CRIMINAL PROCEDURE IN THAILAND

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The criminal procedures in Thailand are governed by the Criminal Procedure Code B.E. 2477 (1934). This paper is divided into three parts. The first and second parts describe the process of investigation and trial in accordance with the Criminal Procedure Code by elaborating the important sections in the criminal proceedings. The third part is the summary of the criminal procedure in Thailand.

I. INVESTIGATION

A. Agencies and Organizations Responsible for Criminal Investigation

1. Administrative or Police Official:

[The Criminal Procedure Code Section 2] "Investigation" means collection of facts and evidence which was conducted by administrative or police official under his power and duties in order to maintain public order and to obtain details of a commission of offence.

[The Criminal Procedure Code Section 2] "Administrative or Police Official" means an official vested by law with power and duty to maintain public order; this shall include a warden, an official of Excise Department, Customs Department, Harbor Department, an immigration officer and other officials when acting in accordance with arresting or suppressing law offenders whom they have duty to arrest or suppress.

[The Criminal Procedure Code Section 17] An administrative or police official shall have the power to investigate any criminal matters.

2. Special Case Inquiry Official:

One mission of the Department of Special Investigation (DSI), Ministry of Justice is prevention and control of crime that has a devastating impact on the economy, social security, and international relations.

[The Special Case Investigation Act B.E. 2547 (2004) (Amended by the Special Case Investigation Act (No.2) B.E. 2551 (2008)]
[Section 21] Special Cases required to be investigated and examined according to this Act are the following criminal cases:
(1) Criminal cases according to the laws provided in the Annex attached hereto and in the ministerial regulations as recommended by the BSC where such criminal cases shall have any of the following natures:
(a) It is a complex criminal case that requires special inquiry, investigation and special collection of evidence.
(b) It is a criminal case which has or might have a serious effect upon public order and moral, national security, international relations or the country's economy or finance.
(c) It is a criminal case which is a serious transnational crime or committed by an organized criminal group.
(d) It is a criminal case in which influential person being a principal, instigator or supporter.
(e) It is a criminal case in which the Administrative Official or Senior Police Officer, who is neither the Special Case Inquiry Official nor Special Case Officer, is the suspect as there is

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reasonable evidence of crime committed, or being the alleged culprit, or being the accused. This however shall be in line with details of the offence provided by the BSC.

[Laws Provided in the Annex Attached to the Special Case Investigation Act B.E. 2547 (2004)]

1. Law on Loan Amounting to Public Cheating and Fraud
2. Competition Act
3. Commercial Banking Act
4. Law on the Finance Business Securities Business and Credit Foncier Business
5. Chain Loan Control Act
6. Foreign Exchange Control Act
7. Law on Government Procurement Fraud
8. Act for the Protection of Layout-Designs of Integrated Circuits
9. Consumer Protection Act
10. Trademark Act
11. Currency Act
12. Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act
13. Interest on Loan by the Financial Institution Act
14. Bank of Thailand Act
15. Public Company Act
16. Anti Money Laundering Act
17. The Industrial Product Standard Act
18. Copyright Act
19. Board of Investment Commission Act
20. Enhancement and Conservation of National Environmental Quality Act
21. Patent Act
22. Security and Exchange Commission Act
23. Revenue Code
24. Customs Law
25. Excise Law
26. Liquor Act
27. Tobacco Act
28. Foreign Business Act
29. Casualty Insurance Act
30. Life Insurance Act
31. Law on Agricultural Futures Trading
32. Computer Crime Act
33. Land Law
34. Forest Law
35. National Park Act
36. National Reserved Forest Act
37. Wildlife Preservation and Protection Act

B. Public Prosecutor

[The Criminal Procedure Code Section 2] "Public Prosecutor" means an official who has a duty to prosecute an alleged offender in court; a public prosecutor can be either a government official in the Office of the Attorney General or other officials authorized to act in the same manner.

The public prosecutor will have the power to conduct their own investigations when;

[The Criminal Procedure Code Section 20] In case that an offence punishable under Thai law was committed outside the Kingdom of Thailand, the Attorney General on his surrogate shall be the responsible inquiry official; the Attorney General may delegate such duty to any public prosecutor or inquiry official to conduct inquiry on his behalf, if he so chooses.
In case that the Attorney General or his surrogate assigns an inquiry official the responsibility

to conduct an inquiry, the Attorney General or his surrogate may assign a public prosecutor to join in conducting such inquiry, if he so chooses.
A public prosecutor assigned to be a responsible inquiry official or to join an inquiry official in conducting an inquiry shall have the power and duty in such inquiry as does an inquiry official. However, other powers and duties as prescribed by law shall be of such public prosecutor.
In case that a public prosecutor joins an inquiry official in conduct an inquiry, the inquiry official shall comply with orders and recommendations given by the public prosecutor when the matter is related to the collection of evidence.

C. Investigative Procedure

[The Criminal Procedure Code Section 130] The proceedings of an inquiry shall be commenced without delay and also be conducted at any time and place as deemed appropriate, and the alleged offender is not required to be present.

1. Gathering Evidence:

[The Criminal Procedure Code Section 131] The inquiry official shall gather all types of evidence as possible in order to know the facts and other circumstances concerning the offence alleged, and to find out who the offender is and prove his guilt or innocence.

[The Criminal Procedure Code Section 131/1] In the case that scientific evidence is requisite for proving the facts under Section 131, the inquiry official is empowered to examine any persons, objects or documents by scientific means. . . .

[The Criminal Procedure Code Section 150] In case that a postmortem examination shall be conducted, the inquiry official of the locality in which the corpse is found and a physician specialized in forensic medicine who has received a certificate or an approval letter from the Medical Council shall conduct the examination as soon as possible.

[The Criminal Procedure Code Section 132] For the purpose of gathering evidence, the inquiry official is empowered to do the following:
(1) to examine the injured person with his consent, or the alleged offender, or any things or places which may be adduced as evidence, including taking a photograph, drawing a map or sketch or creating a mould or taking a finger-print, hand-print or foot-print as well as recording any details which may be used to prove the case clearly;
In the inspection of the injured person's body or the alleged offender's body according to the first paragraph, if the injured person or the alleged offender is female, the inspector shall be a female official or any other women. In the case where appropriate, the injured person or the alleged offender may request for the attendance of any persons requested in such inspection;
(2) to search for an article of which its possession constitutes an offence; or which is obtained by committing the offence; or used or suspected of having been used for the commission of the offence, or may be used as evidence, but execution under this paragraph shall comply with the provision on search under this Code;
(3) to issue a summons to a person who possesses any articles which may be used as evidence. However, such person needs not to come in person and shall be deemed to have complied with a summons if the article required therein is delivered;
(4) to retain all the articles found or delivered as provided in sub-sections (2) and (3).

[The Criminal Procedure Code Section 133] The inquiry official is empowered to issue a summons to the injured person, upon the reasonable ground to believe that his statement may be useful to the case, to appear before him at the time and place specified in a summons, such person shall then be examined. . . .

2. Notification of the Charged:

[The Criminal Procedure Code Section 134] When the alleged offender is summoned or brought, or voluntarily appears before the inquiry official, or when any persons appearing before the inquiry official is the alleged offender, the inquiry official shall ask his/her name, middle name, surname nationality, parentage background, age, profession, address and place of birth, and inform the alleged offender of the fact concerning his commission of a crime alleged, then notify the alleged offender of the charged offence.

3. Inquiry File:

[The Criminal Procedure Code Section 139] The inquiry official shall make a note of the examination in accordance with the general provisions on inquiry under this Code, and shall combine any noted documents including those forwarded by other inquirers of the same case with the inquiry file.
All documents presented as evidence shall be gathered in the inquiry file, and other materials shall also be listed and attached to the file.

4. Indictment of the Suspect:
When the responsible inquiry official has an opinion that an inquiry is completed, he shall perform as follows:

(i) If it is unknown who committed the offence: **[The Criminal Procedure Code Section 140]**
(1) If such offence carries a maximum imprisonment not exceeding three years, the inquiry official shall stay an inquiry and note down the reason thereof, and subsequently submit a note together with the inquiry file to the public prosecutor.
If such offence carries a maximum imprisonment exceeding three years, the inquiry official shall submit the inquiry file together with an opinion of staying an inquiry to the public prosecutor.
If the public prosecutor issues the order to stay the case or to continue with an inquiry, the inquiry official shall comply with such order.

(ii) If it is known who committed the offence but he could not yet be summoned or arrested, the inquiry official shall, upon the result of an inquiry, submit an opinion whether a prosecution order or non-prosecution order should be made together with the inquiry file to the public prosecutor.

[The Criminal Procedure Code Section 141]
If the public prosecutor agrees with an opinion not to prosecute, he shall end the inquiry by issuing the non-prosecution order and notify the inquiry official of such order.
If the public prosecutor considers that an inquiry should continue, he shall order the inquiry official to carry out accordance with such opinion.
If the public prosecutor considers that the prosecution order should be issued, he shall take any actions to obtain the alleged offender. If the alleged offender resides abroad, the public prosecutor shall make a request for his extradition.

(iii) If it is known who committed the offence and he has been kept in custody or detained, or has been granted provisional release, or it is believed that such offender would show up if summoned, the inquiry official shall, upon the result of an inquiry, submit an opinion whether the prosecution order or non-prosecution order should be made together with the inquiry file to the public prosecutor:

[The Criminal Procedure Code Section 142]
In the case that the non-prosecution opinion has been submitted, only an inquiry file together with such opinion shall be forwarded to the public prosecutor, but as for the alleged offender, the inquiry official is empowered to grant him the release or provisional release. If the alleged offender is detained, the inquiry official shall apply on his own account or request the public prosecutor to apply to the Court for the release.
In the case that the prosecution opinion has been submitted, the inquiry file along with the alleged offender shall be dispatched to the public prosecutor except that alleged offender has

already been detained.
However, if the offence is the one which can be settled by the inquiry official, and the offender has complied with a settlement, a note thereof shall be made and submitted with the file to the public prosecutor.

After having received the inquiry file together with an opinion of the inquiry official, the public prosecutor shall perform as follows:

[The Criminal Procedure Code Section 143]
(1) in the case where the non-prosecution opinion has been rendered and the public prosecutor agrees with such opinion, he shall issue the non-prosecution order, but in the case where the public prosecutor disagrees with such opinion, he shall issue the prosecution order and inform the inquiry official to take the alleged offender to be prosecuted
(2) in the case where the prosecution opinion has been rendered and the public prosecutor agrees with such opinion, he shall issue the prosecution order and bring the case against the alleged offender to the Court, but in the case where the public prosecutor disagrees with such opinion, he shall issue the non-prosecution order

5. Arrest, Detain and Imprison:

[The Criminal Procedure Code Section 78] An administrative or police official is unable to arrest any person without an arrest warrant or a court order, except in the following cases:
(1) when a person has committed a flagrant offence as prescribed in Section 80;
(2) when a person has been found with tools, weapons or any other objects which may be used to commit an offence, in a circumstance with reasonable cause to suspect that such person is going to cause injury to a person or property of other persons;
(3) when there exists a cause of issuing an arrest warrant under Section 66 (2), but due to a necessity and urgency of the matter which has rendered the request of an arrest warrant against such person in Court not possible;
(4) when an arrest is to be conducted against an alleged offender or accused person who has escaped or is going to escape during his provisional release granted under Section 117.

In conducting an arrest, the official to conduct such arrest:

[The Criminal Procedure Code Section 83]
- shall notify the person to be arrested that he is going to be arrested
- shall notify the arrested person of his charge, in case an arrest warrant has been issued, such warrant shall produced to the arrested person
- shall notify the arrested person that: he may choose whether to plead or not; such pleaded statement may be used as evidence against him in trial; and the arrested person has the right to meet and consult with his lawyer or the person who shall be his lawyer
- shall allow the arrested person who wishes to notify his relatives or the person whom he confides in of the arrest and such notification: can be done with convenience; does not obstruct the arrest; does not obstruct custody of the arrested person, and does not endanger any person
- shall have the power to exercise any methods or preventative measures, as far as it is deemed appropriate to the circumstances of such arrest in case that the person is to be arrested: has obstructed or is going to obstruct the arrest; has escaped or is going to escape

[The Criminal Procedure Code Section 85] An official who conducts an arrest or whom the arrested person has been delivered to shall have the power to search the alleged offender and seize articles which may be used as evidence

An arrested person shall be kept in custody only to the extent that it is necessary for the circumstances of the case:

[The Criminal Procedure Code Section 87]
- in case of misdemeanors - only for the period of time necessary for inquiring into his plea, his

identity and his place of living

- in case that an arrested person has not been granted a provisional release - shall be brought to Court within 48 hours from the time that the arrested person has been delivered to the office of the inquiry official under Section 83
- in case of an offence which carries a maximum punishable imprisonment term not exceeding 6 months, or, a fine or not more than 500 Baht or both - the Court shall have the power to issue a detention order only once, with the term of not more than 7 days
- in case of an offence which carries a maximum punishable imprisonment term of more than 6 months but less than 10 years, or, a fine of more than 500 Baht or both - the Court shall have the power to issue several detention orders consecutively but the term of each detention order shall not be more than 12 days and the total term shall not exceed 48 days
- In case of an offence which carries a maximum punishable imprisonment term of 10 years or longer, regardless of whether a fine can also be imposed or not - the Court shall have the power to issue several detention orders consecutively but the term of each detention order shall not exceed 12 days and the total term shall not exceed 84 days

D. Interviewing

The investigator's interviews of suspects are not recorded on video but his statement shall be written down. During the interview, the suspect's attorney can attend the interview conducted by investigative organizations as below:

> **[The Criminal Procedure Code Section 134/3]** The alleged offender is entitled to have the counsel or any persons trusted to attend his examination.
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> **[The Criminal Procedure Code Section 134/4]** Prior to taking of a statement of the alleged offender, the inquiry official shall inform the alleged offender of the following rights:
> (1) the right to give or not to give the statement, if the alleged offender has given the statement, it may be used as evidence against him in the trial;
> (2) the right to have the counsel or any persons trusted to attend the examination.
> When the alleged offender voluntarily gives his statement, it shall be noted, and if the alleged offender refused to give the statement, such refusal shall also be written down.

E. Investigative Report

After conducting the interview, the investigators prepare reports about the contents of the suspect's oral statement and provide the suspect with an opportunity to confirm and correct mistakes in such documents as below.

> **[The Criminal Procedure Code Section 8]** Upon filing a case an accused person of such case shall have the following rights:
> (1) to receive a speedy, continuous and fair trial;
> (2) to hire a defence lawyer in a preliminary examination proceeding or trial in the Court of First Instance, including those in the Court of Appeal or Supreme Court;
> (3) to have a private meeting with his lawyer or the person who will be his lawyer;
> (4) to examine the evidence which will be adduced in trial, make copies or take photographs of such evidence;
> (5) examine preliminary examination proceeding file or trial file and make a copy of such documents or request a certified copy of such documents upon payment of fee, except where the court orders exemption of such fee;
> (6) examine or make a copy of his testimony given during the inquiry.
> A lawyer of an accused person shall be entitled to the same rights as such accused person
> Once the public prosecutor submits a prosecution order to the Court, an injured person shall be entitled to the same rights according to the first paragraph (6) as an accused person.

F. Warrants

1. Search Warrant:

> **[The Criminal Procedure Code Section 69]** The cause for issuing a search warrant shall be

as follows:
(1) to discover and seize an article which shall be used as evidence for an inquiry, a preliminary examination or a trial;
(2) to discover and seize an article which: its possession is an offence or; has been obtained through illegal means or; there is a reasonable cause to believe that it was used or is intended to be used for a commission of offence;
(3) to discover and rescue a person who has been illegally confined or detained;
(4) to discover a person prescribed in an arrest warrant;
(5) to discover and seize an article in accordance with a judgement or court order, but only in case that such article is unable to be discovered or seized by any other means.

2. Arrest Warrant:

[The Criminal Procedure Code Section 66] The cause for issuing an arrest warrant shall be as follows:
(1) where there exists reasonable evidence that a person has committed an offence with the maximum punishment of three years' imprisonment or longer;
(2) where there exists reasonable evidence suspecting that a person has committed an offence and there is a reasonable cause to believe that he would escape, interfere with evidence, or cause any other injury;

II. TRIAL

A. Competency of Courts

[The Criminal Procedure Code Section 22] When an offence has been committed, alleged or believed to have been committed within the territorial jurisdiction of any court, it shall be tried and adjudicated by such Court. However:
(1) where the accused has residence or has been arrested in a locality or when the official is conducting the inquiry in a locality outside the territorial jurisdiction of the Court above mentioned, the case may be tried and adjudicated by the Court within whose territorial jurisdiction such locality is situated;
(2) where the offence has been committed outside Thailand, it shall be tried and adjudicated by the Criminal Court. If the inquiry has been conducted in a locality situated within the territorial jurisdiction of any Court, the case may also be tried and adjudicated by such Court.

B. Prosecution of Criminal Cases

1. Persons Entitled to Institute Criminal Prosecution in the Court

[The Criminal Procedure Code Section 28] The following persons are entitled to institute the criminal prosecution in the Court.
(1) the Public Prosecutor
(2) the injured person

2. Persons Entitled to Proceed with the Case in Case the Injured Person Dies

[The Criminal Procedure Code Section 29] Where an injured person dies after having instituted the prosecution, his ascendant, descendent, husband or wife may proceed with the case in his stead.
Where the injured person, who is a minor or an incompetent person, dies after criminal prosecution has been instituted on his behalf by his legal representative, custodian or representative *ad litem*, the latter may proceed with the case.

C. Procedure in the Courts of First Instance

1. Charge before the Court

[The Criminal Procedure Code Section 157] Prosecution of criminal cases shall be preferred

a charge before any of the Courts competent according to the provisions of this Code or the other laws:

[The Criminal Procedure Code Section 158] A charge must be made in writing and contain:
(1) the name of the Court and date;
(2) the names of the parties in the case and the offence charged;
(3) the official position of the Public Prosecutor or, in case of private prosecution, the name, the surname, age. Place of residence, nationality and protection;
(4) the name, the surname, age. Place of residence, nationality and protection of the accused;
(5) all the acts alleged to have been committed by the accused, all the facts and particulars regarding the time and place of such acts, and the persons or articles concerned which are reasonably sufficient to give the accused a clear understanding of the charge;
in a charge for defamation, the words, writings, sketches or other matters pertaining to the alleged defamation shall be fully stated or attached to the charge;
(6) a reference to the Section of the law which enacts that such act constitutes an offence;
(7) the signature of the prosecutor, the drawer and the writer or type if the charge.

[The Criminal Procedure Code Section 160] The distinct offences will be able to be joined in the same action, but they shall be separated and stated in consecutive order.
Each count of offences will be able to be deemed as charges separated from the other charges. If the Court deems it expedient, the Court will order to separate the file for trying any count or several counts of offences, and the Court will be able to issue such order either before or during the trial.

[The Criminal Procedure Code Section 161] Where the charge does not conform with the law, the Court shall order the prosecutor to correct the charge, or dismiss, or refuse to accept the charge. The prosecutor has the power to appeal against such order of the Court.

2. Procedures after the Court Accepts the Charge

[The Criminal Procedure Code Section 162] Where the charge is found conform with the law, the Court shall act as follows:
(1) in the case where a private person is the prosecutor, the Court shall make a preliminary examination, but, if the prosecutor has also instituted a criminal prosecution with the same charge, sub-section (2) shall apply;
(2) in the case entered by the prosecutor, the Court need not hold a preliminary examination, but it may do so if it thinks fit.
In case there is a preliminary examination as aforesaid, if the accused pleads guilty, the Court shall accept the charge for trial.

[The Criminal Procedure Code Section 165] In the case where the charge is entered by the prosecutor, the accused shall, on the day fixed for holding the preliminary examination, appear or be brought before the Court. The Court shall serve a copy of the charge on each of the accused; and, after the Court has been satisfied as to the identity of the accused, the charge shall be read out and explained to him, and he shall then be asked whether or not he has committed the offence and whether he wishes to make any statement in defence. The statement made by the accused shall be written down. If the accused refuses to make any statement, this shall be written down in a memorandum and the preliminary examination shall then proceed. The accused is not entitled to adduce evidence in the course of the preliminary examination, but this shall not debar him from having the assistance of a counsel.
In the case where the charge is entered by a private prosecutor, the Court has the power to hold the preliminary examination in the absence of the accused; the Court shall serve on each accused a copy of the charge and notify him of the date fixed for the preliminary examination. The accused may attend the examination with or without a counsel to cross-examine the witnesses for the prosecution. If he will not attend, he may appoint counsel to cross-examine the witnesses for the prosecution. The accused shall not be asked by the Court to make a statement, and, before acceptance of the charge, the accused shall not be treated as such.

[The Criminal Procedure Code Section 167] If it appears that there is a prima facie case, the Court shall accept the charge only as regards the count for which there is a prima facie case for trial, and, if there be no prima facie case, the charge shall be dismissed.

[The Criminal Procedure Code Section 170] The order of the Court to the effect that there is a prima facie case in final, but the order to the effect that there is no prima facie case may be appealed or *dika* appealed against by the prosecutor in accordance with the provisions of the Code governing appeal and *dika* appeal.

3. Trial and Taking of Evidence

[The Criminal Procedure Code Section 172] Unless otherwise provided, the trial and the taking of evidence shall be conducted in open Court and in the presence of the accused.
When the prosecutor or his counsel and the accused are before the Court, and, after the Court has been satisfied as to the identity of the accused, the charge shall be read out and explained to him, and he shall then be asked whether or not he has committed the offence and whether he wishes to make any statement in defence. The statement made by the accused shall be written down. If the accused refuses to make any statement, this shall be written down in a memorandum and the preliminary examination shall then proceed.

[The Criminal Procedure Code Section 172 bis] After the proceedings under section 172, second paragraph, has been taken by the Court, and the Court deems expedient that the trail shall proceed without delay, it has the power to conduct the trial and the taking of evidence in the absence of the accused in the following cases:
(1) in the case of offences punishable with imprisonment the maximum of which does not exceed ten years, irrespective of any punishment with fine imposed or not, or in the case of offences punishable with fine only, the accused has counsel and has been granted permission from the Court not to attend the trial and the taking of evidence;
(2) in the case of several accused, if it thinks fit, conduct the trial and the taking of evidence upon each accused in the absence of any other accused.
In the case where the Court has conducted the trial and the taking of evidence according to (2) or (3) in the absence of any accused, no Court shall, in any case whatever, be bound by the trial and the taking of evidence conducted in the absence of, and to be detrimental to, such accused;
(3) in the case of several accused, the Court may, if it thinks fit, conduct the trial and the taking of evidence upon each accused in the absence of any other accused.
In the case where the Court has conducted the trial and the taking of evidence according to (2) or (3) in the absence of any accused, no Court shall, in any case whatever, be bound by the trial and the taking of evidence conducted in the absence of, and to be detrimental to, such accused.

[The Criminal Procedure Code Section 173] In the case of the offence punishable with death, or in the case of accused aged not more than eighteen years on the date entered an action in Court, before commencing the trial, the Court shall ask the accused whether he has counsel or not, if he has none, the Court shall appoint one for him;
In the case of the offence punishable with imprisonment, before commencing the trial, the Court shall ask the accused whether he has counsel or not, if he has none and requires one, the Court shall appoint one for him;
The Court shall pay the fees and expenses to the counsel appointed by the Court under this section by taking into consideration the case and economic conditions as designated by the Rule by Administrative Committee of the Court of Justice with an agreement of Ministry of Finance.

[The Criminal Procedure Code Section 173/1] For a speedy, continuous and impartial trial in the case where the accused makes no statement or makes a negative statement, if any of the parties makes a request to the Court or the Court deems suitable, the Court may notify the parties of the designated date for the evidence to be inspected, not less than ten days prior to the date as designated for taking of evidence....

[The Criminal Procedure Code Section 174] Before adducing the evidence, the prosecutor is entitled to open the case for the purpose of stating to the Court the case for the prosecution, that is to say, by setting forth the nature of the charge and the evidence which he proposes to bring in order to prove the guilt of the accused. The Prosecutor shall then adduce the evidence for the prosecution.
As the witness for the prosecution has been taken, the accused is entitled to open the case for the purpose of stating to the Court the case for the defence, by setting forth the facts or provisions of law upon which he proposes to rely, and the evidence which he proposes to bring. The accused shall then adduce the witness for the defence.
After the witness for the defence has been taken, the prosecutor and the accused are entitled to close their respective cases either orally or in writing, or both.
In the course of the trail, if the Court is of opinion that it is not necessary to take further evidence or to carry out any further proceedings, it may issue an order dispensing with the taking of such evidence or the carrying out of such proceedings.

[The Criminal Procedure Code Section 176] In the trial of a case, if the accused pleads guilty to the charge, the Court may give judgement without taking any further evidence, provided that if the minimum punishment in the case where the accused pleads guilty to the charge is imprisonment from five years upwards or heavier, the Court must hear the witness for the prosecution until it is satisfied that the accused is guilty.
In the case of several accused, and only some accused have pleaded guilty to the charge, the Court may, if it thinks fit dispose of the case for those who refuse guilt in order that the prosecutor may institute the prosecution against such accused as another case within the period fixed by the Court.

4. Judgment and Orders

[The Criminal Procedure Code Section 182]....After the trial is over, a judgement or order shall be given in accordance with the merits of the case.
A judgement or order shall be read in open Court either on the day the trial is over or within three days from such date. If there are reasonable grounds, the Court may postpone the reading to a later date, but the grounds for the postponement shall be written down in the memorandum.

[The Criminal Procedure Code Section 192] No judgement or order shall be pronounced for anything in excess of, or not included in, the charge.
If the Court is of the opinion that the facts as they appeared in the trial differ from the facts as stated in the charge, the Court shall dismiss the case, unless such differences are not the essential elements, the Court may inflict punishment on the accused upon the facts as found in the trial....

D. Appeal and *Dika* Appeal

1. Appeal to the Appeal Court

[The Criminal Procedure Code Section 193] An appeal on questions of fact and questions of law shall lie to the Appeal Court against any judgement or order of a Court of First Instance, except where such appeal is prohibited by this Code or other laws.
Every appeal must set forth in order a summary of facts or the points of law relied upon.

[The Criminal Procedure Code Section 193 bis] No appeal shall be against the judgement of the Court of First Instance on the questions of fact in the case where the maximum rate of imprisonment does not exceed three years or fine not exceeding sixty thousand baht, or both. Unless;
(1) the accused has been sentenced by the judgement of Court to be punished with imprisonment or confinement in lieu of the imprisonment;
(2) the accused has been sentenced by the judgement of Court to be punished with imprisonment, but the Court suspends the infliction of punishment;

(3) the Court passes the judgement that the accused is guilty, but determination of the punishment is suspended, or
(4) the accused has been sentenced by the judgement to be punished by fine exceeding one thousand baht.

[The Criminal Procedure Code Section 193 ter] In the case where appeal is prohibited according to Section 193 bis, if any judge, who tried or set the signature in the judgement or given the dissenting opinion in the Court of First Instance, considers that such matter is an important question to be decided by the Appeal Court and gives permission to the party to appeal, or the Director-General of the Public Prosecution Department or the Public Prosecutor receiving the power from the Director-General of the Public Prosecution Department sets the signature to certify that there are reasonable grounds for the Appeal Court to decide such matter, such appeal shall be accepted for further decision.

[The Criminal Procedure Code Section 198] The Appeal shall be filed with the Court of First Instance within one month from the date of judgement or order has been read or has been regarded as having been read to the party lodging the Appeal.

2. *Dika* Appeal (Appeal to the Supreme Court)

[The Criminal Procedure Code Section 216] Subject to the provisions of sections 217 to 221, the parties are entitled to lodge a *dika* appeal against a judgement or order of the Appeal Court within one month from the date of such judgement has been read or has been regarded as having been read to the party lodging *dika* appeal.
Such *dika* appeal shall be filed with the Court of First Instance, and the provisions of Section 200 and 201 shall be applied mutatis mutandis.

[The Criminal Procedure Code Section 218] In the case where the Appeal Court has confirmed the judgement of the lower Court or modified it only on immaterial points, and sentenced the accused to imprisonment for a term not exceeding five years or to a fine, or to both fine and imprisonment for a term not exceeding five years, there shall be no right to *dika* appeal on questions of facts.
In the case where the Appeal Court has confirmed the judgement of the lower Court or modified it only on immaterial points, and sentenced the accused to imprisonment for the term not exceeding five years, whether it shall have the other punishment also or not, the prosecutor shall have no right to *dika* appeal on question of facts.

[The Criminal Procedure Code Section 219] In cases where the Court of First Instance has sentenced the accused to imprisonment not exceeding two years and fine not exceeding forty thousand baht, or both, if the Appeal Court has sentenced the accused not exceeding the above limits, the party shall have no right to *dika* appeal on the question of facts, but this prohibition shall not enforce the accused in the case where the Appeal Court has passed the judgement to modify it on material points and to increase punishment of the accused.

[The Criminal Procedure Code Section 220] The party shall have no right to *dika* appeal in the case where the Court of First Instance and the Appeal Court dismisses the charge of the prosecutor.

III. SUMMARY

The law guarantees the criminally accused the right to a speedy trial. Consequently, prosecutors must file the charges without delay. The court must conduct a speedy trial. The law also guarantees the right to a public trial by an impartial judge. The law provides for an impartial judge by permitting both sides to exercise peremptory challenges. If a party exercises a peremptory challenge against a prospective judge, then the court must excuse that particular judge from the panel.

Due process requires that the criminally accused receive a fair trial. In high-publicity trials, trial

judges have the responsibility to minimize effects of publicity, perhaps by implementing a gag-order on the parties and to eliminate outside influences during the trial. Due process further commands that the accused have the right to call their own witnesses, and mount their own evidence.

There is no system of plea bargaining in the Thai criminal procedure. After the police conclude the investigation and the prosecutor is of an opinion that the accused committed the crime, the public prosecutor shall institute the case by entry of a charge in the competent court. The prosecutor usually prepares his witnesses before trial by meeting his witnesses and their statements through questions and answers. Witnesses are protected from threatening by protection measures under the Witness Protection Act B.E. 2546 (2003). These measures include relocation of the witness, change of witness's identity, testing via video link and other appropriate measures. The protection also extends to witnesses' families. At trial, the law provides further rights for the criminally accused. Trying to avoid convicting an innocent defendant at all costs, the burden of proof lies with the public prosecutor who must show, to the satisfaction of the court, that the accused is guilty as charged. This very high burden differs from a civil trial in which the plaintiff must only prove a claim by a preponderance of the evidence. One such right includes the right to cross-examine the prosecution's witnesses. Both parties may submit all kinds of evidence; including hearsay statements, they deem appropriate to prove the guilt or the innocence of the accused. Confession of the suspect is admissible. However, the value of evidence submitted is weighed by the court. Specifically, the Criminal Procedural Code section 227 states that the court shall exercise its discretion in considering and weighing all the evidence taken. Moreover, section 227/1 states that in considering and weighing hearsay evidence or evidence with bad character the court must do so with due diligence. No judgement of conviction is delivered unless there is a sound reason to believe or there is other supportive evidence that the accused has committed the offence.

The law guarantees the accused the right to assistance of counsel during trial. If the accused cannot afford an attorney, the government is required to provide the accused an attorney. Such accused receive legal representation from the Attorney Association. However, if the accused chooses to waive assistance of counsel and self-represent, he may do so.

After law enforcement arrests a suspect, a judge will set the suspect's initial bail, which is a specified amount of cash that allows the accused to get out of jail after the initial arrest. If the accused shows up for the proper court dates, the court refunds the bail, but if the accused skips the date, then the court keeps the bail and issues a warrant for the individual's arrest.

The arraignment follows next. During an arraignment, a judge calls the person charged and takes the following actions: reading the criminal charges against the accused, asking the accused whether the accused has access to an attorney or needs the assistance of a court-appointed attorney, asking the accused to plead, deciding whether to amend the initial bail amount, and setting the dates of future proceedings.

Upon the parties' request, a pre-trial hearing may be conducted. The prosecution and the accused team use the pre-trial to file motions before a judge. These motions usually concern whether the court should suppress certain evidence, whether certain individuals can testify, or whether the judge should dismiss all charges for lack of evidence.

After all these stages, the court will conduct a trial by hearing evidence from both sides in open court and in the presence of the accused. Before commencing the trial, the Court must be satisfied with the identity of the accused, read out and explain to the accused that he has been charged with a crime and ask whether the accused has committed the offence and what the accused's plea will be.

As mentioned above, the law guarantee the accused's right to counsel. Therefore, if the offence is punishable with death, the court must ask the accused whether he has a counsel. If he has none the court must provide him with counsel. If the offence is punishable with imprisonment or the accused is not over eighteen years old on the day he is brought before the court, the court must ask whether he has counsel. If he has none and requires one, the court must appoint counsel.

Both sides then offer opening statements first, although the accused can reserve opening statement

until the prosecution rests. The prosecution presents its witnesses and evidence first. Then, the accused presents witnesses and evidence. Both sides have the right to cross examination. After the accused rests, the accused offers a closing argument, and then the prosecution offers the final closing argument. After closing arguments, the court pronounces a judgement. However, if the court deems it necessary, the judge may set a later date to pronounce a judgement.

If the party is unsatisfied with the judgment, he may appeal to the Court of Appeal within one month after the judgement has been read. An appeal must set forth in order a summary of the facts or the points of the law relied upon. However, no appeal shall be against the judgement of the Court of First Instance on the questions of fact in the case where the maximum rate of imprisonment does not exceed three years of fine not exceeding sixty thousand baht, or both, unless (1) the accused has been sentenced by the judgement of the Court with imprisonment or confinement in lieu of the imprisonment (2) the accused has been sentenced by the judgement of the Court with imprisonment, but the Court suspends the infliction of punishment (3) the Court passes the judgement that the accused is guilty, but determination of punishment is suspended or (4) the accused has been sentenced by the judgement to the punishment of a fine exceeding one thousand baht.

On the same notion, if the party is unsatisfied with the judgement of the Court of Appeal, he may lodge a *dika* appeal to the Supreme Court within one month after the judgement has been read. The provisions in the appeal sections apply to the lodging of *dika* appeal mutatis mutandis. However, the party may not lodge a *dika* appeal if the Court of Appeal has confirmed the judgement of the lower court or modified it only on immaterial points, and sentenced the accused to imprisonment for a term not exceeding five years or to a fine, or to both fine and imprisonment for a term not exceeding five years.