

(Unofficial translation)

**ACT ON ESTABLISHMENT OF ADMINISTRATIVE COURTS AND
ADMINISTRATIVE COURT PROCEDURE,
B.E. 2542 (1999)**

BHUMIBOL ADULYADEJ, REX.

Given on the 10th Day of October B.E. 2542;

Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law establishing administrative courts and administrative court procedure;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the "Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542".

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. In this Act:

“administrative agency” means a Ministry, Sub-Ministry, Department, Government agency called by other name and ascribed the status as a Department, provincial administration, local administration, State enterprise established by an Act or Royal Degree or other State agency and shall include an agency entrusted to exercise the administrative power or carry out administrative acts *Published in the Government Gazette V01. 116, Part 94 a, dated 10th October B.E. 2542(1999). Office of the Council of State, All Rights Reserved.

“State official” means

(1) Government official, official, employee, group of persons or person performing duties in an administrative agency;

(2) quasi-judicial council or committee or person empowered by law to issue any by-law, order or resolution affecting persons; and

(3) person who is under the supervision or superintendence of administrative agencies or State officials under (1) or (2) “quasi-judicial council” means the committee established under the law which provides for the organization and procedure for the adjudication of disputes in respect of rights and duties under the law;

“administrative judge” means a judge of the Supreme Administrative Court and a judge of an Administrative Court of First Instance;

“J.C.A.C.” means the Judicial Commission of the Administrative Courts;

“party” means a plaintiff and a defendant and shall include a person, administrative agency or State official becoming a party to the case by way of interpleading, whether voluntarily or being summoned by an Administrative Court to appear in the case by reason of being an interested person or a person likely to be affected by the out come of the case, and, for the purpose of the proceedings, shall also include the person authorised to represent the aforesaid person;

“plaint” means the submission of a claim to a Court, whether made to an Administrative Court of First Instance or to the Supreme Administrative Court, or made at the time of the filing of the case by a plaintiff or a request or subsequently by a supplementary or amended plaintiff or by a counterclaim or by way of voluntary or compulsory interpleading or by way of application for a new trial;

“by-law” means a Royal Decree, Ministerial Regulation, Notification of a Ministry, ordinance of local administration, rule, regulation or other provision which is of general application and not intended to be addressed to any specific case or person;

“administrative contract” includes a contract at least one of the parties of which is an administrative agency or a person acting on behalf of the State and which exhibits the characteristic of a concession contract, public concession contract or contract for the provision of public utilities or for the exploitation of natural resources.

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Section 4. The President of the Supreme Administrative Court shall have charge and control of the execution of this Act.

Section 5. All rules, regulations or notifications issued by the general assembly of the judges of the Supreme Administrative Court or by the J.C.A.C. or by the J.C.A.C. with the approval of the general assembly of the judges of the Supreme Administrative Court shall come into force upon their publication in the Government Gazette.

Section 6. The regulations of the general assembly of the judges of the Supreme Administrative Court under section 44 and section 66 shall be submitted to the House of Representatives on the date of their issuance for the purpose of examination by members of the House. If a motion for the cancellation of any regulation, whether in whole or in part, is subsequently submitted to the House of Representatives and approved by its resolution passed by not less than one-half of the total number of the existing members of the House within thirty days as from the date of their submission, the general Assembly of the judges of the Supreme Administrative Court shall proceed in compliance therewith. Days under paragraph one shall mean the days within the House's session.

CHAPTER I

Establishment and Jurisdiction of Administrative Courts

Section 7. Administrative Courts are divided into two levels, viz:

- (1) the Supreme Administrative Court;
- (2) Administrative Courts of First Instance, viz:
 - (a) the Central Administrative Court;
 - (b) Regional Administrative Courts.

Section 8. There shall be established the Supreme Administrative Court in Bangkok Metropolitan or in a province nearby. There shall be established the Central Administrative Court in Bangkok Metropolitan or in a province nearby which shall have jurisdiction throughout the boundaries of Bangkok Metropolitan and the provinces of Nakhon Pathom, Nonthaburi, Pathum Thani, Ratchaburi, Samut Prakan, Samut Songkhram, and Samut

Sakhon. The Central Administrative Court shall also have jurisdiction over the locality where a Regional Administrative Court has not yet been established. All disputes arising outside the jurisdiction of the Central Administrative Court under paragraph two and paragraph three may be brought before the Central Administrative Court; provided that the Central Administrative Court has the discretion to refuse to try and adjudicate such case Unless the case is transferred in accordance with the rules governing the administrative cases. The establishment of Regional Administrative Courts and the determination of their jurisdiction shall be made by an Act having regard to the amount of litigation and personnel administration of Administrative Courts; provided that the jurisdiction of a Regional Administrative Court may be extended over administrative boundaries of several provinces. The commencement of operation of the Supreme Administrative Court, Central Administrative Court and Regional Administrative Courts shall be prescribed in the Government Gazette by the President of the Supreme Administrative Court.

Section 9. Administrative Courts have the competence to try and adjudicate or give orders over the following matters:

(1) the case involving a dispute in relation to an unlawful act by an administrative agency or State official, whether in connection with the issuance of a by-law or order or in connection with other act, by reason of acting without or beyond the scope of the powers and duties or inconsistently with the law or the form, process or procedure which is the material requirement for such act or in bad faith or in a manner indicating unfair discrimination or causing unnecessary process or excessive burden to the public or amounting to undue exercise o discretion;

(2) the case involving a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;

(3) the case involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official arising from the exercise of power under the law or from a by-law, administrative order or other order, or from the neglect of official duties required by the law to be performed or the performance of such duties with unreasonable delay;

(4) the case involving a dispute in relation to an administrative contract;

(5) the case prescribed by law to be submitted to the Court by an administrative agency or

State official for mandating a person to do a particular act or refraining therefrom;

(6) the case involving a dispute in relation to the matters prescribed by the law to be under the jurisdiction of Administrative Courts. The following matters are not within the jurisdiction of Administrative Courts:

- (1) action concerning military disciplines;
- (2) action of the Judicial Commission under the law on judicial service;
- (3) the case within the jurisdiction of the Juvenile and Family Courts, Labour Courts, Tax Courts, Intellectual Property and International Trade Courts, Bankruptcy Courts or other specialised Courts.

Section 10. Administrative Courts of First Instance have the competence to try and adjudicate cases within the jurisdiction of Administrative Courts except the cases falling within the jurisdiction of the Supreme Administrative Court.

Section 11. The Supreme Administrative Court has the competence to try and adjudicate the following cases:

- (1) the case involving a dispute in relation to a decision of a quasijudicial council as prescribed by the general assembly of the judges of the Supreme Administrative Court;
- (2) the case involving a dispute in relation to the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of Ministers;
- (3) the case prescribed by the law to be within the jurisdiction of the Supreme Administrative Court;
- (4) the case in which an appeal is made against a judgment or order of an Administrative Court of First Instance.

CHAPTER II

Section 12. In the Supreme Administrative Court, there shall be administrative judges of the following positions:

- (1) President of the Supreme Administrative Court;
- (2) Vice President of the Supreme Administrative Court;
- (3) Senior Judges of Divisions of the Supreme Administrative Court;(4) Judges of the Supreme Administrative Court; Provided that the number thereof shall be prescribed by the J.C.A.C. with the approval of the House of Representatives and the Senate.

Section 13. The person eligible for appointment as a judge of the Supreme Administrative Court shall have the following qualifications:

- (1) being of Thai nationality;
- (2) being not lower than forty five years of age;
- (3) being qualified in the fields of law, political science, public administration, economics, social science or in the administration of State affairs in accordance with the rules prescribed by the J.C.A.C.; and
- (4) having one or more of the additional qualifications as follows:
 - (a) being or having, in the past, been a Law Councillor, Petition Councillor or Councillor of State;
 - (b) serving or having, in the past, served in a position not lower than Senior Judge of a Division of an Administrative Court of First Instance;
 - (c) serving or having, in the past, served in a position not lower than that of judge of the Supreme Court of Justice or its equivalent or Judge of the Supreme Military Court;
 - (d) serving or having, in the past, served in a position not lower than that of Regional Chief Public Prosecutor or its equivalent;
 - (e) serving or having, in the past, served in a position not lower than that of Director-General or its equivalent or other equivalent position in a State agency as prescribed by the J.C.A.C.;
 - (f) being or having, in the past, been a lecturer in law, political science, public administration, economics, social science or in the subject related to the administration of State affairs in a higher education institution and holding or having, in the past, held the position of Professor or Honorary Professor;
 - (g) being or having, in the past, been an attorney for not less than twenty years with experience in administrative cases in accordance with the rules prescribed by the J.C.A.C.

Section 14. A judge of the Supreme Administrative Court shall not be under the following prohibitions during the currency of the office:

- (1) being any other government official holding a permanent position or receiving salaries;
- (2) being an official or employee of a State agency or of any person;
- (3) being a person holding a political position, member of a local assembly, local administrator, director or holder of a position responsible for the administration of a political party, member of a political party or official of a political party;
- (4) being a director of a State enterprise;
- (5) being a director in a State agency unless the J.C.A.C.'s approval has been obtained;

(6) being a director, manager or consultant or holding any other position of similar nature of work in a partnership or company;

(7) being an attorney or engaging in any other occupation or profession or holding any position or carrying out any activity which is incompetent with the performance of duties as specified in the regulation prescribed by the J.C.A.C.

Section 15. The J.C.A.C. shall consider and select persons with qualifications under section 13 and with suitability for appointment as judges of the Supreme Administrative Court and shall then present the list of nominated persons to the Prime Minister, and the Prime Minister shall submit such list to the Senate within fifteen days as from the date of the receipt thereof. Upon its approval, the Prime Minister shall tender it to the King for royal appointment. The J.C.A.C. shall consider and select one judge of the Supreme Administrative Court as President of the Supreme Administrative Court and shall submit the nomination to the Prime Minister, and the Prime Minister shall submit it to the Senate within fifteen days as from the date of the receipt of the nomination. Upon its approval, the Prime Minister shall tender it to the King for royal appointment. In making appointment of any judge of the Supreme Administrative Court as Vice President of the Supreme Administrative Court and Senior Judge of each division of the Supreme Administrative Court, the J.C.A.C. shall make the selection and the Prime Minister shall further tender it to the King for royal appointment. The procedure for the selection of the President of the Supreme Administrative Court, Vice President of the Supreme Administrative Court, Senior judge of a division of the Supreme Administrative Court and a judge of The Supreme Administrative Court shall be in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court.

Section 16. Any person approved by the Senate to hold office as a judge of the Supreme Administrative Court who is under the prohibition under section 14 shall resign from the position to which the prohibition relates or shall present to the Prime Minister convincing evidence indicating the cessation of the occupation, profession or any act falling under such prohibition within fifteen days as from the date the Senate gives the approval.

Section 17. In each Administrative Court of First Instance, there shall be the following positions of administrative judges:

- (1) Chief Justice of the Administrative Courts of First Instance;
- (2) Deputy Chief Justice of the Administrative Courts of First Instance;

- (3) Senior Judge of a Division of the Administrative Court of First Instance;
- (4) Judge of the Administrative Court of First Instance; Provided that the number thereof shall be prescribed by the J.C.A.C. with the approval of the House of Representatives and the Senate.

Section 18. The person eligible for appointment as a judge of an Administrative Court of First Instance shall have the following qualifications:

- (1) being of Thai nationality;
- (2) being not lower than thirty five years of age;
- (3) being qualified in the fields of law, political science, public administration, economics, social science or in the administration of State affairs in accordance with the rules prescribed by the J.C.A.C.; and
- (4) having one or more of the additional qualifications as follows:
 - (a) serving or having, in the past, served as a petition commissioner or secretary to Law Councillors in the Office of the Council of State for at least three years;
 - (b) serving or having, in the past, served for at least three years in a position of administrative court official of the class prescribed by the J.C.A.C.;
 - (c) serving or having, in the past, served for at least three years in a position not lower than judge of the Civil Court or Criminal Court or its equivalent or judge of the Central Military Court;
 - (d) serving or having, in the past, served for at least three years in a position of Provincial Public Prosecutor or its equivalent;
 - (e) serving or having, in the past, served for at least three years in a position not lower than Level-8 government official or other equivalent position in a State agency, as prescribed by the J.C.A.C.;
 - (f) being or having, in the past, been a lecturer in law, political science, public administration, economics, social science or in the subject related to the administration of State affairs in a higher education institution and holding or having, in the past, held a position not lower than Associate Professor or Honorary Associate Professor for at least three years;
 - (g) having graduated with a master degree in public law and serving in a State agency for at least ten years since the graduation at that level, or having graduated with a doctoral degree in public law and serving in a State agency for at least six years since the graduation at that level;
 - (h) being or having, in the past, been an attorney for not less than twelve years with experience in administrative cases in accordance with the rules prescribed by the J.C.A.C.

The provisions of section 14 and section 16 shall apply *mutatis mutandis* to judges of an Administrative Court of First Instance.

Section 19. The J.C.A.C. shall consider and select persons with qualifications under section 18 and with suitability for appointment as judges of an Administrative Court of First Instance and shall then submit the nominations to the Prime Minister, and the Prime Minister shall tender them to the King for royal appointment. The J.C.A.C. shall consider and select judges of Administrative Courts of First Instance for holding the positions of Chief Justice of the Administrative Courts of First Instance, Deputy Chief Justice of the Administrative Courts of First Instance and Senior Judges of divisions of the Administrative Courts of First Instance and shall then submit the nominations to the Prime Minister, and the Prime Minister shall tender them to the King for royal appointment. The provisions of section 15 paragraph four shall apply to the appointment of judges of Administrative Courts of First Instance *mutatis mutandis*.

Section 20. Before taking office as a judge of an Administrative Court for the first time, an administrative judge shall make a solemn declaration before the King in the following words: "I, (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the name of the King without any partiality in the interest of justice to the people and the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect."

Section 21. An administrative judge vacates office upon:

- (1) death;
- (2) resignation;
- (3) expiration of the fiscal year in which that administrative judge attains the age of sixty five years unless the judge passes the performance fitness assessment for remaining in office under section 31;
- (4) being disqualified or being under the prohibitions under section 13, section 14 or section 18;
- (5) being a bankrupt;
- (6) being an incompetent or quasi-incompetent person or a person of unsound mind or mental disorder;
- (7) developing a disease or being of a physical or mental condition which is unsuitable for the

office of administrative judge as specified in the notification of the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court;

(8) being removed from office under section 22;

(9) being expelled under section 23. In the case of the vacation of office under paragraph one other than under (1), it shall be presented to the King for the Royal Command to such effect.

Section 22. An administrative judge shall maintain his or her conduct in accordance with the judicial disciplines prescribed by the J.C.A.C. The J.C.A.C. may pass a resolution removing any administrative judge from office in accordance with the law on government pension fund in the case where such law allows the removed person to receive a pension, but the removal from office with the right to receive compensatory pension shall also be permissible only upon the following circumstances:

(1) gross neglect in the performance of duties or misconduct as prescribed in the judicial disciplines for administrative judges;

(2) lack of ability to perform official duties or suffering illness which prevents consistent performance of official duties but which does not cause physical infirmity;

(3) being imprisoned by a final judgment except for an offence committed through negligence or a petty offence;

(4) the occurrence of the circumstances under section 21 (4), (5), (6) or (7).

Section 23. The J.C.A.C. may pass a resolution expelling an administrative judge in the following circumstances:

(1) malfeasance in office;

(2) gross disciplinary breach as prescribed in the disciplines for administrative judges;

(3) being imprisoned by a final judgment except for an offence committed through negligence or a petty offence.

Section 24. In considering the removal from office of an administrative judge under section 22(1), (2) or (4), in conjunction with section 21(4) or (7) or under section 23(1) or (2), the J.C.A.C. shall appoint an investigatory committee consisting of four judges of the Supreme Administrative Court or Administrative Courts of First Instance and one member of the Civil Service Commission under the law on Civil Service appointed by the Civil Service Commission as members for the purpose of conducting an investigation.

In conducting the investigation, the investigatory committee has the power to summon any administrative agency or person to provide facts, give statements or furnish documents or evidence relevant to the matter under investigation.

During the investigation or consideration under paragraph one, if the J.C.A.C. is of the opinion that the continued performance of duties by the person against whom the investigation or consideration is directed will cause detriment to the official service, it may pass a resolution suspending the person from official service.

The suspension from the official service shall take effect throughout the period of the investigation or consideration. Upon the completion of the investigation or consideration, if it appears that the person under suspension has not committed the act being the subject-matter of the investigation or consideration, such person shall remain in the official service as previously.

The procedure for the investigation and the rights of the person against whom the accusation is made and the persons concerned shall be in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court.

Section 25. When any administrative judge vacates office without having committed any wrongful act and such vacation is not that under section 21 paragraph one (5), section 22 or section 23, the J.C.A.C. may consider and elect that person to resume official office as administrative judge in a position not higher than the original office or its equivalent provided that such person has the qualifications and is not under the prohibitions under section 13, section 14 and section 18, as the case may be.

Section 26. Any administrative judge desirous to resign from official service shall tender a letter of resignation and shall be deemed to vacate office upon permission by the President of the Supreme Administrative Court.

In the case where an administrative judge resigns for the purpose of holding a position prescribed by the Constitution or a political position or for the purpose of candidacy in an election, the resignation shall take effect as from the date of his or her resignation.

Except the case under paragraph two, the President of the Supreme Administrative Court may withhold the permission for resignation for the duration of not more than three months as from the date of tendering the resignation if the President considers it necessary for the official service.

Section 27. A transfer of any administrative judge to hold another position in an Administrative Court must be upon consent of that administrative judge, and the President of the Supreme Administrative Court has the power to make appointment with the approval of the J.C.A.C. in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court.

The provisions of paragraph one shall not apply to a promotion to a higher position or an annual transfer or to the case of being under a disciplinary action or becoming a defendant in a criminal case already accepted for trial by the Court.

Section 28. The President of the Supreme Administrative Court shall have the responsibility in ensuring the orderly operation of the Administrative Courts in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court, with the Vice President of the Supreme Administrative Court assisting in the performance of official duties as entrusted by the President of the Supreme Administrative Court.

The Chief Justice of the Administrative Courts of First Instance shall have the responsibility in ensuring the proper operation of such Courts in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Court, with the Deputy Chief Justice of the Administrative Courts of First Instance assisting in the performance of official duties as entrusted by the Chief Justice of the Administrative Courts of First Instance.

In the case where the office of the President of the Supreme Administrative Court or the office of Chief Justice of the Administrative Courts of First Instance becomes vacant or in the case of his or her inability to perform official duties, the Vice President of the Supreme Administrative Court or the Deputy Chief Justice of the Administrative Courts of First Instance or other administrative judge, as the case may be, shall perform official duties in

place of the aforesaid person in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Courts.

The person performing duties in place of the aforesaid persons shall have the same powers and duties as those in whose place the duties are performed.

Section 29. The variation of an administrative judge in any particular division by reason of any administrative judge's vacation of office, suspension from official service, appointment to another position, illness or inability to perform duties on account of other necessary cause shall be in accordance with the regulation prescribed by the general assembly of judges of the Supreme Administrative Courts.

The replacing administrative judge under paragraph one shall have the power to examine the case file and sign a judgment.

Section 30. An administrative judge shall receive salaries and emoluments in accordance with the list attached to this Act.

Upon the commencement of the annual fiscal year, each administrative judge shall receive the increment of the salaries and emoluments from the current entitlement in an amount equivalent to the rate of the change in the consumer price index of the past year as calculated by the Ministry of Commerce for official use.

An administrative judge shall receive transport fees, accommodation fees and other expenses in the case of an official travel in accordance with the Royal Decree.

For the purpose of pensions, an administrative judge shall be deemed a Government official under the law on government pension fund. In this instance, the Office of the Administrative Courts shall be the authority overseeing the retirement of administrative judges.

Section 31. The J.C.A.C. shall provide an assessment of performance fitness of an administrative judge who shall have been sixty five years of age in the following fiscal year.

The rules and procedure for the assessment of the performance fitness under paragraph one shall be in accordance with the regulation prescribed by the J.C.A.C. with the approval of the general assembly of judges of the Supreme Administrative Courts.

An administrative judge who passes the assessment of performance fitness under paragraph one shall remain in office until the expiry date of the fiscal year in which such person shall have been seventy years of age.

Section 32. In the case where any Government official or official of a local government organisation is appointed as an administrative judge, it shall, in the interest of official service, be deemed that the period of such person being in official service or working while being a Government official or official of a local government organisation is the period of official service of that administrative judge, and the law on officials' pensions or the law on government pension fund, as the case may be, shall apply *mutatis mutandis*.

Section 33. The uniform of an administrative judge and the regulation on dressing shall be prescribed by the J.C.A.C.

The working days and office hours, official holidays and official leave of absence of an administrative judge shall be prescribed by the J.C.A.C.

Section 34. In the performance of duties, an administrative judge shall be a judicial official under the Penal Code.

CHAPTER III

Judicial Commission of the Administrative Courts

Section 35. A qualified member of J.C.A.C. under section 279 of the Constitution of the Kingdom of Thailand must have the qualifications as follows:

- (1) qualified members under section 279 paragraph one (2) of the Constitution of the Kingdom of Thailand must be from six judges of the Supreme Administrative Court elected by judges of the Supreme Administrative Court and from three judges of the Administrative Courts of First Instance elected by judges of the Administrative Courts of First Instance;
- (2) qualified members under section 279 paragraph one (3) of the Constitution of the Kingdom of Thailand must have the qualifications under section 13 and must not be under the prohibitions under section 14.

The Secretary-General of the Office of the Administrative Courts shall be secretary to the J.C.A.C.

Section 36. The election of qualified members under section 279 paragraph one (2) of the Constitution of the Kingdom of Thailand shall be by direct and secret ballot. For this purpose, the Secretary-General of the Office of the Administrative Courts shall prepare a list of names of persons eligible for being elected, which must be categorised into judges of the Supreme Administrative Court and judges of Administrative Courts of First instance, for forwarding to judges of the Supreme Administrative Court or judges of Administrative Courts of First Instance, as the case may be. The date, time and place for the election shall also be notified therein.

There shall be an election committee consisting of the Secretary- General of the Office of Administrative Courts, three judges of Administrative Courts and three Deans of Faculties of Law in governmental higher education institutions elected by the President of the Supreme Administrative Court as members, who shall have the power to take action in connection with the election of the qualified members under paragraph one, the vote counting and the announcement of the result of the election.

The President of the Supreme Administrative Court shall have the responsibility in ensuring that the election will proceed in a proper and orderly manner.

Section 37. In electing qualified members under section 279 paragraph one (3) of the Constitution of the Kingdom of Thailand who shall be elected by the Senate, the Senate shall appoint a committee for nominating six appropriate persons to the Senate for further consideration.

Section 38. In electing qualified members under section 279 paragraph one (3) of the Constitution of the Kingdom of Thailand who shall be elected by the Council of Ministers, the Prime Minister shall nominate to the Council of Ministers persons considered suitable for election for its consideration and passing a resolution.

Section 39. A member of the Judicial Commission of the Administrative Courts under section 35 paragraph one (1) and (2) shall hold office for a term of two years and may be re-elected but may not serve for more than two consecutive terms.

In the case of a vacancy of office before the expiration of the term, action shall be taken for a replacement election to take place within sixty days as from the date of vacancy except that if

less than ninety days remain in the term of office of that member, such replacement election may be omitted.

A replacing member of the Judicial Commission of the Administrative Courts who is elected shall hold office for the remaining term of the replaced person.

Section 40. In addition to vacating office at the expiration of term, a member of the Judicial Commission of the Administrative Courts under section 35 paragraph one (1) and (2) vacates office upon:

- (1) death;
- (2) resignation;
- (3) vacating office of judge of the Supreme Administrative Court or judge of an Administrative Court of First Instance, in the case of a member under section 35 paragraph one (1);
- (4) being disqualified under section 13 or being under the prohibition under section 14.

Section 41. At a meeting of the J.C.A.C., the presence of not less than one-half of the total number of the members is required to constitute a quorum.

If the President of the Supreme Administrative Court is not present at the meeting or is unable to perform the duty, the Vice President of the Supreme Administrative Court shall perform the duty. If there is no Vice President of the Supreme Administrative Court or there is such person but the person is unable to perform the duty, one member shall be elected to preside over the meeting.

In the case of a vacancy of office in the J.C.A.C., the remaining members may continue the performance of duties, provided that the number of the remaining members must be sufficient to constitute a quorum.

A decision shall be by a majority of votes. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as casting vote.

The J.C.A.C. shall have the power to issue rules of procedure for the meeting and the passing of a resolution thereat.

The J.C.A.C. shall have the power to appoint a sub-committee for carrying out any act as is appropriate.

CHAPTER IV

Administrative Court Procedure

Part 1

Filing of Administrative Cases

Section 42. Any person who is inevitably aggrieved or injured or who may inevitably be aggrieved or injured in consequence of an act or omission by an administrative agency or State official or who has a dispute in connection with an administrative contract or other case falling within the jurisdiction of an Administrative Court under section 9 may, provided that the redress or alleviation of such grievance or injury or the termination of such dispute requires a decree as specified in section 72, file a case with an Administrative Court.

In the case where the law provides for the process or procedure for the redress of the grievance or injury in any particular matter, the filing of an administrative case with respect to such matter may be made only after action has been taken in accordance with such process and procedure and an order has also been given thereunder or no order has been given within a reasonable period of time or within such time as prescribed by law.

Section 43. In the case where an Ombudsman is of the opinion that any by-law or act of an administrative agency or State official is unconstitutional, the Ombudsman shall have the right to refer the case, together with the opinions thereon, to an Administrative Court. In presenting such opinions, the Ombudsman shall have such rights and duties as if the Ombudsman were the person entitled to file a case under section 42.

Section 44. Any action in connection with the filing of a case, interpleading, the summoning of a person, administrative agency or State official to become a party to a case, the proceedings, the hearing of evidence and the adjudication of an administrative case other than those already provided in this Act shall be in accordance with the rules and procedure prescribed by the general assembly of administrative judges of the Supreme Administrative Court.

Section 45. A plaint shall be written in polite and courteous language and shall contain the following:

(1) the name and address of the plaintiff;

- (2) the name of the administrative agency or State official concerned which gives rise to the filing of the case;
- (3) all acts constituting the cause of action as well as necessary facts and circumstances in connection therewith;
- (4) the relief sought by the plaintiff;
- (5) the signature of the plaintiff which, in the case of the filing of a case on behalf of another person, must also be accompanied by an instrument of authorisation.

If any plaint does not contain the full items under paragraph one or is ambiguous or incomprehensible, the Office of the Administrative Courts shall give advice to the plaintiff for the purposes of correction or amendment of the plaint. In this instance, the date of the submission of the initial plaint shall be reckoned for the purpose of the computation of the period of prescription.

In the case where several persons wishes to file an administrative case for the same cause of action, such persons may jointly submit a single plaint and appoint one among themselves to represent every plaintiff in the proceedings. In such case, an act of the person representing the plaintiffs in the proceedings shall be deemed to bind every plaintiff.

The filing of a case is not subject to Court's fees except that the filing of a case for an order to pay money or deliver a property in connection with the circumstance under section 9 paragraph one (3) or (4) shall be subject to Court's fees at the rate of two point five percent of amount in dispute, provided that it shall not be in excess of two hundred thousand Baht.

In the proceedings, a party may act on his own motion or appoint an attorney or other person with such qualifications as specified in the regulation prescribed by the general assembly of judges of the Supreme Administrative Court to represent the party in filing a case or carrying out any act.

Section 46. A plaint shall be submitted to a competent official of an Administrative Court. In this instance, a plaint may be submitted by registered post, and, for the purpose of the computation of the period of prescription, the date of the delivery of a plaint to the postal officer shall be deemed as the date of submission of the plaint to an Administrative Court

Section 47. A case within the jurisdiction of an Administrative Court of First Instance shall be filed with an Administrative Court in whose jurisdiction the plaintiff is domiciled or the cause of action has arisen.

A case within the jurisdiction of the Supreme Administrative Court shall be filed with the Supreme Administrative Court.

In the case where any Administrative Court gives a decision that the case filed with it is within the jurisdiction of another Administrative Court, the plaint shall be referred to the Administrative Court having jurisdiction over it for consideration. In the case where the Administrative Courts of First Instance are of different opinions with regard to the jurisdiction, the Administrative Court where the case is last accepted shall present its opinion to the Supreme Administrative Court for making the determination on the jurisdiction.

The hearing of a case filed with any Administrative Court shall be carried out in such Administrative Court during its working days and office hours, except that, in the case of compelling urgency or necessity or in the interest of convenience of the parties, the Administrative Court may order that the trial be carried out in any other place or on a non-working day or on any day or at any time.

Section 48. The President of the Supreme Administrative Court shall publish addresses and normal working days and office hours of Administrative Courts in the Government Gazette.

Each Administrative Court may have such an appropriate number of ad hoc working places as the President of the Supreme Administrative Court may publish their addresses, working days and office hours in the Government Gazette.

A general assembly of judges of the Supreme Administrative Court has the power to determine that the submission of a plaint and any act in connection with the trial and adjudication of an administrative case may be made to or at an ad hoc working place of the Administrative Court.

Section 49. An administrative case may be filed within ninety days as from the date the cause of action is known or should have been known, or within the expiration of ninety days as from the day the plaintiff made a request in writing to the administrative agency or State agency for the performance of duties under the law and has not received a written explanation

from the administrative agency or State agency or has received the same but such explanation is considered by the plaintiff as unreasonable, as the case may be, unless it is otherwise provided by a specific law.

Section 50. In the case where any order may be brought before an Administrative Court, the person issuing that order shall also specify in such order the procedure for submission of a plaint and the time-limit therefor.

In the case where it subsequently appears to the person issuing the order that the provisions of paragraph one is not complied with, such person shall, without delay, notify the recipient of the order of the statement which should have been made under paragraph one. In this case, the time for the submission of a plaint shall restart as from the day the recipient of the order receives the notification of such statement.

In the case where no notification is made under paragraph two and the time for submission of a plaint is less than one year, the time for its submission shall be extended as a one-year period as from the date of the receipt of the order.

Section 51. The case under section 9 paragraph one (3) or (4) shall be filed within one year as from the day the cause of action is known or should have been known but the filing shall not be later than ten years as from the date of such cause of action.

Section 52. An administrative case concerning the protection of public interest or a status of an individual person may be filed at any time.

Upon the lapse of time within which an administrative case can be filed, if the Administrative Court is of the opinion that the case so filed will be of public benefit or there occurs a necessary cause, the Administrative Court may, whether at its own initiative or upon an application of a party, accept the case for trial and adjudication.

Section 53. In the case where any of the parties dies before a judgment of an Administrative Court, the Administrative Court shall adjourn the trial until the heir, estate administrator, any person in possession of the estate, successor of such person, or an interested person submits an application for the substitution for the deceased party, whether by their own motion or by a summons of the Court given upon the other party's application.

Such application shall be submitted within one year as from the date of death of such party. If no application is made by such person or no application is made by either party within the time specified under paragraph one, the Administrative Court may have an order striking such case out of the Case List.

Part 2

Administrative Court Proceedings

Section 54. In the Supreme Administrative Court, there shall be at least five administrative judges of the Supreme Administrative Court to constitute a quorum for trial and adjudication. In an Administrative Court of First Instance, there shall be at least three administrative judges of the Administrative Courts of First Instance to constitute a quorum for trial and adjudication.

Section 55. The trial and adjudication of a case shall be expediently carried out and completed. The parties shall be afforded reasonable opportunities to give explanations and present evidence pertaining thereto; provided that the explanations shall be made in writing unless the Court allows oral explanations before it.

A party has the right to examine evidence presented by each party in the case file unless it is a particular case in which protection from disclosure is afforded by law or in which the Administrative Court is of the opinion that the compelling necessity warrants its non-disclosure for the purpose of preventing loss to the State affairs, but the evidence not disclosed in the aforesaid case may not be admissible by the Administrative Court in its trial and adjudication.

In the trial and adjudication, the Administrative Court may examine and inquire into facts as is appropriate. For this purpose, the Administrative Court may hear oral evidence, documentary evidence or experts or evidence other than the evidence adduced by the parties, as is appropriate.

The oral evidence or the expert summoned by the Administrative Court for testimony or opinions shall be entitled to remuneration in accordance with the rules and procedure prescribed in The Royal Decree.

Section 56. When cases are filed with any Administrative Court, the President of the Supreme Administrative Court or Chief Justice of the Administrative Courts of First Instance shall comply with the following rules in connection with the distribution of case files within that Administrative Court:

(1) in the case where a specialised division is established for any particular category of cases, the distribution of case files shall be made in accordance with the specialisation of the division established therefor;

(2) in the case where the area of responsibility of a division is arranged, the case the cause of action of which has arisen in the respective area shall be distributed to the division so arranged;

(3) in the case where no arrangement of division is made under (1) or (2), or various divisions have been arranged in the same manner, or the division responsible for such cases has such a large number of pending cases that further distribution of case files to such division will cause a delay or affect justice, the distribution of case files shall be made by the method by which prediction may not be made as to the division to which the case file is distributed.

When a division in any Administrative Court has received a case file, the Senior Judge of a division of the Supreme Administrative Court or Senior Judge of a division of an Administrative Court of First Instance in that division, as the case may be, shall appoint an administrative judge in his or her division as the judge in charge of the case for collecting facts from the plaint and explanations of the parties and collecting relevant evidence, with the assistance of the administrative court official as entrusted by the judge in charge of the case.

When a case file has been distributed to any judge in charge of the case or to any division, a recall or transfer of the case file may not be made except in the following circumstances:

(1) where a case is transferred in accordance with the regulation prescribed by the general assembly of the judges of the Supreme Administrative Court;

(2) where, with respect to a recall of a case file, a challenge is made against the judge in charge of the case or where, with respect to a transfer of a case file, a challenge is made against an administrative judge in the division carrying out the trial and adjudication or a quorum is not constituted in the division;

(3) where the judge in charge of the case or the division carrying out the trial and adjudication has a large number of pending cases which will cause delay and wishes to disown the case file under responsibility.

Section 57. The judge in charge of the case shall examine, and submit opinions on, issues of law and issues of facts to the division which carries out the trial and adjudication, and shall carry out acts relevant to the case.

During the proceedings by the judge in charge of the case under paragraph one, the party shall be afforded an opportunity to know the allegations or contentions of the other party and the party shall present evidence on his or her part in confirmation or rebuttal of the issues of fact and issues of law. When the judge in charge of the case considers that sufficient issues of facts and issues of law have been collected, the judge in charge of the case shall prepare an opinion for presentation to the division which carries out the trial and adjudication for further proceedings.

In affording the parties with the opportunity under paragraph two, the judge in charge of the case shall instruct the parties to present their evidence within the specified time. If the party fails to act so within such specified time, the party failing to present the evidence shall be deemed as not having any supporting evidence or as accepting the facts vindicated by the evidence of the other party, as the case may be, and the Administrative Court shall proceed with the trial and adjudication as it thinks just.

In the case where an administrative agency or State official fails to take action within the time specified in paragraph three or shows such conduct as indicative of prolonging the case, the Administrative Court shall report to the superior, superintendent, supervisor or Prime Minister for proceeding with corrective action, giving directions or taking a disciplinary action, without prejudice to the power of the Court to inflict a punishment by reason of a contempt of court.

The performance of duties of the judge in charge of the case and the administrative court official shall be in accordance with the regulation prescribed by the general assembly of judges of the Supreme Administrative Court.

Section 58. Before the hearing day, the judge in charge of the case shall deliver the case file to the judge who makes the conclusions for consideration and the latter judge shall prepare a summary of issues of fact, issues of law and opinions thereon to be submitted to the division carrying out the trial and adjudication and shall give oral statements to The division on the hearing day. For this purpose, the judge who makes the conclusions has the right to be

present at the hearing and at the meeting for adjudication of the case but cannot cast a vote in the adjudication of such case.

In the hearing of any case, if the judge who makes the conclusions is of the opinion that the facts for the trial and adjudication of the case have changed, the judge shall prepare a new summary of issues of fact, issues of law and opinions thereon for submission to the division conducting the trial and adjudication for further consideration.

The Chief Justice of the Administrative Courts of First Instance or the President of the Supreme Administrative Court shall appoint a judge who makes the conclusions from administrative judges in that Court who are not judges in the division carrying out the trial and adjudication of the case concerned.

The judge who makes the conclusions in the Supreme Administrative Court may be appointed from administrative judges of the Administrative Courts of First Instance.

The appointment and performance of duties of the judge who makes the conclusions shall be in accordance with the regulation prescribed by the general assembly of judges of the Supreme Administrative Court.

The provisions in paragraph one shall not apply to the case specified in the regulation prescribed by the general assembly of judges of the Supreme Administrative Court.

Section 59. In trying a case, the division responsible for the trial and adjudication shall hold at least one hearing in order that the parties have the opportunity to make oral statements before it.

Before the first hearing, the summary of facts prepared by the judge in charge of the case shall be furnished to the parties at least seven days in advance. In this instance, the parties shall have the right to present their additional statements and adduce evidence supporting such statements to the division conducting the trial and adjudication in order to confirm or rebut issues of fact and issues of law on the hearing day, provided that the parties may elect to omit their oral statements.

Section 60. The hearing shall be conducted in open court. In any case, if the Administrative Court, in the interest of the maintenance of public order or good morals or the protection of

public interest, thinks it appropriate to prohibit disclosure of the whole or part of facts or circumstances of the case which appear from the pleadings or arguments of the parties or from the evidence already taken, the Administrative Court may issue the following orders:

- (1) an order prohibiting the public from attending the whole or part of the hearing and proceeding with such hearing *in camera* or
- (2) an order prohibiting the publication of such facts or circumstances. Irrespective of whether the Administrative Court has issued an order under paragraph two or not, the publication of the whole or part of the judgment or summary thereof in an impartial and accurate manner shall not be deemed unlawful, except that in the case where the Court considers it appropriate for the purpose of the maintenance of public order or good morals or the protection of public interest, the Court may prohibit the whole or part of the judgment.

Section 61. Any administrative judge entrusted by the division shall have the following powers:

- (1) to issue an order summoning the administrative agency or State official concerned to give statements or opinions in writing in connection with the performance of work of the administrative agency or State official involved;
- (2) to issue an order summoning an administrative agency or State official to furnish an object, document or other relevant evidence or give opinions on any particular matter or send a representative or State official of that administrative agency to give explanations or statements for supplementing the consideration;
- (3) to issue an order summoning the parties to give statements or evidence for supplementing the consideration;
- (4) to issue an order summoning the person concerned with case to give statements or furnish evidence for supplementing the consideration;
- (5) to inquire into or issue an order on any matter which does not amount to the delivery of judgment, in accordance with the regulation prescribed by the general assembly of judges of the Supreme Administrative Court.

In the case of compelling necessity, the administrative judge or person entrusted by the administrative judge has the power to examine a place, person or any other object for supplementing the consideration.

Section 62. If the plaintiff has already received an order from an Administrative Court to give statements or present evidence and fails to comply with the order within the time specified by the Administrative Court without justifiable reason, the Administrative Court may issue an order striking the case from the Case List.

The case struck by the Administrative Court under paragraph one may, if the plaintiff proves to the satisfaction of the Administrative Court that the noncompliance with the Court's order is due to a *force majeure* or a reasonable cause, be allowed by the Administrative Court to be re-filed.

Section 63. The administrative judge in the division responsible for the trial and adjudication may be challenged on account of the grounds for challenging judges provided in the Civil Procedure Code and on account of any other ground of such serious nature as to impair the justice in the trial and adjudication.

The withdrawal from the case, the submission of a challenge, the consideration of a challenge, the issuance of an order instructing the challenged person to stay the proceedings and the issuance of an order instructing another person to take over the duties shall be in accordance with the regulation prescribed by the general assembly of judges of the Supreme Administrative Court.

The issuance of an order instructing the judge against whom a challenge is made to stay the proceedings shall not have prejudice to any act previously done by the challenged administrative judge.

Section 64. Apart from those provided in this Act, the provisions governing the circumstances deemed to constitute a contempt of court under the Civil Procedure Code shall apply *mutatis mutandis*, and when a contempt of court is committed, the Administrative Court shall have the power to inflict punishment as follows:

- (1) warning with or without written reproach;
- (2) expelling from the Court 's precinct;
- (3) inflicting imprisonment for a term not exceeding one month or a fine not exceeding fifty thousand Baht or both.

The order inflicting punishment for contempt of court shall be issued with circumspection and insofar as it is necessary in the circumstances of the case and if it is the infliction of punishment under (3), the punishment shall be considered and inflicted by a division other than that responsible for the trial and adjudication of the case.

Section 65. Any person who criticises a trial or adjudication of an Administrative Court in good faith and by an academic means shall not be guilty of an offence of contempt of court or defamation of the Court or judge.

Section 66. In the case where the Administrative Court considers it appropriate to prescribe provisional remedial measures or means in favour of the party concerned before the delivery of judgment whether an application therefor is made by such person or not, the Administrative Court shall have the power to prescribe a provisional measure or means and issue an order towards the administrative agency for compliance therewith in accordance with the rules and procedure prescribed by the general assembly of judges of the Supreme Administrative Court.

In prescribing the rules and procedure under paragraph one, there shall also be taken into consideration the responsibility of the administrative agency or State official as well as problems and obstacles likely to occur to the administration of State affairs.

Part 3

Judgments or Orders in Administrative Cases

Section 67. A judgment or order of an Administrative Court, if given or issued by several administrative judges, shall be given effect in accordance with the majority opinion and in the case where any administrative judge has a dissenting opinion, the dissenting opinion shall be written in such judgment or order.

Section 68. If the President of the Supreme Administrative Court thinks appropriate, any issue or case may be decided by a general assembly. If any issue or case is required by law or by the regulation prescribed by the general assembly of judges of the Supreme Administrative Court to be decided by a general assembly, it shall be decided by the general assembly.

Subject to section 63, the general assembly shall consist of all existing judges of the Supreme Administrative Court provided that there shall be not less than one-half of judges of the Supreme Administrative Court, and the President of the Supreme Administrative Court shall preside over the general assembly.

The decision of the Supreme Administrative Court shall be by a majority of votes and, in the case of an equality of votes, the person presiding over the meeting shall have an additional vote as casting vote.

Section 69. A judgment or order of an administrative case of an Administrative Court shall at least specify the following:

- (1) the name of the plaintiff;
- (2) the administrative agency or State official giving rise to the cause of action;
- (3) the cause of action;
- (4) the facts of the case filed;
- (5) reasons of the judgment;
- (6) the judgment of the Court on the issues of the case;
- (7) the decree, if any, which shall also specify the administrative agency or State official required to comply therewith;
- (8) remarks on the direction or the procedure for the execution of the judgment, if any.

The judgment or order under paragraph one shall bear the signatures of the administrative judges sitting in the trial and giving such judgment or order. If any administrative judge, by reason of necessary cause, is unable to enter a signature, the Chief Justice of the Administrative Courts of First Instance or the President of the Supreme Administrative Court, as the case may be, shall also record such cause in the judgment or order.

When the Administrative Court has read the result of the judgment or order of an administrative case in the Administrative Court openly on a particular day, the day the same is read shall be deemed as the date of the judgment or order of the Administrative Court. For this purpose, the Administrative Court shall give the parties a reasonable advance notice of the day on which the result of the judgment or order is scheduled to be read.

If no party appears before the Administrative Court on the day the result of the judgment or order is scheduled to be read, the Administrative Court shall dispense with the reading of the

judgment or order and record the fact, and the date of such record shall be deemed as the date of the judgment or order of the Administrative Court.

The Office of the Administrative Courts shall make available judgments or orders of administrative cases at the Administrative Court for public inspection or request for a certified copy thereof. A fee therefor may be collected in accordance with regulation prescribed by the J.C.A.C.

The Office of the Administrative Courts shall publish for the dissemination purpose judgments or orders of Administrative Courts and opinions of the judge who makes the conclusions under section 58.

Section 70. A judgment of an Administrative Court shall be binding on the parties. The decree shall be complied with as from the day specified in the judgment until the day such judgement is amended, varied, reversed or set aside.

In the case of a judgment of an Administrative Court of First Instance, the compliance with the decree shall be pending until the period of time for an appeal has elapsed, or in the case of an appeal, the execution of the judgment shall be suspended until the case becomes final.

Section 71. Subject to the provisions governing appeal against a judgment or order, any judgment or order shall be binding on third parties in the following cases:

- (1) a judgment for the eviction of any person from any place shall also be applicable to such person's dependents in such place unless they can prove their special titles;
- (2) if any person has given a guarantee in Court for the purpose of any act as required by a judgment or order, the judgment or order shall be applicable to that guarantee without a case having to be brought against the guarantor;
- (3) a judgment or order given with regard to a status or capacity of a person or juristic person may be relied on by or set up against a third person unless the third person has a better title;
- (4) a judgment or order given with regard to rights in any property may be relied on by the parties concerned vis-vis third persons unless the third persons have better titles.

Section 72. In delivering a judgment, an Administrative Court has the power to issue a decree for any of the following:

- (1) ordering revocation of a by-law or order or restraining an act in whole or in part, in the

case where it is alleged in the case filed that an administrative agency or State official has committed an unlawful act under section 9 paragraph one (1);

(2) ordering the head of the administrative agency or State official concerned to perform the duty within the time prescribed by the Administrative Court, in the case where it is alleged in the case filed that the Administrative agency or State official has neglected the duty or performed the duty with unreasonable delay;

(3) ordering the payment of money or the delivery of property or the performance or omission of an act with or without prescribing the time and other conditions, in the case where the case filed is in connection with a wrongful act or liability of an administrative agency or State official or in connection with an administrative contract;

(4) ordering a treatment towards the right or duty of the person concerned, in the case where it is requested in the case filed that the Court give judgment declaring the existence of such right or duty;

(5) ordering a person to act or refrain from any act in compliance with the law.

In issuing the decree under paragraph one (1), the Administrative Court may direct that it should have a retrospective or non-retrospective effect or prospective effect to any particular time or may prescribe any condition therefor, as justice in a particular case shall require.

In the case where the Administrative Court gives a final judgment revoking a by-law, the result of the judgment shall be published in the Government Gazette and such publication shall be treated as the revocation of that by-law.

In the case where the Administrative Court issues a decree directing any person to pay money or deliver the property specified in the judgment, if such person fails to pay the money or deliver the property, the Administrative Court may issue an order of execution against the property of that person.

In the case where the Administrative Court issues a decree under paragraph one (5) or under paragraph four, the provisions of the Civil Procedure Code governing execution of judgment shall apply *mutatis mutandis*.

In passing a judgment of the case, the Administrative Court shall order the return of the whole or part of the Court fees in proportion to the winning of the case.

Section 73. An appeal against a judgment or order of an Administrative Court of First Instance shall be submitted to the Administrative Court of First Instance that has passed the judgment or issued the order within thirty days as from the date of passing the judgment or issuing the order. If no appeal is submitted within such period of time, that case shall be deemed final.

The judgment or order under paragraph one shall include an order in connection with a contempt of court or any other order which has the effect of disposing of the case.

In the case where the Supreme Administrative Court is of the opinion that an appeal has insignificant questions of fact or question of law determination of which is inappropriate, the Supreme Administrative Court may reject that appeal.

The judgment or order of the Supreme Administrative Court shall be come final.

Section 74. When final judgments or orders of Administrative Courts of different levels are passed or issued with respect to the same issue of the dispute and are in conflict, the judgment or order of the Supreme Administrative Court shall prevail.

If final judgments or orders of Administrative Courts of First Instance conflict in the same issue of the dispute, the party or a third person who is interested may submit an application to the Supreme Administrative Court for making an order as to which judgment or order shall prevail. Such order of the Supreme Administrative Court shall become final.

Section 75. In the case where an Administrative Court has passed a judgment or issued an order disposing of an administrative case, the party or a third person who is interested or who may be affected by the result of the case may file an application to the Administrative Court for a new trial and judgment or for issuing a new order disposing of the case in the following circumstances:

- (1) the Administrative Court erred in hearing facts or there appears fresh evidence which may result in material alteration of the finally heard facts;
- (2) the real party or the third person did not enter an appearance in the proceedings or appeared but was unreasonably refused an opportunity to participate in the proceedings;
- (3) there occurred in the process of trial and judgment a material impropriety which results in unfairness in the result of the case;
- (4) the judgment or order has been passed or issued in reliance on any fact or law and

subsequent material alteration of such fact or law results in the judgment or order being contrary to the law then in force.

The application under paragraph one may be submitted only when the party or third person has, without fault, no knowledge of such circumstance in the previous hearing.

The application for a retrial and judgment or for a new order shall be submitted within ninety days as from the day such person has known or should have known of the ground for the retrial and judgment or for the new order but not later than five years as from the judgment or order of the Administrative Court.

CHAPTER V

Office of the Administrative Courts

Section 76. There shall be the Office of the Administrative Courts as an independent Government agency under the Constitution, which shall be a juristic person.

Section 77. The Office of the Administrative Courts shall have the powers and duties, as follows:

- (1) to be responsible for secretarial works of Administrative Courts;
- (2) to carry on activities with respect to administrative cases as directed by the Administrative Court;
- (3) to conduct execution of decrees made by the Administrative Court;
- (4) to study and compile information in the interest of the performance of work of Administrative Courts;
- (5) to analyse causes of the filing of administrative cases for the purpose of making suggestions to State agencies concerned with regard to direction for the improvement of public administration;
- (6) to publish and disseminate judgments or orders of Administrative Courts;
- (7) to provide training and knowledge development for administrative judges, officials of the Office of the Administrative Courts and other State officials concerned as well as co-ordinate with other agencies concerned for developing principles of public law and the administration of State affairs and personnel in the field of public law;
- (8) to perform other acts under the provisions of this Act or as the law prescribed to be under the responsibility of the Office of the Administrative Courts.

Section 78. There shall be Secretary-General of the Office of the Administrative Courts who shall be an official of the Office of the Administrative Courts directly answerable to the President of the Supreme Administrative Court, with the responsibility in exercising general supervision of official affairs of the Office of the Administrative Courts, and shall be the superior of officials of the Office of the Administrative Courts. There shall be Deputy Secretary-Generals of the Office of the Administrative Courts to assist in directing and performing official duties.

In making appointment of the Secretary-General of the Office of the Administrative Courts, the President of the Supreme Administrative Court shall, with the approval of the J.C.A.C., elect and nominate to the Prime Minister a person suitable for holding such office and the Prime Minister shall tender the nomination to the King for further appointment.

In affairs of the Office of the Administrative Courts in connection with third persons, the Secretary-General of the Office of the Administrative Courts shall represent the Office. For this purpose, the Secretary-General of the Office of the Administrative Courts may entrust any person to perform specific official duties on his or her behalf, in accordance with the regulation prescribed and published in the Government Gazette by the Commission of Officials of the Office of the Administrative Courts.

Section 79. There shall be administrative court officials to assist judges in charge of the case in the administrative court proceedings as entrusted by the judges in charge of the case and perform other duties in the Office of the Administrative Courts as entrusted by the Secretary-General of the Office of the Administrative Courts.

In the performance of duties in relation to administrative court proceedings as entrusted by the judge in charge of the case, the administrative court official shall be an official in the position of inquiry official under the Penal Code.

Section 80. Qualifications of the persons to be appointed as administrative court officials of each class shall be in accordance with the rules prescribed by the J.C.A.C.

The Secretary-General of the Office of the administrative courts shall have the power to appoint officials of the Office of the Administrative Courts who have qualifications under paragraph one as administrative court officials.

Section 81. There shall be a Commission called the “Commission of Officials of the Office of the Administrative Courts” consisting of the President of the Supreme Administrative Court as Chairman, First Vice President of the Supreme Administrative Court, Chief Justice of the Central Administrative Court, Secretary- General of the Office of the Administrative Courts, three officials of the Office of the Administrative Courts of the level not lower than that prescribed by the J.C.A.C. appointed from officials of the Office of the Administrative Court in accordance with the procedure prescribed and published by the J.C.A.C. with the approval of the general assembly of the judges of the Supreme Administrative Court, Secretary- General of the Council of State and Secretary-General of the Civil Service Commission, as members.

The Secretary-General of the Office of the Administrative Courts shall appoint officials of the Office of the Administrative Court as secretary and assistant secretaries.

Section 82. A member of the Commission of Officials of the Office of the Administrative Courts elected from officials of the Office of the Administrative Court shall hold office for a term of two years and may be re-appointed but shall not serve for more than two consecutive terms.

If the office becomes vacant before the expiration of term, there shall be held a replacement election within sixty days as from the date of the vacancy, except that in the case where less than ninety days remain in the term of office of that member, the replacement election may be omitted.

A replacing member of the Commission of Officials of the Office of the Administrative Courts shall hold office for the remaining term of the person replaced.

Section 83. In addition to vacating office at the expiration of term, a member of the Commission of Officials of the Office of the Administrative Courts elected from officials of the Office of the Administrative Courts vacates office upon:

- (1) death;
- (2) resignation;
- (3) ceasing to be an official of the Office of the Administrative Courts;
- (4) being removed by the Commission of Officials of the Office of the Administrative Courts, with the votes of not less than three quarters of the total number of its existing members, by

reason of inappropriate act or conduct in the performance of duties as member of the Commission of Officials of the Office of the Administrative Courts.

Section 84. The Commission of Officials of the Office of the Administrative Courts shall have the power to issue regulations or notifications in regard to the administration of general affairs, personnel administration, budget, finance and property and other activities of the Office of the Administrative Courts, in particular in respect of the following matters:

- (1) internal organisation of the Office of the Administrative Courts and powers and duties of such Government agencies;
- (2) the prescription of qualifications, selection, recruitment, appointment, trial-performance of official duties, transfer, promotion, vacation from office, increment of salaries, resignation from government service, suspension of official service, instruction for temporary resignation, disciplines, inquiry and imposition of disciplinary penalty, complaint and appeal against the imposition of penalty on officials of the Office of the Administrative Courts;
- (3) delegation of powers of officials of the Office of the Administrative Courts, be it for the purpose of acting for or acting as holders of such positions;
- (4) the prescription of working days and hours, traditional public holidays, annual public holidays and leave of absence of officials of the Office of the Administrative Courts;
- (5) the prescription of the uniform and dresses of officials of the Office of the Administrative Courts;
- (6) the employment and appointment of persons as experts or specialists in specific fields beneficial to the performance of duties of Administrative Courts and the rate of remuneration for the employment;
- (7) the appointment of persons or groups of persons for performing any act as entrusted;
- (8) the administration and management of budgets and procurement of the Office of the Administrative Courts;
- (9) the provisions of welfare or other assistance to officials of the Office of the Administrative Courts;
- (10) the maintenance of personnel record and the control of retirement of officials of the Office of the Administrative Courts;
- (11) the prescription of procedure and conditions for the employment of employees of the Office of the Administrative Courts including the prescription of uniforms and dresses, working days and hours, traditional public holidays, annual public holidays and leave of absence and the provision of welfare or other assistance to employees of the Office of the

Administrative Courts;

(12) the prescription of other acts within the powers and duties of the Commission of Officials of the Office of the Administrative Courts. The regulations or notifications under paragraph one shall be signed by the Chairman of the Commission of Officials of the Office of the Administrative Courts and shall come into force upon their publication in the Government Gazette.

Section 85. The law on civil service insofar as it deals with ordinary Government officials shall apply *mutatis mutandis* to the prescription of positions and salaries, emoluments and additional remuneration for special positions of officials of the Office of the Administrative Courts, and, for this purpose, the expression “C.S.C.” shall mean the Commission of Officials of the Office of the Administrative Courts.

Section 86. The provisions applicable to Government officials as provided in the law on civil service shall apply *mutatis mutandis* to salary scales, emolument scales and eligibility therefor, and the payment of salaries and emoluments of officials of the Office of the Administrative Courts.

Section 87. The recruitment of persons as officials of the Office of the Administrative Courts and the appointment to such office shall be under responsibility of the following competent persons:

(1) the recruitment and appointment of Deputy Secretary-General of the Office of the Administrative Courts shall be under the responsibility of the President of the Supreme Administrative Court to nominate to the Prime Minister the person suitable for the office with the approval of the J.C.A.C. and the Prime Minister shall further tender the nomination to the King for appointment;

(2) the recruitment and appointment of other positions than (1) shall be under the responsibility of the Secretary-General of the Office of the Administrative Courts;

Section 88. The transfer of an official of the Office of the Administrative Courts for recruitment and appointment as an official in another State agency or as an official of a local government organisation or the transfer of an official in another State agency or official of a local government organisation for recruitment and appointment as an official of the Office of the Administrative Courts may be made upon the consent of the person to be transferred and upon an agreement between the person empowered to order the recruitment and the original

agency, and in accordance with the regulations prescribed by the Commission of Officials of the Office of the Administrative Courts with the approval of the respective commission of officials or commission of local officials, as the case may be.

The recruitment and appointment of a Government official or an official of a local government organisation transferred to be an official of the Office of the Administrative Courts under paragraph one to any position and for any salary and emolument shall be determined by the Commission of Officials of the Office of the Administrative Courts, provided that the salary to be received shall not be higher than that of an official of the Office of the Administrative Courts possessing the same level of qualifications, ability and expertise.

For the purpose of computing the duration of the official service, the duration of the official service or the working time of the person transferred to be an official of the Office of the Administrative Courts under paragraph one while being a Government official or official of the local government organisation shall also be deemed as the duration of the official service of the official of the Office of the Administrative Courts under this Act.

The transfer of a political official and Government official who is under the trial-performance of official duties to be an official of the Office of the Administrative Courts under this Act shall not be made.

Section 89. An official of the Office of the Administrative Courts shall be entitled to the same pension under the law on government pension fund as that enjoyed by a Government official.

Section 90. When the Office of the Auditor-General of Thailand has already audited and certified all accounts and finance of the Administrative Courts and the Office of the Administrative Courts, the result of the audit shall be submitted directly to the House of Representatives, Senate and Council of Ministers without delay.

Section 91. The Office of the Administrative Courts shall submit its estimate of budget to the Council of Ministers for the purpose of appropriating subsidies for the Administrative Courts and for the Office of the Administrative Courts in an annual appropriations bill or supplementary appropriations bill, as the case may be. For this purpose, the Council of Ministers may also prepare its opinion on the appropriation of the budget of the

Administrative Courts and the Office of the Administrative Courts to be included in the memorandum accompanying the introduction of the annual appropriations bill or the supplementary appropriation bill.

Section 92. In the matter concerning the introduction or consideration of the budgetary appropriation or the appointment of administrative judges or in the consideration of any matter concerning the Office of the Administrative Courts or Administrative Courts, the joint sitting of the National Assembly, the House of Representatives, the Senate or the Committee concerned may, if the Secretary- General of the Office of the Administrative Courts makes a request to the Council of Ministers, allow the Secretary-General of the Office of the Administrative Courts or the person entrusted by the Secretary-General of the Office of the Administrative Courts to give explanations.

Section 93. The Office of the Administrative courts shall annually prepare a report on the work performance of the Administrative Courts and the Office of the Administrative Court to be submitted to the Council of Ministers, the House of Representatives and the Senate.

Transitory Provisions

Section 94. In the initial period, there shall be established Regional Administrative Courts, as follows:

- (1) Khon Kaen Administrative Court, to be located in Khon Kaen Province, with the jurisdiction throughout the Provinces of Kalasin, Khon Kaen and MahaSarakham;
- (2) Chumphon Administrative Court, to be located in Chumphon Province, with the jurisdiction throughout the Provinces of Chumphon, Prachuap Khirikhan, Phetchaburi and Ranong;
- (3) Chiang Mai Administrative Court, to be located in Chiang Mai Province, with the jurisdiction throughout the Provinces of Chiang Rai, Chiang Mai, Mae Hong Son, Lampang and Lamphun;
- (4) Nakhon Ratchasima Administrative Court, to be located in Nakhon Ratchasima Province, with the jurisdiction throughout the Provinces of Chaiyaphum and Nakhon Ratchasima;
- (5) Nakhon Si Thammarat Administrative Court, to be located in Nakhon Si Thammarat Province, with the jurisdiction throughout the Provinces of Krabi, Nakhon Si Thammarat, Phangnga, Phuket and Surat Thani;
- (6) Buri Ram Administrative Court, to be located in Buri Ram Province, with the jurisdiction throughout the Provinces of Buri Ram and Surin;

- (7) Phitsanulok Administrative Court, to be located in Phitsanulok Province, with the jurisdiction throughout the Provinces of Kamphaeng Phet, Tak, Nakhon Sawan, Phichit, Phitsanulok, Phetchabun and Sukhothai;
- (8) Phrae Administrative Court, to be located in Phrae Province, with the jurisdiction throughout the Provinces of Nan, Phayao, Phrae and Uttaradit;
- (9) Yala Administrative Court, to be located in Yala Province, with the jurisdiction throughout the Provinces of Narathiwat, Pattani and Yala;
- (10) Rayong Administrative Court, to be located in Rayong Province, with the jurisdiction throughout the Provinces of Chanthaburi, Chachoengsao, Chon Buri, Trat, Prachin Buri, Rayong and Srakaew;
- (11) Lop Buri Administrative Court, to be located in Lop Buri Province, with the jurisdiction throughout the Provinces of Nakhon Nayok, Phra Nakhon Si Ayutthaya, Lop Buri, Saraburi, Sing Buri, and Ang Thong;
- (12) Sakorn Nakhon Administrative Court, to be located in Sakorn Nakhon Province, with the jurisdiction throughout the Provinces of Nakhon Phanom, Mukda han and Sakorn Nakhon;
- (13) Songkhla Administrative Court, to be located in Songkhla Province, with the jurisdiction throughout the Provinces of Trang, Phatthaung, Songkhla and Satun;
- (14) Suphan Buri Administrative Court, to be located in Suphan Buri Province, with the jurisdiction throughout the Provinces of Kanchanaburi, Chai Nat, Suphan Buri and Uthai Thani;
- (15) Udon Thani Administrative Court, to be located in Udon Thani Province, with the jurisdiction throughout the Provinces of Loei, Nong Khai, Nhong Bua Lampoo and Udon Thani;
- (16) Ubon Ratchathani Administrative Court, to be located in Ubon Ratchathani Province, with the jurisdiction throughout the Provinces of Yaso Thon, Roi Et, Si Sa ket, Ubon Ratchathani and Umnajjareon.

Section 95. In the case where additional Regional Administrative Courts under section 8 are established and commence their operation in the jurisdiction of the Central Administrative Courts or Regional Administrative Courts under section 94, all cases in the jurisdiction of the newly established Regional Administrative Courts pending in the Central Administrative Court or Regional Administrative Courts under section 94 shall continue to be tried and adjudicated in such Central Administrative Court or Regional Administrative Courts.

Section 96. Within the period of five years as from the date of the entry into force of this Act, section 21 paragraph one (3) shall not apply to the person appointed as judge of the Supreme Administrative Court during such period.

In the case where the person appointed as judge of the Supreme Administrative Court under paragraph one is the person receiving or entitled to receive the ordinary pension at the time of appointment, the provision of section 32 shall apply *mutatis mutandis*.

Section 97. In appointing administrative judges of the Supreme Administrative Court for the first time upon this Act coming into force, there shall be a Committee for the Selection of Judges of the Supreme Administrative Court, consisting of two Government officials of the Office of the Council of State elected at a general assembly of the Council of State, two judges of the Supreme Court of Justice holding a position not lower than judge of the Supreme Court of Justice and elected by a general assembly of the Supreme Court Of Justice, one representative of the Commission of Public Prosecutors, one representative of the Civil Service Commission, one representative of the Law Council's Executive Committee, two representatives of the Faculties of Law or an equivalent of all governmental higher education institutions elected among themselves and one representative of the Faculties of Political Science or an equivalent of all governmental higher education institutions elected among themselves, as members, and such members shall elect one member among themselves as Chairman. The Committee under paragraph one shall elect an official of the Office of the Administrative Courts as secretary.

Section 98. The Committee for the Selection of Judges of the Supreme Administrative Court shall select not more than twenty three persons who have the qualifications under this Act and possess knowledge, integrity and conduct suitable for appointment as judges of the Supreme Administrative Court, and the provisions of section 15 paragraph one shall apply *mutatis mutandis* provided that action shall be taken and completed within sixty days as from the date of the entry into force of this Act.

For the purpose of the selection of such number of persons with respective most suitable knowledge and integrity as specified in paragraph one, the Committee for the Selection of Judges of the Supreme Administrative Court shall prepare a list of persons to be selected from persons wishing to apply for candidacy and persons nominated by the institutions or organisations concerned with the persons who have the qualifications under section 13(4), and such persons shall produce evidence of academic

or professional works indicating the suitable knowledge and integrity for the office of judge of the Supreme Administrative Court. For this purpose, the list of the persons to be selected and the list of the selected persons shall be disclosed and publicised, and persons in the fields of law and public administration shall be invited to give opinions which shall be considered before the submission of the list of the persons finally selected to the Prime Minister for further proceeding.

Upon the appointment by the King of judges of the Supreme Administrative Court under paragraph one, the duty of the Committee for the Selection of Judges of the Supreme Administrative Court shall terminate. Judges of the Supreme Administrative Court shall elect one judge among themselves as President, two as Vice Presidents of the Supreme Administrative Court and four as Senior Judges of divisions of the Supreme Administrative Court and section 15 paragraph two and paragraph three shall apply *mutatis mutandis*.

Section 99. In the initial period, a general assembly of judges of the Supreme Administrative Court appointed under section 98 shall select one person having the qualifications and suitability for appointment as Chief Justice of the Administrative Courts of First Instance, one as Deputy Chief Justice of the Administrative Courts of First Instance and not more than one hundred and thirty as judges of Administrative Courts of First Instance, and action shall be taken under section 98 paragraph two *mutatis mutandis* before the submission of the list of such persons to the Prime Minister for tendering it to the King for appointment.

Section 100. When judges of the Supreme Administrative Court have been appointed under section 98 and judges of the Administrative Courts of First Instance have been appointed under section 99, the Senate, the Council of Ministers and the President of the Supreme Administrative Court shall cause an election of members of the Judicial Commission of the Administrative Courts to be held within ninety days.

Section 101. From the initial period up to 30th September B.E. 2544 (2001), section 30 paragraph two shall not apply and a judge of an Administrative Court of First Instance, a Senior Judge of a division of an Administrative Court of First Instance and Deputy Chief Justice of the Administrative Courts of First Instance shall be entitled to the minimum salaries prescribed for the respective office, provided that if the person transferred has received higher salaries than the minimum rate fixed for the office, the entitlement to any salary scale shall be as Deliberated by the J.C.A.C.

Section 102. In the case where the person transferred to be an administrative judge or an official of the Office of the Administrative Courts is already a Government official under the law on officials' pensions prior to the date of the entry into force of provisions of Chapter 3 of the Government Pension Fund Act, B.E. 2539 but has not applied to be a member of the Government Pension Fund, such person shall be entitled to the pension under the law on officials' pensions.

Section 103. When administrative judges have been appointed under section 98 and section 99, the President of the Supreme Administrative Court shall publish in the Government Gazette determining the operation date of the Supreme Administrative Court, the Central Administrative Court and Regional Administrative Courts. The Supreme Administrative Court and the Central Administrative Court shall commence its operation not later one hundred and eighty days as from the date of the entry into force of this Act. The operation of Regional Administrative Courts under section 94 shall be in accordance with the necessity, having regard to the appointment of administrative judges of suitable knowledge and integrity but shall be at the rate of not less than seven Courts per year.

While the operation of the Regional Administrative Courts under section 94 does not cover all Courts specified thereunder, a general assembly of the Supreme Administrative Court shall have the power to issue, and publish in the Government Gazette, a Notification designating a Regional Administrative Court already in operation to have jurisdiction over any Province nearby as is appropriate.

When the operation date for the Central Administrative Court has been published, all petitions submitted to the Petition Council pending its consideration or already adjudicated by the Petition Council but pending the direction by the Prime Minister shall be transferred to the Central Administrative Court. If the Central Administrative Court considers it as the case under section 9, it shall proceed with the trial and adjudication.

For convenience of the petitioner in proceeding with the administrative case, if the respective Regional Administrative Court is in operation, the Central Administrative Court may, if it thinks fit, transfer that case to the competent Regional Administrative Court.

The proceedings and adjudication of the case transferred under paragraph three shall be in accordance with the regulation prescribed by the general assembly of judges of the Supreme

Administrative Court but shall not be contrary to or inconsistent with the provisions of this Act.

Section 104. While the regulations or notifications governing the personnel administration under section 84 are not yet in existence, the law on civil service shall apply to officials of the Office of the Administrative Courts *mutatis mutandis*. For this purpose, the Commission of Officials of the Office of The Administrative Courts shall have the powers and duties as the Civil Service Commission under such law.

In the initial period, officials of the Office of the Administrative Courts shall, without delay, elect three persons among themselves as members of the Commission of Officials of the Office of the Administrative Courts. While appointment has not yet been made for any office the holder of which sits as *ex officio* member of the Commission of Officials of the Office of the Administrative Courts, the Commission shall consist of its existing member.

Section 105. All cases already filed with, or pending the trial of, any other Court on the date of the entry into force of this Act and exhibiting the characteristic of an administrative case under this Act shall be proceeded with by that Court in regard to its trial and adjudication until the case becomes final.

Section 106. The right to lodge a complaint to the Petition Council under section 11 of the Act on Liability for Wrongful Acts of Officials, B.E. 2539 (1996) in respect of the case not within the jurisdiction of the Administrative Court under this Act shall be deemed to be the right to file a case with a Court of Justice.

Section 107. In the initial period prior to the appropriation of the annual budget to the Office of the Administrative Courts, the J.C.A.C. shall prepare the work plan for the operation of the Administrative Courts and the work plan for the establishment and administration of the Office of the Administrative Courts to be submitted to the Council of Ministers in order to obtain subsidies for funding the operation and administration in accordance with such plans.

The Council of Ministers shall consider and allocate the budget as general subsidies for funding the work operation under the plans submitted by the J.C.A.C. in accordance with the necessity.

Countersigned by:

Chuan Leekpai

Prime Minister

Certified correct translation

(Dr. Ackaratorn Chularat) Secretary-General of the Council of State Office of the Council of State

Thailand Law Forum