IDE Asian Law Series No. 6 Judicial System and Reforms in Asian Countries (Thailand)

## The Judicial System in Thailand: An Outlook for a New Century

Central Intellectual Property and International Trade Court Thailand

INSTITUTE OF DEVELOPING ECONOMIES (IDE-JETRO)

March 2001 JAPAN

## Table of Contents

Chapter 1: Historical Background and Overview of the Thai				
Judicial System				
Introduction	1			
Chapter 2: Court system under the constitution				
1 Introduction	5			
2 Constitutional Court	6			
3 Court of Justice	8			
4 The Administrative Court	13			
5 Military Court	14			
6 How to solve conflict of jurisdiction among the Courts	15			
7 Special function of the Supreme Court under the 19	97 16			
Constitution				
Chapter 3: Court of justice	17			
1 Introduction	17			
2 Structure	17			
2.1 Administration	18			
2.2 Adjudication	24			
3 Judicial System	26			
3.1 The Courts of First Instance	27			
3.1.1 General Courts	28			
3.1.1.1 In Bangkok	30			
Civil Courts	30			
Criminal Courts	30			
The Min Buri Provincial Court	31			
Kwaeng Courts	31			
3.1.1.2 In other Provinces	31			
Provincial Courts	31			
Kwaeng Courts	32			
3.1.2 The Juvenile and Family Courts	32			
3.1.3 Specialized Courts	33			
3.1.3.1 The Central Labour Court	33			
3.1.3.2 The Central Tax Court	35			

		3.1.3.3 The Central Intellectual Property and	35
		International Trade Court	
		3.1.3.4 The Central Bankruptcy Court	37
	3.2	The Courts of Appeal	38
	3.3	The Supreme Court	38
Cha	pter 4	4: Personnel in the Machinery of Justice	40
1	Jud	ge	40
	1.1	Types of Judge	40
		1.1.1 Career Judge	40
		1.1.2 Senior Judge	43
		1.1.3 Associate Judge	44
		1.1.4 Datoh Justice	44
	1.2	The performance of duties and securities	45
		(1) Salary	45
		(2) The supervision	45
		(3) The transfer	46
	1.3	The Judicial Service Commission	46
2	Puł	olic Prosecutor	47
	2.1	Organization	47
	2.2	The performance of duties	49
		1 Duties in Criminal matters	49
		2 Duties in civil matters	50
		3 Legal Aid	50
		4 Other duties	50
		3 Attorney	50
	3.1	Organization	51
	3.2	Works	51
Cha	pter :	5: Legal Education and Training of Legal Profession	53
1	Leg	gal Education in Thailand: Historical Background	53
	1.1	Before Legal and Judiciary System Reform [before	53
		B.E. 2411 (A.D. 1868)]	
	1.2	After Legal and Judiciary System Reform [after B.E.	56
		2411 (A.D. 1868)]	
2	Leg	gal Education in Thailand: Current and Future Trend.	62
	2.1	Current Legal Education in the University of Thailand	63
	В	achelor of Laws program of Chulalongkorn University	63

	N	Master of Laws program of Ramkhamhaeng University	70
	2.2	Future Trend of Legal Education in Thailand	80
3	Leg	gal Profession Training and Development	84
	3.1	Judiciary	84
	3.3	Public Prosecutor	89
	3.3	Lawyer	91
Cha	pter	6: Novelty in Thai Procedural Law	95
1	Pro	ocedure in the Intellectual Property and International	95
	Tra	de Court	
	1.1	Rethinking the Philosophy of IPR Enforcement in the	96
		light of TRIPS and the Concept of Private Rights	
	1.2	The Establishment in Thailand of an Intellectual	97
		Property and International Trade Court	
	1.3	Some Salient Features of the IP&IT Court System	98
	1.4	Rules of the Court under the IP&IT Regime	100
	1.5	Novelty in Intellectual Property Rights Enforcement:	101
		Injunction V. Police Raid	
	1.6	Anton Piller Order under Art. 50 (1) (b) of TRIPS	104
		Agreement	
	1.7	Rights of Information	107
	1.8	Damages	108
	1.9	Improvements in the Thai Intellectual Property Law	110
		and Practice to Protect IPR as 'Public Rights'	
	1.10	Conclusion	111
2	Pro	cedure in the Bankruptcy Court	112
	2.1	Overview and Procedure	112
	2	.1.1 Bankruptcy Cases	112
		2.1.1.1 Receiving Order	113
		2.1.1.2 Meetings of Creditors	114
		2.1.1.3 Composition and Realization of Assets	114
		2.1.1.4 Distribution	115
		2.1.1.5 Termination of the Administration	116
	2	.1.2 Reorganization or Rehabilitation	116
		2.1.2.1 Automatic Stay	119
		2.1.2.2 Management	119
		2.1.2.3 The Plan	120

2.1.2.4 Classification of Creditors and Cram Down	121
2.2 Insolvency Test	122
2.3 Deliberation Procedure	122
2.3.1 Claims	122
2.3.2 Avoidance Power	123
2.3.3 Executory Contract	124
2.4 Management and Insolvency	124
2.5 Disclosure Procedure	124
2.6 Reorganization/Composition Plan	125
2.6.1 Content of the Plan	125
2.6.2 Post-confirmation Procedure	125
Chapter 7: Alternative Dispute Resolution in Thailand	127
1 Court-Annexed Conciliation	127
1.1 Practice Guidance on Court-Annexed Conciliation and	127
Arbitration	
1.2 Role of the Judge: Inquisitorial V. Adversary	129
1.3 Some Techniques Used in Court-Annexed Conciliation	130
1.4 Court-Annexed Arbitration	132
2 Arbitration in Thailand	132
2.1 International Commercial Arbitration	133
2.1.1 Enforcement of Foreign Arbitral Awards	134
2.1.2 Scope of the New York Convention	135
2.1.3 Thailand and the Enforcement of Foreign	136
Arbitral Awards	
2.1.4 Scope of the Arbitration Act 1987	137
2.1.4.1 Domestic Awards	138
2.1.4.2 Foreign Awards	138
2.1.5 A Critique of International Commercial Arbitration	140
in Thailand	
2.2 Problems Obstacles and Remedies for the Development	141
of Arbitration in Thailand	
2.3 Conclusion	144
Chapter 8: Conclusion	146
Index	151
Appendix	

Published by Institute of Developing Economies (IDE), JETRO 3-2-2 Wakaba, Mihama-ku, Chiba-shi Chiba 261-8545, JAPAN

Cinoa 201 05-15, 37 117 11 v

FAX +81-(0)43-2999731

Web Site: http://www.ide.go.jp

e-mail: laws@ide.go.jp

© 2001 Institute of Developing Economies