

# **Office of the Council of State**

## **Fact Book**

Office of the Council of State

Foreign Law Division

December 2022

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**COUNCIL OF STATE  
AND  
OFFICE OF THE COUNCIL OF STATE**

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**HISTORICAL BACKGROUND**

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Prior to the change in administrative and political regime to constitutional monarchy in 1932, Thailand was administered under a regime of absolute monarchy. Sovereign power devolved to the King who was the head of State and in a position of divine authority. The King retained the sole power to enact Laws of the realm. At that time, there was no central agency specifically responsible for law drafting. The duties of law drafting were normally performed by a Royal Scribe (called “Arluk”) who, upon the completion of the draft, would then presented the draft to the King for reexamination and approval before promulgating it into law.

*“The King retained the sole power to enact Laws of the realm. At that time, there was no central agency specifically responsible for law drafting.”*

When colonialist states of the West turned their fleets to South East Asia for new colonies, neighbouring countries were annexed as vassal states of those superpowers. The dominant justification for colonization was the need for assistance from ‘civilised’ and ‘developed’ colonial powers to the ‘uncivilised’ and ‘undeveloped’ countries.



*King Rama V*

King *Rama V* (King *Chulalongkorn*) came to realize that modernisation of the country was the best resort to counter these claims and to escape the grasp of impending threats of westerners' colonisation. His Majesty immediately put in effect the schemes for modernisation. This was aimed at (a) the construction of such infrastructures as roads, railroads, tap water system, electricity and irrigation system and (b) the reform of State administration and laws and order.

*“The Council of State of Thailand was designed on the model of French Council of State (Conseil d’Etat) to be advisory body to the King for State administration affairs and legislative drafting”*

At the outset, King *Rama V* started his modernisation scheme by enacting the “Council of State as an Advisory of the State Act” in 1874, which marked the establishment of the Council of State in Thailand. The Council of State of Thailand was designed on the model of French Council of State (*Conseil d’Etat*) to be advisory body to the King for State administration affairs and legislative drafting, and to perform the function of considering petitions submitted by the people for redress of

grievance. In 1891, the King issued a Royal Proclamation establishing 12 Ministries to be responsible for each function of the State, modeled in the same way as those of the European countries. After an appointment of a portfolio minister for each Ministry, the integral legal and administrative framework of Thailand was laid down.

*“European countries were very influential in the drafting of Thai Law Codes, in particular, German and French laws”*



*Prince Rabi of Rajburi*

As for the then existing legal system which was perceived to be arcane and at times, uncivilised in the eyes of the Western world, the King who had profound comprehension of the concept of due process and the Rule of Law established the new legal system of the country. It was based upon the *Civil Law tradition*, modeled upon the legal system of countries on the European continent. Then, the four main Codes, *viz.* the Civil and Commercial Code, Penal Code, Civil Procedure Code and Criminal Procedure Code, were urgently drafted and enacted. It should be noted that all *ad hoc* Codification Committees which were responsible for the making of the Codes were chaired by *Prince Rabi of Rajburi* while their members consisting of experienced lawyers from England and the US which are Common Law countries and

lawyers from such Civil Law countries as Belgium, France and Germany. Laws of many European countries were very influential in the drafting of Thai Law Codes, in particular, German and French laws; Japanese law was also taken into comparative study of the drafters in the drafting of Codes as well. The result of modernisation scheme of King *Rama V*, especially the reform of State administration and laws and order was a reply to the colonialist powers' justifications for their intended annexation of Thailand as part of their vassal states.



*King Rama VI*

In 1923, the Legislative Drafting Department was established within the Ministry of Justice by Royal Proclamation of King *Rama VI*, King *Vajiravudth*, to be responsible directly to legislative drafting affair of the country in place of the *ad hoc* Committee.

After the Coup of 1932 in which Thailand changed to a system of democratic government with the King as Head of the State, the Legislative Drafting Department was transferred to the Office of the Prime Minister and it had also been entrusted to perform the function to adjudicate the administrative cases (petition or adjudicatory functions) in

addition to its consultative function (legal advisory and law drafting functions) as same as French *Conseil d'Etat*. As a result, the Legislative Drafting Department was renamed the “Council of State” by the Council of State Act, B.E. 2476 (1933). However, the Council of State under the Act of 1933 could not promptly perform the petition function due to the absence of the procedure for adjudication of administrative cases. Aggrieved citizens tried to gain recourse to the Civil Court, but found it too difficult to get access to due process within the established civil procedures because certain technicalities rendered Civil courts impractical for handling administrative cases.

*“The new Act empowered the Council of State to perform both consultative and petition functions. Since then, the Council of State had attained the full status of the Council of State of the European continent. The Act also established the Office of the Council of State as the secretarial unit of the Council of State”*

In 1979, the Council of State Act, B.E. 2476 (1933) was repealed and replaced by the Council of State Act, B.E. 2522 (1979). The new Act empowered the Council of State to perform both consultative and petition functions. Since then, the Council of State had attained the full status of the Council of State of the European continent. The Act also established the Office of the Council of State as the secretarial unit of the Council of State.

*“The Parliament also passed the Council of State Act (No.4), B.E. 2542 (1999) to transfer the petition function of the Council of State to the Administrative Court”*

To respond to the need of making laws fairer, more accessible and more cost-effective, in 1991, the Council of State Act (No.3), B.E. 2534 (1991) was enacted to set up the Law Reform Commission to conduct law reform. Since the establishment of the Law Reform Commission, the Office of the Council of State has provided secretarial support to the Commission.

In 1999, the Government and Parliament had come into agreement that the Administrative Court should be established to adjudicate administrative cases. The Act on Establishment of the Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) was therefore enacted to implement such scheme. In addition, the Parliament also passed the Council of State Act (No.4), B.E. 2542 (1999) to transfer the petition function of the Council of State to the Administrative Court. Since then, the Council of State attains only consultative and law reform functions.



## COUNCIL OF STATE

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### FUNCTIONS

The Council of State has the Prime Minister as *ex officio* President and a number of Law Councillors who are appointed by the King upon the recommendation of the Council of Ministers from qualified persons with knowledge and experience in law, political science, economics, social science or public administration. The Council of State performs the consultative functions which are, *viz.*

(a) to draft laws, by-laws, rules, regulations or notifications upon direction of the Prime Minister or resolution of the Council of Ministers;

(b) to give legal advice to State agencies or State enterprises or upon direction of the Prime Minister or resolution of the Council of Ministers;

(c) to submit opinions or remarks to the Council of Ministers on the need for new legislation or the revision, amendment or the repeal of existing legislation.

### ORGANISATION

In the performance of duties, the Law Councillors meet as a Committee. At present, there are 136 Law Councillors divided into 14 Law Committees, each of which consists of 10 Law Councillors. Each Committee deals with certain different area of law as follows:

(1) *1<sup>st</sup> Law Committee*, dealing with laws related to politics and public governance;

(2) *2<sup>nd</sup> Law Committee*, dealing with laws related to State administration;

- (3) *3<sup>rd</sup> Law Committee*, dealing with laws related to monetary system;
- (4) *4<sup>th</sup> Law Committee*, dealing with laws related to transportation and communication;
- (5) *5<sup>th</sup> Law Committee*, dealing with laws related to industry and energy;
- (6) *6<sup>th</sup> Law Committee*, dealing with laws related to international relations;
- (7) *7<sup>th</sup> Law Committee*, dealing with laws related to natural resources and environment;
- (8) *8<sup>th</sup> Law Committee*, dealing with laws related to education, religion, arts, culture and sports;
- (9) *9<sup>th</sup> Law Committee*, dealing with laws related to social welfare;
- (10) *10<sup>th</sup> Law Committee*, dealing with laws related to public health;
- (11) *11<sup>th</sup> Law Committee*, dealing with laws related to civil and criminal justice process;
- (12) *12<sup>th</sup> Law Committee*, dealing with laws related to public finance;
- (13) *13<sup>th</sup> Law Committee*, dealing with laws related to public sector management;
- (14) *14<sup>th</sup> Law Committee*, dealing with laws related to commerce and business.

## OFFICE OF THE COUNCIL OF STATE

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In carrying out its duties, the Council of State is assisted by the Office of the Council of State (OCS) as its secretariat. In addition to serving as secretariat to the Council of State, the Office of the Council of State is also responsible for secretarial and technical works of the Law Reform Commission, the Code Revision Commissions and the Administrative Procedure Commission.



### VISION

“Better Regulation for Better Life”



## MISSIONS

1. to prepare draft legislation in a way that is accurate and complete for the use as a mechanism of State administration and providing justice to general members of the public;

2. to render legal opinion to State agencies for the purpose of laying down rules in performing official duties within the scope of legitimacy;

3. to improve laws of the country for the purpose of making law an instrument for economic and social development and protection of public interest;

4. to develop principles of administrative law for the purpose of providing guideline in discharging State functions to government officials;

5. to enhance knowledge and expertise in public law for government officials;

6. to be a centre for compiling and disseminating legal information of the country;

7. to provide training to legal counsels of *Krisdika* and public lawyers from other State agencies for the purpose of equipping them with academic knowledge and making them specialists in performing duties related to the law.

## ORGANISATION

Under the provisions of the Council of State Act, B.E. 2522 (1979), the person in charge of OCS is the Secretary-General of the Council of State who is appointed by the King upon the recommendation of the Council of Ministers and with the approval of the National Assembly and is directly

responsible to the Prime Minister. The Secretary-General is assisted by Deputy Secretary-Generals and an Assistant Secretary-General who are assigned responsibilities in supervising works of divisions of the OCS. In addition, there are also Permanent Law Councillors (a position of expert *Krisdika* legal counsel) who are responsible for providing academic support to the Council of State or carrying out other tasks as assigned by the Secretary-General or the Deputy Secretary-Generals. As of December 2022, the personnel of the Office are at a number of 360 officials. In this number, there are 226 *Krisdika* legal counsels.

For administrative purpose, the Office of the Council of State is currently divided into the divisions as follows:

1. Central Administration
  - 1.1. Internal Audit Group
  - 1.2. Administration Development Group
  - 1.3. Anti-corruption Operation Centre
2. Secretary-General Office
  - 2.1. Achieves Section
  - 2.2. Treasury Unit
  - 2.3. Personnel Unit
  - 2.4. Public Relations and Support Unit
  - 2.5. Policy and Planning Unit
  - 2.6. Information Unit
3. Justice Process Law Division
  - 3.1. Civil Justice Process Law Section
  - 3.2. Criminal Justice Process Law Section

4. Financial and Treasury Law Division
  - 4.1. Financial Law Section
  - 4.2. Treasury Law Section
5. State Administration Law Division
  - 5.1. Political and Public Governance Law Section
  - 5.2. State Administration Law Section
6. Commercial and Industrial Law Division
  - 6.1. Industrial and Trade Law Section
  - 6.2. International Trade and Intellectual Property Law Section
7. Education and Cultural Law Division
  - 7.1. Basic Education and Sport Law Section
  - 7.2. Higher Education and Cultural Law Section
8. Natural Resources and Environmental Law Division
  - 8.1. Natural Resources Law Section
  - 8.2. Land, Construction and Agricultural Law Section
9. Technology and Communication Law Division
  - 9.1. Technology and Energy Law Section
  - 9.2. Communication Law Section
10. Social Welfare Law Division
  - 10.1. Social Welfare Law Section
  - 10.2. Public Health Law Section
11. Domestic Law Division
  - 11.1. Legal Information Section
  - 11.2. Special Affairs Section
  - 11.3. Law Library Section
12. Foreign Law Division
  - 12.1. Legal Opinion and Translation Section
  - 12.2. Legal Comparison and Research Section

- 13. Administrative Law Division
  - 13.1. Administrative Law Development Section
  - 13.2. Administration Law Case and Analysis Section
- 14. Legislative Division
  - 14.1. Legislative Drafting Analysis Section
  - 14.2. Legislative Affairs Section
- 15. Public Lawyer Training and Development Institute
  - 15.1. Course Administration Section
  - 15.2. Operation and Assessment Section
- 16. Law Reform Division
  - 16.1. Law Research and Reform Section
  - 16.2. Regulatory Impact Analysis and Ex-post Evaluation Section

## **OTHER ROLES OF THE OFFICE OF THE COUNCIL OF STATE**

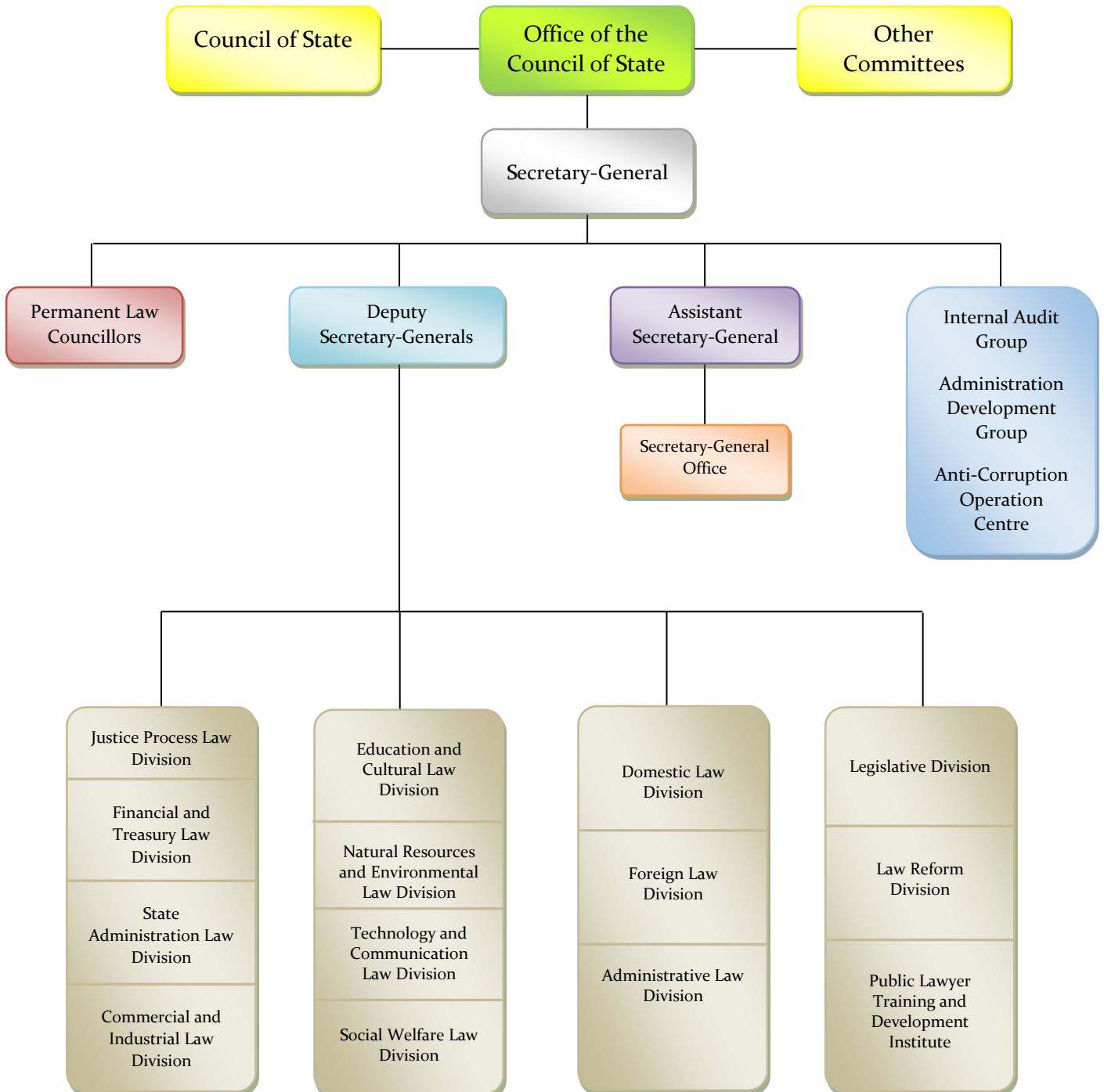
Due to the fact that the Office of the Council of State is the central legal advisory body to the government, the Secretary-General of the Council of State always participates in decision-making process of the Council of Ministers, in particular, on the “point of law”. In this regard, the Secretary-General attends Council of Ministers’ meetings to deliver opinions related to legal matters under consideration of the Council of Ministers as its legal counselor. Furthermore, the Office of the Council of State has the duty under section 62 of the Council of State Act of 1979 to submit opinions on the need for new legislation or the amendment, revision or repeal of existing legislation as entrusted by the Council of Ministers or the Prime Minister.

The Office of the Council of State, by law, is to remain impartial in the course of performing its work. As the legal advisor of the government, it is to perform the duties to ensure that the administrative powers are exercised in accordance with the Rule of Law and for the public interest.



# Organisation Chart

## Office of the Council of State



## **OTHER COMMISSION AND COMMITTEES**

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In addition to the Council of State, the Office of the Council of State also provides secretarial work and support for the following Commission and Committees:

### **LAW REFORM COMMISSION**

The Law Reform Commission is established under the Council of State Act B.E. 2522 (1979) as amended by the Council of State Act (No.3) B.E. 2534 (1991). It is entrusted with the powers and duties of the study and examination of Laws currently in force, whereupon if it considers any legal enactment to contain provisions that in effect, unduly limit the freedom of a person, property, or the ability to pursue a vocation, or where Laws cause disproportionate impediment thereto, or that any legal provision stands contrary to Government policy or to the economic, social, political development, or to the administration of state, or where it considers that new Laws should be enacted to better protect the rights and freedom of the people, the Commission has the power to formulate and implement a plan or project of legal reform for the Council of Minister's approval. The Commission is thereby authorised to carry out the study and research for the preparation of a report and a draft enactment for the consideration of the Council of Ministers.

Since the establishment of the first Commission in 1991, there have been 8 sets of commissions to which the Law Reform Division of the Office of the Council of State has provided secretarial support.

## **ADMINISTRATIVE PROCEDURE COMMITTEE**

The Administrative Procedure Committee is established by virtue of section 7 of the Administrative Procedure Act, B.E. 2539 (1996). Under this Act, the Committee is entrusted with the powers and duties to monitor and supervise administrative acts of State officials to ensure their compliance with the law on administrative procedure and to render advice and consultation in connection with the execution of official duties under the law on administrative procedure. The Committee also has the powers and duties to give recommendation on what legislation should be further enacted for a better execution of the law on administrative procedure. In addition, at least once a year, the Committee is obliged to prepare a report on administrative procedure indicating measures which should be taken to improve the efficiency and fairness in discharging State functions under the law on administrative procedure and to present it to the Council of Ministers for consideration.

The current Administrative Procedure Committee consists of not more than 15 qualified members from government sector and academic sector. The Administrative Law Division of the Office of the Council of State is in charge of the secretarial work of the Committee.

## **CODE REVISION COMMITTEES**

In order to improve the revision of Codes in a way that is more prompt, coherent and efficient, the Prime Minister, by virtue of the resolution of the Council of Ministers, ordered the establishment of 4 Committees to revise the Codes, namely the Criminal Procedure Code Revision Committee, the Civil Procedure Code Revision Committee, the Penal Code Revision Committee, and the Partnership, Company and Business Organisation Law Revision Committee. The Committees are entrusted with the powers and duties to consider and revise the relevant Code and other related laws and enactment within their scope of duties, as well as the powers and duties to issue legal opinions or to review drafts of legislation pertaining to matters within the area of laws entrusted to the Committee. In addition, the Committees also have the powers and duties to arrange for the study and research of matters being deliberated or to request the Office of the Council of State to arrange for a seminar or for a public hearing, as deemed appropriate by the Committee.

Each of the current Code Revision Committee consists of 13-15 qualified members appointed by resolutions of the Council of Ministers. As the Office of the Council of State is responsible for the secretarial work of the Committees, the Secretary-General has the duty to appoint several qualified legal counsels from the OSC to serve as secretaries and assistant secretaries of the Committee.

## CONTACT US

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