

The Ombudsman Act, B.E. 2542 (1999)

Translation

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Being the 54th Year of the Present Reign

Section 1

This Act called "The Ombudsman Act, B.E. 2542 (1999)"

Section 2

This Act shall come into force as of the day after its publication in the Royal Gazette.

Section 3

In this Act:

"Government body" refers to ministries, departments or other government agencies called by different names but having the same status as a ministry or department;

"State agency" refers to any state organ other than a government body, state enterprise, or local government;

"State enterprise" refers to any state enterprise subject to the laws concerning budgeting methods;

"Local government" refers to any local government under the laws concerning administrative procedures;

"Secretary general" refers to the secretary general of the Office of the Ombudsman;

"Officer" refers to any person appointed by an Ombudsman to perform duties under this Act.

Section 4

The Speaker of the National Assembly shall enforce the provisions of this Act and shall have the authority to issue regulations and announcements for enforcing the provisions of this legislation.

These regulations and announcements shall be published in the Royal Gazette.

Chapter One

The Ombudsman

Section 5

There shall be no more than three Ombudsmen.

Section 6

The following procedures shall apply to the selection of an Ombudsman:

- (1) The House of Representatives shall appoint a selection committee comprising 31 members. These members shall consist of:
 - (a) nineteen (19) members of political parties represented in the House of Representatives. The number of members selected from each political party shall be proportionate or approximately proportionate to the number of party members in the House of Representatives.
 - (b) four (4) presidents of state universities, selected by the presidents of all the state universities; four (4) representatives from the Office of the Attorney General, and four (4) members of Supreme Court.
- (2) The selection committee shall draw up a list of qualified nominees. The number of nominees shall be three times greater than the number of Ombudsmen

permitted under the Constitution. The list shall be presented to the House of Representatives within thirty days of the selection committee's appointment. The list of nominees shall be in alphabetical order by name and contain the history, credentials, relevant skills and professional experience of each nominee. The committee shall also submit proof of the nominees' wish to be considered for the position of Ombudsman.

- (3) Once the House has received the list of nominations under Sub-Section (2), the Speaker of the House shall convene a meeting of the House of Representatives. By secret ballot, the members of the House shall reduce the number of nominees by one-third. Nominees receiving the most votes and not less than one-half of the votes of the members present shall be considered as having been selected by the House of Representatives.

If the first ballot does not obtain the desired number of nominees meeting the conditions set forth in Sub-Section (3), the members of the House shall reduce the number of nominees by one-third. Nominees receiving the most votes shall be considered as having been selected. Should two or more nominees receive an equal number of votes, resulting in more than the desired number of nominees, the Speaker of the House shall draw lots to determine which nominee(s) is/are selected. The Speaker of the House shall then present the list of nominees to the President of the Senate with seven days of the voting.

- (4) The President of the Senate shall convene a meeting of the Senate to consider the list of nominees obtained under Sub-Section (3), and by secret of ballot, the members of the Senate shall select not more than 3 nominees. Those nominees receiving the most votes and not less than a majority of the Senators present shall be appointed Ombudsmen.

Should two or more nominees receive an equal number of votes, resulting in the selection of more than three persons, the President of the Senate shall draw lots to determine who is selected.

- (5) Should no one be selected under Sub-Section (4), the President of the Senate shall instruct the Speaker of the House to proceed according to Sub-Sections (1), (2), and (3) again within sixty days of this notification. The provisions of Sub-Section (4) shall apply *mutatis mutandis*.

Section 7

If, after voting, the Senate has not selected three individuals to serve as Ombudsmen, the House of Representatives may select (a) suitable candidate(s) and present the name(s) to the President of the Senate for consideration.

The Provisions of Section 6 shall apply *mutatis mutandis*.

Section 8

The President of the Senate shall present the list of names approved by the Senate under Section 6 or Section 7 to His Majesty the King, who shall officially appoint the new Ombudsmen.

Section 9

An Ombudsman shall serve a term of six years, commencing from the date of his or her appointment to the position by His majesty the King. An Ombudsman shall be appointed for only one term.

An Ombudsman who has completed his of her term shall continue to hold office until the Parliament can appoint a replacement.

Section 10

An Ombudsman must be recognized by the public as an individual of honesty and integrity. He or she must be knowledgeable and experienced in public administration or the administration of a state enterprise or other activity of benefit to the public.

Section 11

To be appointed, an Ombudsman must meet all of the following requirements. He or she must:

- (1) be a Thai citizen by birth;
- (2) be not less than 45 years old at the time of his or her appointment;
- (3) hold a Bachelor's degree or its equivalent;
- (4) not have previously served as an Ombudsman;
- (5) be a qualified voter;
- (6) not be a member of the House of Representatives or the Senate or hold any elected office or serve on any local council or administrative body;
- (7) not be or previously have been a member or holder of any other position in a political party within three years of his or her selection as Ombudsman under Section 6 (2);
- (8) not be an election committee member, a member of the National Human Rights Commission, a Constitutional Court judge, an Administrative Tribunal judge, a member of the Office of the Counter Corruption Commission, or a member of the Office of the Auditor General.
- (9) not have been declared insolvent by a court of law;
- (10) never have been sentenced to prison by a court of law;
- (11) never have been dismissed from a government body, state agency, state enterprise, or local government as a consequence of a serious breach of discipline;
- (12) never have been expelled from membership in the Senate or the House of Representatives under the provisions of the Thai Constitution;
- (13) never have been removed from his or her post by an act of the Senate in accordance with the Thai Constitution.

Section 12

An Ombudsman must:

- (1) not be a civil servant in an active, salaried position;
- (2) not be employed by a government body, state agency, state enterprise, or local government or be a board member or advisor to any government body or state enterprise;
- (3) not hold any post in a partnership, business, or profit-making enterprise; he or she must not share in any profits or be employed by any other person;
- (4) not be engaged in any other type of self-employment.

Should the Senate select a person who does not conform to the conditions set forth in Sub-Sections (1), (2), (3), or (4) above, that person may be appointed Ombudsman only after resigning from all other positions as specified in Sub-Sections (1), (2) and (3) or after showing credible proof of having ceased all forms of self-employment within 15 days of his or her selection. If, however, that person fails to resign from other posts or to stop engaging in all forms of self-employment within the time specified, his or her selection shall be withdrawn. The provisions of Section 14 shall apply *mutatis mutandis*.

Section 13

The appointment of an Ombudsman terminates upon the completion of his or her term or when he or she:

- (1) dies;
- (2) resigns;

- (3) no longer conforms to the conditions set forth in Section 11;
- (4) is in violation of one or more of the conditions laid down in Section 12;
- (5) is sentenced to prison by a court or law;
- (6) is removed from his or her post by Senate vote under the relevant provisions of the Constitution.

Section 14

Should an Ombudsman vacate his or her post, the House of Representatives shall follow the procedures laid down in Section 6 not later than 90 days after the post is vacated.

Section 15

The salary, benefits and all other forms of remuneration paid to an Ombudsman shall be in accordance with the relevant laws.

Chapter Two

The Ombudsman's Powers and Duties

Section 16

An Ombudsman has the following powers and duties:

- (1) to consider and investigate complaints when:
 - (a) a civil servant, member or employee of a government body, state agency, state enterprise or local government violates the law or exceeds the jurisdiction of his or her authority;
 - (b) when an action or inaction by a civil servant, member or employee of a government agency, state enterprise or local government causes harm, damage or injustice to an individual or to the general public, whether or not this action or inaction is within his or her jurisdiction; or
 - (c) the law warrants investigation.
- (2) to submit reports, opinions and recommendations to the National Assembly.

Section 17

If, in the opinion of the Ombudsmen, a law, regulation, or action of an individual under Section 16 (1) is in violation of the Constitution, the Ombudsmen shall refer the matter to either the Constitutional Court or an Administrative Tribunal, as appropriate, for further review.

Section 18

Should there be more than one Ombudsman; the Ombudsmen shall allocate duties among themselves in order that each may work independently, within agreed parameters and in accordance with the principles and procedures set forth by the Ombudsmen jointly. Exceptions, however are matters relating to Section 20 paragraph 2, Section 21 paragraph 2, Section 27 (5) and (6), Section 30 paragraph 2, Section 31 paragraph 2 and 3, Section 33, Section 39, Section 41, Section 42, Section 43, Section 44, Section 45, and Section 48, when the Ombudsmen shall consult and give their consent, jointly

At each meeting of the Ombudsmen requiring joint consultation and joint consent as in paragraph 1, the Ombudsmen shall select one of their members to chair the meeting

Section 19

Under the provisions of this Acts, an individual or group of individuals has the right to lodge complaints with an Ombudsman.

The lodging of a complaint under the provisions of this legislation shall in no way preclude a complainant's right to pursue action through other legal channels.

Section 20

All complaints lodged with the Ombudsman must be in writing and most:

- (1) specify the name and relevant circumstances for lodging the complainant;
- (2) specify the grounds and relevant circumstances for lodging the complaint;
- (3) avoid inflammatory language;
- (4) be signed by the complainant.

The Ombudsmen may lay down procedures for lodging verbal complaints, which shall be published in the Royal Gazette.

Section 21

Complaints lodged with the Ombudsmen may be delivered in person by the complainant, sent by mail, or delivered by a third party. A member of the Senate or the House of Representatives may also lodge a complaint with the Office of the Ombudsman on behalf of a complainant.

Sound the Ombudsmen set forth other regulations, principles or procedures for lodging a complaint; they shall be published in the Royal Gazette.

Section 22

If, in the course of an investigation or hearing, a Senate or House committee determines that, under the provisions of this legislation, a complaint falls within the jurisdiction of the Ombudsmen, the committee may turn the matter over to the Ombudsmen inform the committee of their initial findings.

Section 23

Once a Senate or House committee has referred a matter to the Ombudsmen as in Section 22, the Ombudsmen shall have the authority to pursue the matter even if the referring committee members are no longer in offer.

Section 24

The Ombudsman shall not intervene in the following matters:

- (1) policies announced by the Cabinet in Parliament, except when the exercise of these policies violates the conditions set forth in Section 16 (1);
- (2) cases currently under consideration in a court of law or cases in which the court has issued a final ruling;
- (3) complaints not in violation of the conditions laid down in Section 16 (1);
- (4) complaints relating to personnel management or disciplinary action which may be taken against a civil servant, member or employee of a government body, state agency, state enterprise, or local government;
- (5) complaints in which the complainant does not comply with the provisions of Section 20.

Section 25

The Ombudsmen may refuse to consider or may cease consideration of a complaint if:

- (1) the complaint involves official corruption or misconduct;
- (2) the complainant has suffered no personal loss or damage and investigation would not be in the public interest;
- (3) the complainant has taken no action in the two years after he or she learned or should have learned of the alleged violation and investigation would not be in the public interest;
- (4) the complainant has already been justly compensated for the harm done to him or her and further investigation would not be in the public interest;

- (5) the complainant, without just cause, does not give testimony, supply documentary evidence, or comply with the written instructions of the Ombudsmen within a specified length of time;
- (6) the complainant dies and further investigation would not be in the public interest;
- (7) the Ombudsmen have previously issued a ruling in the matter.

Section 26

Any complaint not within the jurisdiction of the Ombudsmen or not accepted for Consideration by the Ombudsmen under Section 25 may be referred by the Ombudsmen to the appropriate government body, state agency, state enterprise, or local government for further action.

Section 27

An Ombudsman shall, in the exercise of his or her duties under the provisions of this legislation, have the power to:

- (1) demand occurrence reports, statements of opinion, objects, documents or any other type of evidence relevant to his or her investigation from any government body, state agency, state enterprise, or local government;
- (2) demand occurrence reports, secure testimony, or obtain objects, documents, or any other evidence relevant to his or her investigation from the head or from subordinates of any agency in Sub-Section (1) or from any government officer, staff of the attorney general's office, investigating officer, or any other individual;
- (3) request from the court any object, document, or other evidence relevant to the Ombudsman's investigation;
- (4) enter any premises where a complaint has occurred provided that the owner or person in charge has been given prior notice;
- (5) issue regulations and procedures for receiving complaints and conducting preliminary investigations;
- (6) issue regulations and procedures for reimbursing witnesses for travel expenses and officers for out-of-pocket expenses incurred in the performance of their duties under this legislation.

All regulation and procedures under Sub-Sections (5) and (6) shall be published in the Royal Gazette.

Section 28

In the exercise of powers granted under Section 27, an Ombudsman must not harm state Security, public safety, or international relations.

When, for the reasons referred to in paragraph 1, an Ombudsman is unable to proceed with an investigation, the investigation shall be terminated and the Ombudsman shall submit a report on the matter to the Senate and the House of Representatives

Section 29

When a complaint is received, the Ombudsmen must take appropriate action within a reasonable time; the Ombudsmen must also give complainants, civil servants, members and employees of the government body, state agency, state enterprise, or local government in question adequate opportunity to present facts, evidences and testimony relevant to the case;

When an Ombudsman declines to accept a complaint or ceases an investigation, the Ombudsman shall notify the complainant and provide an explanation for his or her actions; when appropriate, the Ombudsman may also notify the relevant agency of his or her decision.

The explanation in paragraph 2 shall mention all relevant facts and laws; when an Ombudsman ceases an investigation because the facts show that the civil servant, member or employee of the government body, state agency, state enterprise, or local government in question has acted in accordance with Section 16 (1), (2) or (3), the Ombudsman shall supply a clear, complete explanation of his or her findings to the complainant.

Section 30

When an Ombudsman has issued a ruling or completed an investigation, he or she shall submit a report containing all relevant facts, opinions and recommendations for corrective action to the relevant government body, state agency, state enterprise, or local government.

When an Ombudsman finds that an action taken by a civil servant, member or employee of a government body, state agency, state enterprise, or local government, while in compliance with the law, official regulations, or Cabinet decision, nevertheless results in injustice or inequality before the law or is arbitrary or outdated, the Ombudsman shall recommend that the government body, state agency, state enterprise, or local government in question change or correct the law, regulation, or Cabinet decision. In the case of a Cabinet decision, the Ombudsman shall submit a report to the Cabinet.

Section 31

When a civil servant, member or employee of a government body, state agency, state enterprise, or local government fails to comply with the opinions or recommendations of an Ombudsman within a reasonable length of time, the Ombudsman may refer the matter to the Prime Minister, responsible Cabinet Minister, or director of the relevant government body, state agency, state enterprise or local government for appropriate action.

If, after the action in paragraph 1 has been taken, a sufficient length of time has passed and the civil servant, member or employee of the government body, state agency, state enterprise, or local government in question still fails, without sufficient cause, to comply with the opinions or recommendations of an Ombudsman, or if the matter is in the public interest or in the interest of a large number of citizens, the Ombudsman may submit an urgent on the matter to the Senate or the House of Representatives. The public shall have access to such reports under the procedures laid down by the Ombudsmen.

Section 32

When an Ombudsman has reason to suspect a civil servant, member or employee of a government body, state agency, state enterprise, or local government of corruption, criminal behavior, or an infraction of government rules and regulations, the Ombudsman shall instruct the relevant authorized agency to investigate the matter and inform the immediate superior of the civil servant, member or employee of the government body, state agency, state enterprise, or local government in question.

The authorized investigating agency and the immediate superior in paragraph 1 shall submit a report on any actions they take to the Ombudsman every three months.

Section 33

The Ombudsmen shall submit an annual report to the Senate and the House of Representatives in March of each year. The report must contain the following:

- (1) the results of their investigations and all observations and recommendations submitted to government bodies, state agencies, state enterprises, or local government;
- (2) any actions taken by government bodies, state agencies, state enterprises, or local government in response to the Ombudsmen's observations or recommendations;
- (3) Any failure by a government body, state agency, state enterprise or local government or by a civil servant, member or employee of a government body, state agency, state enterprise, or local government to comply with the provisions of Section 27; and

(4) Obstacles that have hindered the Ombudsmen in the conduct of their duties.

The Ombudsmen may also submit special reports on matters of urgency or matters important to the running of the state to the Senate and the House of Representatives.

Section 34

The reports referred to in Section 30, Section 31 and Section 33, shall be in summary form and shall not divulge unnecessarily any confidential information concerning individuals or agencies.

Section 35

An Ombudsman shall be immune from criminal prosecution or civil action when he or she has acted in good faith in the performance of his or her duties.

Section 36

Any person who, under the provisions of this legislation, gives testimony, objects, documents, or any other evidence to an Ombudsman, one of his or her appointed officers, or individual charged with preparing or publishing a report under Sections 30, 31 and 33 shall be immune from criminal prosecution, or civil or disciplinary action arising from his or her having provided such evidence.

Section 37

While in the exercise of their duties, the Ombudsmen and their officers are law enforcement officers under the Penal Code.

Section 38

Information obtained in the enforcement of this legislation shall not be divulged except with the consent of the Ombudsmen or when it is necessary to further an investigation, fulfill official duties or reporting procedures, or enforce compliance with this legislation.

Chapter Three

The Office of the Ombudsman

Section 39

The Office of the Ombudsman shall be a state agency; it shall have the status of juristic person and be under the supervision of the Ombudsmen.

The operations of the Office the Ombudsman shall not be subject to laws concerning labor protection, labor relations, social security, or compensation.

Section 40

The Office of the Ombudsman shall be responsible for the general operations of the Ombudsmen and shall have the following powers:

- (1) To carry out the general affairs of the Ombudsmen;
- (2) To study, compile, and analyze information relevant to the work of the Ombudsmen;
- (3) To educate the public on their right to lodge complaints under the Constitution pursuant to this Act;
- (4) To perform other tasks as assigned by the Ombudsmen.

Section 41

In overseeing the Office of the Ombudsman, the Ombudsmen shall have the power to Lay down rules and regulations regarding personnel management, budgeting, finance and assets, and to:

- (1) delegate responsibilities of the Office of the Ombudsman and to define the scope of these responsibilities;
- (2) set rank, salary and other compensation for the secretary general, assistant secretary general and staff of the Office of the Ombudsman;
- (3) select, recruit, appoint, dismiss, and discipline the secretary general, assistant secretary general and staff of the Office of the Ombudsman; to listen to grievances and appeals from the secretary general, assistant secretary general and staff; and to set hiring procedures and conditions for staff of the Office of the Ombudsman;
- (4) select and set pay rates and other special monetary compensation for civil servants, members and employees temporarily assigned to the Office of the Ombudsman under Section 46
- (5) manage the finances and assets of the Office of the Ombudsman;
- (6) arrange for the secretary general, assistant secretary general and staff of the Office of the Ombudsman to receive employee benefits and other welfare.

Section 42

The Office of the Ombudsman shall have one secretary general, appointed with the consent of the Ombudsmen; he or she shall be the immediate superior of the members and employees of the Office of the Ombudsman and shall be responsible for the working of the Office; the secretary general shall answer directly to the Ombudsmen, and an assistant secretary general may be appointed to help carry out his or her duties.

Section 43

The secretary general must be politically neutral, and more importantly, he or she must possess honesty and integrity. He or she must be a Thai national not over the age of 65 and have a proven record of success as an administrator in an area related to the duties of the Office of the Ombudsman.

The secretary general shall serve a term of four years, commencing from the date of his or her appointment, and may serve no more than two consecutive terms.

Section 44

The secretary general is responsible for overseeing the general operations of the Office of the Ombudsman and ensuring that they are in accordance with the law as well as the rules and regulations laid down by the Ombudsmen. The secretary general shall also have the power to:

- (1) recruit, appoint, discharge, promote, reduce salary or wages, or take disciplinary action against staff of the Ombudsman. He or she may also dismiss staff from their posts
- (2) lay down regulations governing the staff of the Office of the Ombudsman as well as civil servants, members or employees attached to the Office of the Ombudsman;
- (3) lay down regulations governing the working of the Office of the Ombudsman.

The exercise of these powers shall conform to the principles and conditions laid down by the Ombudsmen and shall not contravene the rules and regulations set by them.

Section 45

The secretary general shall represent the Office of the Ombudsman in dealings with people from outside the Office. In specific cases, the secretary general may choose to delegate this responsibility to another individual, but this must be done in compliance with the regulations laid down by the Ombudsmen.

The regulations laid down by the Ombudsmen under paragraph 1 shall be published in the Royal Gazette.

Section 46

An Ombudsman may request that a civil servant, member or employee of a government body, state enterprise or local government be assigned temporarily to the Office of the Ombudsman; any such request must be approved by the individual's immediate superior.

When a civil servant, member of employee receives approval to work for the Office of the Ombudsman on a temporary basis, his or her government pension shall in no way be affected for the entire period of his or her assignment. He or she shall be considered as having remained in the government service when his or her pension is calculated under the laws concerning pensions for civil servants or the provident fund for civil servants, as the case may be.

Section 47

When a civil servant, member or employee requests to be returned to his or her regular post or completes the period for which he or she has received permission to work for the Office of the Ombudsman, the proper authorities shall take steps to reinstate the individual and commence to pay him or her a monthly salary. The period for which the individual was assigned to the Office of the Ombudsman under Section 46 shall be included in the calculation of his or her pension.

Section 48

To cover the expenses of the Ombudsmen and the Office of the Ombudsman, the Office of the Ombudsman shall propose a budget, approved by the Ombudsmen, to the Cabinet. The budget proposal shall be contained in the annual budget bill or the additional budget bill, as the case may be. The Cabinet may include its opinions on the proposed budget of the Office of the Ombudsman in its report on the annual budget bill or the additional budget bill.

Section 49

The Office of the Ombudsman shall have the power to administer, oversee, and maintain the assets of the Office of the Ombudsman.

The assets of the Office of the Ombudsman are the property of the state and are not liable to execution.

Section 50

The Office of the Ombudsman shall prepare a financial statement and submit it to an auditor within ninety days of the end of the fiscal year.

The Office of the State Audit shall be responsible for auditing the accounts and verifying all financial transactions. The Office shall also be responsible for evaluation how effectively the funds and other assets of the Office have been used and to what extent its goals and objectives have been met. The Office of the Ombudsman shall present a report on the audit and evaluation to the Cabinet and the National Assembly without undue delay.

Chapter Four Penalties

Section 51

Anyone who violates or fails to comply with Section 27 (2) is subject to a prison term not to exceed six months or a fine of not more than ten thousand Baht or both.

Section 52

Anyone who resists or intentionally obstructs an Ombudsman in the exercise of his or her duties under Section 27 (4) is subject to a prison term not to exceed one year or a fine of not more than twenty thousand Baht or both.

Section 53

Anyone who fails to comply with Section 38 is subject to a prison term not to exceed six months or a fine of not more than ten thousand Baht or both.

Temporary Provisions

Section 54

Initially, the following procedures shall be observed:

- (1) In accordance with Section 6, the House of Representatives shall select a list of nominees for the position of Ombudsman not later than 90 days after this enabling legislation comes into force;
- (2) In accordance with Section 6 (4) and (5), the Senate shall select from the list of nominees not later than 90 days after the Speaker of the House presents the list to the Senate.

Section 55

Those persons selected to serve as Ombudsmen under Section 54 shall serve a term of three years, commencing from the date on which they are appointed by His Majesty the King.

An Ombudsman appointed under Section 54 who completes his or her term or who leaves the post for some other reason prior to the completion of his or her term under Section 13 may be reappointed Ombudsman and shall not be subject to Section 9 (1) or Section 11 (4)

Section 56

The Office of the Ombudsman shall be established not later than one year after this Enabling legislation comes into force.

Prior to the establishment of the Office of the Ombudsman under paragraph 1, the Secretariat of the House of Representatives shall serve as the office of the Ombudsmen and shall have all the powers and duties of the Office of the Ombudsman. The Secretary General of the House of Representatives shall fulfill the duties of the Secretary General of the Office of the Ombudsman.

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