.
 - d) being or having been in the past, a lawyer for not less than ten years.
- (2) having passed the Institute of Legal Education of Thai Bar Association examination.
- (3) having excellent knowledge and experience in the field of law, as prescribed by the Judicial Service Commission.
- (4) being honest, and having appropriate personality, conduct and attitude for performing duties as a judicial official.¹⁸

Once candidates are recruited, they are required to undergo training as judge-trainees for at least one year. After completion of training and if results are satisfactory, a judge-trainee will be approved by the Judicial Service Commission, and tendered to the King for royal appointment to be a judge attach to the court.¹⁹

The ways in which a judge can be terminated are as follows:

- (1) death.
- (2) resignation.
- (3) vacating the office under law on government pension fund.
- (4) transfer to serve in a position as a government official, and not in a judicial position.
- (5) resignation for military service.
- (6) being formally instructed to resign.
- (7) being expelled, dismissed, or removed from office.
- (8) the Senate passes a resolution for removal from office.²⁰

¹⁷Section 28 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000).

¹⁸Section 29 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000).

¹⁹The Judicial System in Thailand: An Outlook for a New Century, page 50 of Chapter Four: Personnel in the Machinery of Justice. This book is a joint undertaking between the Central Intellectual Property and International Trade Court in Thailand and the Institute of Developing Economies (JETRO-IDE) of Japan.

²⁰Section 32 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000).

C. Public Prosecutors: Membership, Requirements and Regulations

A public prosecutor is an official under the Office of the Attorney-General and is governed by the Regulation of Public Prosecutor Officers Act B.E. 2521 (A.D. 1978). The Office of the Attorney-General, formerly called the Public Prosecutor Department, was separated from the Ministry of Interior and became a state agency under the direct supervision of the Prime Minister in 1991 to make the Office free from outside influence and interference. The public prosecutor is responsible for bringing criminal prosecution on behalf of the government and represents the government in civil cases where the government is a party to the proceedings. There are eight levels of positions, ranging from public prosecutor-trainee to Attorney-General. The Public Prosecutor Commission²¹ is the governing body responsible for the appointment, promotion, transfer, and removal of public prosecutors and exercises disciplinary powers over them. Most of the qualifications required in order to become a public prosecutor, as well as the public prosecutor governing body, and the removal process of the public prosecutor are generally similar to those of judges.

To apply for an examination as a public prosecutor-trainee, a candidate must meet the following qualifications:

- (1) (a) having a Bachelor's Degree in law (LL.B.), or having a law degree or certificate from a foreign country, not lower than a Bachelor's Degree (compared and approved by the Public Prosecutor Commission).
- (b) having passed the examination of the Institute of Legal Education of Thai Bar Association.
- (c) having not less than two years experience as a judicial official, registrar, deputy registrar, official receiver, executing officer, probation officer, officer of the Judge Advocate General Department, lawyer, or other legal profession prescribed by the Public Prosecutor Commission.
- (2) being of Thai nationality.
- (3) being not less than 25 years of age.
- (4) upholding the democratic regime according to the Constitution with good faith.
- (5) being an ordinary member of the Thai Bar Association.
- (6) not having ignominious or immoral conduct.

²¹ Under Section 15 of the Regulation of Public Prosecutor Officers Act B.E. 2521 (AD 1978), the Public Prosecutor Commission consists of the following persons:

- (1) a president selected from a retired official, who has, in the past, served in a position not lower than Deputy Attorney General, or Attorney-General, or a qualified person in a field of laws, who is a retired official and has served, in the past, in a position not lower than Director or its equivalent. However, a person who will be selected as a president must have never been either a member or an official of a political party in the past 10 years, or political official, a member of the House of Representative or the Senate, or a lawyer;
- (2) the Attorney General, as a Vice-President;
- (3) a Deputy Attorney General, a Special Prosecutor in advisory division, a Special Prosecutor in litigious division, a Special Prosecutor in legal affairs division, as ex-officio member;
- (4) six qualified members elected by the public prosecutor being the official at the second level or more.

- (7) not being insolvent.
- (8) not being under suspension or having temporarily resigned pursuant to the Regulation of the Public Prosecutor Officers Act or other laws.
- (9) not having been expelled, dismissed, or removed from official service or any state agency or state enterprise.
- (10) not being imprisoned by a final judgement except for an offence committed through negligence or as a result of a petty offense.
- (11) not being incompetent or a quasi-incompetent person or a person of unsound mind or mental disorder, or having a body or mental condition inappropriate for being a public prosecutor, or having a disease prescribed by the Ministerial Regulations.
- (12) passing a physical and mental examination by a committee of doctors, consisting of not less than three. The report of the committee shall be approved by the Public Prosecutor Commission.²²

Once the candidates pass the public prosecutor-trainee examination, they will be called to participate in a 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.

The ways in which a public prosecutor can be terminated are as follows:

- (1) death.
- (2) vacating the office under the law on government pension fund.
- (3) resignation.
- (4) transfer to serve as a government official.
- (5) resignation for military service.
- (6) being instructed to resign.
- (7) being expelled, dismissed, or removed from office.²³

III. LEGAL EDUCATION: THE INSTITUTE OF LEGAL EDUCATION OF THE THAI BAR ASSOCIATION

As discussed above, law graduates who want to be lawyers are required to register and obtain a lawyer's license by passing a training course and examination set up by the Law Society of Thailand. On the other hand, law graduates who want to be judges or public prosecutors are required to pass the bar exam. However, the bar exam is provided not only for law graduates who want to apply to be judges or public prosecutors. Any legal practitioner who wants to obtain knowledge of legal practice is also urged to attend the bar exam.

²²Section 33 of the Regulation of Public Prosecutor Officers Act B.E. 2521 (AD 1978).

²³Section 36 of the Regulation of Public Prosecutor Officers Act B.E. 2521 (AD 1978).

The Institute of Legal Education of the Thai Bar Association was established in 1948, with the objectives and duties to educate and promote knowledge of legal practice for law practitioners. The qualifications of a candidate who can apply to study in the Institute include being a law graduate with a Bachelor's Degree in law (LL.B.) from Thammasat University, Chulalongkorn University, or Ramkhamhaeng University, a law degree in the faculty of law in other universities in Thailand or foreign country approved by the Bar Legal Study Committee, and having passed an examination up to the standards stipulated by the Bar Legal Study Committee.

The period of study is separated into two terms. An examination will be held at the end of each term. The examination consists of written and oral tests. A student who passes the examination will be entitled to be a Barrister-at-Law and be an ordinary member of the Thai Bar Association.

Memberships of the Thai Bar Association are of different classes: Ordinary membership, Extraordinary membership, Associate membership, Auxiliary membership, and Honorary membership. Only a student who passes the bar examination will be eligible to be an ordinary member of the Thai Bar Association. The Extraordinary and Associate memberships are for any law graduate who passes a lawyer examination held by the Law Society of Thailand. Auxiliary membership is for a student in the Institute of Legal Education of the Thai Bar Association. Honorary membership is given to any distinguished person with extensive knowledge of legal or political science.