

# GOVERNANCE IN THAILAND: CHALLENGES, ISSUES AND PROSPECTS

*In our rush to catch up with the West, the lessons we learned--  
from the West and from our past--were incomplete.  
While the West had evolved checks and balances  
to curb the excesses of capitalism, in our exuberance  
to reap the fruits of capitalism the need for such mechanisms  
was unheeded. While transparency and accountability  
had long been pillars of public governance in the West,  
in Asia the webs of power and money remain largely  
hidden from public view...We created a hybrid  
form of capitalism where patronage was put to  
the service of profit-maximization, indeed a recipe  
for unbalanced and unsustainable development.*

--Anand Panyarachun, former Prime Minister of Thailand  
February, 1998--

**Asian Development Bank**

**April, 1999**

## LIST OF ABBREVIATIONS

ADB	-	Asian Development Bank
ASEAN	-	Association of Southeast Asian Nations
AusAID	-	Australian Agency for International Development
BOB	-	Bureau of Budget
BOT	-	Bank of Thailand
CCC	-	Counter Corruption Commission
CGD	-	Comptroller General's Office
CSC	-	Civil Service Commission
CSSCs	-	Civil Service Sub-Commissions
EGAT	-	Electric Generating Authority of Thailand
FIDF	-	Financial Institutions Development Fund
FPO	-	Fiscal Policy Office
GES	-	Good Enterprise System
GNP	-	Gross national product
IMF	-	International Monetary Fund
MOI	-	Ministry of Interior
MP	-	Member of Parliament
MOJ	-	Ministry of Justice
MOF	-	Ministry of Finance
NAP	-	New Aspiration Party
NBT	-	National Broadcasting Services of Thailand
NCCC	-	National Counter Corruption Commission
NESDB	-	National Economic and Social Development Board
NGOs	-	Nongovernment organizations
OAG	-	Office of the Auditor General
OSE	-	Office of State Enterprises
OCJ	-	Office of the Courts of Justice
OCSC	-	Office of the Civil Service Commission
PAO	-	Provincial Administrative Organization
PSAL	-	Public Sector Administration and Reform Loan
RTG	-	Royal Thai Government
SAP	-	Social Action Party
SEC	-	Securities and Exchange Commission
SEPC	-	State Enterprise Policy Committee
SERC	-	State Enterprise Reform Committee
SOEs	-	State-owned enterprises
TI	-	Transparency International
UNDP	-	United Nations Development Programme

## FOREWORD

Throughout Asia, issues of governance are at the center of many of the most pressing challenges confronting the region. In the wake of the Asian financial crisis, countries in East Asia are grappling with enhancing the transparency and independence of regulatory regimes, improving corporate governance, and establishing predictable legal frameworks. Questions of improving service delivery, cutting red tape and streamlining bureaucratic procedures, strengthening accountability and reducing corruption are of fundamental importance in both East Asia and South Asia.

The Asian Development Bank has long been concerned about improving the quality of public sector management in its programs and projects. With the adoption of the policy, *Governance: Sound Development Management* in August 1995, and the subsequent adoption of an anticorruption policy in 1998, the ADB has moved proactively to address a broad range of governance issues.

The Thailand paper is the logical extension of this effort. Since the field of governance is vast and touches upon nearly all aspects of development, multilateral development banks must be selective and focus their limited resources upon those areas where they can be of greatest assistance to their borrowing countries. It is therefore critical to have a careful survey of the relevant issues at stake on a country by country basis. This initial survey will serve as the basis for a more detailed and operationally oriented plan that will identify specific areas where the ADB and borrowing country can work in partnership to implement their governance agenda.

The Thailand study is the first of a number of country studies that the Programs West Department has recently initiated, and subsequent studies will be completed shortly for Laos, Nepal, Pakistan and Viet Nam. It is appropriate that Thailand be first for, as this survey argues, the new 1997 Constitution has provided an excellent basis for far-reaching governance reform. We are particularly grateful for the strong cooperation and high level participation that we received from the Thai government in preparing this study, which is the product of a joint team of Thai researchers and ADB staff.

Although the study was the result of an extensive participatory effort, it should be noted that the views reflected within this study do not necessarily reflect those of the Asian Development Bank and the Royal Thai Government.

Finally, I would like to say a word of thanks to the staff of the Programs West Department's Thailand desk, for providing guidance and support, and to the Strategy and Policy Office and its Governance and Public Management Unit, for their excellent assistance in the preparation of this study.

Geert van der Linden  
Director, Programs West  
Manila, April 1999



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## EXECUTIVE SUMMARY

This paper provides an overview of the major governance issues currently confronting the Royal Thai Government (RTG), with particular emphasis upon the issues likely to be of greatest interest to international donors such as the Asian Development Bank (ADB). It is intended to provide background and context for a more detailed strategy paper on ADB operations in Thailand relating to governance and public sector management.

The fundamental governance challenge confronting Thailand is to ensure the effective implementation of the October 1997 Constitution. This undertaking will be a massive challenge, for the constitution is designed to radically reconfigure the political, legislative, judicial and administrative machinery of government. If successful, Thailand will move to a more decentralized and participatory structure, in which government institutions at all levels will operate in a more transparent, accountable and responsive fashion. It will take at least a generation to work out all of the implications and ensure that the new practices and procedures are functioning effectively.

In seeking to implement such far-reaching reforms, Thailand can draw upon a number of strengths. Social and economic changes over the past three decades--such as globalization, education, the expansion of the media, the growth of civil society, and generational change--have resulted in a more affluent, mobile, informed and politically aware populace. They have helped erode traditional authority relationships and created demands for increased political pluralism and improved governance. The Asian financial crisis has provided further impetus for change, as has the election of a reformist government under Prime Minister Chuan Leekpai. Furthermore, Thailand is home to some dynamic public sector managers, who have both the will and capacity to implement reform.

Unfortunately, Thailand also confronts a number of serious obstacles. A number of influential forces have a vested interest in the status quo, and enthusiasm for the new constitution is not universal among them. Other daunting challenges, such as a highly hierarchical and deferential culture, the practice of vote buying in rural areas, fierce bureaucratic resistance to the decentralization initiatives envisioned in the constitution, and widespread perceptions of corruption, remain very much a part of Thai political and administrative life.

As a result of these dynamics, Thailand is at a crossroads. With careful planning and tenacious implementation, many of the ambitious hopes envisioned within the Constitution can be realized. However, success is by no means guaranteed, and much will depend upon the quality of the decisions made within the next five years.

International donors, such as the ADB, have only limited influence over developments in Thailand. Nevertheless, there are a number of areas where they can usefully assist the reforms currently underway. The World Bank is already playing a major role in public expenditure management, and is likely to be heavily engaged shortly on various aspects of civil service reform as well. Along with the International Monetary Fund (IMF), it is also working to restructure the banking sector, and it is proposing additional activities in legal reform. The United Nations Development Programme (UNDP) has launched pilot programs in decentralization and human resource management, and results based

management. A variety of bilateral donors, such as Japan, Canada, New Zealand and Australia are also supporting individual projects that touch upon governance issues.

The ADB is one of the largest donors in Thailand, providing over \$4.25 billion in loans and \$37.4 million in technical assistance grants from 1968-97. The Bank is already working on several critical governance issues, including strengthening the regulation of securities markets and rationalizing service delivery in the agricultural sector. Under a regional technical assistance grant, the legal framework for secured transactions in Thailand will also be examined.

In addition to these ongoing areas of involvement, there are six important themes and priorities where the ADB could be of particular assistance: (1) support for decentralization and enhanced citizen participation in decisionmaking; (2) strengthened accountability and integrity within the public sector; (3) enhanced service delivery by rationalizing functions and reengineering business processes both within and between departments; and (4) shrinking the sphere of state intervention in the economy and improving the performance of State Owned Enterprises (SOEs); (5) improved coordination in policy formulation and implementation; and (6) support for legal and judicial reform.

Some of these priorities, such as decentralization or the reengineering of business processes, are functional priorities that can be strengthened in the ADB's work across sectors. Any Bank lending program (or any donor program, for that matter) should contribute to the realization of these objectives within its specific sphere of operations. Other initiatives, such as enhancing accountability or advancing legal and judicial reform, will involve working with particular institutions tasked with performing this responsibility for the public sector as a whole. In the area of accountability, for example, this would include the National Counter Corruption Commission (NCCC), the Office of the Auditor General (OAG), the Ombudsmen and the Administrative Court.

Turning to the first area, decentralization, the reforms envisioned are massive in scope and will require many years to fully implement. There are several ways in which the ADB can support this effort, including both efforts to integrate participation and decentralization in its project work with individual ministries, agencies and departments, as well as specific programming initiatives to enhance decentralization by supporting a range of targeted initiatives in this area. As a general principle, sector work should support the appropriate and timely devolution and decentralization of decisionmaking responsibility away from Bangkok, although the strategies for achieving this objective will vary.

Turning to specific programming areas where ADB assistance may be useful, a top priority is for the Decentralization Committee and its related subcommittees to work out viable structures, staffing and financial arrangements surrounding decentralization. This effort is already well advanced, and a number of donors are providing assistance to various components of the decentralization effort. The ADB could provide technical assistance, as necessary, to make available technical expertise and support research in areas where critical gaps exist, and we could also support the continued participatory preparation of this legislation through stakeholder workshops, etc. Two other areas where the Bank could provide support are the human resource management and development and financial management components of decentralization.



Particular care should be devoted to developing institutions and practices that will put pressure upon various units of subnational governance to improve their performance. Toward this end, supporting the development of credit ratings agencies would be a particularly promising approach, for such ratings are both public information and linked to the ability of local governments to receive additional resources at lower cost. The ADB could also support research and publicity regarding the effectiveness of municipal governments or certain aspects of municipal service delivery.

The ADB can contribute to enhanced transparency and accountability both in its general project and program work and by specific initiatives to strengthen accountability institutions, such as the new NCCC, OAG, Ombudsmen and Administrative Courts. In terms of general project work, ADB projects can pay particular attention to examining accountability relationships within specific ministries, agencies and departments. Working in collaboration with their Thai counterparts, Bank staff and consultants should assess the existing mechanisms for monitoring both organizational and individual performance to determine their adequacy and use in executive decisionmaking. They should strengthen the internal audit function and ensure that adequate financial control systems are in place. They should examine the organization's record in dealing with complaints against staff from OAG and the Counter Corruption Commission (CCC, the current organizational precursor to the NCCC), and look at existing disciplinary and grievance procedures. They should look into procurement procedures and the degree to which staff can exercise discretion over large projects and/or sums of money, and they should examine the general framework for managerial accountability. They should look at staff compensation and assess its adequacy. Finally, they should look at organizational business processes, to ensure their transparency and see if opportunities exist for streamlining and the reduction of delays and opportunities for "speed money".

The ADB can also work directly with institutions specifically tasked with advancing accountability and integrity. In this context, the most important objective is to ensure that a proper accountability framework is in place to prevent the waste or abuse of resources under decentralization. Nothing will discredit the decentralization process more quickly and thoroughly than the existence of widespread corruption in subnational governments, and unfortunately neither the NCCC nor the OAG currently have the capacity to operate effectively in a highly decentralized environment. It is therefore imperative that these organizations be strengthened quickly.

The ADB can assist the Government in a number of areas through either a loan or integrated series of technical assistance grants. It can support the drafting of relevant organic legislation through technical assistance grants for both the NCCC and OAG. It can provide assistance for expanding their presence in the provinces and strengthening their capacity to prevent abuses during decentralization, including the hiring and training of new staff and the development of regional offices. It can help review and upgrade their organizational structure and business processes, including those for investigation. It can support efforts to strengthen human resource management and improve pay and employment conditions. It can strengthen their ability to monitor performance, including tracking the number and variety of cases referred to them for investigation and tracking the disposition of such cases. It can enhance their communication and coordination with other important agencies, such as the police and the Attorney General's office.

Citizens need to be "empowered" to address corrupt or incompetent administration by providing them with access to institutions that can examine complaints fairly and

expeditiously. Toward this end, technical assistance can be provided to support the drafting of organic legislation on the Ombudsmen. Support can also be provided for staff recruitment and training; the development of an appropriate organizational structure, investigation procedures and monitoring mechanisms (in the case of the Ombudsmen), or the rules and procedures to be followed by Administrative Courts; and, finally, by providing the necessary supplies, equipment, etc.

Finally, support can be provided to the Office of the Civil Service Commission's (OCSC) effort to improve transparency and integrity within the public sector by creating an Ethics Promotion Center and drafting a code of conduct, among other measures.

Turning to the third issue, enhanced service delivery, the ADB's current operational strategy for Thailand emphasizes work in the social sector. This includes initiating structural reforms in areas such as education, training, labor market management, health, etc., to reduce inefficiencies and improve the provision of social programs, particularly those targeted toward the most vulnerable members of society.

These objectives will require major improvements in how the relevant line ministries and departments are managed. Unfortunately, in many donor organizations, including the ADB, institutional development concerns were often tacked on to projects that were primarily focused upon other goals. In the future, any Bank project in the social sector should have institutional development and improved public sector management as a fundamental objective that is integrated into project preparation from the outset.

Particular attention should be devoted to three areas. The first is questions of strategic management in general, and functional rationalization in particular. As was noted above, many knowledgeable observers have lamented the frequent duplication of effort and functional overlap within Thai bureaucratic institutions, along with their attendant inefficiencies. On a sectoral, ministerial and departmental basis, the ADB should support the efforts of public sector organizations to narrow and consolidate their focus to their "core business," and to the greatest extent possible off-load tertiary responsibilities on to other government agencies, levels of government, or the private sector. As an interim measure, the pooling of money, manpower and equipment between agencies working in similar areas should be expanded.

The second area is process reengineering. Preliminary work by the OCSC has indicated that there are major efficiency gains to be achieved in the fundamental reform of administrative processes and procedures. This work needs to be expanded and replicated among many departments and agencies, particularly when functions cross administrative boundaries (the most frequent cause of delays). Such reforms pay added dividends in improving service delivery and therefore gathering public support for reform, as well as in eliminating opportunities for corruption.

Finally, in a fashion consistent with developments within the "New Public Sector Management," greater attention needs to be devoted to performance monitoring and evaluation. The design of appropriate output and outcome measures, and their use in administration, is a very complicated task. Care must be taken not to create dysfunctional or perverse incentives, or to dismantle input controls before a proper monitoring framework is in place. However, Thailand's public sector needs to be reoriented from its largely inward, vertical orientation to an outward looking, client focused approach, and the design of appropriate performance measures that emphasize

results over inputs can play a useful role in moving social sector departments in this direction. Toward this end, the work of internal audit units and monitoring and evaluation units within ministries and departments should be strengthened.

The bulk of the ADB's work on governance issues that fall at the intersection between the public and private sectors will focus upon securities regulation and a number of subsidiary issues, such as pension and provident fund regulation, information compliance and disclosure, and asset securitization. This work is critical to facilitating the development of market instruments for private debt and, ultimately, to Thailand's recovery and ability to secure needed financing at a reasonable cost. It will require considerable attention and effort to ensure that the new regulatory regimes are properly established.

It is unclear that the ADB will be in a position to support large-scale reform among individual SOEs. Such support is often linked to the financing of major infrastructure projects, which provides scope for dialogue on issues of policy and governance. However, the Bank's draft operational strategy envisions that lending will be phased out in several infrastructure areas, such as energy and telecommunications, where enterprises can now obtain commercial finance at competitive rates. ADB lending for infrastructure may also be limited geographically to the poorer regions of the country, further curtailing the opportunity for engagement on these issues. Nevertheless, there may be selective opportunities to support such efforts on a case-by-case basis.

Numerous Thai and international observers have emphasized the importance of improving coordination at all levels of government. Information flows are often vertical, highly restricted and do not readily cross organizational boundaries. This is true both among central agencies and departments and among various levels of government, where subnational governments are often highly dependent upon the center for information.

As a matter of general priority, all ADB projects should seek to enhance the degree of collaboration and coordination both among different levels of government and among different agencies working within a particular sector. This objective will, in turn, involve progress along three dimensions: (1) improving the incentives for various organizations to collaborate; (2) improving the mechanisms and vehicles that exist for collaboration; and (3) improving organizational communication and public relations, so more information is available about the work that various ministries, agencies, departments and local governments are doing.

In terms of specific institutions, the ADB could begin by assisting the efforts of the Cabinet Secretariat to improve coordination in government decisionmaking. When problems of coordination occur at the top, the results are felt throughout government. As an initial step, the number of issues taken to Cabinet on a statutory basis should be reviewed and significantly curtailed. Computerization can help to reduce long lead times, and a strengthened subcommittee process would go a long way toward obviating the need to bring many issues before the full Cabinet. Careful attention should be devoted to examining the linkage between cabinet decisionmaking and the budget and planning process.

Turning to the need for greater communication at the working level, the formation of intergovernmental task forces and coordinating committees should be strengthened, and

these bodies need to be empowered to resolve issues within their jurisdiction. In the area of subnational government, the new constitution has taken a number of useful steps in this direction through the creation of elected local assemblies and Local Officials Committees. Care must be taken to develop their capacity for effective coordination, to redraft rules and regulations to provide them with greater flexibility in responding to local needs, and to ensure that the proper incentive framework is in place so that the employees of central ministries and departments will take their collaborative duties seriously. These principles also hold true for collaboration between ministries and departments at the central level, and even for collaboration within various ministries--where teamwork skills and joint working groups are often missing or underdeveloped.

Finally ways should be found to strengthen horizontal associations and advocacy groups at both the central and subnational levels. The Rural Doctors Society, for example, has played an important role in combating corruption within the Ministry of Health. More importantly it has served as an effective vehicle for doctors in remote areas to strengthen their managerial skills and exchange information and advice on topics of mutual interest. Similar "civil society" organizations, such as leagues of mayors or other professional associations, should be encouraged.

Significant amounts of money are not necessary to solve many of Thailand's most pressing legal and judicial problems. However, Thailand would benefit from assistance in three areas. The first and most urgent priority would be, on a selective basis, to provide support for drafting certain elements of the thirty or so pieces of organic legislation that must be passed by October 1999.

Second, there are several areas where the ADB could potentially be of assistance to the task of judicial reform in Thailand. An immediate need is to assist in the smooth transfer of administration of courts and judges from the Ministry of Justice to the new Office of the Courts of Justice (OCJ). Another important need would be to strengthen the operations of the Constitutional Court. Similar assistance could also be provided to the establishment of the new Administrative Courts and the laws relating to their jurisdiction and procedures.

Finally, in recent discussions with various institutions and agencies, ADB staff have identified a number of areas for legal technical assistance, such as providing assistance to the Law Commission for a study on the reform of specific laws (e.g. those governing public procurement, competition law and the new administrative courts), or assistance for development of a Thai legal dictionary.

It is not suggested that the ADB be active in all of these areas. Rather, they present the most promising targets of opportunity for the Bank's governance work in Thailand, based upon a combination of the current needs and priorities of the Thai government and the ADB's own areas of comparative advantage. Tradeoffs and hard choices will need to be made, in close consultation with the Government and civil society, and with careful consideration of the work of other donors. The next step will be the preparation of a more detailed governance strategy, which will provide a concrete guidance for the Bank's lending and technical assistance operations within Thailand.

## GOVERNANCE IN THAILAND: CHALLENGES, ISSUES AND PROSPECTS

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## I. Introduction

The fundamental governance challenge confronting Thailand is to ensure the effective implementation of the October 1997 Constitution. This undertaking itself will be a massive challenge, for the constitution is designed to radically reconfigure the political, legislative, judicial and administrative machinery of government. It will take at least a generation to work out all of the implications and ensure that the new practices and procedures are functioning effectively. If successful, Thailand will move from being a highly centralized state whose politics have often been dominated by a narrow set of political, military, administrative and economic elites to a decentralized and more participatory structure, in which government institutions at all levels will operate in a more transparent, accountable and responsive fashion. This transformation will be all encompassing, and there is no other governance issue of remotely comparable importance.

To many external observers, the significance of the new constitution is not inherently obvious. Since the absolute rule of King Rama VII was ended and a constitutional monarchy established in 1932, Thailand has experienced no fewer than fifteen constitutions--including one drafted as recently as 1992. Thai politics have traditionally involved a delicate balancing act between the crown, the army, the bureaucracy and powerful economic interests. These forces remain very influential in Thai political life, and enthusiasm for the new constitution is not universal among them. A majority of parliamentarians were opposed to the new constitution and voted for it only under strong public pressure arising out of the recent economic crisis. Other daunting challenges, such as a highly hierarchical and deferential culture, the practice of vote buying in rural areas, fierce bureaucratic resistance to the decentralization initiatives envisioned in the constitution, and widespread perceptions of corruption, remain very much a part of Thai political and administrative life.

However, there are also powerful forces working to advance the reform agenda. With globalization and the rapid social and economic development of the past three decades, Thailand itself has changed. In 1960, the urban working class accounted for only approximately 12 percent of the labor force; today, it accounts for over 40 percent. Some professional categories have witnessed a four-fold expansion in membership within the last two decades. Since the 1960s, the percentage of the population enrolled in secondary education has doubled, and during the 1980s, the proportion of the population enrolled in tertiary education increased by almost 50 percent. Currently, over 5,000 Thais are studying abroad annually. Although significant disparities remain in terms of income distribution, the level of poverty has clearly declined; between 1988 and 1996, the percentage of the population living below the poverty line dropped by more than half.

Improvements in education and income have fostered the development of mass communication. During the past three decades, Thailand has developed a relatively free media with lively political debate and broad access to the populace. In Bangkok, at least 75 percent of adults read a daily paper, compared with about 20 percent in rural areas. There are about 150 newspapers, including 30 dailies in Bangkok and 120 provincial papers in Thailand. Nine out of ten Bangkok households and three out of four rural households owned at least one television set.<sup>1</sup>

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<sup>1</sup> For a discussion of the media in Thailand, see Appendix 6.

There has been a rapid expansion in civil society. The number of Nongovernmental Organizations (NGOs) and private foundations operating within Thailand has increased to over 14,000. The number of professional associations has also grown rapidly, as has their sophistication and knowledge base. Some, such as the Rural Doctors Society, for example, have recently been able to mount a successful and savvy political campaign to eliminate corruption in pharmaceutical procurement. Government ministries and departments are increasingly called upon by the political leadership to cultivate, encourage and foster relationships with NGOs as partners in the social and economic development of Thailand.

Finally, Thailand is experiencing a generational shift. Many Thai professionals and emerging leaders in their forties were attending university during the tumultuous years of the late 1960s and early 1970s, when violent student protests helped to end the military government of Field Marshall Thanom Kittikachorn in 1973. Their political views were forged during this climactic period of upheaval, when many rebelled against the established social order and embraced more democratic and egalitarian political traditions.

All of these changes--globalization, education, the expansion of the media, the growth of civil society, and generational change--have resulted in a more affluent, mobile, informed and politically aware populace. They have helped erode traditional authority relationships and created demands for increased political pluralism and improved governance. The massive outpouring of public support for the new constitution, which was passed overwhelmingly by the parliament in spite of opposition from a number of powerful and well-entrenched elites, is the strongest example of the new dynamics at work within Thai politics.

Furthermore, there is a consensus among many astute observers of Thai political developments that the influence of at least two of the traditional pillars of Thai society--the military and the bureaucracy--is changing. The military has been less willing to interfere in politics in the wake of the humiliating royal rebuke of Generals Suchinda Kraprayoon and Chamlong Srimuang the bloody suppression of protests in 1992. It allegedly declined to intervene to prevent the passage of the October 1997 Constitution, and it allowed a peaceful transition of power from the New Aspiration Party coalition to the Democrat coalition during the midst of the economic crisis. Prime Minister Chuan Leekpai has served successfully as the civilian head of the Ministry of Defense for over a year. The new Commander and Chief of the Armed Forces, General Surayud Chulanont, has emphasized the professionalism of the military. He voluntarily resigned his seat in the Senate and has told reporters repeatedly that, as a professional soldier, it would be inappropriate for him to comment on political developments.

Even if the military were inclined to intervene, their effort to re-enter politics would be fiercely resisted by leading political and economic interests and various elements of civil society. Analysts believe it could not be accomplished without considerable civil unrest and repression, which would run the risk of further royal rebuke and could trigger international sanctions that would jeopardize the recovery effort. Furthermore, it is unclear that the military possesses the economic expertise that would make it any more adept at handling Thailand's current crisis than the current civilian government.<sup>2</sup>

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<sup>2</sup> As Dr. James Klein notes, a more critical question is whether the military will actively support public participation, accountability and transparency or give indirect encouragement to conservative elements among the bureaucracy and political parties who seek to thwart reform. This could be accomplished by



In a similar fashion, the Thai bureaucracy is also unlikely to mount an effective direct challenge to the reforms envisioned in the constitution. The bureaucracy's prestige has been on the wane for over a decade, as many of Thailand's best and brightest opted for more interesting and/or lucrative careers in the private sector. The economic crisis and a number of high-profile corruption scandals have further decreased their status in the eyes of the populace. In an effort to regain their lost stature, many progressive civil servants have concluded that they must reach out to society and develop new forms of partnership.<sup>3</sup> More conservative elements may try to thwart reforms by diluting organic legislation or raising extensive procedural obstacles to the implementation of new policy directions. However, such initiatives are likely to consist of defensive rearguard actions and not major frontal assaults on the reforms envisioned in the new constitution.

The new constitution can draw upon several strengths. It was drafted in a participatory manner. Unlike many previous constitutions, which were written by narrow elites in the capitol, the 99 member Constitutional Drafting Assembly was carefully crafted to incorporate broad representation from society at large. Its membership consisted of 76 representatives from each of Thailand's provinces and 23 recognized political, administrative and legal experts, each of whom was nominated and approved by parliament through a decentralized, participatory process.<sup>4</sup> The drafting process, which began in 1996, took approximately nine months and involved a large number of public hearings and significant media debate.

A second strength is the nature of the document itself. As will be discussed in greater detail below, it takes a number of revolutionary steps toward promoting transparency, strengthening the accountability and responsiveness of the bureaucracy, enhancing the independence of key watch dog agencies, improving provisions regarding conflict of interest, and advancing the devolution of power and responsibility to subnational governments. Although it will take time to become fully operational, these new provisions will fundamentally reconfigure established power bases and strengthen fundamental checks and balances.

Other factors augur well for political and administrative reform. The monarchy provides continuity and has been a voice for progressive change. The enduring Asian economic crisis is creating further pressure to refashion Thai political and economic institutions. A reformist government is currently in power under Prime Minister Chuan Leekpai, who has been able to strengthen his ruling coalition since assuming office. In addition, Thailand is home to some dynamic public sector managers, who have both the will and the capacity to implement systemic change.

In short, the necessary preconditions are in place and the timing appears to be ripe for far-reaching reforms in the quality of governance in Thailand.<sup>5</sup> These changes are by no

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diluting the organic legislation that must be drafted in the wake of the 1997 Constitution. See James Klein, "The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy," *Asia Foundation Working Paper Number 8* (March, 1998), pp. 36-38.

<sup>3</sup> For a more detailed discussion of this position, see Klein, pp. 36-38.

<sup>4</sup> The 76 representatives were indirectly elected by Parliament from a list of nominations by the provinces. In a similar fashion, 30 government and private universities nominated experts in political science, public law and administration, and Parliament selected from the choices it was provided.

<sup>5</sup> The Thai word for "good governance," *dhamma rat*, was introduced only recently and is subject to various interpretations. Literally translated, it means "ethical rule," and reflects a more normative or moralistic approach to governance than is typical in the West, where the term often has a neutral and technocratic meaning. It has been used extensively within the current political debate, particularly by Prime Minister

means guaranteed. The path to reform will be resisted by influential forces with a vested interest in the status quo. It could also be complicated by any one of a number of endogenous or exogenous shocks—such as drought and falling agricultural prices at home, or a further round of devaluations abroad.

Yet, for all of the reasons cited above, the prospects for successful governance reform in Thailand are more promising than in most countries throughout the Asian and Pacific region. With strong political will, careful planning, and tenacious implementation, Thailand should be able to realize many of the ambitious expectations envisioned within the constitution.

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Chuan Leekpai and others associated with the reforms surrounding the 1997 Constitution. Some Thai intellectuals have embraced the term and extended it to mean social empowerment and the integration of impoverished and marginalized groups within political decisionmaking. Others are more skeptical, and view it as an essentially foreign phrase that is inconsistent with traditional Thai political practices.

## **II. Background and General Overview**

This paper provides an overview of the major governance issues currently confronting the Thai Government, with particular emphasis upon the issues likely to be of greatest interest to international donors such as the Asian Development Bank. It is intended to provide background and context for a more detailed strategy paper on ADB operations in Thailand relating to governance and public sector management.

The following section provides a general overview of leading political and administrative institutions within the RTG and a broad discussion of major governance issues. Section III offers a more detailed treatment of selective governance issues of considerable interest to the Bank. Section IV discusses possibilities for ADB programming on governance issues in Thailand, in preparation for a more detailed strategy paper on that topic.

### **A. Historical Evolution of Modern Thai State**

Although the beginnings of Thailand's centralized system of government can be traced back into the 13<sup>th</sup> Century, it was King Chulalongkorn, whose reign stretched from 1868 to 1910, who is credited with establishing the basis of the modern Thai state. The King implemented a number of critical reforms, including the creation of a number of central departments and the replacement of local hereditary governors with senior officials appointed and controlled from Bangkok. Measures were also taken to end the system of tax-farming and to enhance the separation between personal and public property. Chulalongkorn's reforms were continued by subsequent rulers. In 1928, the Civil Service Act was passed, which created the modern Thai civil service and standardized administrative procedures and practices in all civil ministries.

The absolute monarchy of King Rama VII was overthrown by the Peoples' Party in a bloodless coup in 1932. The first Thai constitution was drafted in December of that year, and the first parliamentary elections were held in 1933. Reformers believed that Thailand was not ready for direct popular rule and introduced the notion of "guided democracy," in which a lower house of popularly elected representatives would be balanced by an upper house of appointed legislators representing the interests of leading social groups.

Thailand's early democratic reforms were to prove short-lived. In 1933, a military coup installed Colonel Phraya Phahol Pholphayuhasena as the new Prime Minister. Thailand subsequently entered a period in which control oscillated between the army and civilian leadership, mediated by the monarchy. From 1933-1944, the military held the upper hand. There was a brief return to civilian rule from 1944-48, followed by repeated cycles of military intervention and civilian rule from 1948-91.

The bureaucracy enjoyed great power and status under both military and civilian regimes, and its supremacy over day-to-day administration was unchallenged. The normal trappings of democracy—political parties, interest groups, unions, independent think tanks, a robust civil society and large middle class—were weak and under-developed. There was no local government per se, as political and administrative power was centralized in Bangkok.

On the positive side, during this period the Thai bureaucracy was able to achieve a number of important accomplishments in areas such as macroeconomic management, infrastructure development, and social development (including education and health). These achievements, the roots of which stretch back into the late 1950s, laid the foundation for Thailand's subsequent rapid economic growth.

On the negative side, Thailand also experienced chronic political instability and administrative fragmentation. Between the end of the absolute monarchy in June 1932 and the first ascension of the Democrat Party into power in September 1992, there were no fewer than 50 governments—or roughly one every fourteen months. This frequent turnover belied certain underlying continuities, for in fact political power revolved around a narrow set of competing elites in the capitol.

During this period, ministries and state-owned enterprises (SOEs) often became the privileged domain and source of patronage and profit for their senior administrative ranks. From the 1930s on, the role of state intervention in the economy expanded markedly, as new elites used an array of nationalist economic interventions to exercise state power and divert resources in support of their own private bureaucratic fiefdoms.<sup>6</sup>

In the wake of the upheavals of the early 1970s, Thai politics entered a new phase. Economic interests, and the political parties associated with them, became more powerful as the economy developed. The three player game between the monarchy, bureaucracy and military became a four player game, as business interests played an increasingly important role in the House of Representatives. New dynamics—such as the media, student protests and the growth of civil society—were also growing factors in political and administrative life.

Although initially popular, the last military intervention of 1992 ended in disaster for the coup leaders when they received a humiliating royal rebuke.<sup>7</sup> Thailand has been under a series of elected civilian governments since that time. The coalition government of Chuan Leekpai held office from September 1992 through May 1995, when it was replaced by Banharn Silapa-acha's Chat Thai Party. This administration was forced to step down in September 1996 in favor of General Chavalit Yongchaiyut's New Aspiration Party. Buffeted by the economic crisis, Chavalit's government collapsed in November 1997. Subsequently, Chuan Leekpai and the Democrats reentered office and continue to enjoy a wide measure of public support.

## **B. The Machinery of Government and Broader Political Milieu**

### ***Basic Structure of Government***

Thailand is a constitutional monarchy, under which the King wields considerable moral suasion. The King also has a number of formal powers under the new constitution. He serves as the Head of State, the Upholder of Religion and Head of the Thai Armed Forces. He can issue Royal Decrees that are not contrary to law, declare martial law, and declare war with the approval of two thirds of the National Assembly. He can conclude peace and other treaties. He plays an important role in conferring nominations

<sup>6</sup> See Klein, pp. 10-12. It should be noted that by the 1960s, the trend toward state intervention in the economy had slowed and plans were already being developed to privatize some SOEs.

<sup>7</sup> Many senior Thai political observers have noted that Thai military coups almost never occur in a vacuum, but have implicit backing from important traditional power brokers and solid public support.

upon officials to fill senior state positions, ranging from permanent secretaries in ministries to independent commissions to the constitutional and administrative courts. Finally, he can decide whether or not to affix his signature on organic legislation, although his refusal to sign can be overridden by a two thirds majority of both Houses. In practice, these powers are almost exclusively pro forma in nature and exercised only with the consent of the current political leadership. In 1999, His Majesty King Bhumibol Adulyadej (King Rama IX) will celebrate the 53<sup>rd</sup> year of his reign.

The Prime Minister, who is typically the leader of the largest party in the ruling coalition, is entrusted with the day-to-day running of government. The Prime Minister must be nominated by one fifth of the members of the House of Representatives and approved by over half the members of the House. In addition to the Prime Minister, there are four to six Deputy Prime Ministers appointed by the Prime Minister to take charge in specific policy areas.

Thailand has a cabinet style of government, in which the Council of Ministers is responsible for the management of state affairs. The Council of Ministers currently consists of 49 members, although under the new constitution its membership will be reduced to 35. A number of cabinet committees have been set up consisting of relevant ministries, such as the Economic Affairs Committee and the Social Affairs Committee, to coordinate major policies.

The work of the Council of Ministers is coordinated by the Cabinet Secretariat, which is under the Office of the Prime Minister. It is headed by a Secretary General and has a staff of approximately 300. The Cabinet Secretariat performs four major tasks. It is responsible for coordinating between the Cabinet and the King on matters such as appointments. It coordinates the policy process, including the submission of proposals, the preparation of the Cabinet agenda and minutes, and conducting follow-up to ensure proper implementation. It also coordinates the flow of legislation with the Council of State, and publishes all laws in the Royal Gazette and distributes them to the general public.

Thailand is a unitary state. It has traditionally employed a highly centralized form of government, in which most employees at provincial, district and sub-district levels are affiliated with central agencies and local communities are governed directly by officials appointed from Bangkok. Historically, subnational governments have comprised only about 5 percent of total civil service employment. Their share of government expenditure has increased under the Eight Plan to about 15 percent, although there are plans to increase their share to around 40 percent during the next decade. For the first forty years of Thailand's constitutional democracy, the issue of local self-governance was simply not raised; it was not until 1974 that the constitution first addressed it.

In terms of overall size, the Thai government is not excessive. In 1992, Thailand's public sector accounted for only 15.4 percent of GNP, lower than any other ASEAN country and much lower than Malaysia, where the figure stood at 29.4 percent. In 1995, employment within Thailand's civil service stood at approximately 1.24 million employees, or roughly 2.1 civil servants per hundred population. This figure is more than Myanmar (1.3) and Lao PDR (1.4); consistent with staffing in Indonesia, Singapore, Korea and the Philippines; and is significantly less than Viet Nam (3.2) or Malaysia (4.5).

### ***National Government***

Thailand's central government currently consists of 15 ministries and 125 departments. The ministries consist of the Office of the Prime Minister; Defense; Finance; Foreign Affairs; Agriculture and Cooperatives; Transport and Communications; Commerce; Interior; Justice; Labor and Social Welfare; Science, Technology and Environment; Education; Public Health; Industry; and University Affairs. An organizational chart for the Royal Thai Government is provided in Appendix 1.

Each ministry is headed by a minister appointed by the ruling coalition. However, all other staff within the ministry are career officials protected by civil service legislation. In a fashion typical of many Commonwealth countries, the senior civil servant in each ministry is the Permanent Secretary, followed by several Under Secretaries, Directors General, Deputy Director Generals, Assistant Director Generals, and Directors. Officials are typically recruited into a particular ministry soon after graduation and remain there for the duration of their careers.

The government also consists of 10 independent public agencies, such as the Bank of Thailand, the Bureau of Crown Property and the Office of the Attorney General. The government also has a controlling interest in 59 SOEs, such as the Electricity Generating Authority of Thailand, the Port Authority of Thailand, and Thai Airways International.

### ***Subnational Government***

The Local Administrative Act of 1914 formed the basic pattern of hierarchical territorial administration that exists in Thailand today. The country is divided into 76 provinces (*changwats*). With the exception of Bangkok, which has an elected governor, these provinces are headed by a governor appointed by the Ministry of Interior (MOI). Officials from between 40 and 80 central government departments are assigned to each province to work under the governor, and provincial authority extends over all subsequent levels. Policymaking and major policy execution functions are centralized in Bangkok, but some responsibilities are decentralized to provincial levels and below.

Provinces are organized into districts (*amphurs*), each of which is administered by a Chief District Officer appointed by the MOI through the Department of Local Administration. There are currently 745 districts. The Chief District Officer has authority over a number of Deputy District Officers. Districts are sub-divided into *tambons*, or sub-districts, of which there are 7,252, or approximately 8-10 per district. Each sub-district is divided into approximately 10 villages, totaling 66,130.

The *tambon* and village level have traditionally been headed by local chiefs and village headmen. Prior to the 1997 Constitution, they were selected for a non-specified time period in a supervised election overseen by the provincial governor. They were tasked with coordinating with central government officials and received a small stipend. The *tambons* and villages currently do not have government offices or officials working under them.

In addition to the provincial structure, a number of special municipal or local authorities operate in a semi-autonomous fashion. They include the Bangkok Metropolitan Administration and the City of Pattaya. They also include 147 other municipalities (which in

turn are divided into cities, towns and communes according to the density of population and sources of revenue for self-government); and 983 sanitary districts. Local administrations have prescribed administrative authority and functions separate from line ministry departments. Nevertheless, they must either report to the central government or have officials of central government as chairpersons or in other significant roles.

Local governments are allowed to obtain revenues from a limited number of sources, primarily related to property taxes. Their functions include garbage collection, street cleaning, transport, water and sewer, medical services, lighting and fire prevention. Some functions are the joint responsibility of local and central government, while others are either provided by the central government or monitored and controlled by the central government.

The 1997 Constitution envisions four different types of local administration: provinces, municipalities, *Tambon* Administrative Organizations, and special administrative bodies (such as Bangkok and Pattaya).

### **Political Parties**

Political parties are new and relatively underdeveloped in Thailand. They do not fit easily within a traditional “left-right” ideological spectrum. Rather, they represent shifting coalitions of interest groups, bound together by some perceived affinity and mutual advantage, but prone to defections and shifting alliances. These dynamics are changing, however, and recently more intellectuals and academics are being recruited into new think tanks associated with various parties to sharpen their policy focus.

Currently, 13 political parties are represented in the House of Representatives. They are elected to a four-year term in 155 multi-seat constituencies. The ruling coalition consists of seven parties with a total strength of 258 seats, of which the *Pak Prachatipat* (Democrats) are the senior member with 123 seats. This coalition also includes *Chart Pattana* (National Development Party, with 52 seats), *Chart Thai* (Thai Nation Party, with 39 seats), *Kitsangkhom* (Social Action Party, with 20 seats), *Ekkaporb* (Solidarity Party, with 8 seats), *Seritham* (Liberal Party, with 4 seats), as well as 12 defectors from *Prachakorn Thai* (Thai People's Party).

The opposition is comprised of the *Pak Kwam Wang Mai* (New Aspiration Party, with 125 seats) and 5 members of the *Prachakorn Thai* Party. Two other parties--*Thai* and *Palang Dhamma*--are comprised of only one member each and are considered neutral and independent. A more detailed description of the leading political parties is provided in Appendix 2.

The new constitution has established a threshold of 5 percent of the popular vote for parties to be recognized, which should eliminate a number of the smaller parties from contention in the future. However, it is unlikely that any one party will enjoy an absolute majority, so coalition politics will continue to dominate Thai political life for the foreseeable future.

### **Nongovernmental Organizations (NGOs) and Civil Society**

NGOs operate within a complicated environment in Thailand. On the plus side, Thai royalty have historically played an important role in promoting philanthropy, and this

tradition has established many important public welfare institutions. There are about 14,000 NGOs and private foundations registered in Thailand, most of them established as memorial foundations by the children of wealthy Thai aristocrats or businessmen in honor of their parents. However, school alumni clubs and sporting associations are also numbered among them.

Unfortunately, NGOs working within Thailand often face significant obstacles. There is a legacy of mistrust in which any independent organization not affiliated with the government is viewed with suspicion. NGOs can confront a number of hurdles within the Thai bureaucracy in obtaining the requisite permits. (These obstacles are so formidable that by 1997, only 264 NGOs had secured tax-exempt status as direct public benefit service providers.) Most NGO achievements go unrecognized locally, although some have received international acclaim. Thus, despite a long and rich heritage, philanthropy and voluntarism are still in their infancy in Thailand.

### C. The New Constitution

The new constitution was approved by the National Assembly on 27 September 1997 by a vote of 578 in favor, 16 against and 17 abstentions. It entered into force on 11 October 1997. This overwhelming support belied deep divisions between reformers and conservatives. As *Oxford Analytica's Asia Pacific Daily Brief* noted, the decision of many MPs to back the charter, "was seen as an attempt to reduce tensions that have been building for weeks over the issue, rather than an endorsement borne of conviction."<sup>8</sup> Several controversial questions, such as the relationship between the Ombudsmen offices and the Administrative Courts, were effectively postponed until the drafting of relevant organic legislation.

Several unique features of the new constitution set it apart from its predecessors, including: (1) strengthening the rule of law and human rights; (2) enhancing accountability mechanisms and enforcing much stronger conflict of interest standards; and (3) improving transparency, participation and decentralization. These changes will be discussed in greater detail below.<sup>9</sup> Changes to the electoral and legislative processes, which are intended to provide a more stable government and more effective checks and balances, are discussed in the following section.

The constitution also provides what some observers have dubbed one of Asia's most liberal codes of individual freedom. Sections 26 through 65 lay out a broad range of individual liberties, including both political rights (freedom of speech, religion, association, assembly, etc.) and social rights (the right to receive health care and twelve years of education at the state's expense). To enhance transparency, the constitution also provides the right to access public information in possession of a state agency, enterprise or local government organization.

To advance integrity in Thailand's political and economic life, the new constitution contains a number of provisions to strengthen the effectiveness of accountability institutions and improve the delineation of conflict of interest. The Counter Corruption Commission, which was created in 1975 and is currently housed under the Prime Minister's Office, will be established as an independent commission. The Office of the

<sup>8</sup> "Thailand: New Constitution," *Oxford Analytica Asia Pacific Daily Brief*, 30 September, 1997.

<sup>9</sup> This discussion draws heavily upon James Klein's excellent study, particularly pp. 15-34.



Auditor General, which is also under the Prime Minister's Office, will become an independent public agency and report directly to parliament. The constitution also includes a number of important provisions regarding the declaration of assets by politicians and government officials and provides for the impeachment of government officials found guilty of corruption or "unusual wealth."

The constitution embraces principles of participation and decentralization. Article 170 allows 50,000 eligible voters to submit a petition to the President of the National Assembly to consider their draft of a bill, bypassing both the bureaucracy and established political representatives. Article 304 permits a similar number of voters to request the President of the Senate to remove from office a number of senior officials on charges of corruption.

Citizen control of local resources is enhanced through a number of measures that "promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity, and in the promotion, maintenance and protection of the quality of the environment" (Article 79). These measures include the requirement that environmental impact studies be conducted prior to implementing a major project, which will be made available to the citizenry upon request, and the requirement that public hearings be held for any project or activity that may effect the quality of the environment, health or sanitary conditions, or the overall quality of life.

The 1997 Constitution embraces decentralization while being vague on the specific institutional and financial arrangements that will support it, which are left to be addressed later in the relevant organic legislation. Article 284 maintains that, "all local government organizations shall enjoy autonomy in laying down policies for their governance, administration, personnel administration, finance and shall have powers and duties particularly on their own part." It then maintains that the specific delineation of powers and duties between the state and a local government organization shall be "in accordance with the provisions of the law, having particular regard to the promotion of decentralization."

The constitution seeks to end the practice of "guided democracy" at the local level by specifying that a local government organization shall have a local assembly and local administrative committee or local administrators. Members of the assembly shall be chosen through direct election, whereas a local administrative committee will be either directly elected or approved by the local assembly; both will serve for a four-year term. In contrast to existing practice, where many local employees are appointed from Bangkok and owe their allegiance to their individual ministry, the power to transfer, promote, increase salaries and punish local officials will be vested with the local government, although the approval of a Local Officials Committee is required. This committee will consist of an equal number of representatives of relevant government agencies and representatives of local government organizations (Article 288).

The constitution gives local governments responsibility for conserving local arts, customs, knowledge and culture. They are tasked with providing education and professional training. They are also given responsibility for managing and preserving natural resources and the environment and for participating in any initiative which may affect it.

The next challenge in implementing the constitution will be the passage of over thirty pieces of organic legislation on various constitutional provisions, ranging from the establishment of the NCCC to allowing 50,000 citizens to propose legislation. A list of organic legislation to be implemented under the constitution is provided in Appendix 3.

#### **D. The Legislature**

Thailand's National Assembly consists of the Senate and House of Representatives. The National Assembly is empowered to enact new laws and approve emergency decrees, as well as to amend or repeal existing laws. It can also control state administration by initiating a vote of no confidence against government ministers. It is empowered to approve certain critical elements of legislation, such as the budget and appropriations, and to oversee nominations to various state organizations. The Speaker of the House is also the President of the National Assembly.

A bill may be introduced by a Member of Parliament (MP) provided that he or she has the signatures of 20 fellow MPs. (Under the new constitution, these MPs need not come from the same political party.) If the bill involves appropriation, it will be sent first to the Prime Minister for consideration. Ordinary bills are submitted to the Parliament President, who then sends it to appropriate committees for consideration. All bills go through a process of three readings. Afterwards, they are sent to the Senate, where they also go through three readings. The Senate has to act within a certain time limit (typically 60 to 90 days). If no action is taken, the bills are considered to be approved. In case of change or disagreements, a joint committee composed of members from the two houses will be formed to look into the matters. After the bills have passed through appropriate process, the Prime Minister will present them to the King for assent and promulgation.

##### ***House of Representatives***

Under the old constitution, the House of Representatives served as the popularly elected assembly. The current number of representatives is 393. Under the new constitution, the size of the House will increase to 500 representatives, out of which 100 will be elected on a party list basis and 400 on a single constituency, first-past-the-post basis. MPs must be 25 years old and, under the new constitution, possess at least a bachelor's degree. Every province is entitled to at least one representative, and the more populated provinces have more.

As of 1996, there were 23 standing committees of the House of Representatives. The list is typical of many countries, and includes Agriculture and Cooperatives, Transport and Communications, Foreign Affairs, and Banking and Finance, to name but a few.

The House of Representatives is served by a Secretariat, which consists of approximately twenty separate organizations. They include the National Assembly Library, the Research and Legislative Service Center, the Legal Advisor to the House of Representatives, the Radio Broadcasting Station, and other units that facilitate the operation of parliament (i.e. procurement, public relations). In comparison with many countries, the legislature is relatively well-staffed, with over 1,100 employees under the supervision of the Legislative Bodies Officials Commission. In addition, individual members of parliament are entitled to a staff of five paid for at the public expense.

## **Senate**

The Senate has historically played a watch-dog or "balancing" function in reviewing legislation that was advanced by the House of Representatives. As part of a compromise agreement between liberals and conservatives, this function will be enhanced under the new constitution, although criteria for membership in the Senate will be changed. Formerly, the Senate was comprised of 270 members appointed by the King upon recommendation from the Cabinet; they were to be qualified persons possessing knowledge and experience useful to the administration of the state. Membership was for four years from the date of appointment. The Senate has 16 standing Committees.

## ***Reforms Under the New Constitution***

Several important changes under the new constitution will affect the composition of both the House and the Senate. A controversial provision requiring that members in the House have at least a Bachelor's degree was inserted to reduce vote buying in the rural areas, on the assumption that many traditional "godfathers" (i.e. wealthy local businessmen who dominate political and economic life within a district) would be excluded. Another change was to require that all parties contesting a general election field 100 appointed candidates under a list system, which should help eliminate small splinter factions and consolidate power in the hands of a few dominant parties.

With regard to the Senate, instead of the old system of appointments, senators will be elected for a six-year term by popular vote on a constituency basis. They must be at least 40 years of age and have a bachelor's degree. Candidates may not be a member of the House of Representatives, a political party, or local assembly, and they may not be a permanent official or the employee of any government agency or state enterprise. More robust conflict of interest legislation has been introduced to prohibit senators from receiving a commission or being a partner or shareholder in a company that receives commissions from any state agency.

## **E. Legal and Judicial Issues**

Thailand has a sophisticated hybrid legal system based on the civil and common law systems. Until recently, the Thai judiciary was made up of three tiers of courts: a Supreme Court, a Court of Appeal, and a series of lower courts usually referred to as Courts of First Instance. The Supreme Court is the final court of appeal in all criminal and civil cases. There are eight Courts of First Instance, whose jurisdiction is mixed. Some specialize in a particular field of law, such as bankruptcy or labor, whereas others deal with a wide range of matters within a particular geographic area.

Other important legal institutions are the Ministry of Justice (MOJ), the Council of State, the Law Reform Commission and the Attorney General's Office. The MOJ is responsible for all matters pertaining to the courts, including the enforcement of judgments. (The MOJ does not play a direct role in the appointment of judges, which is carried out by the Judicial Commission.) The drafting of legislation and provision of legal advice to the government is the responsibility of the Council of State, while government litigation is handled by the Attorney General's Office, which is directly under the Prime Minister's Office. The police have their own administration; the Probation Department is under the jurisdiction of the MOJ; and the Department of Corrections, which has responsibility for overseeing prisons, is under the Ministry of Interior. As will be discussed in greater

detail in Section IV below, this institutional fragmentation is complicating the broader task of legal and judicial reform.

All cases are decided by judges, and there is no provision for trial by jury. The judiciary is generally believed to be independent, although very conservative and (in the view of some) slow to adapt the law to the requirements of a modern economy. Commercial and banking lawyers believe that many of the important commercial and business laws fall short of best international practices, and that the poor enforcement of law is largely due to the lack of institutional capacity. While there are delays in the courts, allegations of corruption are not widespread—which may be attributed to the fact that cases are almost always heard by a panel of three judges rather than a single judge, thereby making the negotiation of bribes difficult in practice.

The new constitution will have a profound impact upon Thai legal institutions. Although Thailand has experienced a succession of constitutions, in practice they have often been subservient to the civil code, administrative law, military edicts and royal decrees. The new constitution firmly establishes the principle of constitutional supremacy. Article 6 maintains that any law, act or decree which is contrary or inconsistent with the constitution will be unenforceable. Article 27 binds all branches of government to enforce the constitution. To ensure the constitutionality of all legislation and functioning of state organs in accordance with the constitution, Article 259 establishes a Constitutional Court as an independent body with 15 full-time judges, selected by a complicated process that seeks to ensure that they are above political or business interests.

Article 198 creates the position of Ombudsman and empowers the ombudsman to refer any case to in violation of the constitution to either the Administrative Court or the Constitution Court. Article 28 allows citizens who believe their rights or liberties have been violated to cite provisions of the constitution as the basis for filing a case before the courts. The new constitution also provides for the self-administration of the courts by the judiciary rather than the MOJ—a process that is to be accomplished by October 1999

The constitution will create Administrative Courts with the power to adjudicate disputes between a state agency, enterprise, local government organization or state official of the one part and a private individual of the other part. These courts are empowered to adjudicate both acts of commission and acts of omission. The constitution provides for a Supreme Administrative Court and Administrative Tribunals of first instance, and it also allows for the creation of an Appellate Administrative Court if necessary. Their activities will be regulated by an independent Judicial Commission of Administrative Courts. The Commission secretariat and administrative courts shall have autonomy in personnel administration, budget and other activities prescribed by law.<sup>10</sup>

The Constitutional Court, together with the Ombudsmen and the Administrative Courts, provides a system for judicial review of legislation and administrative action. Delineation of the exact jurisdiction and powers of the Constitutional Court, the Administrative Courts and the Ombudsmen is an important task for the proper functioning of these three constitutional organs. The constitution only lays down general principles but leaves the specific details to be addressed in substantive laws. In particular, it does not spell out the details for the transition from the existing institutions to the new constitutional institu-

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<sup>10</sup> The constitution advances judicial independence by creating a transparent and nonpolitical mechanisms for the appointment, discipline (including removal), and fixing the salaries of judges.

tions. The dialogue on these crucial issues is not yet complete and has been postponed to the discussion on the drafting of organic laws and their implementation. As a result, there is a great deal of institutional uncertainty. (For example, what if any will be the role of the MOJ if the courts are to administer all of their own affairs?) Similarly, the powers and jurisdiction of the new Administrative Courts and the Ombudsmen have yet to be worked out. This post-constitution institutional transition phase poses particularly sensitive issues for any donor assistance in the legal sector. In particular, it makes the task of identifying suitable and stable counterparts that much more difficult.

As part of their assistance for the financial crisis, the IMF and the World Bank have stipulated a number of conditionalities in relation to legal reforms in the financial sector, especially laws relating to bankruptcy and foreclosure. Under Loan No. 1600-THA: Financial Markets Reform Program Loan, the ADB has also stipulated the need for changes to the Bankruptcy Act. Changes in both the bankruptcy and foreclosure laws are now at an advanced stage of consideration by parliament.

In addition to short-term legal reform measures in the financial sector, the Government of Thailand has requested World Bank assistance in systemic legal reform. Such systemic reform would focus on the broader issues of institutional capacity relating to implementation of new laws; it would also address the medium and long-term issues affecting the legal sector. The World Bank has responded by providing a grant for studies on economic law reform; legal education and training; the interface between law and civil society; the legislative process and citizen's participation; and some assistance for building capacity in implementation of the new bankruptcy law. Institutional transformation and development under the new constitution is not covered under the World Bank assistance.

Many Thais believe that several of the reforms are in the interest of foreign creditors and investors rather than changes required per se to facilitate economic recovery. The constitutional changes relating to the judiciary, such as the establishment of new courts, have not been welcomed by all judges. The setting up of separate courts, in particular, is seen by some as weakening the judicial function through excessive bifurcation of the court's general jurisdiction. Poor coordination between both donors and various government agencies involved in legal reform has further handicapped these efforts.

While the lack of support for legal reform among some judges poses a challenge, powerful constituencies are also pressing for such changes. The Prime Minister's Office is acutely aware of the need for legal reform, especially to address medium to long-term issues of institutional reform and capacity building. In addition, there are supporters of reform in the Council of State, as well as among the judiciary, law schools and the NGO community. It is also important to note that the Ministry of Finance (MOF) has been in the forefront of recent economic law reform and there are also parts of the MOJ and the Supreme Court that are keen to seek assistance for capacity building of the judiciary and court officials.

## **F. The Public Sector**

As was noted above, the Thai public sector is not particularly large in comparison with that of many other Asian countries. In the 1980s, concerns were expressed that the productivity of the civil service was not keeping pace with its expansion, and a cap of 2 percent was placed upon annual workforce growth (actual growth rates were closer to 3

percent). Its current problems stem not from overstaffing, but rather from over-centralization, poor coordination and functional overlap, particularly at the subnational level; lagging productivity; antiquated work processes that allow for too much delay and discretion in implementing decisions; the need to strengthen transparency and integrity at all levels of government; pay and employment conditions that are leading to the steady erosion of talented staff to the private sector; and a lack of responsiveness and accountability to the citizenry. These problems are discussed in greater detail below.

### **Civil Service Reform**

Since 1928, the legal framework of the Thai Civil Service has been determined by a series of legislative acts. The Civil Service Act of 1928 laid down the public personnel system and introduced uniform standards across the public service, including a public pay scale, career service, and the unification and standardization of disciplinary codes. The Civil Service Act of 1975 introduced a modern position classification system and a central entry examination for the recruitment of staff.

The Civil Service Act of 1992 established the legal basis for the current civil service. It enshrined the role of the Civil Service Commission (CSC) and its secretariat, the Office of the Civil Service Commission (OCSC), as the central personnel agency for civil servants.<sup>11</sup> The CSC and OCSC are tasked with four major responsibilities: (1) advising the government on the administration of the public service; (2) advising on procedural and structural improvements; (3) issuing regulations, rule and directives to carry out the Civil Service Act; and (4) interpreting and resolving conflicts arising from the enforcement of the Act. There are eleven categories of civil servant, each attached to its own central personnel agency. However, the CSC is considered to be the central personnel agency, and its directives are often adopted by other commissions.

In fulfilling this mandate, the CSC can appoint Civil Service Sub-Commissions (CSSCs) to act on its behalf in specialized areas. Nine such sub-commissions currently exist in areas such as recruitment and human resource planning, organization and position classification, compensation and welfare, and laws and regulations. Other sub-commissions exist at the ministry, department and provincial level.

The OCSC is headed by a Secretary General and located directly under the Office of the Prime Minister. It is tasked with overseeing the personnel development of the public service, including position classification, recruitment, disciplinary action, transfers, promotion, entrance exams and compensation. It also deals with issues such as ethics, and with enhancing public sector productivity. The current Secretary General, Dhipavadee Meksawan, has overseen the implementation of a number of innovative pilot programs to reengineer business processes, enhance monitoring and evaluation and improve efficiency and service delivery in areas such as a provincial tax office and a municipal land title and registration office.

As Appendix 4 indicates, as of 1995, the Thai civil service consisted of approximately 1.236 million employees, excluding the military, SOE employees and temporary or

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<sup>11</sup> Membership of the CSC consists of five *ex officio* commissioners, five commissioners selected from among the civil servants, and five to seven commissioners selected from among persons of "high caliber" having experience in public administration or related fields. *Ex officio* members include the Prime Minister, the Permanent Secretary of the Ministry of Finance, the Director General of the Bureau of the Budget, the Secretary General of NESDB, and the Secretary General of OCSC.

contract workers. They are divided into eleven separate services, including the Judicial Service Commission, Public Prosecutor Commission, Provincial Administration Commission, Sanitation Officials Commission, among others. The largest is the Teacher Service Commission, which has over half a million employees, or approximately 43 percent of the total. The next largest category, comprising roughly 380,000 employees or 30 percent of the total, are Ordinary Civil Servants under the jurisdiction of the CSC. The police are the third largest category, numbering 205,000, or approximately 17 percent of the total. Approximately 37 percent of the recurrent budget is spent on civil service staff costs, which is generally higher than ASEAN norms.<sup>12</sup> The Thai Government would ultimately like to reduce this figure to 20 percent.

There are three categories of public servant in Thailand: general positions, professional and special positions, and top and middle-level executive positions, with the vast majority belonging to the “general” category. There are eleven salary levels (with up to 18 incremental steps in between). The bulk of the public sector falls into salary levels 3-8. Permanent secretaries are at level 11, and director generals are at level 10. The civil service enjoys generally strong legal protection from political interference and manipulation, although ministers can find unofficial ways to exercise influence over staff.<sup>13</sup>

Recruitment into the Thai Civil Service is by competitive examination. Benefits include retirement benefits (a lump sum gratuity or pension); a housing allowance, medical allowance, and hardship allowance. A Civil Service Training Institute was established in December 1980, and a human resource development policy endorsed by the Cabinet in 1996 provides for an allocation of one percent of the annual public personnel budget during the first two years for training and development, with each officer receiving at least five days of training per year.

A survey of entry level civil service salaries indicates that they have not been able to keep pace with those of the private sector. This is particularly true in the more skilled areas. Entry level salaries and allowances for staff with less than a BA degree in certain key skill categories (i.e. typist, electrician, bookkeeping) runs about 40 percent behind comparable positions in the private sector. For BA level skills in disciplines such as law, accounting, engineering computer science and personnel, the gap between public and private sector remuneration increases to about 140 percent. For Masters level skills in these disciplines, it is even higher, at almost 220 percent. In light of these differentials, it is not surprising that the civil service is finding it increasingly difficult to recruit and retain talented personnel in certain key skill categories.<sup>14</sup>

Issues of pay and employment will be further complicated by the emergence of independent and quasi-public agencies set up by the new constitution, such as the Administrative Courts and the NCCC. These agencies will be able to set up their own salary scales, which are likely to be considerably more generous than those in the civil service. Internal equity is likely to become an increasingly important issue.

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<sup>12</sup> On this point, see *Profiles of Government Administration in Asia*, (Canberra: Australian Public Service Commission and University of Canberra, 1995), pp. 173-174.

<sup>13</sup> Under the Civil Service Act of 1992, the minister can only appoint, transfer or remove a permanent secretary, and a permanent secretary is responsible for all other personnel appointments within his or her ministry. However, permanent secretaries can be sanctioned or removed for refusing to act on a personnel request by a minister.

<sup>14</sup> This information is calculated by data provided by the OCSC for 1997 entry-level positions.

The OCSC is currently pursuing a number of initiatives to improve the efficiency of the civil service. A rapid promotion project and executive career management project will seek to attract and retain talented staff within the public sector. Improved manpower planning will emphasize downsizing, a freeze in new hires, and the outplacement of underutilized staff. Delegation and decentralization will increase the responsibility of the CSSCs, so the SCS can remove itself from administration and concentrate upon its strategic and consultative role. The OCSC is also supporting the Thailand International Public Sector Standard Management System and Outcomes program, which seeks to enhance the performance of government agencies regarding ultimate outcomes based upon key performance indicators. Finally, OCSC has launched the "Prime Minister's Award," which seeks to enhance service delivery and quality by given recognition to outstanding provinces and government agencies.

A number of donors either are or will shortly be active on civil service reform issues. The World Bank is currently contemplating a major program of assistance with OCSC along a number of dimensions, which would be financed out of a proposed Public Sector Administration and Reform Loan (PSAL). They would expand the pilot programs focusing on reengineering core business processes and developing key performance indicators, and move up from the department to the ministry level. They would also support the reform of the civil service compensation package and revamp the position classification and ranking system, with the goal of monetizing benefits and making them more transparent. In addition, they would support a civil service "rightsizing" exercise that would seek to retrench staff in certain areas, such as education.

As will be discussed in greater detail below, the UNDP is seeking to support the process of decentralization by developing a pilot program that will identify and test the specific human resource management systems and functions to be decentralized and the proper transitional mechanisms for doing so. The UNDP is also helping the Thai Government to implement a results based management system.

### ***Public Expenditure Management***

The efficient and effective utilization of financial resources is one of the most important tasks confronting any government. In Thailand, this task has historically been highly centralized. The national budget has traditionally accounted for approximately 95 percent of government revenues, with the remainder coming through a variety of local taxes.

Nationally, four institutions play a particularly important role in public expenditure management: the Bank of Thailand (BOT); the Ministry of Finance and its Fiscal Policy Office (FPO); the Bureau of Budget (BOB), and the National Economic and Social Development Board (NESDB). Other organizations, such as the Ministry of Interior and the Office of the Auditor General, are also engaged at some level. The OAG will be addressed in the section on accountability institutions; the others are discussed below.

The Bank of Thailand was formally constituted in 1942. The Minister of Finance is empowered to oversee the overall affairs of the bank, while general control and direction is entrusted to a board of directors comprised of the Governor and Deputy Governor, who are appointed by the King, and at least five other members appointed by the Cabinet. As the nation's central bank, the BOT has responsibility for formulating monetary policy and maintaining monetary stability. It is also charged with supervising



Thai financial institutions, particularly the banking sector. It acts as banker to the government and makes recommendations on economic policy; it also acts as a banker to financial institutions. The BOT manages Thailand's international reserves and prints and issues bank notes.

The Ministry of Finance is responsible for collecting government revenue and oversees the Customs, Excise and Revenue Departments. It manages government finances through the Treasury and Comptroller-General's Departments. It manages macro-economic policy and regulates a number of important economic functions through its FPO. Finally, it oversees the operation of eleven SOEs, such as the Thailand Tobacco Monopoly or the Syndicate of Thai Hotels and Tourist Enterprises.

Within the Ministry of Finance, the Fiscal Policy Office (FPO), established in 1961, plays a particularly important role in fiscal, financial and economic policy formulation. It has supported a variety of fiscal policy measures, such as the introduction of VAT, tariff restructuring, municipal tax restructuring, the modification of government budget compilation and other related procedures. FPO also oversees initiatives relating to financial and capital markets, including cooperation with the Bank of Thailand in establishing the Securities and Exchange Commission. The Office has undertaken a financial sector development plan, which seeks to enhance competitiveness and prepare this sector for liberalization. FPO is also engaged in the promotion of international trade and investment. The Office has recently set out four policy objectives: to maintain stable economic expansion, to strengthen financial and capital markets so as to attain higher competitiveness, to develop Thailand into a regional investment and financial center, and to encourage income distribution into provincial areas.

The National Economic and Social Development Board grew out of early attempts at development planning in Thailand in the 1950s, when its precursor, the National Economic Council, was established to undertake economic studies and advise the Thai Government on financial and economic matters. NESDB is essentially a central planning agency that undertakes a continuing study of the Kingdom's economy and draws up plans for its development. Its broad scope of work includes: (1) formulating five-year plans and annual development plans; (2) studying, analyzing, and recommending solutions for development problems; (3) appraising development projects before their inclusion in the National Plan; (4) coordinating the implementation of these projects; (5) monitoring and evaluating development programs and projects; and (6) facilitating communication regarding development. Since its inception, NESDB has already completed seven Development Plans.

The Bureau of Budget (BOB) is headed by a Director General and under the jurisdiction of the Prime Minister's Office. It is tasked with formulating the annual recurrent budget and overseeing budget preparation by the government departments. During budget implementation, it also has responsibility for reviewing and approving allotment requests on a trimester basis, and for monitoring and evaluating the programs and projects implemented by all government agencies and state enterprises.<sup>15</sup> The BOB has a staff of almost 1,100. It has five Deputy Directors who are responsible for five major areas of activity: (1) National Security and Government Services; (2) Health and Utilities; (3) Economic Services; (4) Education; and (5) Evaluation, Management Services &

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<sup>15</sup> The Comptroller General Office under the Ministry of Finance is responsible for examining and authorizing the payment requests of government agencies and state enterprises.

Personnel Development, and Budget Standards. In addition, a senior Budget Advisor is responsible for and Budget Policy and Information. Four Assistant Directors look after Local and Provincial Budgeting; Legal Affairs and Regulation; and State Enterprise Services.

Finally, the Ministry of Interior, working through its Departments of Local Administration and Community Development, plays an important role in authorizing expenditure at subnational levels of government. At the district and sub-district levels, all disbursements must be authorized by the Ministry of Interior representative, who reports directly to the governor of the province.

The Thai government adopted a program budget format in 1982. The Government's fiscal year begins on October 1, and the initial call circular goes out in November of the previous year. A summary of the annual budget cycle is provided in Appendix 5.

There are a number of problems with Thailand's current system of public expenditure management. Some senior Thai officials have expressed concern about the placement of BOB under the Office of the Prime Minister and advocated merging its functions with the Ministry of Finance. It is argued that BOB, which was patterned after the Office of Management and Budget in the United States, is more attuned to the needs of a presidential and not a cabinet system of government. A merger would reestablish the MOF's primary role in resource allocation and improve BOB's accountability to both the MOF and Parliament.

The general problem of administrative fragmentation has become particularly acute recently, as different coalition partners have exerted influence over the lead agencies--NESDB, MOF, BOB and BOT--active in this area. As a result, policy coordination has been hampered.

Expenditure administration is overly centralized and often fragmented among different agencies, frequently resulting in lengthy delays. The recurrent and capital budget process does not fully reflect policy priorities. (Although BOB has established policy analysis unit, it lacks the necessary wherewithal to discharge its responsibilities effectively, and there is imperfect coordination between budget analysis and budget monitoring and evaluation.) Mechanisms for *ex post* evaluation are weak, although (as will be discussed in greater detail below) efforts are underway to improve the Government's capacity to conduct program audits. Procurement procedures are often not transparent and vulnerable to corruption.

A number of donors are active in supporting reforms in this area. The World Bank has a major Economic Management Assistance Project for \$15 million that was approved in February 1998. This project seeks to support work in developing fiscal strategy, establishing a multi-year budget framework and supporting budget reform, improving expenditure control and cash management, procurement and improved financial information flows. The IMF is working on tax policy, among other areas. In collaboration with the World Bank, the New Zealand Government is supporting work on debt management and monitoring, developing the internal audit function, and accounting system reform.

### ***The Public/Private Interface***

One of the critical roles for the state is to foster an enabling environment for private sector growth. Such an environment typically includes the provision of a legal and regulatory framework that is at least moderately transparent and predictable. To ensure that private providers can compete on an equal footing with public enterprises, avoid the drain of SOEs upon the state budget, and reduce their capacity to "squeeze out" the private sector's access to credit, it also includes a reduction of direct state intervention in the economy to the minimum level necessary to protect the public interest. A final objective includes the delivery of critical goods and services, such as infrastructure, in an efficient and cost-effective manner.

### ***Financial Market Regulation***

Thailand's legal and regulatory framework has been criticized extensively for being inadequate to stem the current crisis. This is particularly true in the financial sector, where problems of under-capitalization, lack of disclosure, inadequate accounting systems, poor procedures for creating, registering and enforcing security interests, unsound lending practices, and an ineffective supervisory framework have combined to create a situation in which 20-35 percent of the loans of Thai banks may be non-performing.

Thai financial institutions are currently supervised by a number of agencies. The Bank of Thailand supervises commercial banks, finance companies and state-owned specialized financial institutions. The Securities and Exchange Commission (SEC) supervises securities companies. The Ministry of Commerce oversees insurance companies, and the Ministry of Agriculture supervises agricultural cooperatives.

The ADB and other donors have been working to improve the quality of financial markets regulation. The IMF and World Bank are working closely with the Ministry of Finance, the Bank of Thailand and other authorities to complete the reform and recapitalization of the Thai banking sector. The World Bank is also focusing upon improving the supervisory and legal/regulatory framework, including: (1) strengthening the financial institution resolution process; (2) raising supervisory standards; (3) rationalizing the supervisory regime; and (4) improving the bankruptcy and collateral foreclosure processes, among other efforts. AusAID is currently considering providing support for technical assistance in banking supervision.

The ADB is focusing on the development of capital markets as an alternative means for intermediating funds within the economy. The Bank's Financial Markets Reform Program, which was approved in December 1997 for \$300 million, places particular emphasis upon strengthening market regulation and supervision. This involves increasing the autonomy of the SEC to insulate the agency from outside interference, centralizing powers over the securities markets and clearly delineating lines and scope of authority between different regulatory agencies, and improving market transparency by strengthening information disclosure and compliance norms and requirements. It also involves decentralizing supervision by creating a system of self-regulation that devolves responsibility and regulatory enforcement on appropriate bodies based on demonstrated capabilities and subject to SEC oversight.

*Privatization, Commercialization and State Enterprise Reform*

Currently there are 59 state enterprises, which can be broadly categorized into five major sectors: telecommunications, water, energy, transport, and other (including industrial, social and technology, commercial and services, agriculture, and financial sectors). The state enterprise sector plays a major role in the economy. Between 1995 and 1997, the sector consumed Baht 74.4 billion (about \$2.9 billion) in subsidies for both capital investment and operational costs while remitting Baht 163.6 billion (about \$6.3 billion) to the Government.

In terms of profit and loss for 1997, the Electricity Generating Authority of Thailand (EGAT) earned the largest profit in the state enterprise sector (Baht 14.0 billion, or about \$539 million), while the Bangkok Metropolitan Transit Authority incurred the largest loss (Baht 2.5 billion, or about \$96 million). During this period, the state enterprise sector employed some 319,000 persons in 1997. Despite the large number of employees, the sector accounts for only 1.04 percent of total employment in Thailand. The transport sector is the largest employer, accounting for 30 percent of total state enterprise employment, followed by the energy sector, which employs 25 percent. Different laws and regulations govern SOEs and commercial enterprises. Each state enterprise was established by legislation that gives it specific powers and authorities. In addition to legal and functional differences, employees of state enterprises enjoy benefits not typically provided in commercial enterprises.

Thailand has a long history of private sector participation in the economy, with privatization efforts dating back to 1961. There is a consensus among influential Thai opinion makers that the state will play a significantly reduced role in the economy in the future. It will serve primarily as a policymaker and regulator, ensuring that public goods and services are properly delivered, consumer interests are protected, and that a level playing field exists for competition between private sector entities. The state will pull back from enterprise operations that can be more efficiently performed by the private sector. It will maintain an operating role only in specific enterprises whose operations are strategic, socially obligatory or non-commercial in nature, yet are considered necessary for the quality of life of Thai citizens.

### III. More Detailed Discussion of Selected Governance Topics

Thailand is currently grappling with two important governance issues that have particular bearing upon the successful implementation of the 1997 Constitution. The first is decentralization, with specific emphasis upon ensuring that subnational governments have adequate resources and financial management skills to successfully perform their new responsibilities. The second is strengthening key accountability institutions, such as the new National Counter Corruption Commission, the Office of the Auditor General, and the Ombudsmen and Administrative Courts.

Two other initiatives are critical for improved efficiency and enhanced service delivery within the public sector. The first is rationalizing functions and streamlining and reengineering business processes both within and between departments. The second is reducing the scope of state intervention in the economy by privatization and commercialization, and improving the performance of the remaining SOEs by better corporate governance and performance monitoring. All four areas are of potential interest to donors, such as the ADB, and will be discussed in greater detail below.

#### A. Decentralization

Rapid economic growth and its attendant problems have placed a heavy burden on the policy and administrative capacity of the highly centralized Thai local administration system. Although some recent progress has been made in increasing responsibility at the local level (e.g., changes in tax laws, requirements for public hearings, creation of *tambon* councils, etc.), broader efforts to provide local governments with greater resources and responsibilities for responding to the needs and priorities of their constituents have struggled to find success. The decentralization of authority and local fiscal capability were limited and unable to cope with investment to expand basic services in municipal areas in all regional urban centers. Moreover, there were also limitations in program planning techniques and development projects of the local areas.<sup>16</sup>

Article 78 of the new constitution seeks to decentralize significant responsibility to subnational governments and to ensure that local administrations are governed by directly elected assemblies and local official committees. The constitution further stipulates that the National Assembly pass legislation that will delineate the powers and duties in the management of public services between the central government and local administrative organizations. This legislation is to include provisions for the allocation of taxes and duties, as well as provisions to transfer control over local officials from the Ministry of Interior and other line agencies to the elected Local Officials Committee.<sup>17</sup>

The Thai Government has created a National Decentralization Policy Committee, chaired by a Deputy Prime Minister, to oversee the process of decentralization. This Committee has three subcommittees: (1) Local Administration Personnel, which will address the institutional arrangements surrounding the transfer of civil servants to local authorities and their standards for personnel management; (2) Financial Management, which will define the scope of financial authority provided to local authorities for revenue

<sup>16</sup> NESDB 7<sup>th</sup> Plan, Chapter 4 (1.3): Decentralization of Urban Development and Infrastructure Service to the Regions—Results of Past Performance.

<sup>17</sup> Thailand's 1974 constitution was the first to include a section on local administration. However, this provision was overturned in the wake of the 1976 military coup. See Klein, pp. 23-24.

generation; and (3) Structural Improvements, which will define the roles, relationships, functions, structures and staffing needs at the different levels of local government.

The sweeping transformation envisioned in the constitution will not be easy to implement. There is considerable resistance, confusion, and lack of consensus about how to make the shift toward greater policy making, revenue management and implementation authority and capacity at the local level. Many within the system now recognize the need for change, but the direction that it should take remains unclear. Several fundamental questions remain, including decisions regarding the functions, staff and financial resources to be devolved to the regional, district and *tambon* level; the need to ensure effective mechanisms of coordination between various agencies, sectors and levels of government; the development of appropriate controls that will allow for flexible and responsive resource planning at lower levels of government while ensuring probity in the use of public resources; the need to make local representative institutions more accountable to the public and to strengthen channels for popular participation in the policy-making process; and the need for public education and awareness raising regarding their duties and responsibilities under the new constitution.

In the end, the success or failure of efforts to decentralize decision-making authority will depend upon securing the cooperation of many parties who are naturally concerned about self-preservation first. It is therefore crucial that careful consideration be given to the new incentive frameworks being established as decentralization moves forward. In recognition of this problem, the constitution places a premium upon the role of local participation in serving a watchdog function. While the importance of community participation must not be under-emphasized, care must also be given to strengthening formal accountability mechanisms, such as reforming existing mechanisms for performance monitoring and evaluation, strengthening audit capacity, etc.

### **Issues**

Public resources and international donor assistance will not be sufficient to fund the enormous amount of local investment needed in the next ten to twenty years. Yet there are important legal and policy restrictions that prevent local authorities from accessing growing private capital markets. Although virtually all financing of local development projects is undertaken by the central government or state enterprises,<sup>18</sup> local governments do have the legal mandate to borrow—albeit through a cumbersome and lengthy process which they prefer to avoid. Furthermore, because of central government restrictions and/or local administrators' unfamiliarity with more sophisticated techniques of capital budgeting, local governments are very cautious borrowers for fear they will not be able to manage additional debt. The supply of private capital is not organized to permit local authorities to mobilize financing through, for instance, municipal bond markets. Existing rules and regulations are very difficult to change, and the Ministry of Finance is reluctant to fully decentralize responsibility for local finances.

Decentralization efforts will be rendered useless if local governments are not given sufficient fiscal power to acquire and manage their own finances. It can be argued that the issue of fiscal autonomy must precede the issue of administrative autonomy because

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<sup>18</sup> Dr. Utis Kaothien, Dr. Douglas Webster, and Mr. Voravit Vorathanyakit, *Urban Infrastructure Finance: Thailand Discussion Paper*, Urban Infrastructure Finance Seminar, Asian Development Bank, April 16-18, 1996.

the control of local resources will make any administrative adjustments much easier than when the fiscal autonomy is lacking.<sup>19</sup> Local governments rely heavily on central government subsidies, and the power to raise local taxes is vested in the central government. Inflexible financial and administrative structures have made Thai local governments incapable of responding to the diverse needs of the general public<sup>20</sup>. Moreover, these structures have prevented elected representatives from exercising much creativity in local government, as they are primarily accountable to a central government governor, district official, or city clerk.

Coordinated planning in the management of service delivery problems among local governments is generally underdeveloped. Key local governments responsible for most major development and planning are the municipality and the Provincial Administrative Organization (PAO). Structurally, however, the cooperation and contact between the municipality and the PAO are very weak. To further exacerbate the situation, agencies of the Ministries of Interior and Science, Technology and Environment—whose respective mandates concerning local development remain unclear—act as the middlemen between these local governments. By and large, the relationship among the various government organizations depends to a great extent on personal contacts. For example, if two officials come from the same party or are good friends, they can achieve close cooperation and assistance.

Local governments are encumbered by the limited knowledge of elected representatives concerning financial regulations and their own legal status as representatives of the people. Local government regulations, which serve as the basic reference for the conduct of local representatives, have never been fully clarified. For the most part, local representatives rely on the knowledge of central government officials. Limited knowledge combined with bureaucratic red tape have hindered the performance of local representatives to exercise their authority. As a result, active and progressive forces at the grassroots level have found their best allies in the various NGOs. Many grassroots organizations consider existing government institutions to be irrelevant for addressing the needs of the local population.

In general, local governments attract the least qualified recruits in the public sector. The talent pool they draw from is much weaker than that of the ministries, which recruit in Bangkok. Moreover, the limited opportunities for advancement, lower average salaries, and low prestige make careers in local government less attractive than other public sector jobs. Easy work and job security are about all the local governments have to offer their employees. Not surprisingly, levels of professionalism and productivity are usually low.

### ***Constraints to Further Decentralization***

The decentralization movement in Thailand has been slow and sporadic. To a large extent, the development of local government reflects the long historical development of Thai society. There was a strong move to set up municipal administrations throughout the country soon after Thailand changed from an absolute to a constitutional monarchy

<sup>19</sup> Medhi Krongkaew, "The Political Economy of Decentralization in Thailand" *Southeast Asian Affairs*, 1995.

<sup>20</sup> The points are further elaborated in *Local Government Strengthening in the Context of Decentralization: The Thailand Case*, Dr. Utis Kaothien, Dr. Douglas Webster, Ms. Joroonsri Chyeahard, Dr. Ksemsan Suwarnarat, Mr. Voravit Vorathanyakit, Regional Workshop on National Urbanization Strategies and Local Government Development in the Context of Decentralization, September 26-29, 1994.

in 1932, and 117 municipalities were formed by the end of 1946. Nevertheless, during the next 48 years, from 1946 to 1994, only 36 additional municipalities were set up.<sup>21</sup> Thus, the traditional system of sending governors to “govern” the countryside on behalf of the central government in Bangkok still exists, more or less, in its general form today. The predominant constraint to further decentralization in Thailand is a problematic institutional arrangement, which is generally characterized by an over-controlled or perversely regulated local sector.<sup>22</sup> There is a very high proportion of earmarked revenue that is collected and redistributed by the central government. This approach to local government management starts with a laudable objective—avoiding abuse of power at the local level. However, it can fail because it emphasizes regulation to such an extent that local autonomy and accountability are seriously compromised.

In addition, ministries and state enterprises take on much of the responsibility for municipal capital works, leaving only the task of operations and maintenance to local government. As a result, residents have difficulty holding local governments accountable for any specific function, and the mayor is encouraged to act as a lobbyist before the central government ministries, rather than as an individual ultimately responsible for specific functions. With responsibility for capital investment assigned to ministries and state enterprises, but operations and maintenance left to the municipal level, disputes over roles and responsibilities and refusals to assume maintenance obligations on new assets are common. Resource allocation tends to be more responsive to the political interests of central government rather than local expressions of effective demand.

### ***Existing Opportunities***

The RTG has developed a sound national policy approach as articulated in the new constitution and Eighth Five Year Plan. The latter, launched in October 1996, is a particularly important document, in that it envisions a more participatory approach to development with enhanced interaction between central government officials and local communities. Nevertheless, major work remains in implementing that policy guidance:

- The RTG maintains a stated policy of shifting responsibility for financing and administering public services from the central government to lower levels of government (or intermediaries) and to service beneficiaries. There is a growing need to develop some form of financial intermediary to mobilize domestic savings and channel that credit to urban service delivery.
- There is already a system of intergovernmental transfers that could be redesigned to better address community development priorities and improve performance of local government officials. The Budget Act could be revised to facilitate greater allocations to local governments.
- Steps have already been taken to provide additional revenue enhancement instruments available to local governments. These

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<sup>21</sup> Medhi Krongkaew, *ibid.*

<sup>22</sup> For a more in-depth discussion on this topic, see *Decentralization and its Implications for Municipal Service Delivery*, Lessons from Urban Lending, Urban Development Division, The World Bank, , March 4, 1994.



positive moves should be expanded to unleash the single and potentially most important revenue-generating instrument for local governments: the property tax.

- Many internationally renowned research institutes already exist in Thailand. In order to build on this reputation, there should be a commitment on the part of RTG agencies, donors and consultants (local and foreign) to build the institutional base for local government policy research and analysis. The development of an institutional base should draw together existing resource bases rather than try to create a new capability. The institutional structure should also promote the training of additional professionals in this field. The expansion of high level Thai professional expertise will enable Thailand not only to become less reliant on foreign experts but will also promote Thai consultants in the region.

### ***Recommendations***

To effectively support the decentralization effort in Thailand, progress needs to be made along several dimensions. First, steps need to be taken to improve resource mobilization. This will include: (1) strengthening the ability of municipalities to utilize the property tax, (2) working out an improved system of intergovernmental grants and transfers, (3) enhancing local government access to loan and debt finance; and (4) looking into other areas for revenue enhancement, such as user fees.

Second, measures need to be taken to strengthen institutional development and improve public sector management at the level of subnational government. This objective, in turn, will need to proceed along three dimensions: (1) strengthening staffing and human resource management and development; (2) strengthening the capacity of local governments in public expenditure management, and particularly in capital planning and budgeting; and (3) improved research and training in local government policy and administration.

Finally, efforts need to be made to strengthen performance monitoring. This includes greater use of performance indicators (particularly those that place a premium on transparency and publicity); the use of credit ratings and other measures that create incentives for improved performance; and increased community participation. As will be discussed in the section on accountability institutions below, it also includes the strengthening of organizations that can help to detect and prosecute corruption, abuse and mismanagement and lower levels of government.

### ***Property Tax Reform***

Of most importance is the potential impact property tax reform will have on enhancement of municipal own-source revenue-raising capacity. Volumes of research and recommendations have been presented on the topic for more than a decade and draft property tax legislation has been circulating within the RTG for as many years. Nevertheless, particular aspects of the Thai local property tax system must be addressed, including the omission of owner-occupied residences from the tax base, the denial of municipal discretion in setting tax rates, and the operation of inefficient separate tax systems for vacant and developed property.

### *Intergovernmental Transfers*

Intergovernmental transfers need to be streamlined and linked to some combination of national development priority, municipal performance, and local need. For instance, RTG support could be contingent upon measurable improvements at the local level. Elected officials may overcome their reluctance to collect more taxes, fines and fees if any gains would be highly leveraged to matching grants. Presently, the Department of Local Administration maintains more than a half dozen distinct grants for all types of situations.

### *Providing Access to Credit*

Much more attention needs to be given to replacing grant financing with loan-financing. In principle, loan financing has several desirable attributes. Providing funds on a loan (rather than a grant) basis is a means of improving targeting and depoliticizing the allocation process. By allocating funds on the basis of beneficiaries' willingness to incur debt, lending would force potential beneficiaries to reveal their degree of commitment to specific projects. Lending would also help depoliticize the allocation process, by placing a price on finance, rather than requiring the government to attempt to ration a free good.

With the private capital market unwilling to lend, and the central government less than insistent upon timely repayment, consideration should be given to organizational hybrids—attempts to combine the commercial incentives of private lenders with the financial backing of central government. Local government credit institutions should attempt to separate the government and the lending process; isolate lending and loan administration in an entity that enjoys some legal and bureaucratic separation from the government budgeting process; and establish clearer allocation and recovery rules to defend the organization from political interference.<sup>23</sup>

### *Revenue Enhancement*

Movement toward strengthening local resource mobilization should be made both a condition of loan availability from capital financing facilities and also a demonstration of the capacity to generate sufficient resources to pay debt service on loans taken out by a local government. Local governments in Thailand are in many instances charging less than the maximum rates for fees and taxes than allowed by national law. The problem appears to be more in the nature of fees set too low to recover the costs of providing service, rather than of not charging fees at all.

### *Human Resource Management and Development*

Current government plans call for the transfer of an unspecified number of civil servants from the central government to the provincial, district, sub-district and municipal levels. They also call for the transfer of critical functions regarding human resource management, including the right of appointment, transfer, promotion, salary increase and punishment, from the Ministry of Interior and other line agencies to the elected Local Officials Committee. In certain areas (such as agriculture, health and infrastructure, for example), some senior Thai officials envision that the central government will retain

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<sup>23</sup> The World Bank, *ibid.*

responsibility for policy formulation and technology transfer, but will decentralize responsibility for administering programs in these areas to various subnational units

To facilitate this shift from central to local administration, it may be necessary to establish a central unit to monitor job and personnel transfer. The capacity of subnational governments to manage their staff effectively, particularly at the *tambon* level, will also need to be enhanced.

### *Improving Capital Planning and Budgeting*

Both local government budgeting and multi-year development planning are widely utilized in Thailand. However, general local practice does not as yet extend to include a distinct process of capital investment budgeting and programming as practiced in industrialized countries. Such a process provides a sound framework for assessing needs, prioritizing capital projects, analyzing trade-off opportunities and considering financing options.

The greatest emphasis should be placed on debt management—knowing how to integrate debt into project financing and how to evaluate the impact of future debt issuance on the operating budget, and perhaps more generally on future decision-making of the local government. The techniques of project financing are not well established in Thailand. Local officials should be aware of how to “mix and match” available resources (general capital grants, special capital grants, cash-on-hand, loans, impact fees, etc.), how to stagger debt issuance for expensive projects, and how to find the best combination of debt repayment structures for each project and for the community as a whole.

### *Local Government Policy Research*

In terms of policy development, there is a clear need for both public and private institutions in Thailand to compile their extensive knowledge on local government development issues under one roof. Presently, a number of university and government organizations in Thailand conduct research and provide training in community and urban development. While the resource base in aggregate is quite impressive, there are four major deficiencies: (1) the resources are scattered among a number of separate organizations so there is no “critical mass” of expertise at any one place; (2) the database on local government issues is likewise scattered among a number of institutions and individual researchers, so there is a fragmentation of knowledge about these issues—many of which are interlinked; (3) there is no guiding focus for most of the work done, so there is much duplication and gaps in the coverage; and (4) most of the work has been aimed at documenting local problems with relatively little attention to policy analysis.

There is also a growing capability in private consulting, prompted in large part by the demands of donor funded local development projects. This capability is located largely in engineering firms (for infrastructure design and construction management), accounting firms (for management assistance) and universities. However, since donor assistance tends to be project oriented, private sector consulting is apt to be discontinuous. The ad hoc nature of much of the work has made it difficult to assemble the body of research findings (which are generally high quality and large in volume) into a coherent body of knowledge. Given all the work that has been done on piecemeal basis, this appears to be a problem of organization and backing rather than resource

availability.

To remedy these problems, some senior Thai officials have proposed establishing a center for developing and training local government officials, which would include both technical education as well as training in ethics and accountability.

### *Performance Indicators*

Performance indicators in local government are generally measures of economy, efficiency and effectiveness. Economy is about minimizing the cost of resources acquired or used, having regard for appropriate quality. Efficiency is about the relationship between the output of services and the resources used to produce them. Effectiveness is concerned with the relationship between the intended results and the actual results of projects, programs or other activities. How successfully do outputs achieve policy objectives, operational goals and other intended effects? How quickly are services provided?

In Thailand, performance indicators could be used in four main ways to promote improvements:

- by publicizing the performance indicators and the improvements made by local governments;
- by linking grants or loan approval to performance;
- by relaxing detailed central government control over local governments or specific services meeting the performance targets;
- by rewarding good management

The regular publication of performance indicators by an independent body is an effective way of enhancing the accountability of local governments to their citizenry. This could take the form of an annual report on performance against targets. Publicity, both via the media and through regular training programs for local governments, should stress the success stories where major improvements have been made.

Specific grant aid or loan approval to local governments could be linked to achievement of specified indicators. For example, the RTG could link improvements in tax collection indicators to the provision of grant aid for purchasing computer systems.

As an incentive to local government managers, the RTG could reduce its detailed controls over staffing and other issues for those local governments that meet a number of key indicators. For example, if a local government achieved a set performance target on education expenditure per pupil the detailed controls over education could be gradually reduced. Over time, the promotion of local government officials would be seen to depend upon the achievement of certain performance indicators rather than lobbying efforts. This would, however, require a change in government regulations.

### *Credit Ratings*

Given an increased opportunity to borrow, local governments may still find it difficult to secure credit. The borrower's basic credit may be weak, or the local government itself may not be well-known; the security for the particular borrowing may be suspect; or the borrowing may be structured in a complicated way that is difficult to explain to potential investors. Many potential investors, particularly individuals, cannot personally investigate the creditworthiness of each individual borrower. They need and look for an accepted shorthand notation of creditworthiness, and they find it in the debt instrument rating. As a result, there is a direct correlation between ratings and interest rates. The better the rating, the lower the rate.

An independent, privately managed rating agency should take responsibility for assigning credit risk to local governments based on a standardized set of evaluative criteria. This agency would analyze credit risk by applying criteria similar to present day rating agencies, such as Thai Rating and Investment Services. The credit rating agency will need to be precise in rating strength and revise ratings if new situations develop due not only to long term credit deterioration, but also short-term liquidity risk, litigation risk, political risk, etc.

### *Community Participation*

Successful decentralization strategies cannot be a "top-down" process. They must be based on an awareness that local problems and assets are best known to local residents and the local organizations devoted to the betterment of their areas. Local NGOs are in an excellent position to assess neighborhood needs, establish development priorities, and design workable solutions.

Only the collective wisdom of local government, business, labor and neighborhoods can bring about a healthy local economy. These networks are best able to identify emerging development needs and strategic opportunities and assess the performance of existing development efforts. Local governments must not only incorporate this collective wisdom into its decision making, but must also help neighborhoods, businesses, and labor participate more effectively in public affairs by increasing their access to and understanding of public information. For example, holding public workshops on public resource allocation will help to inform citizenry and increase the local government's overall effectiveness.

## **B. Accountability Institutions**

In the past, Thai citizens had limited recourse to protest unjust, arbitrary or capricious actions on the part of the bureaucracy. Furthermore, corruption in political and economic life was widely perceived to be a serious governance problem. In a recent interview, Prime Minister Chuan Leekpai identified the lack of clean politics and clean elections as one of the most fundamental problems confronting democracy in Thailand and a major cause of the recent economic crisis.<sup>24</sup> Annual rankings by *Transparency International* and other organizations have consistently placed Thailand in the bottom quartile of countries grappling with corruption. TI's 1997 survey listed Thailand as 39<sup>th</sup>

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<sup>24</sup> Interview with Chuan Leekpai, "We Must Face Up to Reality – Chuan Targets Political Reform," *Asia* '99, October, 1998, pp. 20-21.

out of the 52 countries surveyed, comparable to the Philippines and China, but significantly lower than Malaysia.

Under the new constitution, there are four sets of institutions that will play a particularly important role in advancing accountability and integrity at all levels of government. They include the National Counter Corruption Commission, the Office of the Auditor General, Administrative Courts and the Ombudsmen. All are scheduled to be established by a series of organic laws to be enacted no later than October 1999.<sup>25</sup>

The Office of the Auditor General currently exists as an independent office. The National Counter Corruption Commission currently exists as the Counter Corruption Commission under the Office of the Prime Minister, but it is slated to become an independent commission under the new constitution. The Administrative Courts and Ombudsmen do not exist, although some preliminary work on the mandate, structure and staffing of the Ombudsman Office has been supported by CIDA with the assistance of the Canadian Parliamentary Centre. With the exception of the Administrative Courts (which were discussed above in the section on legal and judicial reform), each will be addressed below.

### ***National Counter Corruption Commission***

Prior to 1975, any anticorruption activities fell under the jurisdiction of the police. Although the law provided for heavy punishment if officials were convicted, it contained a number of loopholes that in practice made it very difficult to detect and prosecute corruption. The police could not initiate their own investigation. Allegations of corruption needed to be substantiated by physical evidence, such as receipts or deposit slips. In addition to proving that a transfer of resources did take place, the prosecution needed to prove that the intent of the transfer was to influence an official's decision. The police were not allowed access to bank accounts and could not freeze assets.

To strengthen the effort to combat corruption, the Counter Corruption Commission was established in 1975. It was tasked with investigating allegations of corruption, requiring any state official to declare his or her assets upon request, and making recommendations for combating corruption to the Council of Ministers. In pursuit of this mandate, it was given the power to issue summons, to request necessary information from individuals and government ministries, and to evaluate the assets of state officials judged to have become "unusually wealthy".

In practice, the CCC's activities were divided into three areas: suppression, prevention and public relations. Suppression involved the actual investigation of complaints, which were either referred to a superior for disciplinary proceedings or to the police for criminal investigation. Prevention was defined as reviewing procedures, laws and regulations to help stop corruption and monitoring net asset declarations. Public relations involved a variety of campaigns through radio, television and newspapers. The CCC is organized into a Research and Planning Division, which deals with prevention and public relations, and four investigation divisions that are divided by ministry and level of government.

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<sup>25</sup> The constitution also establishes a National Human Rights Commission to examine and report acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party.

There is a broad consensus that the CCC has been only modestly effective in combating corruption within the public sector. From 1977 to 1996, the CCC investigated 73,181 cases involving 35,836 individuals. Of this number, 24,329 cases were closed, resulting in only 39 officials being suspended from service.<sup>26</sup> Recently, the CCC has received about 2,000 complaints per year, out of which approximately 10 percent are referred to the courts or to a superior for action.

There are several reasons for this spotty performance. The CCC is located under the Prime Minister's Office, and its commissioners serve for only a two-year term at the discretion of the Prime Minister and with the concurrence of the government-controlled House of Representatives. Several senior Thai officials have argued that this arrangement is unacceptable, in that it lead to the "politicization" of the fight against corruption and the use of the CCC as a weapon against political opponents. The CCC lacked prosecutorial authority, and could only refer cases to government agencies for disciplinary action or, in extreme cases, to the police. Many civil servants found guilty of corruption were allowed to retire early with full benefits, or were transferred to another position, or were simply not sanctioned. In other cases, the police did not follow up on evidence provided by the CCC. The CCC could not investigate any member of parliament who was not a minister, and any investigations of the prime minister or other ministers had to be initiated while they are in office.

The new constitution contains a number of measures intended to improve the ability of the government to combat corruption. The foremost is enhancing the independence of the premier anticorruption agency. The CCC will be abolished and a new, independent National Counter Corruption Commission will be established apart from the Office of the Prime Minister. Its membership will consist of nine qualified individuals appointed by the King upon recommendation of the Senate. They will be selected by a fifteen-member committee crafted to ensure impartiality and serve for a single nine-year term from the date of their appointment. The NCCC will have its own secretariat, with the Secretary General reporting directly to the President of the NCCC. It will have autonomy in personnel administration, budget and other activities as provided by law.

A second innovation is that the NCCC will have its powers of investigation significantly expanded. At its own initiative, the NCCC can now investigate any politician or government official if it deems that they possess unusual wealth or if it has reason to believe they have committed an act of corruption. Importantly, it will also have the ability to overrule the Attorney General and initiate independent prosecution.

Although many of the underlying legal and jurisdictional problems that have hampered the Government's anticorruption effort will be addressed with the passage of the NCCC's organic legislation, the new commission will confront several important challenges as it undertakes the role envisioned for it in the constitution. There has been a tremendous increase in its mandate to monitor asset disclosure, for now both senators and members of the House of Representatives, as well as all members of a local assembly, will be required to submit a statement of assets and liabilities for both themselves and the members of their immediate family, along with relevant supporting documentation. Although the NCCC will be charged with inspecting the "accuracy, actual existence, as well as change of assets and liabilities" of such persons (Article 301), it is inconceivable

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<sup>26</sup> Cited from Police General Vasit Dejkunjorn, "Corruption in Thailand: An Overview," paper presented at the annual meeting of *Transparency International*, Kuala Lumpur, September 1998.

that the organization will have adequate trained staff to perform this function in any but the most perfunctory fashion for the foreseeable future.

A second problem will be ensuring that the NCCC has the capacity to prevent, investigate and deter corruption at the local level. The CCC has long been plagued by an antiquated organizational structure and inadequate staffing, funding and equipment, and these problems will be exacerbated as greater control over resources is devolved to the provincial, district and sub-district level. The new anticorruption agency's organizational structure should be rationalized and the current breakdown of responsibility between investigative divisions should be revisited. (It is unclear, for example, why different units are tasked with investigating the Ministry of Interior and Local Administration Department, on the one hand, and local governments, on the other, in spite of the obvious synergies between the two.) Furthermore, its presence at the subnational level should be strengthened through creation of a series of provincial offices.

The CCC's staffing is likely to be insufficient to investigate the number of potential allegations that could arise. Its current complement of about 400 includes approximately 250 professional staff, and plans are under consideration for recruiting about 50 more. Yet CCC staff estimate that they would need at least 1,000 officers to adequately fulfill their new mandate. Additional training in appropriate investigative techniques, and the recruitment of staff in disciplines such as money laundering and forensic accounting, are top priorities. Furthermore, the salary structure will need to be revised. Although the evidence is largely anecdotal, there appear to be problems with recruitment and retention, as talented investigators often seek transfer to the Attorney General's Office or the judiciary.

New equipment, such as secure computer links between central and branch offices and surveillance equipment, will also be necessary. Investigative techniques will need to be reviewed and streamlined. Furthermore, greater resources will need to be devoted both to public education and to awareness raising and information campaigns among the politicians and civil servants.

### ***Office of the Auditor General***

The OAG in Thailand was formerly a part of the Prime Minister's Office. However, it was established as an independent public agency in January 1999. It is currently tasked with responsibility for conducting compliance, financial and performance audits of government ministries, agencies, departments, SOEs and subnational government units. OAG currently has a staff of 2,700. About 300 staff are assigned either to state-owned enterprises or to 13 regional offices responsible for all 76 provinces. In 1998, OAG was allocated an annual operational budget of about Baht 500 million (approximately \$13 million).

Organic legislation for strengthening the functioning of the Auditor General is now with the Council of State, and under the new constitution it must be passed by the National Assembly by October 1999. This legislation will strengthen the independence of the agency with regard to budget, staffing and setting its audit agenda. It will report to an Audit Commission, and for the first time it will be required to send its audit findings on to parliament. Under the new arrangements, these reports will be made public.



OAG's role has changed considerably under the government of Prime Minister Chuan Leekpai. It has adopted and is gradually implementing global standards on government auditing. It is placing particular emphasis on performance auditing and developing adequate internal controls, reflecting the belief of the new Auditor General that the monitoring and evaluation of government programs is the weakest link in public sector management within Thailand.<sup>27</sup> OAG has considerable international exposure, and significant numbers of senior auditors have traveled abroad and observed the operations of other audit agencies. OAG has a particular comparative advantage in audit training, and it has been engaged to train auditors in other Southeast Asian countries such as Viet Nam and Lao PDR.

In spite of these accomplishments, OAG confronts a number of important challenges. In an independent evaluation conducted by an external consulting firm, OAG was ranked at a level 4 globally on a 1:10 scale and at a level 6 in comparison with other audit institutions within Asia.<sup>28</sup> Its performance was below that of Hong Kong, India and Singapore, but better than that of Viet Nam and Lao PDR.

Several senior Thai officials have argued that OAG currently lacks teeth to enforce its findings. Data from OAG appears to reinforce this conclusion. In 1996, OAG conducted approximately 1,800 audits. It uncovered 34 cases of potential criminal misconduct, out of which only one has been forwarded to the proper authorities for prosecution and three more are still pending. In 1995, there were 27 cases of reported misconduct, out of which one has resulted in prosecution and 22 others are still under consideration. Similar ratios exist for civil cases and cases referred for disciplinary action.

At a minimum, OAG's efforts to track the disposition of cases should be strengthened and given greater transparency and publicity. Follow through needs to be enhanced in improving systems, procedures and internal controls when audit cases identify weaknesses to prevent them from happening again. Greater attention must also be devoted to strengthening interagency cooperation in response to audit findings. Currently, if a complaint is received by OAG, it sends an investigative team to look into the matter. The team collects documents and tries to substantiate the claim. The case is then referred to the police, who may (or may not) collect additional evidence to build a case for fraud or abuse of power. The case then goes to the Office of the Attorney General, who makes a decision about prosecution, and finally to the courts for judgment. Less serious cases are referred to individual supervisors for disciplinary action.

Until recently, the major weaknesses in this approach were most evident at the point when the OAG turned the case over to the police. Sometimes the police took years to corroborate testimony and collect other evidence. Under the new constitution, when OAG becomes a fully autonomous and independent public agency, its work must always be included in the final report prepared by the police for submission to the Office of the Attorney General and the court. By making these cases more transparent, OAG staff

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<sup>27</sup> Toward this end, the OAG has launched an innovative program that taps into colleges and universities and hires students on a daily basis for surveys and to collect data on government programs. For example, students may visit a watershed development project to count the number of trees that were planted in accordance with the budget for that project. This program not only saves taxpayer money, but also builds a sense of civic responsibility among the students that should translate into improved governance and lower corruption.

<sup>28</sup> The ranking was performed by Kenneth Dye of Cowater International.

hope to cut down on the time required by the police to process a referral and forward it to the legal authorities.

Another major issue confronting OAG is its ability to ensure that proper controls and monitoring arrangements are in place to prevent the misuse of resources under decentralization. OAG staff are concerned that their ability to monitor resource use at the sub-district and village level may not be adequate and argue strongly that decentralization must be done gradually. To do otherwise before the proper internal controls are set up could be disastrous and set the cause of decentralization back by years.

Senior OAG management believe that they currently have enough staff to adequately fulfill their new mandate, although some redeployment may be necessary.<sup>29</sup> OAG's legally mandated work program should be revised and updated to allow staff to be shifted from low priority but legislatively required tasks to higher value added audits. Improvements need to be made in methodology and work procedures. The Auditor General would like to perform his current work with about 2,000, staff freeing up 700 staff to undertake new initiatives in the area of performance auditing, monitoring and evaluation.

The training budget for OAG is insufficient to support the move to global standards on government auditing. When OAG becomes an independent public agency, the Auditor General intends to make long and short term training a priority for both auditors and "auditees" as well. (Care must be taken, however, to ensure that the emphasis upon performance auditing does not undermine the organization's traditional mandate to conduct financial and compliance audits.) Another goal is to recruit a core group of people with advanced degrees in economics, management and finance assigned to the Auditor General's Office to provide policy guidance. Finally, equipment upgrades are need for the OAG to bring all of the regional offices and new provincial offices on-line.

### ***The Ombudsmen***

The Office of Ombudsmen does not currently exist. However, it is slated to be created by October 1999. According to the new constitution, the Ombudsmen (a maximum of three) will be appointed by the King with the advice of the Senate for a single six year term. The Ombudsmen will be empowered to consider and inquire into complaints where a government ministry, agency, enterprise or local government has failed to comply with the law or to perform its duties effectively and this failure unjustly causes injury to the public or the individual originating the complaint. The Ombudsmen will also be empowered to prepare reports and opinions and submit them to the National Assembly, as well as to refer cases to the constitutional and administrative courts. The exact scope of powers and jurisdiction of the Ombudsmen will need to be defined by organic law.

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<sup>29</sup> In the event that current OAG staffing is not sufficient to support decentralization, several possibilities exist. OAG could eliminate its role in auditing SOEs, which could be given to private audit firms. OAG could also work out a standard methodology for auditing subnational government units and then contract out the specific audit task to the private sector.

### **C. Enhancing Service Delivery in Line Ministries and Departments**

There was a consensus among senior Thai officials and knowledgeable foreign observers that there is scope for considerable improvement in productivity within individual ministries, agencies and departments. A recent pilot program to rationalize development activities in the northeastern province of Si Sa Ket, for example, allowed authorities to save 23 percent of their budget, reduce manpower by 58 percent and accelerate work completion by 49 percent.

There are several ways in which the efficiency and effectiveness of line units can be improved, although the results of these reforms will vary by department in response to a host of internal and external variables. The first falls in the area of strategic management. There are often redundancies and duplication of effort both within and between various government ministries. A survey of one area, agricultural extension, for example, revealed that there are a variety of public and private sector entities offering advice to farmers on various aspects of agricultural development. It also revealed that much of the Department of Agricultural Extension's effort was not going where it was needed most: toward export oriented production and facilitating the efforts of small subsistence farmers to sell their surplus in local markets.

Many Thai officials complain that bureaucratic procedures are often cumbersome, antiquated and non-responsive. Organizational structures are frequently laid out along functional lines, whereas work crosses functional boundaries and typically encounters delays. Within some government ministries, efforts are underway to develop new organizational structures laid out along program lines to improve coordination and service delivery. Although such measures may be useful, they are not without their problems. (Difficulties in coordination can exist between programs, and once established, program units can take on a life of their own that may outlive their broader social utility.) Various experiments at reengineering business processes and improving monitoring mechanisms in areas such as the land title office and automobile licensing have yielded striking increases in efficiency and customer service. Such process oriented approaches, combined with judicious restructuring efforts, are likely to yield significant productivity gains.

At an aggregate level, the Thai civil service is not overstaffed in comparison with many Asian countries. However, in many departments, employee productivity could be significantly improved by the reallocation of staff. Focusing upon the Department of Agricultural Extension again, preliminary rationalization plans envision only a modest downsizing in the aggregate number of staff from 14,630 to 12,450, or just under 15 percent. However, almost a quarter of these staff are now concentrated at the central and regional levels. Current plans for reorganization envision radically downsizing headquarters staff by over 62 percent and abolishing the regional staffing layer altogether; they also call for significant increases in staff at the provincial level while leaving the number at the district level virtually unchanged. The net result of these measures would be a radically streamlined headquarters function, down from approximately 1,200 staff to 450, and the movement of over 3,000 staff (or roughly 20 percent of the organization's total) closer to the front-line tasks of service delivery.

#### **D. The Public/Private Interface: Regulation, Privatization and State Enterprise Reform**

Privatization efforts began in Thailand in 1961 and have been part of every subsequent national plan. During the past decade, the government has privatized more than 40 enterprises and reduced the number of state enterprises from more than 100 to 59. The current state enterprise reform program has evolved as a result of the economic downturn. The privatization program has subsequently assumed prominence as a key initiative to assist in the restoration of Thailand's economic vitality.

In its first letter of intent with the IMF, the Government agreed to increase private participation in key commercial and infrastructure sectors dominated by the state as a medium-term goal. The Government also agreed to review and improve the legal framework for private sector participation, including preparation of a law on corporatization. In subsequent letters of intent, the government has reiterated its commitment to reform the state enterprise sector and further defined its objectives with regard to the overall reform program.

To achieve these objectives, a Master Plan for State Enterprise Sector Reform was approved by the Thai Cabinet on 1 September 1998. The Master Plan provides guidelines, principles and practices for increasing effective private sector participation in the economy and serves as the basic blueprint for these reforms. In addition, it serves as a reference document for the government, ministries, enterprises, investors, employees and the general public as privatization plans and their associated legal, regulatory and institutional reforms are prepared, approved and implemented. The Master Plan is a strategic document, giving the Thai Government flexibility in implementation but setting clear objectives and goals.

The current Master Plan accelerates reforms that the government has contemplated for some time. In pursuing this program, the government has established a State Enterprise Policy Committee (SEPC); identified and begun divestiture of fast-track enterprises; appointed privatization advisors; and prepared a Master Plan to ensure that reform efforts have a solid foundation and framework in the months and years ahead.

##### ***State Enterprise Sector Reform***

The Master Plan comprises an action plan for the reform or privatization of all 59 state enterprises. These enterprises are an integral part of economic activity in key sectors of the economy and can be broadly categorized into the following five major sectors: telecommunications, water, energy, transport, and other (including industrial, social and technology, commercial and services, agriculture, and financial sectors). While some SOEs are profitable, the Government believes that increased private sector participation will improve economic efficiencies, reduce the government burden, and improve service quality, coverage and reliability.

The privatization program has tangible objectives and expected benefits. These include structural benefits, such as improvements in the economic efficiency of sectors, as measured by decreases in costs of production and/or price of services. They also include improvements in quality of service, including enhancing consumer choice; the completion of needed infrastructure investment projects; and the attraction of higher value-added services and innovative technology and management systems to Thailand.

The program also has specific financial objectives, such as a reduction in subsidies to enterprises; a reduction in loan guarantees to enterprises; private rather than government financing of necessary infrastructure services; utilizing the proceeds from the sale of enterprises for reinvestment in the economy and social sector; strengthening capital markets in Thailand; and contributing to investor confidence in the Thai financial sector and the Thai economy. Finally, the program includes social objectives and benefits, such as improved and/or expanded services, new employment opportunities, and enhanced government ability to invest in social and public services. The privatization program's ultimate success will be measured by its ability to meet these diverse objectives and deliver these benefits.

In order for the program to be effective, a privatization program must have clear and transparent procedures and well-defined roles and responsibilities for all participants. Toward this end, a new committee has been established, the State Enterprise Reform Committee (SERC), which combines the functions of the future corporatization committee with the current State Enterprise Policy Committee. The SERC has as its secretariat the Office of State Enterprises at the Ministry of Finance and the NESDB. The SERC is tasked with the review and approval of all privatization proposals, all proposals for increased private sector participation in existing SOEs, and all regulatory reform initiatives before forwarding them on to the Cabinet for approval. It was established and began functioning in July 1998.

### ***The Legal and Regulatory Environment***

In order for the privatization program to succeed, a number of legislative changes will be required. Foremost is the need to create or improve the legal basis for independent regulatory bodies in critical infrastructure sectors (telecommunications, water, transport and energy). Other legal changes will be required as well, including the land law, the Alien Business Law, competition laws, taxation laws, intellectual property laws, the employment laws, the private sector participation law, the company law and securities laws. A single "State Owned Enterprise Reform Act," is scheduled to be submitted to parliament during the first half of 1999. It is anticipated that this legislation will incorporate most of these changes and provide the legal framework for the creation of the requisite regulatory bodies.

Currently, the roles of policy making, regulation and operation overlap in many sectors and state enterprises. Clear separation of these functions is an essential component of the reform program and a requirement for the development of transparent, competitive markets. A program of regulatory reform is proposed that includes the creation of individual regulatory bodies in each of the infrastructure sectors of telecommunications, water, transport and energy; it also includes the definition of roles and responsibilities of those authorities.

The Master Plan lays out the policies and provides a framework and direction for the long-term reform of SOEs. The work on development of sector plans and SOE plans was completed at the end of 1998. Work on defining a regulatory framework to increase competition in key sectors, such as telecommunications and energy, is now well advanced. Cabinet approval is expected by the first quarter of 1999, after which parliamentary approval will be sought. A draft Corporatization Law has also been cleared by the Cabinet for early enactment by the National Assembly.

### ***Forms and Methods of Privatization***

A wide variety of privatization methods may be used by enterprises and the state to accomplish its reform objectives. They include divestiture, deregulation, and the licensing of private sector participants. Privatization plans may be submitted by both state enterprises and private entities, and they will be considered and selected based upon stated criteria and their appropriateness to a given SOE and sector reform objectives. While a clear objective of privatization is to raise needed capital at the maximum value, the government will seek to balance this objective with other objectives, such as the need to privatize rapidly, or to reduce the financial burden on the state, or to secure technical or managerial expertise, or to recapitalize an SOE, etc.

The primary forms and methods of privatization include:

- Public Offerings
- Private Placements and Joint Ventures with Strategic Partners (trade sales)
- Management Buy Outs (MBOs)
- Asset Liquidation
- Debt for Equity Swaps and Debt Buy Backs
- Convertible Bond Offerings
- Leasing
- Concession Contracts (BOT, BOOT, BOO,BTO)<sup>30</sup>

The SERC will have responsibility for approving plans and overseeing a transparent and timely privatization process.

Privatization proceeds will be used by the government for reinvestment in the economy and for social, health and welfare benefits. Where proceeds are earned directly by the Government, they will be used in accordance with the cabinet resolution of 19 May 1998, which stipulates that 50 percent will be used to fund needed social services, such as education, public health, labor welfare and agriculture, and another 50 percent will be allocated to the Financial Institutions Development Fund (FIDF), which provides insurance coverage for repayment of principal and interest to depositors in Thai financial institutions

### ***Corporate Governance and Performance Monitoring***

The existing system of corporate governance for SOEs does not provide sufficient accountability and enterprise control. Privatization and corporatization will change the ownership structure of some SOEs. However, for enterprises that remain majority state-owned, a similar board structure is proposed to that mandated under the Public Companies Act.

At the moment, two performance evaluation systems are used for SOEs: the Good Enterprise System (GES) and the Performance Agreement System (PAS). Such systems use comparative performance indicators for key enterprise stakeholders and operations (i.e. customers, shareholders, employees and internal operations). Changes

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<sup>30</sup> BOT is Build, Operate, Transfer; BOOT is Build, Own, Operate, Transfer; BOO is Build, Own, Operate; and BTO is Build, Transfer, Operate.

in performance measurement, including both indicators and the units that monitor them, will be made to streamline decisionmaking and evaluation procedures.

Under the proposed reforms, the performance measurement of SOEs will be improved through the adoption of a balanced scorecard system, which uses comparative performance indicators for key enterprise stakeholders and operations that are common in many commercial enterprises worldwide. The MOF's Office of State Enterprises (OSE) will be the central manager of this system. To permit more effective supervision and regular monitoring of enterprise performance, an improved Management Information System will be established, which will effectively standardize reporting formats and data inputs from SOEs. Currently, all audits of SOEs are undertaken by the Office of the Auditor General in accordance with international standards that were laid out years ago.

### ***Social, Labor and Environmental Concerns***

The Thai Government believes that it must address a number of social, labor and environmental concerns related to privatization. As a result, all privatization proposals must include a discussion of the likely impact of privatization upon the environment, social obligations and enterprise employment. The government will also evaluate the tariff and other social aspects of greater private sector participation and seek to balance any costs with the gains from privatization.

Programs that benefit state employees in the transition to privatization and afterwards will be encouraged. These include stock distribution schemes, early retirement packages and retraining efforts. The Government will enforce existing programs that provide employees with specific benefits if they are terminated due to privatization. It will also adopt some additional measures, such as establishing an employee fund that will ensure that severance pay will be provided to employees while making certain that SOEs are "first in line" in terms of their responsibility for providing such pay.

### ***Public Information and Education***

The Government recognizes that employees require regular, reliable information on the objectives, benefits and timetables of privatization. Therefore, the privatization program will be accompanied by a dedicated public awareness campaign that is intended to respond to the particular concerns of key stakeholders. (Such stakeholders include the SOE employees, investors, the media, and the public at large.) Immediate efforts to be pursued include the establishment of an interactive SERC website, the publishing of a bi-monthly newsletter, and the holding of public seminars and forums. These channels will seek to disseminate both general information on privatization and sector-specific details to the various audiences.

#### IV. Conclusions and Implications for ADB Programming

This study has argued that Thailand is currently at a pivotal point in its history. The days when political power was traded between a narrow elite in Bangkok and officials sent from the capitol presided over an illiterate rural peasantry are over. The country is now in a transition stage, where traditional practices and institutions, such as vote buying or the prevalence of village chiefs and local “godfathers,” coexist along with modern think tanks and one of the most innovative and participatory constitutions in the world. This transition could be largely over within a decade, or it could stretch out for several generations, depending upon the quality of the decisions made within the next five years and the careful and deliberate way in which they are implemented.

Fundamental reform is never easy, and there will be clear winners and losers in the process. Many senior Thai officials note that the result will inevitably fall short of expectations. Others remain skeptical that significant progress is possible, for reasons ranging from the self-interest of entrenched elites to attitudes and beliefs that are deeply ingrained within Thai culture. However, while there is no guarantee that the current reform process will be successful, the proper preconditions are in place that provide hope for change. The new constitution provides an appropriate framework. A government is in power with the political will to advance the reform agenda; as the Prime Minister recently noted, “transparency, good governance, accountability—these are the things I wish to see instituted in Thailand.”<sup>31</sup> The ranks of senior government officials contain many with the requisite knowledge and managerial skills to drive the agenda forward. The broader environment, and the economic crisis in particular, provides additional impetus for improvement.

Under these circumstances, the donor community both can and is playing a useful supportive role in advancing governance reform. The World Bank is already playing a major role in public expenditure management, and is likely to be heavily engaged shortly on various aspects of civil service reform as well. Along with the IMF, it is also working to restructure the banking sector, and it is proposing additional activities in legal reform. The UNDP has launched pilot programs in decentralization and human resource management, and results based management. A variety of bilateral donors, such as Japan, Canada, New Zealand and Australia are also supporting individual projects that touch upon governance issues.

The ADB is one of the largest donors in Thailand, providing over \$4.25 billion in loans and \$37.4 million in technical assistance grants from 1968-97. The Bank is already working on several critical governance issues, including strengthening the regulation of securities markets and rationalizing service delivery and enhancing participation in the agricultural sector. Under a regional technical assistance grant, the legal framework for secured transactions in Thailand will also be examined.

In addition to these ongoing areas of involvement, there are six important themes and priorities where the ADB could be of particular assistance. Four are related to the governance issues discussed in greater detail above: (1) support for decentralization and enhanced citizen participation in decisionmaking; (2) strengthened accountability and integrity within the public sector; (3) enhanced service delivery by rationalizing functions and reengineering business processes both within and between departments;

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<sup>31</sup> Chuan Leekpai interview in *Asia* '99, p. 20.



and (4) shrinking the sphere of state intervention in the economy and improving the performance of SOEs. Two others are important initiatives that will support the realization of these broader goals: (5) improved coordination in policy formulation and implementation; and (6) support for legal and judicial reform.

Some of these priorities, such as decentralization or the reengineering of business processes, are functional priorities that can be strengthened in the ADB's work across sectors. Any Bank lending program (or any donor program, for that matter) should contribute to the realization of these objectives within its specific sphere of operations. This goal will, in turn, require careful attention to the institutional and organizational elements of the project at the earliest stages of project design.

Other initiatives, such as enhancing accountability or advancing legal and judicial reform, will involve working with particular institutions tasked with performing this responsibility for the public sector as a whole. In the area of accountability, for example, this would include the National Counter Corruption Commission, the Office of the Auditor General, the Ombudsmen and the Administrative Court. Thai government officials and ADB staff working with line ministries, agencies and departments can also make progress in advancing certain aspects of accountability and integrity by strengthening the internal audit function or improving performance monitoring and appraisal, for example.

Table 1 presents a breakdown of Selected Governance and Public Sector Management (GPM) Priorities in Thailand that are of greatest interest to donors, such as the Asian Development Bank. The left hand column lists the six themes or functional priorities. The right hand column indicates that this work is either: (1) a general priority to be integrated on an ongoing basis in all of the ADB's project work with various sector ministries; (2) a more specialized function that should be targeted at a specific institution(s) with responsibility for performing this task for the public sector as a whole; or (3) both.

It is not suggested that the ADB be active in all of these areas. Rather, they present the most promising targets of opportunity for the Bank's governance work in Thailand. Tradeoffs and hard choices will need to be made, in close consultation with the Government and civil society, and with careful consideration of the work of other donors. Toward this end, the impending Cabinet paper being prepared by the Government on public sector reform will provide an important opportunity to begin a dialogue on these issues.

Each of these themes and priorities will be discussed below.

Table 1

**SELECTED GOVERNANCE & PUBLIC SECTOR MANAGEMENT  
PRIORITIES IN THAILAND**

Thematic and Functional Priorities	Areas for Institutional Development
1. Support for Decentralization and Enhanced Participation	<b>General Priority for All ADB Work with Line Ministries, Agencies and Departments</b>  <b>Specific Priority for:</b> <ul style="list-style-type: none"> <li>➤ Subcommittee on Decentralization</li> <li>➤ Provinces, Districts, Sub-Districts, Municipalities and Villages</li> <li>➤ Credit Ratings Agencies</li> </ul>
2. Strengthen Accountability and Integrity	<b>General Priority for All ADB Work with Line Ministries, Agencies and Departments</b>  <b>Specific Priority for:</b> <ul style="list-style-type: none"> <li>➤ National Counter Corruption Commission</li> <li>➤ Office of the Auditor General</li> <li>➤ Ombudsmen</li> <li>➤ Administrative Courts</li> <li>➤ Legal Information/Institutions</li> <li>➤ Civil Service Commission &amp; Ethics Promotion Center</li> </ul>
3. Functional Rationalization, Process Reengineering and Performance Measurement	<b>General Priority for All ADB Work with Line Ministries, Agencies and Departments</b>
4. Regulation, Privatization and SOE Reform	<b>General Priority for All Sector/SOE Reform Work</b>  <b>Specific Priority for:</b> <ul style="list-style-type: none"> <li>➤ Securities and Exchange Commission</li> <li>➤ Subsidiary SEC Bodies (i.e. pensions and provident funds)</li> </ul>
5. Improved Coordination in Policy Formulation and Implementation	<b>General Priority for All ADB Work with Line Ministries, Agencies and Departments</b>  <b>Specific Priority for:</b> <ul style="list-style-type: none"> <li>➤ Cabinet Secretariat</li> <li>➤ Inter-ministerial coordinating agencies and working groups</li> <li>➤ Local Officials Committees</li> <li>➤ Professional Societies and Associations</li> </ul>
6. Support for Legal and Judicial Reform	<b>Assistance for Drafting Organic Legislation on a Case-by-Case Basis</b>  <b>Specific Priority for:</b> <ul style="list-style-type: none"> <li>➤ Constitutional Court</li> <li>➤ Administrative Courts</li> <li>➤ Office of the Courts of Justice</li> <li>➤ Council of State</li> <li>➤ Law Schools/Legal Profession</li> </ul>

### ***(1) Support for Decentralization and Enhanced Citizen Participation***

The reforms anticipated under the decentralization component are massive in scope and will require many years to fully implement. There are several ways in which the ADB can support this effort, including both efforts to integrate participation and decentralization in its project work with individual ministries, agencies and departments, as well as specific programming initiatives to enhance decentralization by supporting a range of targeted initiatives in this area.

As a general principle, sector work should also support the appropriate and timely devolution and decentralization of decisionmaking responsibility away from Bangkok. The strategies for achieving this objective will vary. At a minimum, staff guidelines can be redrafted to emphasize deregulation and allow local personnel greater discretion in managing their budget and staff (with the caveat that appropriate ex-ante and ex-post controls over expenditure be retained). More radical solutions could involve moving to a “purchaser-provider” model utilized in several Commonwealth countries, in which central government agencies would be forced to compete with other service providers in “selling” their services to local governments.<sup>32</sup>

Turning to specific programming areas where ADB assistance may be useful, a top priority is for the Decentralization Committee and its related subcommittees to work out viable structures, staffing and financial arrangements surrounding decentralization. This effort is already well-advanced, and a number of donors are providing assistance to various components of the decentralization effort. The ADB could provide TA assistance, as necessary, to make available technical expertise and support research in areas where critical gaps exist, and we could also support the continued participatory preparation of this legislation through stakeholder workshops, etc.

Two other areas where the ADB could provide support are the human resource management and development and financial management components of decentralization. With regard to the former, the UNDP is currently supporting a series of pilot studies of various modalities for decentralization, which seeks to determine the most appropriate roles, functions, structures and staffing arrangements for local governments and the most appropriate systems and procedures for personnel management. (The UNDP is also looking at appropriate structures for managing the transition). They envision a two-step process for achieving this objective that involves: (1) working with relevant government agencies, including the CSC, MOI, and various subnational government units to design appropriate institutional procedures and arrangements; and (2) pilot testing this approach in a target province. Should this approach prove promising, the ADB could support efforts to expand it to other provinces or throughout the public sector as a whole.

Any attempt to assess the feasibility of decentralizing local government activities must take into account alternative financial arrangements. Programs are needed to improve the intergovernmental transfer system and expand the capacity of local governments to recover costs, raise general revenues, and provide greater flexibility to borrow funds. A number of initiatives discussed in the above section on decentralization could be supported by the ADB, and subsequent missions are necessary to determine the most critical priorities.

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<sup>32</sup> Such an approach would be most useful in areas, such as agricultural extension, where a number of different agencies and private sector suppliers are providing the same service.

Particular care should be devoted to developing institutions and practices that will put pressure upon various units of subnational governance to improve their performance. Toward this end, supporting the development of credit ratings agencies would be a particularly promising approach, for such ratings are both public information and linked to the ability of local governments to receive additional resources at lower cost. The ADB could also support research and publicity regarding the effectiveness of municipal governments or certain aspects of municipal service delivery.

Finally, the ADB could support efforts to gather and disseminate knowledge about local government reform in Thailand, whether through the creation of a center on local administration and reform or other mechanism.

## ***(2) Strengthen Accountability and Integrity***

Many Thai observers noted that there are certain aspects of Thai culture that will make it difficult to eliminate corruption, such as a strong deference to hierarchy and authority, a general aversion to confrontation, the expectation of rewarding followers, and a belief that wealth and position are naturally and intrinsically linked. Nevertheless, global experience indicates that the influence of national culture is often not as strong as that of a carefully cultivated organizational culture. If the proper incentive structure and robust monitoring mechanisms are in place; if training, socialization and organizational communication reinforces the same set of messages; and if senior officials act consistently in ensuring that there is no divergence between "formal" and "informal" rules, then the Government should be able to create "islands of integrity" within its civil service that can slowly be expanded to incorporate the civil service as a whole.

The ADB can contribute to this effort both in its general project and program work and by specific initiatives to strengthen accountability institutions, such as the new NCCC, OAG, Ombudsmen and Administrative Courts. In terms of general project work, ADB projects can pay particular attention to examining accountability relationships within specific ministries, agencies and departments. Working in collaboration with their Thai counterparts, ADB staff and consultants should assess the existing mechanisms for monitoring both organizational and individual performance to determine their adequacy and use in executive decisionmaking. They should strengthen the internal audit function and ensure that adequate financial control systems are in place. They should examine the organization's record in dealing with complaints against staff from OAG and the CCC, and look at existing disciplinary and grievance procedures. They should look into procurement procedures and the degree to which staff can exert discretion over large projects and/or sums of money, and they should examine the general framework for managerial accountability. They should look at staff compensation and assess its adequacy. Finally, they should look at organizational business processes, to ensure their transparency and see if opportunities exist for streamlining and the reduction of delays and opportunities for "speed money".

Particular care should be devoted to projects with the Ministries of Interior, Education, Agriculture and Cooperatives, and to government enterprises working under the Ministry of Transport and Communication and Ministry of Interior. Historically, the greatest

number of corruption related cases brought before the CCC have arisen from these sources.<sup>33</sup>

The ADB can also work directly with institutions specifically tasked with advancing accountability and integrity. In this context, the most important objective is to ensure that a proper accountability framework is in place to prevent the waste or abuse of resources under decentralization. Nothing will discredit the decentralization process more quickly and thoroughly than the existence of widespread corruption in subnational governments, and unfortunately neither the NCCC nor the OAG currently have the capacity to operate effectively in a highly decentralized environment. It is therefore imperative that these organizations be strengthened quickly.

The ADB can assist the Government in a number of areas through either a loan or integrated series of technical assistance grants. It can support the drafting of relevant organic legislation through technical assistance grants for both the NCCC and OAG. It can provide assistance for expanding their presence in the provinces and strengthening their capacity to prevent abuses during decentralization, including the hiring and training of new staff and the development of regional offices. It can help review and upgrade their organizational structure and business processes, including those for investigation. It can support efforts to strengthen human resource management and improve pay and employment conditions. It can strengthen their ability to monitor performance, including tracking the number and variety of cases referred to them for investigation and tracking the disposition of such cases. It can enhance their communication and coordination with other important agencies, such as the police and the Attorney General's office.

Specific work with the NCCC would include developing procedures for expeditiously monitoring the declaration of assets, most probably through the use of random sampling techniques. It would also include support for an anticorruption awareness campaign within the Thai government, to help civil servants to better understand the code of conduct and regulations against bribery. Finally, a massive public relations campaign should be mounted that would seek to provide basic information about reporting allegations of corruption and change public attitudes from viewing abuses as "*to rat mai chai*" (it is not my affair) to a serious governance problem. This public relations campaign should be carefully integrated with an effort to expand the presence of the NCCC at the provincial and district levels.

Work with the OAG would include strengthening their capacity to conduct performance audits while enhancing their capacity to conduct financial and compliance audits among subnational governments. The former will involve increased training and staff redeployment. The latter will involve a combination of audits selected through random sampling techniques and ongoing assessments of agency procedures for financial management and control. A revision of mandatory audit legislation should also be supported to allow the Auditor General to redeploy staff away from low priority projects to those with greater potential returns.

Merely informing and educating citizens about anticorruption laws and institutions may not be adequate. Citizens need to be "empowered" to address corrupt or incompetent administration more generally. Such empowerment includes providing them with ready

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<sup>33</sup> See Vasiit, p. 3, and Pasuk Phongpaichit and Sungsidh Piriyarangsarn, *Corruption and Democracy in Thailand* (Chiang Mai: Silkworm Books, 1996), pp. 28-33.

access to institutions that can examine complaints fairly and expeditiously. Toward this end, technical assistance can be provided to support the drafting of organic legislation on the Ombudsmen. Support can also be provided for establishing this institution, including staff recruitment and training; the development of an appropriate organizational structure, investigation procedures and monitoring mechanisms (in the case of the Ombudsmen), or the rules and procedures to be followed by Administrative Courts; and by providing the necessary supplies, equipment, etc.

The OCSC is about to embark upon a major program to promote ethics throughout the public sector. It is drafting a code of conduct and seeking to establish an Ethics Promotion Center, which will have responsibility for a variety of functions to advance integrity within the civil service, including the production and dissemination of training courses and materials; helping managers to advance ethical considerations in the management of their staff; and serving as a center for studies, research and recommendations on advancing ethical behavior throughout the civil service. The ADB has already supported training for select senior Thai civil servants in association with the creation of this center, and further support for its establishment and operations could be considered within the broader context of advancing accountability.

Finally, the Thai cabinet has recently passed a resolution calling for strategic measures to encourage "whistleblowers"--i.e. those who come forward with evidence of graft and corruption. These measures will now need to be implemented throughout government ministries, agencies and departments.

### ***(3) Functional Rationalization, Process Reengineering and Performance Measurement***

The ADB's current operational strategy for Thailand emphasizes work in the social sector. This includes initiating structural reforms in the delivery of social services (education, training, labor market management, health) to enhance the competitiveness of the Thai economy, and reducing inefficiencies in the provision of social services.

These objectives will require major improvements in how the relevant line ministries and departments are managed. Unfortunately, in many donor organizations, including the ADB, institutional development concerns were often tacked on to projects that were primarily focused upon other goals. In the future, any Bank project in the social sector should have institutional development and improved public sector management as a fundamental objective that is integrated into project preparation from the outset.

Particular attention should be devoted to three areas. The first is questions of strategic management in general, and functional rationalization in particular. As was noted above, many knowledgeable observers have lamented the frequent duplication of effort and functional overlap within Thai bureaucratic institutions, along with their attendant inefficiencies. On a sectoral, ministerial and departmental basis, the ADB should support the efforts of public sector organizations to narrow and consolidate their focus to their "core business," and to the greatest extent possible off-load tertiary responsibilities on to other government agencies, levels of government, or the private sector. As an interim measure, the pooling of money, manpower and equipment between agencies working in similar areas should be expanded.

Toward this end, the Prime Minister's recent directive for eight ministries involved in community development work to rationalize their projects is a useful model. It is particularly important that individual government units be provided with incentives to cooperate, such as allowing them to retain a portion of any budgetary savings attained through rationalization. The Budget Bureau has adopted a variant of this strategy, allowing unspent monies to be set aside for additional development works initiated by local people through *tambon* administration organizations.

The second area is process reengineering. Preliminary work by the OCSC has indicated that there are major efficiency gains to be achieved in the fundamental reform of administrative processes and procedures. This work needs to be expanded and replicated among many departments and agencies, particularly when functions cross administrative boundaries (the most frequent cause of delays). Such reforms pay added dividends in improving service delivery and therefore gathering public support for reform, as well as in eliminating opportunities for corruption.

Finally, in a fashion consistent with developments within the "New Public Sector Management," greater attention needs to be devoted to performance monitoring and evaluation. The design of appropriate output and outcome measures, and their use in administration, is a very complicated task. Care must be taken not to create dysfunctional or perverse incentives, or to dismantle input controls before a proper monitoring framework is in place. However, Thailand's public sector needs to be reoriented from its largely inward, vertical orientation to an outward looking, client focused approach, and the design of appropriate performance measures that emphasize results over inputs can play a useful role in moving social sector departments in this direction.

Toward this end, the work of internal audit units and monitoring and evaluation units within ministries and departments should be strengthened. Projects should also work closely with senior Thai officials in developing their familiarity and skills in linking performance measures with organizational objectives and using them to monitor and evaluate performance.

#### ***(4) Regulation, Privatization, and State Enterprise Reform***

The bulk of the ADB's work on governance issues that fall at the intersection between the public and private sectors will focus upon securities regulation and a number of subsidiary issues, such as pension and provident fund regulation, information compliance and disclosure, and asset securitization. This work is critical to facilitating the development of market instruments for private debt and, ultimately, to Thailand's recovery and ability to secure needed financing at a reasonable cost. It will require considerable attention and effort to ensure that the new regulatory regimes are properly established.

It is unclear that the ADB will be in a position to support large-scale reform among individual SOEs. Such support is often linked to the financing of major infrastructure projects, which provides scope for dialogue on issues of policy and governance. However, the Bank's draft operational strategy envisions that lending will be phased out in several infrastructure areas, such as energy and telecommunications, where enterprises can now obtain commercial finance at competitive rates. ADB lending for

infrastructure may also be limited geographically to the poorer regions of the country, further curtailing the opportunity for engagement on these issues.

Nevertheless, there may be selective opportunities to support such efforts on a case-by-case basis. Modest amounts of ADB financing could be utilized to leverage private sector support, providing the opportunity to discuss issues of corporate governance or regulatory reform with regard to a specific sector and/or enterprise, or with regard to a particular geographic area (such as the proposed “regional growth centers”).

More importantly, there are a number of areas in the Government’s broad Master Plan for privatization that could be supported by technical assistance grants or a small scale lending operation. They would include the need to create or improve the legal basis for independent regulatory bodies in critical infrastructure sectors (e.g. transport and water), or to support the drafting of a number of other legal changes (e.g. competition laws, taxation laws, employment laws, the private sector participation law, secured transactions law, the company law and securities laws). They could also involve efforts to sort out the production and regulatory function in certain key sectors of greatest interest to the Government and the ADB, or to support a particular function, such as expanding public information and awareness regarding privatization. If it were to take place, such work would need to be carefully coordinated with the World Bank, which has provided a major technical assistance grant in this area to the MOF and is working closely with a number of SOEs.

#### ***(5) Improved Coordination in Policy Formulation and Implementation***

Numerous Thai and international observers have emphasized the importance of improving coordination at all levels of government. Information flows are often vertical, highly restricted and do not readily cross organizational boundaries. This is true both among central agencies and departments and among various levels of government, where subnational governments are often highly dependent upon the center for information.

As a matter of general priority, all Bank projects should seek to enhance the degree of collaboration and coordination both among different levels of government and among different agencies working within a particular sector. This objective will, in turn, involve progress along three dimensions: (1) improving the incentives for various organizations to collaborate; (2) improving the mechanisms and vehicles that exist for collaboration; and (3) improving organizational communication and public relations, so more information is available about the work that various ministries, agencies, departments and local governments are doing. These concerns will be particularly pronounced as decentralization proceeds, for the number of players in the decision process will increase and the mix of programs delivered at the local level will become more varied.

In terms of specific institutions, the ADB could begin by assisting the efforts of the Cabinet Secretariat to improve coordination in government decisionmaking. When problems of coordination occur at the top, the results are felt throughout government. As an initial step, the number of issues taken to Cabinet on a statutory basis should be reviewed and significantly curtailed. Numerous trivial and inconsequential decisions, including the decision once to relocate a public toilet, have needed to be brought before Cabinet for resolution. One knowledgeable observer estimates that roughly half of the



decisions that currently go to Cabinet can be decentralized to line ministries, agencies and departments.

Further streamlining will also be necessary to allow Cabinet to focus upon critical policy issues and enhance its ability to conduct government business promptly and effectively. Under current procedures, it can take as long as 1-2 months to get an item on the agenda (although urgent items can be fast-tracked), and Cabinet meetings can stretch over many hours. Computerization can help to reduce these lead times, and a strengthened subcommittee process would go a long way toward obviating the need to bring many issues before the full Cabinet. Careful attention should be devoted to examining the linkage between cabinet decisionmaking and the budget and planning process.

Turning toward the need for greater communication at the working level, the formation of intergovernmental task forces and coordinating committees should be strengthened, and these bodies need to be empowered to resolve issues within their jurisdiction. In the area of subnational government, the new constitution has taken a number of useful steps in this direction through the creation of elected local assemblies and Local Officials Committees. Care must be taken to develop their capacity for effective coordination, to redraft rules and regulations to provide them with greater flexibility in responding to local needs, and to ensuring that the proper incentive framework is in place so that the employees of central ministries and departments will take their collaborative duties seriously. These principles also hold true for collaboration between ministries and departments at the central level, and even for collaboration within various ministries--where teamwork skills and joint working groups are often missing or underdeveloped.

Finally ways should be found to strengthen horizontal associations and advocacy groups at both the central and subnational levels. The Rural Doctors Society, for example, has played an important role in combating corruption within the Ministry of Health. More importantly it has served as an effective vehicle for doctors in remote areas to strengthen their managerial skills and exchange information and advice on topics of mutual interest. Similar "civil society" organizations, such as leagues of mayors or other professional associations, should be encouraged.

#### ***(6) Legal and Judicial Reform***

Significant amounts of money are not necessary to solve many of Thailand's most pressing legal and judicial problems. Court infrastructure, for example, is good and some computerization is already underway. However, Thailand would benefit from assistance in several areas.

The first and most urgent priority would be, on a selective basis, to provide support for drafting certain elements of the thirty or so pieces of organic legislation that must be passed by October 1999. In many cases, the drafting of various elements of this legislation is already quite advanced, and a number of formal and informal working groups are currently engaged in this effort. The ADB could support the work of these committees by providing assistance on request to facilitate access to technical expertise as requested and by encouraging the participatory fashion in which this legislation is being drafted, which ensures that all relevant stakeholders have a voice in the process.

Second, there are a number of ways in which the ADB could potentially be of assistance

to the task of judicial reform in Thailand. An immediate need is to assist in the smooth transfer of administration of courts and judges from the Ministry of Justice to the new Office of the Courts of Justice (OCJ). This would include providing the judiciary and senior non-judicial staff (such as the Secretary General of the OCJ) retraining in court administration and case management. Another important need would be to strengthen the operations of the Constitutional Court. There are two ways in which such assistance could be provided: (1) building up the Court's research and analytic capacity; and (2) helping to create the capacity to disseminate the Court's findings widely in Thai and English. Similar assistance could also be provided to the establishment of the new Administrative Courts and the laws relating to their jurisdiction and procedures.

The problem of interagency coordination has been discussed above and is of particular importance in addressing problems of legal and judicial reform. The Thai Government is currently seriously considering establishing a working group chaired by the Minister of Justice to consider better integrating the operations of the Office of the Attorney General, the Department of Corrections, and a special police force handling complex crimes. In another area, Thai legal experts have advanced the notion of establishing a permanent independent law reform commission. This commission would help to guarantee the continuous evaluation of laws and ensure that their enforcement is in accordance with the new constitution.

Finally, in recent discussions with various institutions and agencies, ADB staff have identified the following areas for legal technical assistance: (1) assistance to the Law Commission for a study on its role and function and the reform of specific laws, for example the law of public procurement, competition law and the new administrative courts; (2) the development of a Legal Information System on Thai laws for use by government lawyers, the private legal profession and the public at large; (3) the reform of the Customs Department including simplification of custom laws; (4) assistance in drafting a mergers and acquisitions law; (5) assistance for development of a Thai legal dictionary;<sup>34</sup> and (6) assistance to law schools for training faculty, improving library resources, and legal literacy programs.<sup>35</sup>

### **Next Steps**

From the ADB's perspective, the next step is to prepare a more detailed governance strategy. This strategy will draw upon both the issues raised in this survey and the ADB's comparative advantage in preparing a concrete operational plan, which will help to guide the Bank's lending and technical assistance operations within Thailand. As is true with this survey, the strategy paper will be developed with the full consultation and participation of the Royal Thai Government and leading Thai experts on issues of governance and public sector management.

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<sup>34</sup> It was noted by a number of Thai lawyers that Thai legal terminology tends to be imprecise and capable of several meanings, especially when it translates foreign legal concepts. Although the Royal Thai Academy produced a Thai legal dictionary many years ago, a new legal dictionary is needed to standardize legal terminology.

<sup>35</sup> Thammasat University has an active legal aid and legal literacy program run by students and faculty. Legal literacy is particularly important to educate ordinary people in their newly acquired rights under the constitution.

### **Appendices**

1. Organization Chart of the Royal Thai Government
2. Brief Description of Major Thai Political Parties
3. List of Organic Legislation Required Under the 1997 Constitution
4. Breakdown of Staffing for the Civil Service, 1995
5. The Annual Budget Cycle
6. The Media in Thailand
7. Annotated Bibliography



## **Appendix 1**

### **ORGANIZATION CHART OF THE ROYAL THAI GOVERNMENT**

## Appendix 2

### BRIEF DESCRIPTION OF MAJOR THAI POLITICAL PARTIES<sup>36</sup>

#### ***Pak Prachatipat (The Democratic Party)***

Founded in 1946, the Democratic Party is the oldest party in the country. It has 123 members in the House of Representatives and is the senior member of the ruling coalition. The party's leader, Mr. Chuan Leekpai, is Prime Minister.

The Democratic Party has gained the reputation over the years as the primary opposition party due to its vocal opposition to military rule. Its recent electoral success stemmed in large part from the Prime Minister's reputation for having "clean hands" and the widespread perception among the voters that it is currently the most capable party to tackle the economic crisis. This party's traditional base is in Bangkok and the south, and it could be characterized as a center-right party.

#### ***Chart Pattana (National Development Party)***

The Chart Pattana Party was formed by General Chatichai Choonhavan upon his return from exile in London. The party has been accused by its critics of opportunism, but it became successful by popularizing a proposal for "turning Indochina into a market, not a battlefield." It has 52 MPs in parliament with strongholds in certain parts of the north and northeast. The recent demise of former Prime Minister and party leader General Chatichai may bode an uncertain future for this party.

#### ***Chart Thai (Thai Nation Party)***

The Chart Thai Party was founded in 1970s by the son, in-laws and close associates of Marshall Pin Choonhavan, a former military strong man. This group of friends is also known as the "Roajakru Clan." Chart Thai is a right-wing party of medium size, with 39 MPs in parliament. It is alleged to have played a role in swaying the sentiment of the military in 1976 to act against student radicals at Thammasat University. The party is currently under the leadership of former Prime Minister Banharn Silpa-archa, a "self-made man" whose wealth is based on his construction business and infrastructure development. Its stronghold is in the central region of the country.

#### ***Kitsangkhom (The Social Action Party)***

This party was also founded in 1982 by M.R. Kukrit Pramoj, who is widely respected as a scholar and social critic. Kukrit became premier in the mid-1970s in spite of having only 18 MPs in parliament. The Social Action Party is famous for initiating the "diffusion of funds" program for developing rural areas, which was quite popular politically but has also allegedly led to diversion and wasted expenditures. For a time, this revolutionary policy made the party very successful at the polls. It had 92 MPs in 1983 and 51 MPs in 1986.

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<sup>36</sup> This section was provided by Dr. Pisanu Suntharaks from the Faculty of Political Science at Thammasat University

With the departure of M.R. Kukrit and Air Chief Marshall Siddhi Savetasila, SAP's popularity has waned considerably. It is now headed by Montri Pongpanit, who has been remarkably successful in including the SAP in a number of coalition governments. It is a relatively small party that currently has 20 MPs.

***Pak Kwam Wang Mai (New Aspiration Party)***

The New Aspiration Party was founded in 1990 and is the largest opposition party to the Chuan government. It has 125 MPs and is led by General Chavalit Yongchaiyud, who was prime minister until he was replaced by Mr. Chuan in November 1997. The New Aspiration Party's (NAP) stronghold is in the northeast. The NAP will be the Democrat Party's chief rival in the next election. The NAP is trying to upgrade the party's image as possessing expertise that is equal to or better than that of the technocrats working for the Democrats. It has reformed party structures and public relations activities to emphasize its long-term commitment to policy reform.

### Appendix 3

#### LIST OF ORGANIC LEGISLATION REQUIRED UNDER THE 1997 CONSTITUTION

*Status as of October 1998<sup>37</sup>*

##### **Within 30 Days of Promulgation**

Selection of Election Commissioners (selected)

##### **Within 45 Days of Promulgation**

Selection of Constitutional Court Judges (selected)

##### **Within 260 Days of Promulgation**

Organic Law on Election of Members of the House and Senate (promulgated 9 June 1998)

Organic Law on the Election Commission of Thailand (promulgated 9 June 1998)

Organic Law on Political Parties (promulgated 9 June 1998)

##### **Within Two Years of Promulgation**

Organic Law on Ombudsmen (Joint Committee)

Organic Law on Counter Corruption (Council of State)

Organic Law on Criminal Procedures for Persons Holding Political Positions (House)

Organic Law on State Audit (Council of State)

Organic Law on Referendum (House)

Legislation on Decentralization (S:282-290)

Law to Amend the Provincial Administrative Organization Act (House)

Law to Amend the Municipalities Act (House)

Law to Upgrade Status of Sub-Municipalities to Full Municipalities (Senate)

Law on the Election of Members of Municipalities (Joint Committee)

Law to Change the Status of Pattaya City (Council of State)

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<sup>37</sup> The authors wish to express their appreciation to Dr. James Klein of the Asia Foundation, who prepared this list.



Law on Master Plans and Procedures of Administrative Power (Council of State)  
Law on the Impeachment of Members of Municipalities and Municipal Councils (drafted)  
Law to Establish a Centralized Personnel Body of Permanent Officials of Local Administrative Organizations (drafted)

On the Judicial System:

Law to Establish the Administrative Court and Set Trial Procedures - S:334:3 (House)  
Law to Allow Judges in Primary Courts to Continue Working After Age Sixty - S:334:2 (House)  
Law for the Establishment of the Office of the Constitutional Court - S:270 (House)  
Law for Settlement of Disputes on Jurisdiction of Various Courts - S:248 (Council of State)  
Law on General Affairs Bodies of Independent Courts - S:275 (now being drafted by Ministry of Justice)

Other Legislation:

Law to Enable 50,000 Voters to Propose a Bill - S:170 (House)  
Law to Establish Salaries for Political Appointees of Constitutionally Mandated Organizations (passed by the House and pending in Senate)  
Law to Establish the National Human Rights Commission - S:199/200 (Council of State)  
Law to Punish Citizens Who Do Not Exercise Their Right to Vote - S:68 (now being drafted by the Election Commission)  
Law on Trusteeships for Ministers - S:209 (now being drafted by Ministry of Finance)

**Within Three Years of Promulgation**

Law on Independent Regulatory Agency for Radio, Television and Communications - S:40 (no movement)

**Within Five Years of Promulgation**

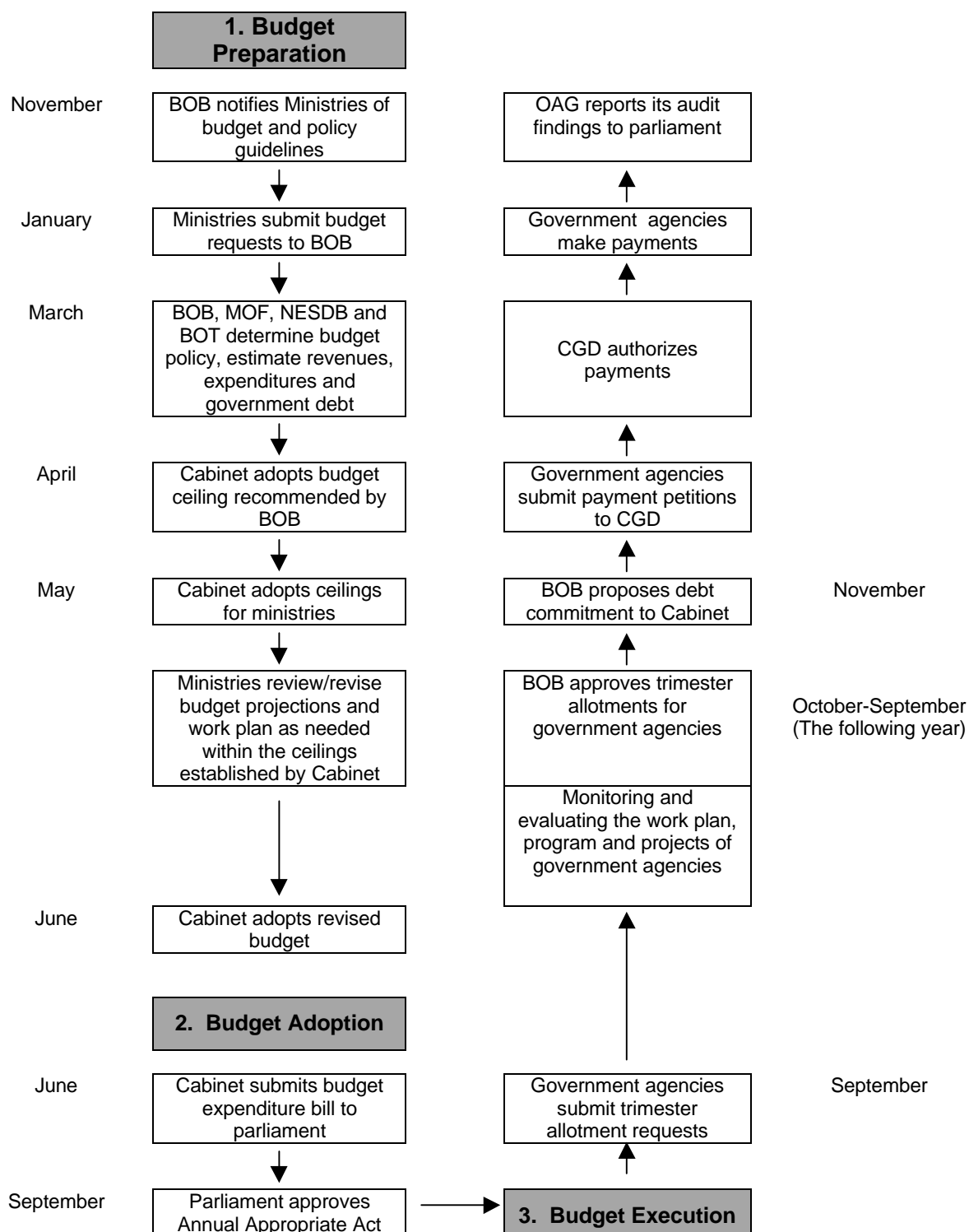
Law on Provision of Twelve Years of State Supported Education for All - S:43 (no movement)  
Law on Arrest, Detention and Warrants - S:237 (no movement)

## Appendix 4

BREAKDOWN OF STAFFING FOR  
THE CIVIL SERVICE, 1995

1995Commission	Number	percent
Ordinary Civil Servants under the CSC	380,123	30.8%
Judges	1,901	0.2%
Teachers	530,487	42.9%
University Officials	48,554	3.9%
Public Prosecutors	1,696	0.1%
Provincial Officials	5,759	0.5%
Municipal Officials	26,012	2.1%
Bangkok Metropolitan Officials	31,285	2.5%
Legislative Body Officials	1,111	0.1%
Sanitation Officials	3,371	0.3%
Police Officers	205,854	16.7%
<b>TOTAL</b>	<b>1,236,153</b>	<b>100.0%</b>

## Appendix 5

ANNUAL BUDGET CYCLE<sup>38</sup>

<sup>38</sup> This table is derived from *Thai Government Budgeting* by Thongchai Lumdubwong, Deputy Director, Bureau of the Budget, Royal Thai Government (unpublished).

## Appendix 6

### THE MEDIA IN THAILAND

The media plays an important role as the principal source of domestic and foreign news in Thailand. All major daily newspapers are privately owned, but radio and most television stations are controlled by the Government and operated as commercial enterprises. Newspapers are generally regarded as more credible than the Government controlled broadcast media.

Mass media are under the broad supervision of the Public Relations Department in the Office of the Prime Minister. This department serves as the principal source of news and information about the Government and its policies. It issues daily news bulletins on domestic and foreign affairs for use by the print and electronic media. News bulletins are also issued by other Government agencies, including the Thai News Agency under the Mass Communications Organization of Thailand, a state enterprise under the Office of the Prime Minister. The Thai News Agency concentrates mostly on domestic affairs, whereas foreign news is gathered from international wire services.

Most observers agree that the Thai press enjoys considerable freedom. Nevertheless, editorial writers and reporters continue to exercise self-censorship, mindful that there are unwritten but real government constraints, especially on coverage relating to the monarchy, government affairs, internal security matters, and Thailand's international image. However, domestic publications continue to present a wide range of political and social commentary. Strong media criticism of political parties, public figures, and the Government is common and vigorous, and journalists are generally free to comment without fear of reprisal.

Newspaper readership is concentrated in Bangkok, where at least 75 percent of adults read a daily paper, compared with about 20 percent in rural areas. There are about 150 newspapers, including 30 dailies in Bangkok and 120 provincial papers in Thailand. Some Bangkok dailies are considered to be national newspapers because of their countrywide distribution. Most provincial papers are published once every few days. In Bangkok, 21 dailies appear in Thai, 6 in Chinese and 3 are in English. Of an estimated daily circulation of 2.4 million for all Bangkok dailies in 1985, *Thai Rath* (1.2 million circulation) and the *Daily News* (600,000 circulation) together claimed about 75 percent of the total circulation. These two newspapers reportedly are most popular among white-collar groups. The most successful among the remaining newspapers are *Ban Muang*, *Khao Sod*, *Krungthep Turak*, *Matichon*, *Naew Na*, *Phuujatkan*, *Siam Post* and *Siam Rath*. In addition, there are more than 25 business and finance-related weekly magazines.

The English-language dailies are the *Bangkok Post*, *The Nation*, and *Business Day*, which are popular among the well-educated and influential members of Thai society, who regard them as more reliable than the Thai dailies, as well as the expatriate community and tourist hotels. Some of the editorial positions on the *Bangkok Post* are held by foreigners, mostly British; *The Nation* and *Business Day*, on the other hand, are almost entirely staffed by Thai and tend to view the world from a Thai perspective.

In the 1980s, Thai journalistic standards improved steadily, as reflected in the print media's growing emphasis on political and economic issues, as well as on major foreign

news events. This could be attributed to the emergence of a more discriminating readership. On the negative side, sensationalist coverage and insufficient professional training continue to mar the reputation of the Thai press, and allegations have been advanced that certain members of the media can be “influenced” in their selection of stories. Newspapers are generally independent and financially solvent, deriving their income from sales and advertising. The Government is forbidden by law to subsidize private newspapers. Foreign ownership of newspapers is banned.

The Broadcasting Directing Board, which is under the Office of the Prime Minister and headed by a deputy prime minister, sets all aspects of radio and television broadcasting, such as operating hours, content, programs, advertising, and technical requirements. In 1995 the country had 275 national and local radio stations. The Public Relations Department, under the Office of the Prime Minister, is responsible for Radio Thailand and the National Broadcasting Services of Thailand (NBT). NBT is the official Government broadcasting station, which transmits Government produced newscasts twice daily for 30 minutes each in the morning and evening on all stations. These broadcasts cover local and international news as well as reports on the activities of international donors to Thailand. News is also broadcast daily in nine foreign languages over Radio Thailand's World Service. Many radio stations are run as commercial enterprises by Government agencies (e.g., the Mass Communications Organization of Thailand; units of the army, the navy, and the air force; the police; the ministries of communications and education; and several state universities).

Programmers are generally free to determine the content and nature of television broadcasts. The Army Signal Corps and the Mass Communications Organization of Thailand operate television channels 5 and 9. Two other channels are operated under license by private groups, the Bangkok Entertainment Company, which runs Channel 3, and the Bangkok Television Company, in charge of Channel 7. Channel 11 is operated by the Government primarily as an educational station. There are also three cable television networks, which enjoy almost complete autonomy under the indirect oversight of the Mass Communications Authority of Thailand. The first ultra high frequency station, managed by a private consortium including the outspoken Nation Publishing Group, was launched in 1997 under a 30-year concession from the Office of the Prime Minister. Touted as the country's first independent television station, its status is similar to that of other subcontracted stations, with free daily direct broadcasting. In 1995, nine out of ten Bangkok households and three out of four rural households had at least one television set.

A large number of international media are represented in Bangkok. The majority of these organizations are responsible for covering news not only in Thailand, but in Cambodia, Lao PDR, Myanmar, and Viet Nam as well. The news bureaus with offices in Bangkok include the American Broadcasting Corporation (ABC), the Australian Broadcasting Corporation (ABC), AP-TV, the British Broadcasting Corporation (BBC), the Canadian Broadcasting Corporation (CBC), the Central Broadcasting System (CBS) (US), the Cable New Network (CNN), CNBC, Fuji Television, NBC Radio Networks (US), NHK (Japan), NTV (Japan), Nihon Denpa News, Radio New Zealand, Reuters TV, Scand-Media Corporation (Denmark), Television Corporation of Singapore, TFI (France), Tokyo Broadcasting System, TV Asahi News, Voice of America, WGBH (USA), and Worldwide Television News (WTN).

International magazines with office in Bangkok include Asia Magazine, Asiaweek, Business Times (Singapore), Communications Services, Expansion, Far Eastern Economic Review, Financial Times (U.K.), Newsweek, South Magazine, The Economist, Time, World Trade Magazine.

International newspapers with offices in Thailand include Asahi Shinbun, Bangkok Shuho, Berlingske Tidende/Scand-Media Corporation, Daily Express (U.K.), Daily Telegraph (U.K.), Die Welt, Geneva Daily News, Handelsblatt, International Defense Review (Jane's Defense Weekly), Knight Ridder Financial News, Khmer Citizen, Kompas (Indonesia), Los Angeles Times, Mainichi Shimbun, The New York Times, Politiken, Pravda, Straits Times (Singapore), The Asian Wall Street Journal, Bureau of National Affairs, Chronicle for Higher Education, The Guardian, Nihon Keizai Shimbun (Nikkei), Sankei Shimbun, The Toronto Star, Yomiuri Shimbun, Tokyo and Shunichi Shimbun.

International wire services include Agence France Presse, Associated Press, AP-Dow Jones, Australian Associated Press, Bloomberg News, Deutsche Presse Agentur, Xinhua News Agency, Inter-Press Service, Jiji (Japan), Kyodo News Service, Reuters, United Press International, Viet Nam News Agency, and the YOWHAP News Agency (Korea).

## Appendix 7

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### **NOTE ON THE PREPARATION OF THIS REPORT**

This report is one of a number of studies of governance and public sector management issues in Asian Development Bank member countries produced under the ADB's Programs Department (West). It is intended to provide a general overview of the major challenges, issues and prospects confronting the Government of Thailand as it seeks to implement the October 1997 Constitution. It is also intended to provide more detailed treatment of certain selected governance and public sector management issues that are of pressing interest to both the Government and multilateral donors, such as the Asian Development Bank.

The report itself is the product of a team comprised of ADB staff and senior Thai political scientists. From the Bank's side, the work was coordinated by Robert P. Beschel Jr. of the Strategy and Policy Office and Craig Steffensen of Programs Department (West). From the Thai side, assistance in structuring the report and drafting the conclusions was provided by Prof. Chai-Anan Samudavanija, Director, Vajiravudh College, and Dr. Pisanu Suntharaks from the Faculty of Political Science at Thammasat University. Additional input on decentralization was provided by Mr. Curtis Borden, an independent ADB consultant, and on legal and judicial reform by Mr. Hamid Sharif, Senior Counsel, ADB. Oversight for this exercise was provided by Mr. Rajat Nag and Mr. Kazu Sakai, Manager, and Mr. Sudipto Mundle, Senior Economist, Programs West Department, Division III.

The report benefited greatly from the insights and assistance of a large number of Thai senior officials, business people, representatives of civil society and knowledgeable international observers during a mission to Bangkok from 14-22 November, 1998. A list of individuals met and references utilized in the preparation of this report is available upon request.

Although the study is the result of an extensive participatory effort, the views reflected within it do not necessarily reflect those of the Asian Development Bank and the Royal Thai Government.

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