

Organic Act on Ombudsmen, B.E. 2552 (2009)**Translation**

BHUMIBOL ADULYADEJ, REX.

Given on the 10th Day of July B.E. 2552;

Being the 64th Year of the Present Reign

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

Whereas it is expedient to have an Organic Act on Ombudsmen;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which Section 29 in conjunction with Section 31, Section 33, Section 35, Section 36, Section 45, Section 56, Section 59 and Section 62 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

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

Section 1

This Organic Act is called the "Organic Act on Ombudsmen, B.E. 2552 (2009)".

Section 2

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

Section 3

The followings shall be repealed:

- (1) Organic Act on Parliamentary Ombudsmen, B.E. 2542;
- (2) Announcement of the Council for Democratic Reform under Constitutional Monarchy No. 14, dated 21st September B.E. 2549.

Section 4

In this Organic Act:

"Government agency" means Ministry, Sub-Ministry, Department or government agency named otherwise but having equal status to Ministry, Sub-Ministry or Department;

"State agency" means any agency other than government agency, State enterprise or local government organization;

"State enterprise" means State enterprise under the law on budgetary procedure;

"Local government organization" means local government organization under the law on State administration;

"Person holding political position" means a person holding political position under the law on counter corruption;

"State official" means a government official, official, employee or a person working for a government agency, State agency, State enterprise or local government organization and a competent official under the law on regional administration;

"Officer" means an official, employee or a person appointed by the Ombudsmen to perform any duty under this Organic Act.

Section 5

The President of the Ombudsmen shall have charge and control of the execution of this Organic Act and shall, with collective approval of the Ombudsmen, have the power to issue Regulation or Notification for the execution of this Organic Act.

Such Regulation or Notification shall come into force upon its publication in the Government Gazette.

CHAPTER I

Ombudsmen

Section 6

The Ombudsmen under this Organic Act shall have its composition, selection, election, approval and term of office as prescribed by the Constitution.

The Secretariat of the Senate shall be secretariat unit for the execution under paragraph one.

Section 7

The Ombudsman shall be a person recognized and respected by the public, with knowledge and experience in the administration of State affairs, enterprises or other activities of common interests of the public and with apparent integrity.

Section 8

The Ombudsman shall have qualifications and shall not be under any of the prohibitions as follows:

- (1) being of Thai nationality by birth;
- (2) being of not less than forty five years of age on the application date;
- (3) having graduated with not lower than a Bachelor degree or its equivalent;
- (4) not having been the Ombudsman or Parliamentary Ombudsman;
- (5) not being a disfranchised person;
- (6) not being a member of the House of Representatives, member of the Senate, political official, local administrator or member of local assembly;
- (7) not being or having been a member of political party or person holding any other position of political party within three years prior to the application date;
- (8) not being a judge of the Constitutional Court, judge of the Administrative Court, Election Commissioner, National Counter Corruption Commissioner, State Audit Commissioner or National Human Rights Commissioner;
- (9) not being bankrupt or dishonest bankrupt;
- (10) not having been sentenced by a judgment to a term of imprisonment irrespective of whether the case becomes final or the sentence has been suspended, except for an offence committed through negligence, a petty offence or defamation and such case has not become final or the sentence has been suspended;
- (11) not having been expelled, dismissed or removed from official agency, State agency, State enterprise or local government organization on the ground of serious violation of discipline;
- (12) not having been vacated from office of a member of the House of Representatives or member of the Senate upon any decision or resolution under the Constitution;
- (13) not having been removed from office under the Constitution;
- (14) not being a narcotics addict;
- (15) not having been ordered by a judgment or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets.

Section 9

Apart from vacating office at the end of the term, the Ombudsman vacates office upon:

- (1) death;
- (2) being seventy years of age;
- (3) resignation;
- (4) being disqualified or being under any of the prohibitions under Section 8;
- (5) having been sentenced by a judgment to a term of imprisonment irrespective of whether the case becomes final or the sentence has been suspended, except for an offence committed through negligence, a petty offence or defamation and such case has not become final or the sentence has been suspended;
- (6) having been ordered by a judgment or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets;
- (7) being under any of the prohibitions under Section 207 (1), (2), (3) and (4) of the Constitution;
- (8) being removed from office by the resolution of the Senate.

Section 10

In the case where the President of the Ombudsmen or the Ombudsman vacates office, the selection and election therefore shall be completed in accordance with the provisions of the Constitution.

The President of the Ombudsmen or the Ombudsman who vacates office at the end of the term shall remain in office to continue his duties until the new President of the Ombudsmen or Ombudsman has been appointed.

Section 11

In the case where the Ombudsman vacates office before term, the existing Ombudsmen shall continue their duties.

If there are two Ombudsmen left, the senior Ombudsman shall be Acting President of the Ombudsmen until the new President of the Ombudsmen has been appointed.

Section 12

In the performance of duties of the Ombudsmen, the President of the Ombudsmen and the Ombudsmen shall jointly meet to divide their responsibilities with a view to enable each Ombudsman to perform his duties independently and to be accountable for his entrusted responsibilities in accordance with the rule and procedure as jointly determined by the President of the Ombudsmen and the Ombudsmen, except the case under paragraph three.

At the meeting under paragraph one, the President of the Ombudsmen shall preside over the meeting. If the President of the Ombudsmen is unable to present at the meeting, the senior Ombudsman shall preside over the meeting.

In the performance of duties of the Ombudsmen under Section 14, Section 15 (5), (6), (7) and (8), Section 24 paragraph three, Section 25 paragraph two, Section 32 paragraph two, Section 33 paragraph two and paragraph three, Section 37 paragraph two, Section 39, Section 41, Section 42 and Section 43 or under other laws, the Ombudsmen shall jointly meet and agree. If there are two Ombudsmen left, the existing Ombudsmen shall continue joint meeting and giving approval.

Section 13

The Ombudsmen shall have the powers and duties as follows:

- (1) to consider and inquire into the complaint for fact-finding in the following cases;

- (a) failure to perform in compliance with the law or performance beyond powers and duties as prescribed by law of a government official, official or employee of a government agency, State agency, State enterprise or local government organization;
 - (b) performance of or commission to perform duties of a government official, official or employee of a government agency, State agency, State enterprise or local government organization, which unjustly causes injuries to the complainant or the public whether such act is lawful or not;
 - (c) investigating any omission to perform duties or unlawful performance of duties of the Constitutional organization or agency in the administration of justice, except the trial and adjudication of the Court;
 - (d) other cases as prescribed by law;
- (2) to conduct the proceeding in relation to ethics of a person holding political position and State official under Section 279 paragraph three and Section 280;
 - (3) to monitor, evaluate and prepare recommendations on the compliance with the Constitution including consideration for amendment of the Constitution as deemed necessary;
 - (4) to report the result of its investigation and performance together with recommendation to the Council of Ministers, the House of Representatives and the Senate annually. Such report shall be published in the Government Gazette and disclosed to the public.

In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.

Section 14

The Ombudsmen may submit a case to the Constitutional Court or Administrative Court in the following cases:

- (1) if the provisions of any law beg the question of constitutionality, the case together with its opinion thereon shall be submitted to the Constitutional Court for consideration;
- (2) if any rule, order or action of any person under Section 13 (1) (a) begs the question of constitutionality or legality, the case together with its opinion thereon shall be submitted to the Administrative Court for consideration.

Section 15

In the performance of duties under this Organic Act, the Ombudsmen shall have the powers:

- (1) to request a government agency, State agency, State enterprise or local government organization to give, in writing, statement of fact or opinion in concerning with its performance or to submit any related object, document, proof or evidence for consideration;
- (2) to request the superior or officer of the agency under (1), public prosecutor, inquiry official or any person to give statement of fact in writing or orally or to submit any related object, document, proof or evidence for consideration;
- (3) to request the Court to submit any related object, document, proof or evidence for consideration;
- (4) to examine any place related to the complaint, but the owner or a person having possessory right thereof shall be informed in advance as necessary;

- (5) to issue regulation determining rule and procedure on receiving of complaint for consideration and the regulation on inquiry;
- (6) to issue regulation determining rule and procedure for the conduct of proceedings in relation to ethics of a person holding political position and State official under Section 37 and Section 39;
- (7) to issue regulation determining rule on expenditure, allowance and travel expense of oral evidence and the performance of duty of the officer;
- (8) to issue any regulation or carrying out any other duty which is prescribed by this Organic Act or other laws to be duty of the Ombudsmen.

Section 16

In exercising of powers of the Ombudsmen under Section 15, regard shall be had to its impact to security of State, public safety or international relation.

In the case where the Ombudsmen is unable to inquire into fact in any matter, such matter shall be ceased and the Ombudsmen shall report the Council of Ministers, the House of Representatives and the Senate for information without delay.

Section 17

The report under Section 32 and Section 33 shall be made in summary without any detail which may disclose confidential information of any person or agency unnecessarily.

Section 18

The Ombudsman shall not be liable to both civil and criminal liabilities if he exercises the powers and duties under this Organic Act in good faith.

Section 19

A person who gives statement or submits any object, document, proof or evidence in concerning with the matter under this Organic Act to the Ombudsmen or officer entrusted in writing by the Ombudsmen or a person preparing and disseminating the report of the Ombudsmen under Section 32, Section 33 and Section 43 shall not be liable to civil, criminal or disciplinary if he discloses information or submits any object, document, proof or evidence or prepares or discloses the report, as the case may be, in good faith.

Section 20

In the performance of duties under this Organic Act, the Ombudsman and officer shall be the competent official under the Penal Code.

Section 21

No person shall disclose any statement, fact or information obtained from an implementation under this Organic Act, provided that he has been entrusted by the Ombudsmen or it is the performance on his official duty or it is beneficial to an examination or inquiry or it has to be reported under his powers and duties or it has to be done in accordance with the provisions of this Organic Act.

Section 22

Salary, position allowance and other benefits of the President of the Ombudsmen and the Ombudsman shall be in accordance with the law on such matter.

CHAPTER II

Complaint and Inquiry

Part 1

Complaint

Section 23

Any person, group of persons and community shall have the right to make a complaint to the Ombudsmen in accordance with the provisions of this Organic Act.

The making of complaint under this Organic Act shall not prejudice to the rights of the complainant under other laws.

Section 24

A complaint may be made to the Ombudsmen in writing, orally or by other means.

In case of a written complaint, it shall have at least the following compositions:

- (1) name and address of the complainant;
- (2) cause of complaint together with statement of fact or circumstance in relation to the matter under complaint;
- (3) polite language;
- (4) signature of the complainant.

The rule and procedure for the making of oral and other complaints shall be in accordance with the regulation as prescribed by the President of the Ombudsmen.

Section 25

The complainant may submit the complaint to the Ombudsmen via the Office of the Ombudsmen in person, by post, by hand or by other means.

The rule and procedure on submission of complaint by other means under paragraph one shall be in accordance with the regulation as prescribed by the President of the Ombudsmen.

Section 26

In the case where the Committee of the House of Representatives or the Senate conducts inquiry or consideration on any matter and it is of opinion that such matter is subjected to the powers and duties of the Ombudsmen under this Organic Act, such Committee may submit that matter to the Ombudsmen for consideration and the Ombudsmen shall submit its preliminary report on the result thereof to such Committee.

Section 27

After having received the matter from the Committee under Section 26, the Ombudsmen shall have the power to continue its consideration on that matter despite such Committee vacates office en masse.

Part 2 Inquiry

Section 28

The complaint decided by the Ombudsmen of having the following characteristics shall be rejected or ceased:

- (1) being policy of the Council of Ministers as stated to the National Assembly, except where the implementation in accordance with such policy being the matter under Section 13 (1) or (2);
- (2) being the matter that having been filed to the Court or the matter that the Court has final judgment or order thereon;
- (3) not being the matters under Section 13 (1) and (2);

- (4) being the matter relating to personnel administration or disciplinary action of government official, official or employee of a government agency, State agency, State enterprise or local government organization, except the matter under Section 13 (2);
- (5) the complainant fails to comply with Section 24.

Section 29

The Ombudsmen may reject or cease the complaint related to:

- (1) corruption in official service;
- (2) the matter in which the complainant is not an interested person and the consideration thereon is not beneficial to the public;
- (3) the matter submitted after the lapse of two years as from the date the complainant knows or ought to know the cause of the complaint and the consideration thereon is not beneficial to the public;
- (4) the matter in which the appropriate remedy or compensation for grief or unfairness of the complainant has been given and the consideration thereon is not beneficial to the public;
- (5) the matter in which the complainant fails to give oral statement or present evidence or fails to do any act as requested writing by the Ombudsmen within specified period and without reasonable grounds;
- (6) the matter in which the complainant has deceased without heir to continue the complaint and the consideration thereon is not beneficial to the public;
- (7) the matter in which the Ombudsmen has had conclusion, except where the new evidence or fact has been found and the consideration result may be changed on account thereof.

Section 30

In case of the complaint that is having been rejected under Section 28 and the complaint that may be rejected under Section 29, the Ombudsmen may submit such complaint to related government agency, State agency, State enterprise or local government organization for their appropriate proceedings.

Section 31

The Ombudsmen shall, upon the complaint under this Organic Act, finish its consideration without delay and shall enable the complainant, government official, official or employee of related government agency, State agency, State enterprise or local government organization to give statement and present evidence in relation to their statement as appropriate.

An order of the Ombudsmen rejecting or ceasing any complaint together with supporting reason thereof shall be informed to the complainant and may, for the performance of official service, be sent to related agency for its information.

The supporting reason under paragraph two shall clarify in details of fact and related law. In case of an order ceasing consideration of a complaint on the ground that an act of the government official, official or employee of the government agency, State agency, State enterprise or local government organization is not subjected to Section 13 (1) (a) (b) or (c) or Section 13 (2), the detailed reason why such act is lawful and fair shall also be clarified to the complainant.

Section 32

At the completion of consideration and inquiry on any complaint, the Ombudsmen shall prepare and submit the report summarizing the fact together with its giving opinion and recommendation for the revision thereof to the related government agency, State agency, State enterprise or local government organization for information or implementation.

In the case where the Ombudsmen is of opinion that despite an act of a government official, official or employee of a government agency, State agency, State enterprise or local government organization is compliant with the law, by-law, rule, regulation or resolution of the Council of Ministers, but such the law, by-law, rule, regulation or resolution of the Council of Ministers induces unfairness or inequality before the law or being the ground of discrimination or out of date, the Ombudsmen shall recommend related government agency, State agency, State enterprise or local government organization to cause revision or amendment to such law, by-law, rule, regulation or resolution of the Council of Ministers. If the recommendation relates to the resolution of the Council of Ministers, the report shall also be submitted to the Council of Ministers for information.

In the case where the Ombudsmen recommends the agency under paragraph two to revise or amend the law, by-law, rule and regulation, if such agency fails to proceed with that recommendation within a reasonable period, the Ombudsmen shall inform the law reform organization under the Constitution for further proceedings and shall urgently report that matter to the Council of Ministers, the House of Representatives and the Senate for information.

Section 33

In the case where a government official, official or employee of a government agency, State agency, State enterprise or local government organization fails to comply with the opinion or recommendation of the Ombudsmen on any matter within a reasonable period, the Ombudsmen shall inform the Prime Minister, Minister or the person controlling or supervising such government agency, State agency, State enterprise or local government organization so as to have necessary order thereon and to report their implementation to the Ombudsmen forthwith.

After having conducted the proceedings under paragraph one for a reasonable period but the government official, official or employee of the government agency, State agency, State enterprise or local government organization fails to comply with such opinion or recommendation without reasonable ground and that matter is important or relating to public interest or the public at large, the Ombudsmen shall urgently submit the report on such matter to the Council of Ministers, the House of Representatives and the Senate.

Such report shall be disclosed to the public in accordance with the procedure as determined by the President of the Ombudsmen.

Section 34

In any matter, if the Ombudsmen is of opinion that there is a reasonable ground to suspect of corruption in official service or there is a criminal or disciplinary well-grounded, the Ombudsmen shall inform the agency having the power to investigate such matter and the superior of a government official, official or employee of related government agency, State agency, State enterprise or local government organization for information and further legal proceedings.

The agency having the power to investigate the matter and the superior under paragraph one shall report their implementation to the Ombudsmen every three months.

CHAPTER III

Inquiry for Constitutional Organs and Judicial Process Organs

Section 35

If the constitutional organs and judicial process organs omit their duties or perform their duties illegally under Section 13 (1) (c), the provisions of Chapter II Complaint and Inquiry shall apply *mutatis mutandis*.

CHAPTER IV

Ethics of a Person Holding Political Position and State Official

Section 36

In conducting the proceedings in relation to ethics of a person holding political position and State official, the Ombudsmen shall have the powers and duties as follows:

- (1) to give advice or recommendation for the making of ethical standard or improving the code of ethics of each kind of persons holding political positions and State officials;
- (2) to enhance ethical consciousness of a person holding political position and State official;
- (3) to report any conduct which is in violation of the code of ethics so as to make the person responsible for the enforcement of the code of ethics to make enforcement thereof.

For the execution of this Chapter, a government agency, State agency, State enterprise and local government organization shall submitted their established code of ethics to the Office of the Ombudsmen within sixty days as from the establishment date thereof.

Section 37

If there is a complaint that a person holding political position violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall consider and inquire into fact. In this regard, the provisions of Chapter II Complaint and Inquiry shall apply *mutatis mutandis*.

If it appears, upon the completion of consideration and inquiry under paragraph one, that a person holding political position violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall report the National Assembly, Council of Ministers or related local assembly, as the case may be, so as to make enforcement of the code of ethics. If such conduct is serious offense, the Ombudsmen shall submit such matter to the National Counter Corruption Commission for consideration. In this case, such conduct is deemed to be a cause for removal from office under the Constitution.

Section 38

If there is a complaint that a State official violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall submit such matter to the person responsible for the enforcement of the code of ethics to make enforcement thereof.

Section 39

If the Ombudsmen is of opinion that any violation or failure to comply with the ethical standard is serious or there is a reasonable ground to believe that the proceedings conducted by the responsible person may be unfair, the Ombudsmen may conduct inquiry and disclose the result thereof to the public.

An inquiry and the disclosure of the result thereof to the public under paragraph one shall be in accordance with the regulation as determined by the President of the Ombudsmen which having standard or having security of not lower than the standard or security under Section 31.

CHAPTER V

Monitor, Evaluation and Recommendation on an Implementation of the Constitution

Section 40

The Ombudsmen may, in monitoring and evaluating an implementation of the Constitution, request a government agency, State agency, State enterprise or local government organization to give statement and report on their performance for consideration.

If it appears, after monitoring and evaluating an implementation of the Constitution, to the Ombudsmen that any agency fails to comply with the Constitution in any matter, the Ombudsmen shall prepare and submit the recommendation for an implementation of the Constitution to the person who controls or supervises such government agency, State agency, State enterprise or local government organization in order to have an order as necessary for each case and such agency shall report its performance to the Ombudsmen for information.

Section 41

The Ombudsmen shall conduct evaluation on an implementation of the Constitution of all government agencies, State agencies, State enterprises or local government organizations annually in accordance with the evaluation rule as determined by the President of the Ombudsmen.

The Ombudsmen shall report the evaluation result to the Council of Ministers, the House of the Representatives and the Senate for information under Section 43.

Section 42

In conducting evaluation on an implementation of the Constitution, if the Ombudsmen is of opinion that amendment to the Constitution has to be considered, the President of the Ombudsmen shall, with collective approval of the Ombudsmen, propose the Council of Ministers, the House of the Representatives and the Senate for further proceedings as necessary.

CHAPTER VI Annual Report

Section 43

The Ombudsmen shall submit its annual report to the Council of Ministers, the House of the Representatives and the Senate within March of each year and one Ombudsman shall state the annual report to the House of Representatives and the Senate himself. Such report shall have at least the following information:

- (1) results of inquiries on all matters together with the advises or recommendations given to the government agencies, State agencies, State enterprises or local government organizations;
- (2) implementation of the government agencies, State agencies, State enterprises or local government organizations or State officials done or undone in response of the advises or recommendations of the Ombudsmen;
- (3) failures to comply with Section 15 of the government agencies, State agencies, State enterprises or local government organizations or State officials;
- (4) violation of or failure to comply with ethical standard of a person holding political position and government official;
- (5) results of monitoring, evaluation and recommendation on an implementation of the Constitution;
- (6) hurdles in the execution of duties of the Ombudsmen.

The annual report under paragraph one shall be published in the Government Gazette and shall be disclosed to the public in accordance with the procedure as determined by the

president of the Ombudsmen. In determining of this procedure, the President of the Ombudsmen shall determine the measures that may be accessed by the handicapped and old age person.

The Ombudsmen may, if it deems appropriate, make a report on any specific matter to the Council of Ministers, the House of Representatives or the Senate for information if it deems that such matter is urgent or beneficial to the administration of State's affairs.

Section 44

The provisions of Section 17 shall apply to the making of report under Section 43.

CHAPTER VII

Penalties

Section 45

Whoever violates or fails to comply with Section 15 (2) shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Section 46

Whoever fights with or obstructs the carrying out of duties under Section 15 (4) shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht or to both.

Section 47

Whoever fails to comply with Section 21 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Transitory Provisions

Section 48

Any act related to the complaint submitted to the Parliamentary Ombudsmen under the Organic Act on Parliamentary Ombudsmen, B.E. 2542 which has been done or has not yet completed shall be deemed to be an implementation under this Organic Act.

Section 49

All laws, rules, regulations, notifications or orders enacted or issued under the provisions of the Organic Act on Parliamentary Ombudsmen, B.E. 2542 shall be continued in force in so far as they are not contrary to or inconsistent with this Organic Act until the enactment or issuance of the laws, rules, regulations, notifications or orders under this Organic Act.

Section 50

The Ombudsmen holding office on the promulgation date of this Organic Act shall be the Ombudsmen under the provisions of this Organic Act and shall be in office until the expiration of the term of office. In this regard, the term of office shall begin on the date the appointment has been made by the King.

Section 51

The Office of the Parliamentary Ombudsmen under the Organic Act on Parliamentary Ombudsmen, B.E. 2542 shall be deemed as the Office of the Ombudsmen temporarily until the law on office of the ombudsmen comes into force.

Countersigned by
Abhisit Vejjajiva
Prime Minister

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