

Office of the Council of State Fact Book

OFFICE OF THE COUNCIL OF STATE
FOREIGN LAW DIVISION
OCTOBER 2024



HISTORICAL BACKGROUND (1/4)

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.

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**King Chulalongkorn
(King Rama V)**

When colonialist states of the West turned their fleets to South East Asia for new colonies, neighboring 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 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.

1874

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.

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HISTORICAL BACKGROUND (2/4)

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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.

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.



Prince Rabi of Rajburi

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.

HISTORICAL BACKGROUND (3/4)

1923

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

1932

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) 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.



**King Vajiravudh
(King Rama VI)**

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.

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HISTORICAL BACKGROUND (4/4)

"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"

1991

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.

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.

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.

To draft laws, by-laws, rules, regulations or notifications upon direction of the Prime Minister or resolution of the Council of Ministers

To give legal advice to State agencies or State enterprises or upon direction of the Prime Minister or resolution of the Council of Ministers

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 14 Law Committees, each of which consists of 10 Law Councillors. Each Committee deals with certain different area of law as follows:

Politics and public governance

Industry and energy

Social welfare

State administration

International relations

Public health

Monetary system

Natural resources and environment

Civil and criminal justice process

Transportation and communication

Education, religion, arts, culture and sports

Public finance

Public sector management

Commerce and business

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 October 2024, the personnel of the Office are at a number of 314 officials. In this number, there are 218 Krisdika legal counsels.

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

DIVISIONS

Central Administration	Internal Audit Group	Administration Development Group	Anti-corruption Operation Centre
Secretary-General Office	Achieves Section	Treasury Unit	Personnel Unit
	Public Relations and Support Unit	Policy and Planning Unit	Information Unit
Justice Process Law Division	Civil Justice Process Law Section	Criminal Justice Process Law Section	
Financial and Treasury Law Division	Financial Law Section	Treasury Law Section	
State Administration Law Division	Political and Public Governance Law Section	State Administration Law Section	
Commercial and Industrial Law Division	Industrial and Trade Law Section	International Trade and Intellectual Property Law Section	
Education and Cultural Law Division	Basic Education and Sport Law Section	Higher Education and Cultural Law Section	
Natural Resources and Environmental Law Division	Natural Resources Law Section	Land, Construction and Agricultural Law Section	
Technology and Communication Law Division	Technology and Energy Law Section	Communication Law Section	
Social Welfare Law Division	Social Welfare Law Section	Public Health Law Section	
Domestic Law Division	Legal Information Section	Special Affairs Section	Law Library Section
Foreign Law Division	Legal Opinion and Translation Section	Legal Comparison and Research Section	
Administrative Law Division	Administrative Law Development Section	Administration Law Case and Analysis Section	
Legislative Division	Legislative Drafting Analysis Section	Legislative Affairs Section	
Public Lawyer Training and Development Institute	Course Administration Section	Operation and Assessment Section	
Law Reform Division	The Regulatory Impact Analysis and Ex-post Evaluation Section	Law Research and Reform 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".

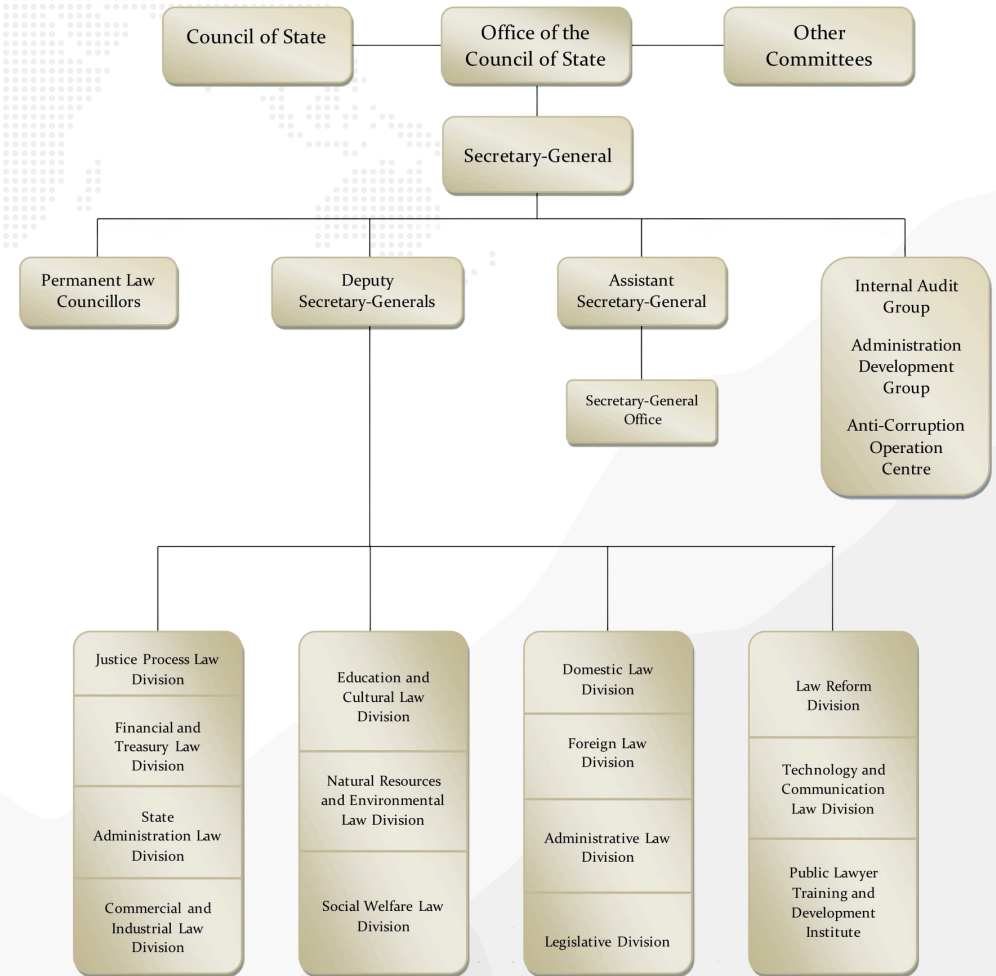
In this regard, the Secretary-General attends Council of Ministers' meetings to deliver opinions related to legal matters under consideration of the Council of Ministers as its legal counselor.

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.



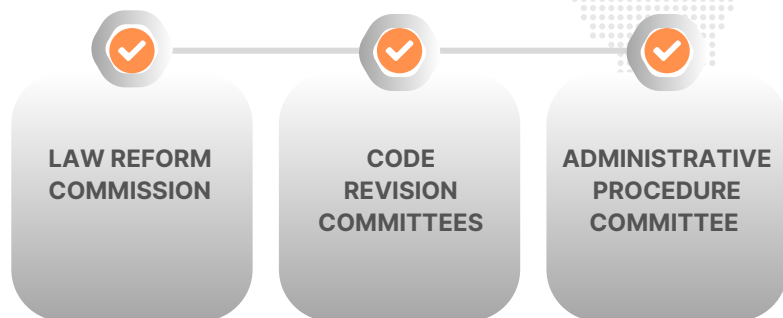
The Office of the Council of State, by law, is to remain impartial in the course of performing its work. As the legal advisor of the government, it is to perform the duties to ensure that the administrative powers are exercised in accordance with the Rule of Law and for the public interest.

ORGANISATION CHART OFFICE OF THE COUNCIL OF STATE



OTHER COMMISSION AND COMMITTEES

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 11 sets of commissions to which the Law Reform Division of the Office of the Council of State has provided secretarial support.



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.



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 9 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.

CONTACT US



Office

Office of the Council of State,

1 Phra Atit Road, Phra Nakhon District, Bangkok 10200

Tel. (66 2) 222 0206-9

Facsimile (66 2) 226 3612, (66 2) 226 6201

E-mail: saraban@ocs.go.th

Foreign Law Division

Tel. (66 2) 222 0206-9

E-mail: nr0907@ocs.go.th

Facebook: Foreign Law Division, Office of the Council of State



Our website

www.ocs.go.th

www.lawreform.go.th



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