

Pro Bono Practices and Opportunities in Thailand¹

INTRODUCTION

Despite a strong culture of community service and volunteerism, Thailand's pro bono culture is still in the early stages of development, as the level of pro bono activity in Thailand remains low overall. Support for pro bono work in the private sector is particularly lacking, with only a small number of lawyers at private law firms volunteering their time on pro bono projects. Nonetheless, there are limited pockets of pro bono opportunities in Thailand, mainly offered or referred by non-profit organizations. Foreigners wishing to engage in pro bono work in Thailand face additional obstacles, including language and cultural barriers as well as barriers to practicing law in the country.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Thailand is a constitutional monarchy with the King as the official head of the State with limited formal powers and the Prime Minister as the head of the government. Although it has a civil law system, the codes are modeled on the codes of several legal systems around the world. The country has a long history of political instability, which has escalated since the violent ousting of former Prime Minister Thaksin Shinawatra in 2006 and its aftermath.

On May 22, 2014, Thailand's military announced a *coup d'état* and established a military dictatorship called the National Council for Peace and Order (the "**NCPO**").² Following the *coup d'état*, the NCPO dissolved the government and the Senate, and repealed the 2007 constitution (the "**2007 Constitution**"). An interim constitution was enacted in July 2014³ (the "**Interim Constitution**"), and in May 2015 the NCPO approved holding a referendum on the draft of the new constitution (the "**New Constitution**").⁴

The Courts

Court System

Section 27 of the Interim Constitution allows for a National Reform Council to make proposals in various fields including law and justice⁵, and therefore it remains to be seen what changes will be made to the judicial system in Thailand. Nevertheless, the draft of the New Constitution awaiting referendum continues to uphold the overall structure established in the 2007 Constitution, maintaining four types of courts and their subsequent hierarchy levels.⁶ Chapter X of the 2007 Constitution governed the judiciary

¹ This chapter was drafted with the support of the Bangkok office of Weerawong, Chinnavat & Peangpanor Ltd.

² BBC, Thailand military seizes power in coup (May 22, 2014), available at <http://www.bbc.com/news/world-asia-27517591> (last visited on September 4, 2015).

³ For an unofficial English translation of the Interim Constitution, see Constitution of the Kingdom of Thailand (Interim), Buddhist Era 2557 (2014) available at http://asean-law.senate.go.th/files/Thailand_2014.pdf (last visited on September 4, 2015).

⁴ See REUTERS, Thai cabinet agrees to hold referendum on new constitution (May 19, 2015), available at <http://uk.reuters.com/article/2015/05/19/uk-thailand-politics-referendum-idUKKBN0O40MU20150519> (last visited on September 4, 2015).

⁵ See Constitution of the Kingdom of Thailand (Interim), *supra* n.3.

⁶ For an unofficial English translation of the draft constitution, see Draft Constitution of the Kingdom of Thailand Buddhist Era (2015) available at http://www.academia.edu/12017762/Draft_Constitution_2015_English_translation_2015_Pakorn_Nilprapunt_Chinapun_Dungsabutra_Vareerat_Ratanaviboonson_and_Natthanicha_Aneksomboonphol_Office_of_the_Council_of_State_of_Thailand (last visited on September 4, 2015).

and specified four types of courts: the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Courts.⁷ While the Constitutional Court, the Administrative Courts and the Military Courts are specialized courts, the Courts of Justice have general jurisdiction with “the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts”.⁸

The Courts of Justice consist of three levels: (i) the Courts of First Instance, which include trial courts of general jurisdiction, family and juvenile courts, and a host of specialized courts such as tax, labor, intellectual property and international trade, and bankruptcy; (ii) the Courts of Appeals; and (iii) the Supreme Court. The Supreme Court is the country’s highest court and has jurisdictional power over all of the provinces in Thailand.

For the time being, Section five of the Interim Constitution suggests that the system of courts established in the 2007 Constitution will remain intact, as it states that “whenever no provision under this Constitution is applicable to any case, it shall be carried out or decided in accordance with Thailand’s administrative conventions of the democratic regime of government.”⁹

Appointment of Judges

In order to become a judge, applicants must first satisfy general qualification requirements (such as holding a law degree and having at least two years of legal experience)¹⁰ and pass the examination given by the Thai Bar Association.¹¹ After passing the exam, candidates have to undergo a one-year traineeship.¹² After the training requirements are satisfied, trainees will be approved by the Judicial Service Commission and thereafter formally appointed by the King.¹³ Section 26 of the Interim Constitution and Section 219 of the New Constitution both provide that judges shall generally exercise independence in addressing lawsuits.¹⁴

The Practice of Law

Education

Currently, there are more than 50 universities and colleges offering legal education in Thailand. The study of law in Thailand is generally a four-year undergraduate level study, where students earn their Bachelor of Laws (LLB) degrees.¹⁵ Students who wish to continue their legal studies may pursue a Master of Laws (LLM) degree, which may vary in length.¹⁶ Due to the increased demand for lawyers adept in specialized fields, the current trend among Thai legal education institutions is to offer focused programs in areas such as business law, public law, international law, civil law and criminal law.¹⁷

⁷ See ASIAN LEGAL INFORMATION INSTITUTE, Constitution of the Kingdom of Thailand 2007, available at <http://www.asianlii.org/th/legis/const/2007/1.html> (last visited on September 4, 2015).

⁸ Id.

⁹ See Constitution of the Kingdom of Thailand (Interim), supra n.3.

¹⁰ See CENTRAL INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE COURT, ET. AL., Judicial System in Thailand: An Outlook for a New Century 48, available at http://www.aseanlawassociation.org/docs/Judicial_System_in_Thailand.pdf (last visited on September 4, 2015).

¹¹ Id at 48-50.

¹² Id. at 50.

¹³ Id.

¹⁴ See Constitution of the Kingdom of Thailand (Interim), supra n.3; see Draft Constitution of the Kingdom of Thailand Buddhist Era (2015), supra n.6.

¹⁵ See Sakda Thanitchul, ASEAN Charter and Legal Education in Thailand (2)(2009), ASEAN LAW ASSOCIATION, 10TH GENERAL ASSEMBLY (2009), available at <http://www.aseanlawassociation.org/10GAdocs/Thailand1.pdf> (last visited on September 4, 2015).

¹⁶ Id.

¹⁷ Id.

Licensure

In Thailand's legal profession, there is no distinction between barristers and solicitors.¹⁸ To obtain a lawyer's license, a candidate must graduate with either a bachelor's degree or an associate degree in law or an equivalent certificate in law from an institution accredited by the Lawyers Council of Thailand.¹⁹ The training course, run by the Institute of Law Practice Training of the Lawyers Council of Thailand, is divided into two terms.²⁰ In the first term, the candidate is required to complete coursework in the theory of case conduct and professional ethics and pass a written examination. In the second term, he or she must practice working in a qualified law office for seven months. After completion of the training course, a candidate may apply for membership of the Lawyers Council. The number of newly admitted lawyers vary from year to year, averaging around 2000+ per year.²¹

Foreigners are not permitted to formally practice law in Thailand, as only Thai nationals can become licensed lawyers.²² Instead, they may obtain work permits as "business consultants," typically working on corporate transactions or as legal advisors in arbitration proceedings.²³ As a result, Thailand has relatively few foreign lawyers.

Demographics

The legal profession in Thailand is divided into three main categories, namely: (i) judges, (ii) public prosecutors and (iii) lawyers.²⁴ As of June 15, 2015, there were 79,401 licensed lawyers in Thailand,²⁵ compared to the country's total population of 67 million. The majority of lawyers practice in the capital city of Bangkok and its surrounding areas.²⁶

Law firms range in size from sole practitioners and small practices to large firms that are part of a global network. While the majority are domestic firms, several international law firms have opened offices in Bangkok, beginning as early as in the late 1970s. However, Bangkok still lags far behind other Asian cities such as Hong Kong, Singapore, Beijing and Shanghai with respect to the presence of foreign law firms. Notably, a handful of major international law firms have downsized or even pulled out of Bangkok entirely following the political and economic instability arising from the 1997 Asian financial crisis and the 2006 military coup that ousted then Prime Minister Thaksin Shinawatra.²⁷

¹⁸ See Judicial System in Thailand: An Outlook for a New Century 59, *supra* n.10.

¹⁹ See INTERNATIONAL BAR ASSOCIATION, Thailand International Trade in Legal Services, available at http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Thailand.aspx (last visited on September 4, 2015).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See Suchint Chaimungkalanont, Cross Border Legal Services in ASEAN under WTO: A Thai Perspective, available at http://www.aseanlawassociation.org/docs/w2_thai.pdf (last visited on September 4, 2015); see also Thailand International Trade in Legal Services, *supra* n.19.

²⁴ For a brief overview of the legal profession in Thailand, see Ngamnet Triamanuruck, et al., Overview of Legal Systems in the Asia Pacific Region: Thailand (2004).

²⁵ Telephone Interview with a representative from the Lawyers' Council of Thailand, in Bangkok, Thailand (Ju1. 6, 2015).

²⁶ Triamanuruck, et al., *supra* n.24 at 7.

²⁷ See, e.g., THE LAWYER, White & Case Axes Bangkok Office, available at <http://www.thelawyer.com/white-and-case-axes-bangkok-office/135675.article> (last visited on September 4, 2015) (2008); LEGAL WEEK, Coudert takes on Freshfields Bangkok Branch, available at <http://www.legalweek.com/legal-week/news/1146597/coudert-takes-freshfields-bangkok-branch> (last visited on September 4, 2015) (2004).

Legal Regulation of Lawyers

The Lawyers Council of Thailand and the Thai Bar Association are the main regulatory bodies governing the conduct of lawyers. The main duties of the Lawyers Council are to register and issue licenses to applicant lawyers.²⁸ The Lawyers Council also espouses rules on legal ethics and oversees the general conduct of attorneys.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Although the Interim Constitution does not include any provisions on legal aid, the 2007 Constitution contained a limited number of general legal aid provisions, including an explicit guarantee of a right to legal aid in certain instances. Similarly, the draft of the New Constitution currently awaiting referendum has legal aid provisions that largely parallel those in the 2007 Constitution.

Notably, Section 40(7) of the 2007 Constitution stated that each citizen has a right to “legal assistance from an attorney” in criminal cases, and “appropriate legal aid from the State” in civil cases. Section 81 further provided that “the State shall provide legal aid service to the public and support the operation of private organizations rendering legal assistance to the public,” and singled out domestic abuse victims as a particular class to be protected.

In comparison, Section 44(5) of the draft of the New Constitution provides that “an injured person, alleged offender, the accused and witness to a criminal case shall have the right to necessary and appropriate protection and assistance from the State and shall be investigated correctly, expediently and fairly” and that “the alleged offender and the accused shall have the right to legal assistance from [an] experienced legal practitioner,” which is similar to Section 40(7) of the 2007 Constitution. However, while Section 44(6) of the New Constitution addresses the right to obtain legal remedies for the “violation of rights or liberties recognized by the Constitution,” the New Constitution does not explicitly state the right to legal assistance for civil cases as was provided in Section 40 of the 2007 Constitution.

State-Subsidized Legal Aid

Eligibility Criteria and Legal Aid Providers

State-funded legal aid in Thailand primarily consists of legal aid provided by the Office of the Attorney General, the Court of Justice and the Lawyers Council of Thailand. Much of the state-sponsored legal aid is provided by the Office of the Attorney General on a voluntary basis. In addition to its role as the principal agency responsible for criminal prosecution and the provision of legal advice to the government and state agencies, the Office of the Attorney General is also responsible for protecting civil rights and providing legal aid to the needy.²⁹ Legal aid recipients are determined on a case by case basis, and the types of legal aid includes assistance in transactional matters, court proceedings and dispute resolution.³⁰ Those who are providing such voluntary legal aid under the Office of the Attorney General may not demand fees from the legal aid recipients, but may request reimbursements for expenses incurred while performing such services.³¹

²⁸ See generally, Thailand International Trade in Legal Services, *supra* n.19.

²⁹ See Thailand – Office of the Attorney General. HUMANTRAFFICKING.ORG, available at <http://www.humantrafficking.org/organizations/217> (last visited on September 4, 2015).

³⁰ Judicial System in Thailand: An Outlook for a New Century, *supra* n. 10 at 57-58; see also OFFICE OF LAW REFORM COMMISSION OF THAILAND, Thailand National Report on Legal Aids (2014), available at http://www.laf.org.tw/ifla2014/en/download/Report_Thailand.pdf (last visited on September 4, 2015).

³¹ See Thailand National Report on Legal Aids, *supra* n.30.

The Court of Justice runs a legal aid scheme to provide legal services to low income individuals and disadvantaged communities.³² Under the scheme, legal officers at courts provide advice on legal issues, assist clients with legal forms and file lawsuits for minor cases.³³ The Court of Justice also partners with lawyers and non-profit organizations to provide volunteer lawyer services.³⁴ Such appointed attorneys are compensated in accordance with regulations prescribed by the Court of Justice's administration committee.³⁵

Legal aid is also offered by the Lawyers Council of Thailand. The scope of such legal aid includes representing disadvantaged individuals in litigation or assisting them in obtaining pro bono or minimal-fee representation elsewhere by means of a volunteer litigator system.³⁶ Generally, an applicant wishing to obtain legal aid must establish that he or she is of low income and cannot afford a lawyer, and that he or she has suffered an alleged injustice. Lawyers providing legal aid through the Lawyers Council may receive reimbursements for expenses which will be reviewed by the Legal Aid Committee or a regional Lawyers Council Executive Board, as the case may be.³⁷

Unmet Needs and Access Analysis

Notwithstanding the existence of both state-sponsored and private legal aid opportunities, the legal aid system in Thailand is still lacking a number of legal aid mechanisms present in certain other jurisdictions. A U.S. State Department report states that legal aid in Thailand has often been carried out on "an intermittent, voluntary, public-service basis and was of low standard," with some NGOs reporting that some legal aid lawyers pressured their clients into paying additional fees directly to them.³⁸

PRO BONO ASSISTANCE

Pro Bono Opportunities

Law Firm Pro Bono Programs

Several law firms in Thailand have been engaged in various pro bono programs.³⁹ For instance, some Thai branches of international law firms engage in pro bono projects in Thailand when local pro bono clients are referred from the firm's headquarters to its local branches. Also, some local Thai firms have pro bono programs and invite their lawyers to participate on a voluntary basis. Many of the law firm pro bono programs in Thailand involve providing legal assistance to charitable organizations, non-profit organizations as well as to individuals, with a focus on human rights issues.

³² See Surin Cholpattana, et. al, Current Judicial Reforms in Thailand: Lessons and Experience, ASEAN LAW ASSOCIATION, 10TH GENERAL ASSEMBLY (2009), available at <http://www.aseanlawassociation.org/10GAdocs/Thailand5.pdf> (last visited on September 4, 2015).

³³ Id.

³⁴ Id.

³⁵ See Thailand National Report on Legal Aids, *supra* n.30.

³⁶ Id.

³⁷ Id.

³⁸ See BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, Country Report on Human Rights Practices for 2014 (Thailand), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dId=236480> (last visited on September 4, 2015).

³⁹ See, e.g., TILLEKE & GIBBINS - PRO BONO, available at <http://www.tilleke.com/firm/community/probono> (last visited on September 4, 2015), and SIAM PREMIER INTERNATIONAL LAW OFFICE LIMITED - PRO BONO SERVICES, available at <http://siampremier.com/about-the-firm/pro-bono/> (last visited on September 4, 2015).

Non-Governmental Organizations

Despite the generally low level of pro bono opportunities in Thailand, there are some pro bono services offered by non-profit organizations. For example, the Thai Volunteer Service Foundation (<http://thaivolunteer.org>) (last visited on September 4, 2015)) maintains a website providing a list of volunteer opportunities for lawyers. Many of the local non-profit websites are only available in the Thai language.

A few NGOs are also developing pro bono aid clinics. For instance, Bridges Across Borders Southeast Asia Community Legal Education Initiative (“**BABSEA CLE**”) has been working in collaboration with universities, law students, law faculties, lawyers and other members of the legal community, and NGO partners to develop clinical programs throughout Southeast Asia.⁴⁰ The BABSEA CLE Foundation in Thailand is an independently registered local non-profit, and works to develop clinical legal education programs and other community initiatives through partnerships with various universities in Thailand.⁴¹ Projects undertaken by Thailand’s BABSEA CLE Foundation include the Legal Clinicians in Residence project, the Legal Ethics, Pro Bono, Access to Justice and Professional Responsibility Curriculum Development project, and the Community Teaching project.⁴²

In addition, refugee rights advocacy groups in Thailand have begun to develop pro bono programs to help asylum seekers obtain legal assistance, as Thailand has a particularly large refugee population.⁴³ According to a 2013 report published by the Asia Pacific Refugee Rights Network, an estimated 120,000 refugees reside in camps along the Thai-Myanmar borders.⁴⁴

Bar Association Pro Bono Programs

As Thai bar associations are active in providing pro bono services, those seeking legal assistance may visit or contact local offices of bar associations for preliminary queries and consultations. Various forms of pro bono legal assistance, including representation in litigation, is provided free of charge (but excluding any court fees or government services fee). Applicants wishing to obtain pro bono services must establish that the applicant is of low income and that the applicant cannot afford a lawyer by his or her own means, and that he or she has suffered an alleged injustice. Furthermore, the applicant must not have any concurrent representation provided by another attorney at the time the pro bono services are requested, and the case being dealt with must not be barred by prescription.⁴⁵

University Legal Clinics and Law Students

Pro bono legal assistance is also provided in certain universities, such as the Faculty of Law Center at Thammasat University, the Legal Consultation Center at Chiang Mai University, Law Student Volunteers Training Center at Khon Kaen University, and the Legal Aid for People Project at Thaksin University.⁴⁶ Most pro bono services provided by universities focus on counselling services and do not include the representation of clients in litigation.⁴⁷ At present, many universities further strive to promote pro bono practices and community awareness through courses targeted at strengthening the students’ sense of

⁴⁰ See generally, BABSEA-CLE, available at <https://www.babseacle.org/> (last visited on September 4, 2015).

⁴¹ See THAILAND – BABSEA-CLE, available at <https://www.babseacle.org/thailand/> (last visited on September 4, 2015).

⁴² Id.

⁴³ See, e.g., ASIA PACIFIC REFUGEE RIGHTS NETWORK, 2013 Annual Report, available at http://www.aprrn.info/1/images/PDF/Annual_Report_2013.pdf (last visited on September 4, 2015).

⁴⁴ Id.

⁴⁵ See, e.g., THE THAI BAR UNDER THE ROYAL PATRONAGE, <http://www.thethaibar.or.th/thaibarweb/index.php?id=254&L=1> (last visited on September 4, 2015) (only available in the Thai language).

⁴⁶ See Thailand National Report on Legal Aids, *supra* n.30.

⁴⁷ Id.



ethics in the legal profession. In some of these courses, students are given opportunities to visit local communities in need of legal assistance and to utilize their knowledge and training to address the various legal issues of the villagers in need.

Historic Development and Current State of Pro Bono

There are several limitations impeding the development of a mature pro bono practice in Thailand. First, apart from a few volunteer organizations, there is a lack of pro bono referral organizations in Thailand. Referrals are mostly done on an *ad hoc* basis and in an uncoordinated manner, primarily through NGO networks.

Second, there are still only a small number of law firms in Thailand that have developed regular pro bono initiatives. While some law firms organize occasional community outreach activities and donate time and money to charitable causes, few encourage their lawyers to provide pro bono legal services on a consistent basis. In addition, there appears to be a lack of incentives for associates to engage in pro bono work, since they are not normally given any billing credit nor are they counted towards annual billable requirements.

Third, foreign lawyers in Thailand face a host of obstacles which prevent them from being active participants in the legal community. These include not only language and cultural barriers, but also legal barriers and restrictions against foreign practitioners, such as the Thailand Lawyers Act 1985, which requires Thai citizenship for an applicant to receive a law license.⁴⁸

Lastly, given that the professional legal community is concentrated mainly in Bangkok, there is a shortage of legal services catering to those living in poor rural areas, who may be among those most in need of legal assistance.

Pro Bono Resources

Entities Engaged in Pro Bono

Below is a non-exhaustive list of organizations offering pro bono opportunities in Thailand that lawyers and nonlawyers seeking to become involved in pro bono work in Thailand may contact.

State-sponsored Legal Aid:

- Office of the Attorney General: <http://www.ago.go.th> (last visited on September 4, 2015)
- Lawyers Council of Thailand: <http://www.lawyerscouncil.or.th/> (last visited on September 4, 2015)
- Thai Bar Association: www.thethaibar.org (last visited on September 4, 2015)

Human Rights and Justice-related Issues:

- Thai Volunteer Service Foundation: <http://thaivolunteer.org/eng/> (last visited on September 4, 2015)
- Human Rights Lawyers Association: <http://humanrightsinsasean.info/content/human-rights-lawyers-association.html> (last visited on September 4, 2015)
- BABSEA CLE: <http://www.babseacle.org> (last visited on September 4, 2015)
- Human Security Alliance: <http://www.hsa-int.net> (last visited on September 4, 2015)
- Asian Forum for Human Rights and Development: <http://www.forum-asia.org> (last visited on September 4, 2015)
- New Tactics: <http://www.newtactics.org> (last visited on September 4, 2015)
- People's Empowerment Foundation: <http://www.peoplesempowerment.org> (last visited on September 4, 2015)
- HDF Mercy Centre: <http://www.mercycentre.org> (last visited on September 4, 2015)
- Internet Law Reform Dialogue: <http://www.ilaw.or.th> (last visited on September 4, 2015)

⁴⁸ See generally, Thailand International Trade in Legal Services, *supra* n.19.



Asylum and Refugee Assistance:

- Asia Pacific Refugee Rights Network: <http://www.aprrn.info/1/> (last visited on September 4, 2015)
- Thai Committee for Refugee Foundation: <http://www.thaiforrefugees.org> (last visited on September 4, 2015)
- International Rescue Committee: www.theirc.org/where/thailand (last visited on September 4, 2015)
- Asylum Access: www.asylumaccess.org (last visited on September 4, 2015)
- Human Security Alliance: www.hsa-int.net (last visited on September 4, 2015)
- Jesuit Refugee Service: www.jrsap.org (last visited on September 4, 2015)
- People's Empowerment Foundation: www.peoplesempowerment.org (last visited on September 4, 2015)
- Thai Committee for Refugees Foundation: www.thaiforrefugees.org (last visited on September 4, 2015)

Women's Issues:

- Women Lawyers Association: <http://www.globalfundforchildren.org/partners/women-lawyers-association-of-thailand/> (last visited on September 4, 2015)
- Foundation for Women: <http://www.womenthai.org/eng/> (last visited on September 4, 2015)

CONCLUSION

Overall, the pro bono culture in Thailand is still in the early stages of development. Apart from intermittent and ad hoc referrals by state agencies, law firm initiatives and the activities of a limited number of non-profit organizations, pro bono opportunities in Thailand remain scarce and disproportionate to the size of the overall legal community. Furthermore, foreign-qualified lawyers wishing to engage in pro bono work face a number of significant obstacles, including regulations prohibiting the practice of law in Thailand. The growth of pro bono services in Thailand depends on the ability to lift the barriers to pro bono work. Efforts are needed to build a supportive pro bono culture and infrastructure, including a coordinated referral system among government agencies, law firms and NGOs to connect ready and willing lawyers with those in need of legal assistance.

September 2015

Pro Bono Practices and Opportunities in Thailand

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.