

Chapter 1

Historical Background and Overview of the Thai Judicial System

Introduction

“The Judicial System in Thailand: An Outlook for a New Century”, 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. Members of the working group for the research comprise of seven judges from various courts of justice in Thailand and two legal officers acting as secretariat. Each judge is assigned to write a chapter on his expertise. A few meetings are conducted to interview players in each compartment of the legal profession. Meetings among the working group members are conducted to discuss matters of controversies and try to arrive at certain consensus. All members are responsible for the final draft. *Justice Prasobsook Boondech*, the Chief Justice of the Central Intellectual Property and International Trade Court graciously acts as the honorary advisor to the programme, which is chaired by *Judge Vichai Ariyanuntaka* of the Intellectual Property and International Trade Court. A brief bibliography of the members are included in the annex to this Research.

Perhaps we are blessed with living in interesting times. In 1997 Thailand witnessed the transition of its economy from phenomenal success and double-digit or near double-digit growth to near collapse verging on the state of bankruptcy in many financial quarters. Lawyers, like any other profession, bear the burden of bringing Thailand out of this predicament. This is a time for re-thinking, re-planning and re-structuring Thai’s legal infra-structure to create the legal environment friendly to international trade and investment. The legal environment whereby legal rights, local

and foreign, shall be equally protected and enforced under Thai law and the dispute resolution mechanism in Thailand. The legal environment of good faith and trust worthiness. The legal environment which will lead Thailand to the more glorified days of international trade and investment and the recovery of Thai economy as a whole.

Under the new Constitution promulgated in 1997, substantial changes have been made in Thai political, social and legal environments. A Constitutional Court has been established. The system of administrative courts has also been established. In the field of criminal justice system, a human right oriented approach is preferred to the traditional strict appliance of 'law and order' approach. In the field of civil justice system, case management by the judge and alternative dispute resolution (ADR) are encouraged.

Over a hundred years ago when Thailand started the modernization of its legal system and establishing a modern court structure, a young prince, *Prince Rajburi Direkrit*, reputed to be the brightest son of *King Chulalongkorn*, and later to be known as "*father of modern Thai law and judicial system*" was sent to Christchurch College Oxford to read jurisprudence. This was around the Meiji era in Japan.

The Thai judicial system in the earlier time, under the administration of *Prince Rajburi Direkrit's* Ministry of Justice, was jewel in the crown in the Thai administration. Walter Graham, in his book, *Siam*, has this to say on the Ministry of Justice of the Kingdom of Siam:¹

...The Ministry has built up a service probably the cleanest and straightest Siam has ever seen, and containing in its ranks officers who could compare favourably with the members of the judiciary of many European countries. In fact, about the year 1909, the Ministry of Justice was the bright particular star in the administration of the country. ---End of quote.

The first law school in Thailand, the Law School of the Ministry of Justice, whereby future judges were trained was modeled upon the "Inn of Courts" in London. The most prestigious legal qualification for legal practice in Thailand is to pass the Thai

¹ Walter A Graham, *Siam* (3rd edn, London: Alexandra Moring, 1924) Vol. I, pp 372-373. The quotation was cited (in Thai) by Professor Thanin Kraivixien in his monumental work, *The Reform of Law and Court Administration in the Reign of King Chulalongkorn*, (Bangkok: Office of the Prime Minister Press, 1968).

Bar Examinations, taught and organized by the Thai Bar Association. The qualification is called “Thai Barrister-at-Law” – Nei ti ban dit Thai - It is so called to distinguish itself from the Inn of Courts’ Barrister-at-Law in England.

Although Thailand may be classified as a Civil Law country whereby the Continental style of codification is evidenced in its systematic and diversified codes of law, the English legal system has much influence in its development, particularly in the field of commercial law, procedural law and the law of evidence. The notion of proof beyond reasonable doubt in a criminal case and proof on the balance of probabilities in a civil case, and adversarial system of procedure where the judge acts in a passive role as an umpire are some of the common law influences. No doubt much of the English influence comes from the part-English trained lawyers and judges of the earlier days.

Legal education abroad represents a trend in the legal development. In the older days Thai government and private well-to-do individuals used to send its officers or their sons to England for legal studies. Higher tuition fees in the UK first introduced by the Thatcher government in 1970s and the world-famous, cost-effective postgraduate legal studies in North American law schools, notably Harvard, Yale, Berkeley, Columbia etc with their one year master of laws programmes create a much competitive choice. One sees an influx of Thai law graduates to the United States law schools to the detriment of UK law schools. The late 1990s saw UK law schools fought back with more competitive one-year masters’ programmes for law graduates from civil law countries whose first language is not English. Although the variety of subjects may be as wide-ranging as US law schools, the UK law schools do not offer core subjects in the masters’ programmes for the benefit of the examination leading to a judicial career in Thailand. Recently, with the reform of judicial salary, judicial career in Thailand has once again gained popularity. The entrance of judicial career is by way of competitive examination, perhaps the toughest of any law exams in this country. Post graduates from an approved Thai or foreign law school have a particular advantage for the judicial examinations since they will be tested in a different set of papers, reputedly softer and more general. However, there are certain core subjects to be fulfilled e.g. contract, tort, criminal law, procedure law and evidence. Not all of these subjects are offered in standard masters of law programmes in the UK since they are considered undergraduate-subjects and hence one cannot use an UK master of law degree to qualify in the judicial examination. American law schools, on the other hand, may offer these courses through their undergraduate law degree (J.D. Programme) and treat it as part of

a masters' programme for individual student interested in the course. This is a matter of administrative arrangements to fit the purpose of the student. It benefits both. We can now see more American influence in the Thai law, particularly in the field of Alternative Dispute Resolution and American legal thinking in general.

ADR is a new terminology of an old concept. Non-aggressive, non-confrontational approach to dispute settlement has been the teachings and practice of eastern philosophers since time immemorial. It is only recently since the method of ADR has been the subject of critical and scientific analysis. Ironically it is the academics in the West who bring ADR, with its famous '*win-win solution*' trademark to world attention. Society, commerce and trade all over the world are the beneficiaries of alternative dispute resolution. In Thailand as well as everywhere in the world, ADR represents a refreshing approach to litigation. It represents a new challenge to the legal profession. This Research, in many aspects, proposes to examine some of the lessons we have learned from introducing or perhaps more accurately, reintroducing ADR into the dispute resolution mechanism in Thailand.