

Preface

The Supreme Court originates in the history and civilization of the Thai people. Appeal (Dika) was the petition that people filed before the King to request his supreme prerogative to abolish any hardship. In the era of the absolute monarchy, the King would himself adjudicate all disputes. Once the royal duty had increased, the Department of Appeal (Dika) Scrutiny was formed to lighten his royal burdens. Subsequently, the Court of the Supreme Commissioner and the Supreme Court were founded respectively. In this manner, the Supreme Court was established with the duty to expand and strengthen the King's authority over laws and legal proceedings. Moreover, the Supreme Court was given the authority to exercise jurisdiction over all cases where there is no law designating such jurisdiction to other courts and, according to the royal custom, to be the representative of the judiciary.

The Ministry of Justice was formerly responsible for the administration of the Court of Justice. When the Thai Constitution 1997 (BE.2540) stipulated that the administration of the Court of Justice is to be independent, the scope of duties of the President of the Supreme Court increased. In addition to managing cases, the President of the Supreme Court is now also responsible for the formulation of the administrative policy of the Court of Justice, and the supervision of the Office of the Judiciary, the administrative branch.

This book, "The Supreme Court of Thailand", has been published in order to provide knowledge of the history, organizational structure, scope of authority and duties of the Supreme Court as well as the essential role of the President of the Supreme Court. It intended to foster fundamental understanding of the highest court of the land and to commemorate of this institute.

Chapter 1

History

Historically, a Thai King personally decided all disputes. Sometimes his authority was delegated to councilors under his closed scrutiny, thus, this royal supreme authority was never fully discharged to others. Early in the Rattanakosin Era, the executive and judicial power was not yet separated, the adjudication of cases was the responsibility of different governmental entities. Generally speaking, courts were scattered among several departments whose officials could act as the judges deciding cases.

There was no Supreme Court in the early Rattanakosin Era. Citizens appealed directly to the King, as in Ayuthaya era, along his route to places out of the Palace. The King thus became the supreme authority of the justice system. This appeal system changed from time to time depending upon the reign of the various Kings. During the reign of King Rama V, an official department for appeals was set up in the Palace. This, however, was not the Supreme Court in its present form. It was more like a section for appeal examination under the direct supervision of the King.

In 1891, King Rama V set up the Ministry of Justice and gathered all courts into the Ministry. The former appeal section was transformed into the Royal Appeal Court. People could still *Dika* appeal the case directly to the King subsequent to Royal Appeal Court decisions. In 1898, King Rama V formed a commission to adjudicate *Dika* appeals. The decision made by such commission was first approved by the King prior to having binding force. The commission acted as the final court of the country, although at that time the commission was not a part of the Ministry of Justice. Later, such commission became the Supreme Court in its present form.

The Judicator Act 1908 was enacted in the reign King Rama V. The Supreme Court became the highest court in the country by this Act. Cases, decided by this Court, were no longer appealed to the King. Nonetheless, the Supreme court was reported directly to the King until 1912. In the Reign of King Rama VI, the Ministry of Justice was reorganized and the Supreme Court was taken into the Ministry. The work of the Ministry of Justice was then comprised court administration and judicial work. The Minister was responsible only for the court administration and not for judicial work.

The 1932, Thailand adopted a democratic regime of government with the King as Head of the State and at that time judicial authority became increasingly developed. The Constitution adopted at that time provided that the Judiciary was independent from the Executive. The Judicature Act 1934 was enacted to amend the Judicature Act 1908. The courts were divided into three levels: Courts of First Instance, Courts of Appeal and the Supreme Court. The head of the Supreme Court was named the "President of the Supreme Court". Being independent from the Minister of the Justice Ministry, the President of the Supreme Court was mandated to have the authority to regulate judicial duties, ensuring that the work of the courts was in accordance with law.

In 2000, a new dimension in the judiciary of Thailand occurred an independent secretariat has been established for the Courts of Justice. The Office of the Judiciary has autonomy in personnel administration, budget and other activities as provided by law.

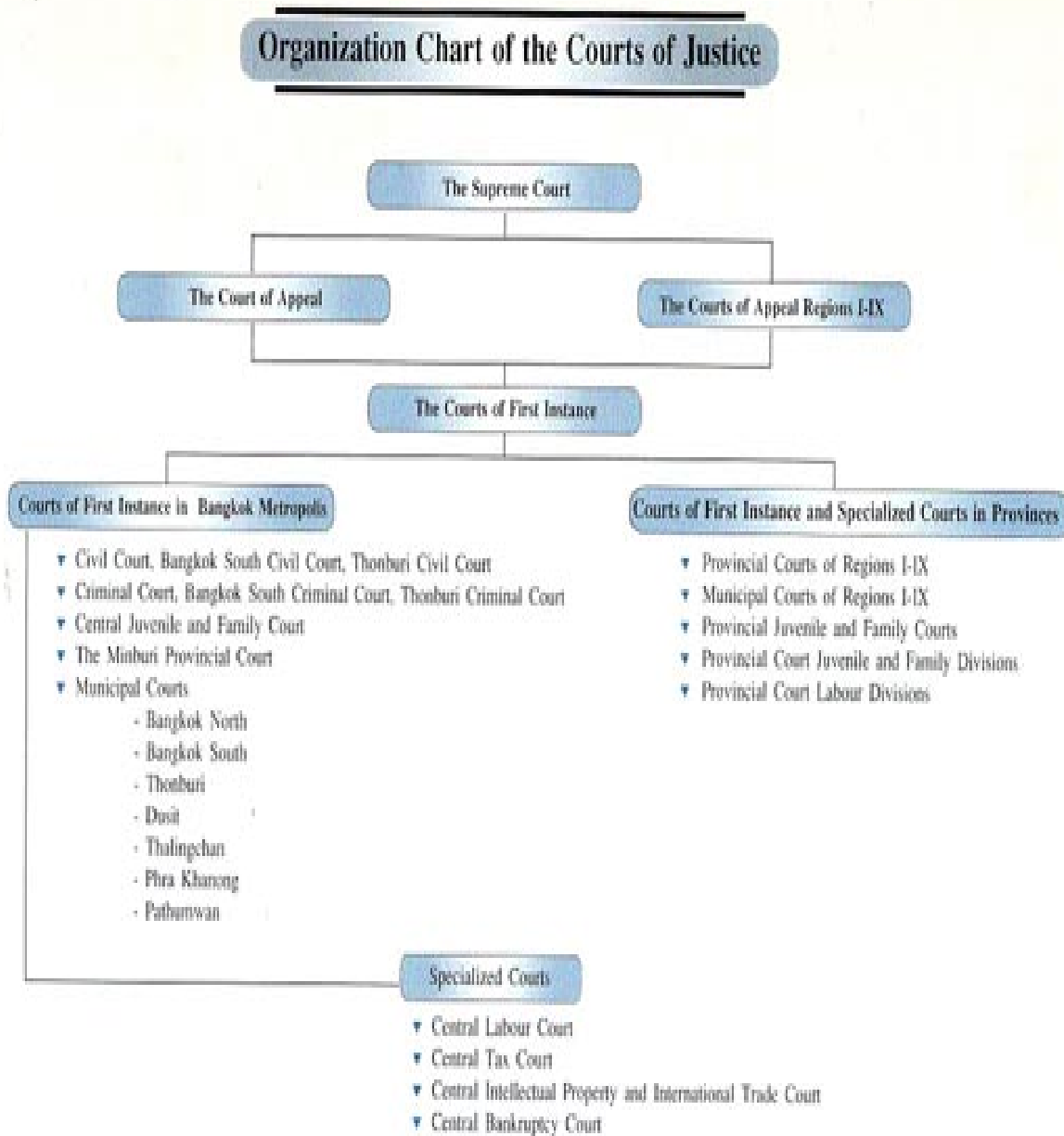
Presently, the Supreme Court retains the important status as the highest court of justice in the country and the President of the Supreme Court is the head of the Judiciary. The role of the President of the Supreme Court, as provided by the current Constitution, has the ultimate authority over the Courts of Justice both, in court administration and judicial work, completely independent from other branches of government.

Chapter 2

Organization of the Courts of Justice

The Courts of Justice have authority to try and adjudicate criminal, civil, bankruptcy, and all cases which are not within the jurisdiction of other types of courts. When there is a question as to whether a particular case will fall under the jurisdiction of which type of court, the Commission on Jurisdiction of Courts chaired by the President of the Supreme Court is authorized by the Constitution to decide. Such decision is final.

The Courts of Justice are classified into three levels consisting of the Courts of First Instance, the Courts of Appeal and the Supreme Court.



2.1 The Courts of First Instance

The Courts of First Instance are categorized into general courts, juvenile, family and specialized courts. The general courts are ordinary courts which have the jurisdiction to try and adjudicate criminal and civil cases. Those courts are: Civil Courts, Criminal Courts, Provincial Courts and Kwaeng Courts.

2.1.1 General Courts

In general courts, except Kwaeng Courts, at least two judges form a quorum. Appeals against a judgment on both questions of law and, subject to some conditions, questions of fact or an order of the general courts is presented before the Courts of Appeal.

With respect to the administration of the Provincial Courts and Kwaeng Courts, the Office of the Regional Court of Justice headed by the Chief Judge of each region, is responsible for the courts in the region to some extent.

In the case where the Office of the Regional Chief Judge becomes vacant or if the Chief Judge's become unable to perform official duties, the President of the Supreme Court will appoint a judge to the perform duties of such Chief Judge.

Regional Chief Judges are regarded as judges of any court in their regions with authority to try and adjudicate particular cases, such as cases concerning offences against public security, serious criminal offences, high value claims and contempt of court. When it is necessary, the Regional Chief Judge has the authority to order a judge of the court in such region, upon the latter's consent, to work temporarily for not more than three months in another court. The Chief Judge, however, must immediately inform the President of the Supreme Court about such order.

Judges are recruited by the Judicial Commission and are appointed by His Majesty the King. Besides having certain qualifications such as being of Thai nationality, passing the examination of the Thai Bar Association to become a Barrister-at-law, and having not less than two years working experience in the legal profession, a candidate must pass a highly competitive examination given by the Judicial Commission. Once candidates are recruited, they have to serve as judge trainees for at least one year.

2.1.1.1 In Bangkok Metropolis

Civil Courts

Under Thai Law, a plaintiff must bring a civil case before the court where the cause of action arises or where the defendant is domiciled. Where immovable property is involved, the plaintiff is required to bring a lawsuit to the court where such property is situated, or where the defendant is domiciled. In Bangkok, Courts of First Instance dealing with civil cases are the Civil Court, the Civil Court of Southern Bangkok, the Thon Buri Civil Court and the Min Buri Provincial Court.

For disputes on civil matters occurring outside the territorial jurisdiction, the Civil Court has the discretion either to try and adjudicate those cases or to transfer them to the court having territorial jurisdiction.

Criminal Courts

In criminal cases, the court in the district where the accused resides or is arrested, or where an inquiry official has made the investigation makes an inquiry has jurisdiction over the cases. In Bangkok,

Courts of First Instance handling criminal cases are the Criminal Court, the Criminal Court of Southern Bangkok, the Thon Buri Criminal Court and the Min Buri Provincial Court.

Criminal Courts have the discretion either to try and adjudicate criminal cases arising outside its territorial jurisdiction brought before it or to transfer them to the court having territorial jurisdiction.

The Min Buri Provincial Court

The Min Buri Provincial Court, the only provincial court in Bangkok Metropolis, deals with both civil and criminal cases arising in the northern part of Bangkok Metropolis. The character of this court is the same as general provincial courts.

Kwaeng Courts

The primary function of Kwaeng Courts is to dispose of small cases quickly with a minimum formality and expense. The jurisdiction of these courts covers both criminal and civil cases. Criminal cases that fall under this jurisdiction pertain to criminal offences punishable by a maximum of three years imprisonment, or fine not exceeding 60,000 Baht or both. For civil cases, the claim amount must not exceed 300,000 Baht. Proceedings in Kwaeng Courts emphasize a speedy trial, therefore, the trial tends to be simple and oral judgments or summary judgments are issued.

2.1.1.2 In other Provinces

Provincial Courts

Provincial Courts exercise unlimited original jurisdiction in all general civil and criminal matters within their own districts, which are generally the provinces themselves. For the purpose of expansion of services of the court to distance areas, some provinces may have more than one Provincial Court. Where a case within the jurisdiction of the Kwaeng Court is brought to the Provincial Court, such cases are transferred to Kwaeng Courts.

Provincial Kwaeng Courts

The jurisdiction of Kwaeng Courts in other provinces is the same as Kwaeng Courts in Bangkok Metropolis as explained above.

2.1.2 Juvenile and Family Courts

Juvenile and Family Courts consist of the Central Juvenile and Family Court, the Provincial Juvenile and Family Courts, and the Division of Juvenile and Family Courts in Provincial Courts. Two career judges and two associate judges, one of whom must be a woman, constitute a quorum for Juvenile and Family Courts. An appeal against a judgment or order of Juvenile and Family Courts is presented before Courts of Appeal.

2.1.3 Specialized Courts

There are four specialized courts in Thailand, the Labour Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court. The establishment of the specialized courts is to ensure that specific or technical problems will be heard before an appropriate judge. Judges of specialized courts are appointed from judges who possess competent knowledge and expertise of the specific matters.

Quorums for two of the specialized courts, namely the Labour Court and the Intellectual Property and International Trade Court, consists of both career judges and associate judges. Associate judges are laymen recruited specifically to work together with career judges in adjudicating cases.

3.2 The Courts of Appeal

The Courts of Appeal consist of the Court of Appeal and nine Regional Courts of Appeal. The Court of Appeal handles appeals against judgments or orders of the Civil Courts and the Criminal Courts. Meanwhile, the Regional Courts of Appeal handle appeals against the judgments or orders of the other Courts of First Instance. The jurisdictions of the Regional Courts of Appeal are consistent with the jurisdictions of the Courts of First Instance Region 1-9. The Courts of Appeal is divided into divisions, each division has one chief justice and two other justices. At least three justices are required to form a quorum.

An appeal on questions of law and, subject to certain specified restrictions, on questions of fact is brought before the Courts of Appeal and then to the Supreme Court.

Justices of the Courts of Appeal are appointed from among judges of the Courts of First Instance with seniority, extensive knowledge and experience.

Each Court of Appeal has a Research Division consisting of research judges. The primary functions of the division are to assist justices of the Courts of Appeal by examining all relevant factual and legal issues of the cases, conducting legal research and discussing with those justices to ensure consistent and fair results.

3.3 The Supreme Court

The Supreme Court is the final court of appeal in all civil and criminal cases in the entire Kingdom. The Court consists of the President, Vice - Presidents, the Secretary and a number of justices. It is divided into divisions with three justices in each division. The President of the Supreme Court is also the head of the Courts of Justice. In the present system of the Courts of Justice, the President of the Supreme Court plays the pivotal role in all judicial and administrative works.

Like the Courts of Appeal, the Supreme Court also has a Research Division consisting of research justices.

At least three justices of the Supreme Court form a quorum. The Court may, however, sit in plenary session to determine cases of exceptional importance and cases where there are reasons for

reconsideration or overruling of precedents. The quorum for the full Court is not less than half of the total number of justices on the Supreme Court.

Justice of the Supreme Court shall be appointed from among justices of the Courts of Appeal with seniority, extensive knowledge and experience.

As a result of the 1997 Constitution, the Criminal Division for Holders of Political Positions was set up within the Supreme Court to act as a trial court for cases where the Prime Minister, a minister, member of the House of Representatives, senator or other political official is accused of becoming unusually wealthy, committing malfeasance in office according to the Criminal Code, performing duties dishonestly, or of corruption under to other laws.

During a trial, a member of the House of Representatives or a senator is unable to claim the immunity provided in the Constitution. The Criminal Division for Holders of Political Positions in the Supreme Court must rely on records from the National Counter Corruption Commission and may investigate to receive additional facts and evidence as it deems fit.

The quorum for this special division of the Court consists of nine justices of the Supreme Court who hold a position of not lower than justice of the Supreme Court, and are elected by a plenary session of the Supreme Court justices on a case by case basis. Judgments will be made by a majority of votes; provided that each justice constituting the quorum will prepare a written opinion and make oral statements to the meeting before making decision. Orders and decisions of the Criminal Division for Holders of Political Positions in the Supreme Court will be disclosed and final.

Chapter 3

Authority and Organizational Structure of the Supreme Court

The Supreme Court is the highest court of the Kingdom with jurisdiction throughout the nation in all kinds of appeal cases from the lower courts in accordance with the law. A party who challenges an order or a judgment issued by the Courts of First Instances, the Court of Appeal or the Courts of Appeal Regions I – IX has the right to appeal against the lower court's order or judgment under conditions required under the law. Moreover, specialized laws such as the procedural laws on labour, tax and intellectual property and international trade allow parties to appeal against judgments of such specialized courts directly to the Supreme Court. An order or a judgment of the Supreme Court in all kinds of cases is final.

The President of the Supreme Court is the head of the Court and has the highest position among judges.

At least three justices of the Supreme Court form a quorum. At present, the Supreme Court has divided the justices internally into 25 chambers. Each chamber has three justices. The most senior justice in a chamber is the presiding justice of that chamber.

The Supreme Court may sit in plenary session (the full court) to determine cases when the President of the Supreme Court views that it is appropriate or if there is a requirement to do so under a specific law. The quorum of the plenary session consists of all justices of the Supreme Court who are present in the Court on the date the plenary session is held but not less than half of the total number of justices of the Supreme Court.

The Supreme Court has eight divisions for specialized cases, namely, the Juvenile and Family Division, the Labour Division, the Tax Division, the Intellectual Property and International Trade Division, the Bankruptcy Division, the Criminal Division for Holders of Political Positions, the Commercial Division and the Administrative Division. Each division has about 10 justices assigned by the President of the Supreme Court and also has one Chief Justice or Presiding Justice supervising the work of a division.

Following the adoption of 1997 Constitution, the Criminal Division for Holders of Political Positions was set up in the Supreme Court to act as a trial court in cases where the Prime Minister, a Minister, a member of the House of Representatives, a senator or other political official is accused of becoming unusually wealthy, committing malfeasance in office according to the Criminal Code, performing duties dishonestly, or of corruption under other laws.

The quorum of this special division of the supreme Court consists of nine justices of the Supreme Court who hold positions of not lower than justices of the Supreme Court, and are elected by a plenary

session of the Supreme Court on a case by case basis. A judgment will be made by a majority of votes; provided that each justice constituting the quorum will prepare a written opinion and make oral statements to the meeting before a making decision. Orders or judgments of the Supreme Court Criminal Division for Holders of Political Positions must be disclosed and final.

The 1997 Constitution also designates several duties to the Supreme Court including the selection of five justices of the Supreme Court to be justices of the Constitution Court and nomination of five qualified persons to the Chairman of the House of Senate for the selection of an Election Commissioner.

Chapter 4

Adjudication of the Supreme Court

Appeals against judgments of the lower courts to the Supreme Court will be assigned to a justice of the Supreme Court by the President of the Supreme Court on a case by case basis. Some kinds of cases, such as labour, tax, bankruptcy, juvenile and family, intellectual property and international trade or some criminal cases in which the defendants are in custody during trials are given priority to be adjudicated urgently. As mentioned in Chapter 3, justices in the specialized divisions of the Supreme Court will adjudicate specialized cases within the division.

The Supreme Court has a Research Division consisting of research justices and associate research judges. The primary function of the division is to assist justices of the Supreme Court by examining all relevant factual and legal issues of the cases, conducting legal research and discussing with those justices to ensure consistent and fair results. In addition, each specialized division has research justices and associate research judges appointed as the secretary and assistant secretaries to the division.

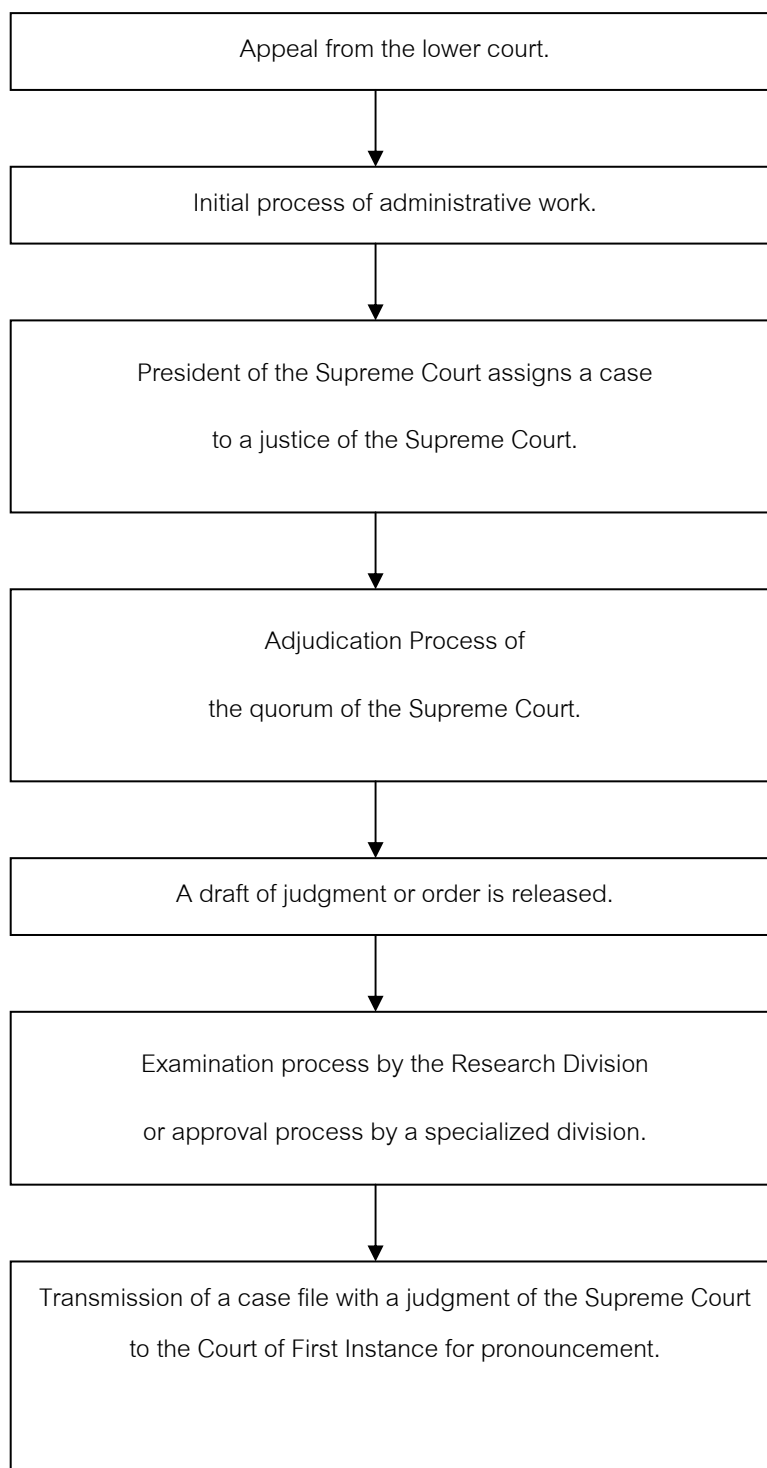
The Secretary of the Supreme Court will assign research justices and associate research judges to assist the justices of the Supreme Court by initially examining factual and legal issues set forth in the drafts of the judgments of the Supreme Court. The research justices or associate research judges will then make comments, consult with and submit the drafts to the senior research justices who are authorized to review the drafts. The drafts with comments will later be submitted to the Vice – Presidents of the Supreme Court and the President of the Supreme Court respectively for final approval.

When a research justice who examines a draft judgment disagrees with a question of fact or law appearing in the draft, he or she may initially seek advice from a senior research justice before consultation with a justice who presided over such case and who drafted the judgment. If there is disagreement between the research justice and the justice who drafted the judgment, the research justice may attach the draft with his or her comments and suggestions before submitting the documents to the senior research justice, the Vice – President and the President of the Supreme Court, respectively. The President of the Supreme Court may agree with the presiding justice or may suggest the latter to review the draft. If the President of the Supreme Court considers that the issues appearing in such judgment are crucial, he may refer the case to the consideration of the plenary session of the Supreme Court.

When the President of the Supreme Court, the authorized Vice – President of the Supreme Court or the authorized Chief Justice of the specialized division approves the draft, the draft will then be processed

under the administrative system of the Supreme Court and sent in a sealed envelope to the Court of First Instance for pronouncement.

Work Flow of the Supreme Court.



Chapter 5

Organization of Court Administration

The Office of the Supreme Court is responsible for the administration of the courts and all staff and it supports the work of all justices of the Supreme Court. There are 6 divisions in the Office.

5.1 General Administration Division

This division is responsible for sending, receiving, drafting, filing and printing official documents; annual budgets; building maintenance; office supplies and procurement; vehicles; security and monitoring of employees of the Supreme Court.

5.2 Division of Adjudication

This division is responsible for receiving, examining and filing complaints, requests, applications and arguments; collecting statistics; and monitoring compromise agreements between parties.

5.3 Division of Orders

This division is responsible for receiving general requests and bail, drafting and submitting orders for the Vice Presidents and the President to approve.

5.4 Division of Judgments

This division is responsible for printing, revising, modifying and dispatching judgments and orders, as well as returning the case files to the lower courts and following upon the pronouncement of Supreme Court Judgments.

5.5 Division of Legal Officers

This division is responsible for providing lawyers, legal resources to research judges and justices, arranging for quorums or sections and the plenary meetings of the Supreme Court.

5.6 Criminal Division for the Holders of Political Positions

Chapter 6

Role of the President of the Supreme Court

The Constitution of the Kingdom of Thailand, Section 275, stipulates that “The Courts of Justice shall have an independent secretariat, with the Secretary-General of the Office of the Courts of Justice as the superior responsible directly to the President of the Supreme Court of Justice.

The appointment of the Secretary-General of the Office of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice.

The Office of the Courts of Justice shall have autonomy in personnel administration, budget and other activities as provided by law.”

The Courts of Justice consequently are independent from the Ministry of Justice. The President of the Supreme Court of Justice thus becomes the highest administrator of the Courts of Justice both in judicial and in administrative affairs. The Office of the Courts of Justice is the supportive office to the President of the Supreme Court on administration, budget and other essential policy of the Courts of Justice. The President of the Supreme Court is responsible for a variety of functions many as follows:

6.1 The Head of Judiciary

Holding highest judicial position, the President of the Supreme Court has the authority and positions, according to the Judicature Act and the Judicial Officials Act, as follows:

6.1.1 to issue judicial rules so as to ensure justice equally, fairly and efficiently;

6.1.2 to issue managerial regulations with the approval of the Judicial Administration Commission;

6.1.3 to serve as the Chairman of the Judicial Commission whose responsibility is to provide judicial independence for judges;

6.1.4 to approve or disapprove the resignation of a judge;

6.1.5 to appoint, promote and transfer a judge with the approval of the Judicial Commission; and

6.1.6 to order judicial disciplinary action.

6.2 The Top Executive of the Judiciary

The President of the Supreme Court is the top executive of the Courts of Justice, the same role filled by the Minister of Justice before the constitutional separation of power. According to the Judicial Administration Act, the President shall have authority as follow:

6.2.1 to determine the policy for the Courts of Justice;

6.2.2 to be in charge and keep control of acts related to the Courts of Justice;

6.2.3 to serve as the chairman of the Judicial Administration Commission whose responsibility is to provide assistance and advice to the President on administrative matters;

6.2.4 to approve the structure and responsibilities of divisions in the organization; and

6.2.5 to supervise of the Secretary-General.

6.3 Other Responsibilities pursuant to the Constitution

The President of the Supreme Court serve as:

6.3.1 to be a member of the Selection Committee for Judges of the Constitutional Court;

6.3.2 a member of the Selection Committee for members of the Counter Corruption Commission;

6.3.3 a member of the Selection Committee for members of the Audit Commissioners; and

6.3.4 the Chairman of the Committee for Jurisdictions of Courts.

Chapter 7

International Relations

7.1 Judicial Agreement

At present, Thailand has entered into four bi-lateral treaties with the Republic of Indonesia, the People's Republic of China, the Commonwealth of Australia and the Kingdom of Spain, on the service of judicial documents and taking of evidence. The objective of these four agreements is to establish direct contact between the Office of the Judiciary and the Ministries of Justice in the said countries for service of process, judicial documents and mutual assistance in the taking of evidence between the Courts in Thailand and their counterparts. These agreements shorten the process of mutual assistance by bypassing the diplomatic channel, that is, requests for assistance can be addressed directly to the court of the other country through the Ministry of Justice or, in the case of Thailand, the Office of the Judiciary and hence saves some valuable time in the process.

For the other countries, in the absence of an international agreement with Thailand, the Civil Procedure Code shall apply in accordance with the principle of international reciprocity and comity. Any request shall be done via diplomatic channels.

7.2 International Cooperation

The Thai Judiciary has been recognized internationally for upholding social justice and the full protection of fundamental human rights. Some countries in Asia, especially those in the Indochina region, contemplate the roles and structures of the Thai Judiciary as a reference for the reformation and improvement of their justice systems. These countries, also, have requested the assistance of the Court of Justice in organizing legal and administrative training programs, arrangement for study visit of judicial officials, as well as arrangement to send Thai judges with special expertise to their countries in order to provide assistance in the establishment of domestic laws.

Every year various groups of judges, senior legal officials, university professors and legal practitioners from abroad visit the Supreme Court for the purpose of observation and exchange of views and experience on the development of judicial systems, the structuring of the Court and its activities. The Supreme Court of Thailand also sends delegations abroad to participate in international conferences and visit foreign courts, relevant agencies and universities to study and research about the judicial system and laws of the other countries in order to keep pace with the new developments of judicial administration and laws.

7.3 The Roles of the President of the Supreme Court-International Functions

In the international arena, the President of the Supreme Court, as the leader of the Judiciary, plays the following important roles.

7.3.1. The President of the Supreme Court has been designated as the representative of the Judiciary, which is one of the three branches of sovereign power, to pay courtesy calls and exchange views related to judicial and legal matters with the heads of states that formally visit Thailand as honored guests of His Majesty and Her Majesty.

7.3.2 The President of the Supreme Court is the Thai delegate who participates in the Conference of Chief Justices of Asia and the Pacific Region held every three years to exchange views on suitable roles of Courts of Justice and development of judicial administration.

7.3.3 The President of the Supreme Court is a member of National Committee of the Asean Law Association for Thailand consisting of legal professionals in both government and non-government sectors aiming at strengthening the relationship and cooperation as well as the exchange of legal knowledge and innovation of new laws among Asean countries.

7.3.4 Being the representative of the Thai Judiciary, the President of the Supreme Court goes abroad to strengthen relationships with and cooperation among the Judiciary of the other countries and to exchange views on issues relating to judicial system and laws.