OECD Reviews of Regulatory Reform

Thailand

Regulatory Management and Oversight Reforms: A Diagnostic Scan

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Regulatory Management and Oversight Reforms in Thailand

A Diagnostic Scan

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What is the Regulatory Policy Committee?

The Regulatory Policy Committee (RPC) was created in 2009 with the underlying mission to "promote an integrated, horizontal and multidisciplinary approach to regulatory quality and seek to ensure that the OECD as a whole promotes sound regulatory policy and practices".

In practice, the RPC has established itself as a forum for policy dialogue and with senior regulatory policy officials from Member and Partner countries. It aims to provide delegates with a valuable source of ideas, information, innovations and analysis related to ongoing challenges in regulatory policy and governance.

What are Reviews of Regulatory Reform?

The Reviews of Regulatory Reform of the OECD are comprehensive multidisciplinary exercises that focus on regulatory policy, including the administrative and institutional arrangements for ensuring that regulations are effective and efficient. The peer-reviews are based on the principles expressed in the Recommendation of the OECD Council on Regulatory Policy and Governance that has served as framework to assess regulatory policy in almost 30 countries. For reference to the scope of the analysis in the reviews please refer to: https://oe.cd/regpol

- The reviews generate detailed recommendations for policy makers to improve the country's regulatory frameworks.
- Thematic areas include; governance arrangements and administrative capacities that enable regulatory reform; regulatory management tools; review of the stock of existing regulations; regulatory compliance, enforcement and appeal processes; and, multi-level regulatory governance.
- Reviews can cover specific regulatory frameworks in one or more sectors. The specific sectors could include power, water, transportation, telecommunications, and natural resources.

The Scan versions of regulatory reform reviews focus on one particular element of regulatory governance and aim to deliver a diagnosis in a shorter period of time and in the format of a more concise output. Data collection is based on OECD surveys and complemented with a fact-finding mission.

This Scan specifically focuses on improving regulatory impact assessment in the Thai rule-making process as compared to OECD practices and standards.

Foreword

The success of Thailand's strategic vision for continued sustainable economic and social development relies on the interplay of multiple factors. Good regulatory practices are a key component of the 2017 Constitution of Thailand, and are woven into the Thai National Strategy (2018-2037), Twelfth National Economic and Social Development Plan, and the "Thailand 4.0" strategy. GRPs can ensure that policies and regulations are well designed, effectively implemented and regularly assessed. This requires an adequate institutional set-up, clearly designated responsibilities in the public service, capacity for managing good regulatory practices, and better regulatory oversight.

The Government of Thailand recognises the important role good governance, including good regulatory practices, has played in its socio-economic progress. At the same time, Thailand's growth has brought new responsibilities, including within the Association of Southeast Asian Nations (ASEAN), where Thailand is a major hub for regional and global value chains and has become one of the largest Southeast Asian economies. Managing this growth towards a more sustainable future, amidst the current COVID-19 pandemic, requires a fresh look at the GRP framework and how it used for the well-being of the Thai population. This is also a central consideration for spurring economic and social recovery from the crisis.

The Review focuses on the new regulatory reforms put forward by the Office of the Council of State (OCS), in accordance with the 2017 Constitution and its new role as regulatory oversight body. The core tasks of the OCS going forward is to manage the implementation of good regulatory practices across Thailand's government and drive further GRP reforms. The Government is commended for its early efforts to base new GRPs on several international good practices and standards for evidence-based and participatory decision making.

A central recommendation from the Review is to translate a sound *de jure* regulatory framework into effective *de facto* implementation. A comprehensive Better Regulation Strategy that fully embeds the principles and tools of good regulatory governance in the organisation and practice of all ministries and agencies is needed, and progress should be tracked via a Better Regulation Action Plan. Significant upgrades to regulatory impact assessments, stakeholder engagement and *ex post* review are central features of the Constitutional reforms and implementing act. Full implementation of the reforms to the current system of good regulatory practices will require uptake by line ministries and agencies, which can be aided by fostering buy-in and participation of key stakeholders, careful communication, sequenced approaches, and capacity building to support critical areas for effective implementation. The OECD stands ready to support the Government of Thailand in reaching the next regulatory frontier.

The OECD Secretariat prepared this scan Review of Regulatory Reforms of Thailand as part of the OECD Thailand Country Programme. This report is part of the OECD work programme on reviews of regulatory policy and governance. This Review has benefited from significant input from the Regulatory Policy Committee, under the Public Governance Directorate, and its members following a presentation and discussion at the meeting of the Committee in March 2020, as well as from numerous stakeholders in Thailand.

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Executive summary

Thailand's economic development over the last two decades has been widely cited as a success story. A key element of this success has been the focus on important regulatory reforms. The first wave of reforms established the foundations for a system of good regulatory governance, including a commitment to improving service delivery and adopting several principles that help improve regulatory policy making.

Most recently, a second wave of reforms have focused on establishing a modern system of regulatory governance that includes regulatory oversight and the improved use of good regulatory practices (GRPs). Moreover, the 2017 Constitution of Thailand enshrines the principles of better regulation in Section 77. These principles are echoed in the Thai National Strategy (2018-2037), Twelfth National Economic and Social Development Plan, and the "Thailand 4.0" strategy.

It is within this context that the OECD began to support Thailand through the Office of the Council of State (OCS) to implement these reforms. The Review began as the new *Act on Legislative Drafting and Evaluation of Law* (2019) was passed to implement Section 77 of the Constitution. This "diagnostic scan" provides Thailand with an assessment and series of recommendations based on the most recent reforms and looks at regulatory governance and oversight, as well as the deployment of good regulatory practices and management tools. The recommendations present short- and medium-term actions that the OCS can take to strengthen implementation of the reforms, and establish the long-term evolution of the system.

Regulatory governance and oversight

The Government of Thailand has introduced important legal provisions to enhance a whole-of-government approach to good regulatory practices, and is commirted to using regulatory policy to achieve critical societal and policy goals. These initiatives constitute a milestone of renewed dynamism in the Government's commitment to improve regulatory governance.

The Government has made efforts to base many of the new GRPs on international good practices and standards for evidence-based and participatory decision making. The most important task now will be to fully implement these reforms and ensure they are translated from *de jure* requirements into *de facto* practices. Keeping track of the challenges and good practices encountered during this process will help draw lessons for further fine-tuning of the system.

A positive aspect of the new legislation and associated reforms has been to give the OCS the mandate to exercise regulatory oversight, which it has used effectively to gain champions for regulatory reform and support training on GRPs. This is supported by a system that distributes roles regarding good regulatory governance amongst a number of central government actors. Ensuring that each actor's roles and functions is clear will be key to reaping the full long-term benefits of the reforms.

Key recommendations:

- ***Maintain*** the momentum in implementing the 2019 Act by creating and actively mainstreaming a narrative for evidence-based and participatory decision-making.

- ***Elaborate and publish*** an overarching, comprehensive Better Regulation Strategy that fully embeds the principles and tools of good regulatory governance in the organisation and practice of all ministries and agencies, supported by a Better Regulation Action Plan with concrete, tailored Key Performance Indicators for tracking progress.
- ***Evaluate and consider*** any possible reforms to the system of regulatory governance and oversight that may be necessary to support the medium- to long-term evolution of the system, with a goal of ensuring each actor has clearly defined *de jure* and *de facto* roles. This includes possible better regulation "leaders" or "units" at the ministerial/agency level.

Good regulatory practices and management tools

The minimum requirements and new guidance for regulatory impact assessments (RIA) are one of the most notable improvements brought about by the new reforms, bringing them broadly in line with the OECD standards and good international practice. However, RIA is limited to primary laws and the Thais system does not put equal emphasis on some considerations found in mature RIA systems, such as multiple options including non-regulatory alternatives and considering a variety of indirect and distributional impacts.

The recent reforms give significant prominence to stakeholder engagement, with a more rigorous and uniform set of principles and procedural standards, though anecdotal evidence suggests that the practice still needs to be refined. While, in principle, stakeholder engagement practices in line with OECD best practice, there is room for improvement in their design and management, and official guidelines have yet to provide comprehensive practical advice on procedural steps or methodologies.

The Government of Thailand has made significant progress in developing a system of *ex post* review through these reforms, taking an integrated approach to post-implementation reviews of legislation five years after it comes into force. Challenges remain in prioritising reviews and setting overarching government goals or targets in strategic documents and development plans. There is scope over the longer term to consider a more formal mixed methods approach in line with OECD best practice principles.

Key recommendations:

- ***Monitor and evaluate*** the implementation of the RIA requirements and guidelines, in line with the Action Plan referred to above, with particular attention to keeping track of the quality of RIA analyses produced by ministries and agencies. Opportunities to upgrade the RIA system should also be considered.
- ***Fully implement*** the tools and guidance produced to date in accordance with the 2019 Act, particularly by encouraging ministries and agencies to start using provisions on enhanced participation and transparency, while continuously look for ways to further upgrade the system.
- ***Utilise*** a staged approach to implementing *ex post* reviews that progressively familiarises ministries and agencies with the new requirements. Support implementation through a user-friendly manual and dedicated capacity building, and consider alternative approaches.

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Assessment and recommendations

Thailand has been on a steady positive trend in economic growth over the past three decades. At the same time, challenges remain to be tackled, including reducing social inequalities, to ensure sustainable and inclusive development. Enhancing Thailand's regulatory system is central to these endeavours.

Since 2015, Thailand has invested heavily in regulatory reform as one of the cornerstones for success in promoting economic, environmental and social development. This started with laws to reduce the burden of licenses and promote *ex post* evaluation as a mandatory tool of good regulatory policy making. Better regulation was also enshrined in Section 77 of the 2017 Constitution, which reformed the entire system of good regulatory practices and strengthened the oversight role of the Office of the Council of State.

More broadly, the importance of regulatory policy as a development tool has been set in national strategic documents, including the 20-year National Strategy (2017-36) to assure continuity of economic and social policies and the related Twelfth National Social and Economic Development plan (2017-2021). Among different overarching policy issues, the Plan focuses on the review and simplification of administrative laws and regulations and explicitly calls for enhanced regulatory governance as well as better public management and integrity. The Government of Thailand also supports ASEAN and APEC frameworks that identify excellence in regulatory governance as a key leverage point to support market competition and digital information.

This process supports the Government of Thailand in the implementation of the 2017 Constitutional provisions on better regulation and use of good regulatory practices (GRPs). The review began as the new *Act on Legislative Drafting and Evaluation of Law* (2019) was passed, aimed at implementing Section 77. The review has been undertaken with three capacity building and one fact finding missions, supported by a questionnaire and an assessment of relevant Thai laws and procedures. This review also supports the OECD Thailand Country Programme, which began in 2018 and is composed of 15 projects

drawing on four pillars: good governance and transparency, business climate and competitiveness, “Thailand 4.0”, and inclusive growth. The purpose is to assist Thailand in aligning with OECD standards while supporting their domestic reform agenda.

This “diagnostic scan” of these reforms examines the regulatory governance and oversight mechanisms as well as the deployment of good regulatory practices and management tools by the central Government. It aims to support the Government of Thailand to further implement and deepen regulatory reform at the national level over the medium- to long-term. It also focuses mainly on the technical aspects of the reforms, given that the Act was passed and in the process of implementation simultaneously with the review. The challenge for the Thailand going forward will be to focus on how the technical requirements can be matched with a strategic vision for changing the culture of regulatory policy making in Thailand. This will require working collaboratively with units across government to gain buy in and support culture change both upstream amongst decisions makers and downstream with line ministries and government agencies.

Finally, given the nature of a scan report, a more systematic and comprehensive review of Thailand’s regulatory policy framework is needed for an in-depth understanding of the wider system of regulatory governance and policy making in Thailand, and track and evaluate the implementation of these reforms. This could focus on sections vital to effective regulatory policy usually covered in full reviews but not addressed in the context of a scan report, such as enforcement and inspections, compliance and burden reduction, multi-level governance and interaction nodes with other National entities.

Key findings and preliminary recommendations

The Government of Thailand has introduced important legal provisions to enhance a whole-of-government approach to Good Regulatory Practice (GRP). This reflects a well-established commitment by decision-makers to leverage regulatory policy to achieve critical societal and policy goals set out by the Government. The Office of the Council of State (OCS) has been entrusted with preparing the guiding instruments to implement the new constitutional principles and procedures set out in the *Act on Legislative Drafting and Evaluation of Law, B.E. 2562* of 2019 (hereafter “the 2019 Act”). The OCS is also coordinating the initial stages of the implementation of the reform. To that end, the OCS has embarked on an internal re-organisation of its functions and on capacity-building, while awareness raising activities and dedicated training with line ministries and agencies are planned throughout 2020.

These initiatives constitute a milestone of renewed dynamism in the Government’s commitment to improve regulatory governance to enable Thailand to achieve strategic social and economic development. They nonetheless rest on long-standing efforts by the

Government to address structural challenges of the Thai regulatory system and can capitalise on pockets of good practice in a number of institutions.

Most of the new GRP framework introduced so far largely reflects several international good practices and standards for evidence-based and participatory decision-making. The Government of Thailand is to be commended for this achievement. The single most important task for all government actors involved in regulatory reform is now to implement the GRP framework as it has been designed. Furthermore, the Government is encouraged to keep track of both the challenges encountered and the good practices and success factors developed in order to draw lessons for further fine-tuning of the system.

Sustained political commitment and demand for ever better evidential analyses and participatory practices to support decision-making will be critical to the long-term success of the reforms. Similarly, it will be important to mainstream basic knowledge and expertise on how to implement GRP tools such as regulatory impact assessments (RIAs), public consultation and *ex post* reviews in an effective but proportionate manner, so as to maximise the return on capacity-building investment. It will also be important to communicate and explain the rationale for investing in regulatory reform both internally and to external stakeholders in order to foster buy-in to the reform; create incentives; and seek support to the reform champions in addressing possible resistance and inertia. This can be supported through the development of a single Better Regulation Strategy that elaborates a coherent goal for the reform agenda, and is implemented through a Better Regulation Action Plan that provides structured actions to achieve the goal.

With a view to contribute to further consolidating the ongoing reform, the OECD invites the Government of Thailand to consider a number of possible additional areas of improvements. Specifically, in the short term, the Government could consider the following:

- ***Maintain*** full momentum in implementing the 2019 Act by creating and actively mainstreaming a narrative for evidence-based and participatory decision-making. Reform messages could be promoted through various channels such as public statements, media interviews by Government members and senior officials, and the organisation of awareness campaigns;
- ***Elaborate and publish*** an overarching, comprehensive Better Regulation Strategy that fully embeds the principles and tools of good regulatory governance in the organisation and practice of all ministries and regulatory agencies;
- ***Create*** a dedicated Better Regulation Action Plan with concrete, tailored Key Performance Indicators (KPIs), targets and deadlines for individual measures and implementation activities – and establish monitoring and evaluation schemes to track implementation of the reform endeavour; and

- ***Complement*** the efforts made so far with a comprehensive programme to build and connect related capacities across line ministries and regulatory agencies. Such programmes should include basic and advanced training, pilot projects, as well as training-of-trainers. The Government should promote the diffusion of the manuals and guidance documents elaborated by OCS.

Over time, when experience with the current system and lessons from initial practices have been collected and evaluated, the medium- to long-term focus could focusing on:

- ***Consider*** instructing the Secretariat of the Cabinet and OCS to coordinate and redefine the respective competences for procedural and substantive scrutiny of draft measures and their underlying documentation (RIA reports and consultation reports); and introduce common standard criteria to settle possible diverging opinions between them.
- ***Consider*** creating a structural separation inside OCS for delivering its dual mandate as regulatory oversight body and as ultimate reviewer of the constitutionality and legality of Government proposals.
- ***Establish*** Better Regulation "leaders" (or "units") across institutions, to champion regulatory policy; coordinate the implementation of an Action Plan; mainstream GRPs within their administration; and liaise with OCS on the overall implementation of the reform (see Box 2). The OCS could first start with generating interest in establishing such units with decision makers, and work closely with the line ministries to provide necessary capacity building, especially early on and with those most willing to implement regulatory reforms. ***Support*** the implementation of these reform by establishing an informal "Better Regulation Network" across various services in the Executive, serving as a dynamic platform to exchange ideas, share experiences, and promote good practices on evidence-based decision-making (see Box 2).
- ***Create*** opportunities for upgrading the current RIA system by reviewing the implementation and application of RIA; targeting RIA efforts across Government initiatives; promoting more systematic inter-ministerial cooperation at early stages of the regulatory process; and enhancing the synergies between RIA and public consultation on one hand, and with *ex post* reviews on the other.
- ***Consider*** revisiting the OCS Guidelines on RIA, public consultation and *ex post* review with a view to bring them closer to international standards while maintaining a focus on developing solutions that are appropriate and effective in the Thai context. An extension of the mandatory minimum consultation period could, in particular, be considered.

Regulatory governance and reform in Thailand

Regulatory policies are most likely to be effective and contribute to sustained high-quality regulatory decisions if they are adopted at the highest political levels and they contain explicit and measurable regulatory quality standards. Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. Tracking reform implementation and benchmarking achievement against the set principles and targets is thus critical. Effective communication to both institutional actors and external stakeholders is also central to securing ongoing support for regulatory reform.

Establishment of overarching legal bases for regulatory policy

Supported by a strong political commitment to Better Regulation, Thailand has accelerated reforms over the last three years by setting robust foundations for ambitious and sustainable regulatory policy interventions. Thailand has embarked on several high-level reforms and policy strategies that rest on initiatives stemming from over a decade ago. In 2017, the new *Constitution of the Kingdom of Thailand* ("the Constitution") set out explicit principles and tools of Good Regulatory Practice (GRP). In 2019, a new *Act on Legislative Drafting and Evaluation of Law* was passed. It implements the constitutional requirements, prescribing rules for drafting legislation, including the use of Regulatory Impact Assessments (RIA), stakeholder engagement, and *ex post* review. These reforms offer a large improvement in terms of both form and substance, and follow previous reform efforts that introduced the principles of good governance for regulatory policy making as well as *ex post* evaluation and licensing procedure reforms that aimed to target the stock of regulations.

Section 77 of the 2017 Constitution establishes core principles for good regulatory governance and formalises the deployment of GRPs across the State institutions and throughout the decision-making process. This provides a structure and mandate to develop RIA, stakeholder engagement and *ex post* review. The new constitutional provisions represent a landmark change and are the precondition for a fully functioning regulatory policy, setting the foundations to align Thailand with OECD standards on good regulatory governance. These provisions enjoy broad support at the government level, a result of the work of the Constitution-Drafting Commission, a well-respected expert body. A strategy to sustain regulatory policy is also visible in several national multi-annual strategic documents adopted by the Government in the recent past. At the international level as well, the Government follows ASEAN and APEC good governance principles and standards.

As a result, regulatory policy is increasingly recognised in Thailand as a way to address and overcome social and economic challenges. Taken together, these commitments have set Thailand on the path to address the challenges currently faced by

its society, economy and environment, aligning with Thailand's sustainable growth and inclusiveness objectives.

The Government of Thailand swiftly adopted concrete and comprehensive legislative measures to fully implement the new reform course. The Cabinet Resolution enacted in April 2017 provided whole-of-government instructions on GRP implementation, complementing the so-called "Sunset Law" (the *Royal Decree on Revision of Law*, *B.E. 2558*) and the *Licensing Facilitation Act*, which were both enacted in 2015. Most recently, the *Act on Legislative Drafting and Evaluation of Law* B.E. 2562 (2019) ("the 2019 Act") implements the requirements of Section 77 of the Constitution into Thai Law, consolidating the provisions on process and tools of good quality regulation into a single legal base. As such, the 2019 Act becomes the reference legal text for GRP. Its scope encompasses RIA, stakeholder engagement and *ex post* review. The 2019 Act prescribes the application of the latter tool not only to primary legislation (as it is the case for RIA and consultation) but also to the secondary (implementing) regulations. The 2019 Act is consequential thanks as well to its explicit emphasis on regulatory oversight. Institutionally, regulatory management is now given more prominence and it is entrusted with the Office of the Council of State (OCS).

By doing so, the Government has also responded to the regulatory reform needs advocated by the private sector. Over the past decade at least, private sector organisations have consistently called upon the Government to improve Thailand's ranking in the World Bank Group's *Doing Business* Indicators and in international competitiveness indexes, which has steadily increased – moving from 48 to 27 from 2016 to 2019. A recent example of such an engagement has been the so-called Guillotine Project – an initiative launched in 2017 by the Office of the Prime Minister, which require continued support at the highest level and regular monitoring of results to be successful.

One of the main challenges for Thailand will be to maintain momentum, over the medium- to long-term, in pursuing effective and credible reform as a new, embedded "government business model". This requires thinking strategically about how to roll out the various measures of reforms, working with various government departments and agencies to take on board these reforms, and iteratively adjust the system as new challenges and opportunities arise. Communicating pro-actively on results is also important in this regard. This implies systemic change in a number of key dimensions, such as:

- Devising a tailored approach to regulatory policy implementation that allows appropriately drawing lessons from international good practices and adapting them to the Thai context strategically and effectively.
- Shifting the regulators' mind set away from *a priori* producing rules to, instead, direct the economy and society towards working to facilitate collective change in

Thailand, with government engaged in framing those enabling conditions thanks to which dynamism, entrepreneurship and individual responsibility may thrive.

- Eventually, there will be a need to create and normalise the demand by decision-makers for the evidence generated from GRPs, including the impact assessment, stakeholder engagement activities, and post-implementation reviews. As a benefit, this reformed regulatory system will allow regulators to carve out "time to think", i.e. to procure, collect and validate data; process information; gauge options and ponder positions; and then deliberate to integrate policy goals, maximise synergies and mitigate trade-offs.
- Challenges remain with regards to prioritising reviews and setting overarching government goals or targets in strategic documents and development plans.
- Operationally, systemic change will likely have to be implemented also through an enhanced collaborative arrangement between the Secretariat of the Council of Ministers and the Council of Ministers, the OCS as well as the ministries and regulatory agencies. Data source providers such as the National Statistical Office or other database managing bodies ought also to be more closely and systemically involved in the decision-making process. These bodies are also key to produce figures on results to communicate across government and to the wider public to ensure support for reform remains secured, while public sector accountability is respected.

This diagnostic report provides an overview of the reform steps undertaken so far and presents options and avenues that the Government of Thailand could consider to mainstream good regulatory governance and practices in a way to achieve such systemic change.

Towards a strategy for good regulatory governance

The advances in the constitutional and legal framework for enhanced regulatory policy are impressive, yet they are still to be complemented by a single Better Regulation Strategy and Action Plan. Over the years, Thailand adopted various strategic and programmatic documents aimed at establishing Thailand among the leading economies in the Southeast Asia. The *National Strategy 2018-2037* accompanied by the five-year *National Economic and Social Development Plan*, and the strategy *Thailand 4.0*, count among the most important ones. The impetus given by Section 77 of the 2017 Constitution now provides a unique opportunity to ensure coherence and structured action to ensure that all the commitments and goals that the Government sets out to pursue find effective and sustained implementation. This should be the primary, overarching purpose of a newly established Better Regulation Strategy. See (OECD, 2020[1]) for example of a similar strategy in Slovakia.

Thailand can count on several champions that have developed substantial capacities and applied GRPs in their areas of competences, which could present the Government with a chance to capitalise on their experience and expertise. At the centre of the government, the Secretariat of the Cabinet has joined OCS in directly applying and diffusing GRPs across the Executive. Some sectoral regulators have also profiled themselves in this respect. For instance, the Bank of Thailand and the Securities and Exchange Commission have already voluntarily embarked on elements of the reform. This has been driven partly by the mismatch between the comparatively complex and burdensome regulatory requirements introduced over the past decades in the Thai financial service and banking sector on the one hand, and the rapidly evolving instruments for agile regulation prompted by new technologies and globalised markets on the other. Other services in the government have leveraged the demands for better regulatory governance stemming from their private sector constituencies and have actively promoted GRPs when implementing their portfolios. Examples include the Ministry of Natural Resources and Environment (in particular, its Pollution Control Department), and the Ministry of Commerce. These champions could help support the OCS in early stages of the implementation of the reforms government-wide by providing possible good practice examples, success stories, and a support network for gaining more and more followers in other ministries and agencies.

The line ministries and regulatory agencies are generally supportive of the principles and tools for regulatory policy. A challenge, however, is a weak understanding of how to configure the new organisational and procedural arrangements, and what technical expertise and know-how is needed to implement GRPs to support evidence-based decision-making. The elaboration of a Better Regulation Strategy could largely be draw from the insights and experiences cumulated by these institutional champions, under the guidance and coordinating role of OCS. Experience from OECD countries suggests that better regulation strategies are most effective when designed to be simple and feasible for the ministries and agencies to incorporate, so as to facilitate buy in.

Recommendations

- ***Maintain*** full commitment to regulatory reform and support the ongoing momentum for implementation of the provisions set out in the 2019 Act. One way to achieve this could be to create and actively mainstream a narrative for evidence-based and participatory decision-making, notably through enhanced use of Regulatory Impact Assessments (RIAs) and public consultation. Reform messages could be promoted through various channels such as public statements, media interviews by Government members and senior officials, and the organisation of awareness campaigns.

- ***Reap*** the full potential of the progress achieved so far by elaborating and publishing a complete and comprehensive Better Regulation Strategy that fully embeds the principles and tools of good regulatory governance in the organisation and practice of all ministries and regulatory agencies. Such a commitment needs to be communicated – both internally to decision makers and line ministries and agencies, as well as externally stakeholders – as a means to encourage and motivate behaviour change. The Strategy should clearly gear regulatory policy initiatives towards the achievements of the Government's policy goals and priorities.
- ***Create*** a dedicated Better Regulation Action Plan with concrete, tailored Key Performance Indicators (KPIs), targets and deadlines for individual measures and implementation activities. The goal should be to clearly define how to change the culture of regulatory policy making in-line with the technical requirements of the new laws. The Action Plan should allow for (a) timely monitoring; (b) rewarding reform champions and prompting (or sanctioning) reform laggards; and, over time, (c) correcting and fine-tuning the design and implementation of the reform.

Establish monitoring and evaluation schemes to track implementation of the reform endeavour. Regular (annual) reports to the Prime Minister Office should be produced (for instance by OCS) on the performance of governmental services. The government should send the report to Parliament and make them available to the general public.

Box 1. Building "whole-of-government" programmes for regulatory quality

Countries considering the introduction of a policy for regulatory quality across the whole of government face the issue of where and how to start the process of embedding regulatory policy as a core element of good governance. An incremental approach has worked in some settings, such as the Netherlands or Denmark, while other countries like the United Kingdom, Australia or Mexico have used a more comprehensive approach.

In **Canada**, the first whole-of-government policy was introduced in 1999 with the *Government of Canada Regulatory Policy*, which was later replaced by the *Cabinet Directive on Streamlining Regulations* in 2007, *Cabinet Directive on Regulatory Management* in 2012 and the *Cabinet Directive on Regulation* in 2018. The latest version of the directive sets out the government's expectations and requirements in the development, management, and review of federal regulations. It outlines four guiding principles for departments and agencies:

1. *Regulations protect and advance the public interest and support good government*: Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.
2. *The regulatory process is modern, open, and transparent*: Regulations, and their related activities, are accessible and understandable, and are created, maintained, and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders, including Indigenous peoples, early on.
3. *Regulatory decision-making is evidence-based*: Proposals and decisions are based on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.
4. *Regulations support a fair and competitive economy*: Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of Canadians and businesses. Opportunities for regulatory co-operation and the development of aligned regulations should be considered and implemented wherever possible.

Source: (OECD, 2010[1]), Regulatory Policy and the Road to Sustainable Growth, OECD Publishing, Paris, https://www.oecd.org/regreform/policyconference/46270065.pdf; (Treasury Board of Canada Secretariat, 2018[2]), Cabinet Directive on Regulation, https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html.

Institutional capacities for good regulatory governance

The institutional architecture underpinning regulatory policy is a critical success factor to ensure that the resources invested in high-quality decision-making are relevant and effective systemically and over time. The organisational arrangements extend well beyond the executive centre of government, although in most OECD countries this has typically been the primary starting point to coordinate and mainstream GRPs. Reforms are needed not only in designing appropriate institutional frameworks but also in ensuring that those frameworks deliver with adequate resources and capacities.

This section focuses on the organisation and procedural arrangement for regulatory oversight, which arguably constitutes the main novelty introduced by the 2019 *Act on Legislative Drafting and Evaluation of Law*.

Regulatory oversight function arrangements

Current capacities across the government to develop the system of good regulatory governance and deliver high-quality regulations are distributed amongst a number of actors. According to the 2019 Act, the execution of GRPs falls upon the line ministries and regulatory agencies, while the exercise of regulatory oversight functions are to be performed centrally. A number of central bodies and services have been involved in regulatory reform in Thailand over the past years – among them are the Legal Reform Sub-Committee of the National Reform Committee, the National Economic and Social Development Board, the Office of Public Sector Development Commission of the Office of the Prime Minister, and the Ministry of Justice. The Fast Action Law Reform Committee, and the Guillotine Unit in the Prime Minister Office have also been active on various aspects of Better Regulation in the recent years. While most of these bodies are tasked with the strategic development of regulatory policy and communication to external stakeholders and the public, none are directly involved in the daily decision-making process of the Government. This could be an opportunity to establish partnerships with willing and able stakeholders to help promote the implementation of the reforms. Clarifying the allocation of roles and responsibilities for regulatory policy and enshrining them in law is important, given the wide autonomy that regulators enjoy in terms of elaboration, execution and enforcement of government measures.

Granting the mandate to exercise additional regulatory oversight functions to the Office of the State Council is a positive development, though there still maintains room to further clarify roles and functions. The 2019 Act assigns the OCS as the main responsible government agency for the regulatory policy and related matters – capacity-building, methodology development and quality scrutiny – in addition to legal scrutiny, which it possessed before. This creates a comprehensive and effective governance for regulatory policy. At the same time, the Secretariat of the Cabinet retains important gate-keeping functions, focusing primarily on conducting a preliminary completion check (i.e. all documents are completed) prior to submitting to Cabinet for deliberation. In accordance with Section 25 and 26 of the 2019 Act, the Secretariat is tasked with reviewing draft laws as well as the summaries of public consultation and RIA reports, both from procedural and substantive perspectives. The Secretariat has the power to block or return proposals for revisions if the needs arise. To date, the scrutiny of the Secretariat has in practice focused on checking the procedural compliance. In addition, OCS opinions are delivered after the Cabinet has initially deliberated on the issue. This opinion is delivered through the Secretariat of Cabinet. Any disagreement between OCS and the Secretariat of the Cabinet is to be presented to the Cabinet for settlement, though disagreement is reportedly very rare. Clarifying these oversight responsibilities are important to fully reaping the potential of the regulatory reform.

The OCS intervenes relatively late in the process, justified, until now, by the fact that the OCS' scrutiny was limited to constitutional and legal matters. With the change in scope of the OCS scrutiny, however, the timing when the OCS considers the proposal is crucial. A late check still allows initiatives grounded on partially defined problem characterisation or on sub-optimal evidential analysis to progress quite substantially along the decision-making process. It also partly precludes the effectiveness of the OCS' task to exercise a relatively strong gate-keeping function. Once the legislative draft has already passed the significant political screening by the Cabinet Secretariat, it is *de facto* difficult for OCS to "open" the dossier again on the basis of GRP considerations.

The 2019 Act further grants OCS the primary responsibility to shape the form and scope of regulatory policy, as well as to progressively intervene as the guardian of the reform implementation and deliverables. As an immediate step to support the implementation of the 2019 Act, the OCS has been developing subordinate regulations, guidelines and manuals, and a long-term training programme for Thai officials. This supporting material covers RIA, public consultation and *ex post* review, both from a methodological perspective and with a view to clarify the procedural arrangements underpinning their application. Checklists and templates for submitting proposals to the Council of State and OCS also form part of the material.

The OCS enjoys credibility and authority among all the actors involved in decision-making, thanks to its history, its performance, the calibre and professionalism of its experts. There is, moreover, already a significant track record of *de facto* oversight exercised by the OCS on substantive policy matters, which the OCS has traditionally done in addition to the regular scrutiny of the constitutionality and legality of the proposals. Such legal review has so far been undertaken on an ad-hoc and an advisory basis, only: the OCS could invite line ministries and regulatory agencies to re-submit their proposal and advise them on possible alternative approaches or formulations. In this respect, the OCS is one of the very few bodies in the Thai Government which has already performed some of the typical regulatory oversight functions and key tasks as identified by the OECD (see Table 1). Further leveraging OCS' good reputation with a constructive approach to feedback to ministries can further support the implementation of the better regulation reforms.

Table 1. Regulatory oversight: areas, key tasks, and arrangements in Thailand

Areas of regulatory oversight	Key tasks	Current (or envisaged) oversight arrangements in Thailand
Quality control (scrutiny of process)	• Monitor adequate compliance with guidelines / set processes • Review legal quality	To be performed by the Cabinet Secretariat and OCS under the 2019 Act provisions, with regard to draft RIA reports and draft consultation

	• Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory	reports.
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	• Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives. • Reviews of regulations and regulatory stock. • Advocate for particular areas of reform	To be performed by the Law Reform Commission under the 2019 Act provisions (in terms of advising areas for possible regulatory review).
Systematic improvement of regulatory policy (scrutiny of the system)	• Propose changes to improve the regulatory governance framework • Nurture institutional relations • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy	Mandated to the Law Reform Commission under the 2019 Act and partly performed the OCS (yet not in a systematic manner).
Co-ordination (coherence of the approach in the administration)	• Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools	To be performed (initially on an informal basis) by OCS, to facilitate the implementation of the 2019 Act provisions.
Guidance, advice and support (capacity building in the administration)	• Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)	Performed by OCS under the 2019 Act provisions with regard to issuing Guidelines on RIA, public consultation and *ex post* review. OCS plans to deliver related trainings.

Source: Adapted from (OECD, 2018[3]), OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris.

The OCS is well positioned to deploy its current staff to support its new tasks granted under the 2019 Act, enhanced skills and resources may be necessary to adequately perform these tasks. The OCS has mobilised several officials already present among its ranks who possess or can easily develop the necessary regulatory oversight expertise. As a part of the initial capacity building programme, over 60 experts are currently being trained to liaise with ministries and regulatory agencies and assist them with deploying GRPs. Under the regime introduced by the 2019 Act, OCS also envisages to restructure its organisation and functions to be better able to perform more substantive scrutiny of the proposals and the underlying evidential documents. Taking into consideration the size of the Thai civil service and resources needed to fully roll out the reforms, it may be necessary to enlarge the OCS team of experts fully versed in good

regulatory practices tools and methodologies and with strong analytical skills in the short to mid-term

Despite no formal OCS scrutiny at the early stages of development of policy and regulation, there appears to be wide-ranging agreement and sustained commitment in the Government to allow the OCS to engage constructively with the regulators, on an informal basis and early in the process. It may, for instance, be envisaged that the OCS may be called upon to comment on the "rationale for intervention" notes produced by ministries and regulatory agencies, in the basis of a memorandum of understanding (or equivalent). Section 7 of the 2019 Act could provide the basis for such a possibility. This also constitutes a challenge for both OCS top management and its staff, which are not necessarily familiar with directly interacting with line ministries. A new interface should also be nurtured between OCS and the Secretariat of the Cabinet. In this respect, OCS is considering re-organising, including by considering the creation of a dedicated unit to facilitate the dialogue with line ministries and regulatory agencies, even before their initiatives reach the stage of Cabinet agenda setting. For the time being, such a dialogue is geared towards raising the awareness of the tools and issues that RIA developers will increasingly have to deploy.

There has been some concern about having OCS engage via informal and early stage commenting as these may be taken as tacit and potentially binding approvals of the proposal. It is critical that the OCS' review does not to remain a pure administrative step with little practical impact. Regulatory oversight bodies in OECD countries, for example, either enjoy explicit rights set out in legal bases granting them authority over the regulators; or they supplement such authoritative approach by publishing their opinions. Transparency is a strong leverage for accountability and the credibility of the GRP system, and to set powerful incentives for compliance with good regulatory standards. At present, however, the informal nature of the OCS's early scrutiny cannot be substantiated by the possibility to publish the resulting opinion. However, there is also potentially substantial benefit to early stage engagement that can support formal training outcomes with ad hoc support, help set expectations, support mapping RIA processes against practical milestones and time pressures, and workshop potential approaches to substantive analysis. Mechanisms can be put in place to ensure such benefits are realised while limiting the risk of tacit approvals.

Looking to the future, the OCS could further review its functions to optimise its role as an oversight body. Experience from OECD countries suggests that regulatory oversight bodies tend to either perform procedural and / or substantive checks of draft RIA reports, or carry out legal reviews. Seldom are these two tasks performed by the same institution, typically because the tasks take place at different moments in time; the expertise required is different; and out of sheer capacity constraints to cope with the flow of initiatives.

In the light of this trade-off, a more distinct organisational separation of the tasks within the OCS might need to be considered in the future.

Capacities for good regulatory practice across the Government

Successful and sustained regulatory reform will, moreover, have to rest on explicit whole-of-government buy-in and diffused capacities across the government. It is important that commitment and expertise for regulatory policy are not confined to the centre of the government and in small pockets but that they also reach the "periphery" of the administration. Important (although just a few) experiences have already been cumulated in the Thai Government over the past years. In 2016, for instance, a small handful of training sessions were organised by the Ministry of Justice in conjunction with APEC initiatives to enhance RIA practices. Mainly thanks to the initiative of the OCS, training courses on effective legislation drafting have been regularly delivered by the OCS' Public Lawyers Training and Development Institution to officials in State agencies at different levels of government. Insights on RIA and common lessons from practice have been incorporated into such courses since the beginning of 2019.

A structured and consistent capacity building programme is a key instrument to raise awareness and diffuse knowledge across the government. Directly training officials is important but the programme should utilise multiple channels and tools to support capacity building efforts. Systematic and systemic capacity-building on evidence-based decision-making in general, and on GRP in particular, is crucial. Training courses are important *per se* to consolidate and diffuse expertise. They also play an important multiplier role in so far as the new experts can become points of reference for colleagues to champion the new approach, assisting with drafting RIA and *ex post* review reports and organising stakeholder engagement initiatives. In this respect, the OCS' Law Reform Division is launching new in-depth training seminars throughout 2020. International experience nonetheless suggests that successful governmental capacity-building strategies tend to rest on several "pillars" or components. These include a mix of general awareness raising events addressed also to decision-makers and top managers; tailored training seminars complementing the transfer of basic knowledge with targeted courses on advanced economic analysis; coached piloting of the execution of RIAs and *ex post* review exercises; and dedicated "training-of-trainers" programmes. Study tours to relevant countries to learn possible international good practices as well as temporary secondments of staff among ministries can also significantly contribute to capacity building. To develop a structured capacity building programme, it is recommended to undertake a functional review of OCS with a view to identify the skills gap vis-à-vis the office's functions and mandate.

Capacity building efforts should be supported with evidence of what has worked to facilitate awareness raising amongst internal and external stakeholder groups. These initiatives could focus on building awareness with decision makers, the local and international business community, and with other non-governmental stakeholders to, *inter alia,* signal the change in government processes that could help build trust, gain support from champions that could be leveraged to promote behaviour change, and promote inputs by stakeholder groups that could result in higher quality regulations. The training programmes being developed by the OCS Law Reform Division does also include partnerships with external academic institutes.

Recommendations

- ***Progressively*** raise its demand for ever better evidential analyses produced by line ministries and regulatory agencies to underpin Government decisions, by leveraging and supporting the scrutiny functions of the Secretariat of the Cabinet and of the Office of the Council of State.
- ***Define*** clearly the *de jure* and *de facto* roles of the Secretariat of the Cabinet and of the OCS, particularly regarding how they intend to implement their respective mandate in practice. Specifically, the two bodies should coordinate to redefine, within the scope of the current legal provisions set out in the 2019 Act, the following three fundamental aspects of oversight:
    - Address the possible current trade-off between performing a pure legal check of the draft measures and strengthening the substantive review of the rationale for intervention and the quality of the impact assessments. While both bodies have competence to carry out procedural and substantive checks, an effective review of the rationale and quality of the evidential analysis should take place earlier in the regulatory process. Accordingly, the substantive scrutiny by the OCS should be earlier compared to what established by the 2019 Act.
    - The Secretariat of the Cabinet and the OCS should introduce common standard criteria to settle possible diverging opinions between them on the quality of the evidential documentation submitted by the line ministries and regulatory agencies. Escalating their diverging appraisal of the appropriateness and or robustness of the RIA and consultation reports to the political deliberation of the Cabinet should remain the exception.
    - In the short term, these changes could be achieved by means of a memorandum of understanding between the Cabinet Secretariat, OCS (and the ministries, as appropriate), or by informal practice. Over time, and with the accumulation of experience and good practices, higher levels of formalisation should be introduced by amending relevant provisions of the 2019 Act.

- ***Consider***, in the mid-term, a differentiation in the execution of the OCS' tasks, possibly by envisaging complementary organisational, procedural and methodological arrangements to perform regulatory oversight functions on the one hand, and legal and constitutional review functions on the other.
- ***Establish*** Better Regulation "leaders" (or "units") in line ministries and agencies in the top levels of the ministerial organigramme, with a view to:
  - Champion the rationale for regulatory reform and evidence-based decision-making (as set out in the future Better Regulation Strategy);
  - Coordinate the implementation of the Action Plan;
  - Mainstream GRPs across technical departments by serving as help-desk experts on RIA, consultation and *ex post* review methodologies;
  - Liaise with the OCS on the overall coordination of the regulatory reform endeavour; and,
  - Consider performing a functional review within OCS to ensure that the relevant amount and types of expertise are engaged in the most efficient way possible, and filling gaps where necessary.
- ***Complement*** efforts made so far to design the new GRP system with a comprehensive programme to build and wire up related capacities across line ministries and regulatory agencies. The purpose of such programme, to be drawn up and coordinated by the OCS, should be to both mainstream general knowledge about how to proportionally and effectively implement GRP, and to create pockets of analytical excellence from which ministries and agencies can draw when needs arise. Some further considerations include:
  - Rest the programme on various approaches ranging from basic training programmes to more advanced modules; from training-of-trainers programme to pilot projects on RIA and / or *ex post* review; and encompass – in the mid- to long-term – secondments, structured civil servants' curricula development, and life-long learning schemes.
  - Include main features that i) target the most relevant staff to participate in the various awareness-raising and training activities; ii) ensure that the training programmes are tailored, practice-oriented, rigorous, and delivered on a systematic basis; iii) form and retain high-quality trainers and coaches; and iv) provide the necessary incentives for ministries and individuals to engage, use, and diffuse knowledge on GRP.
  - Utilise early stage engagement with Ministries to clearly signal expectations on the level of substantive analysis and consider mechanisms to avoid the risk of perceived approval, i.e. i) ensure officials involved in this discussion are not undertaking the substantive scrutiny of the RIA later on and ii) clarify

engagement principles up front, such as that the engagement is for education purposes and not approvals.

- ***Create*** a holistic approach to capacity building that focuses on both the know-how and skills of civil servants but also promoting technical and methodological documents that are made available to underpin decision-making. Accordingly, the Government disseminate widely the manuals and guidance documents elaborated by OCS to assist ministries and agencies in the production of RIA and *ex post* review reports and in carrying out stakeholder engagement activities.
- ***Consider*** establishing an informal "Better Regulation Network" across various services in the Executive, serving as a dynamic platform where to exchange ideas, share experiences, and promote good practices on evidence-based decision-making. The OCS could be considered to coordinate this network, which could form an environment to stimulate learning and seek mutual help and support in implementing GRP especially when including both senior officials as well as technical members. Such a network, which initially could take the shape of a voluntary Community of Practice, could be progressively formalised over time to be part of a job rotation that could lead to new promotions or other benefits for officials. Such formalisation should consider sufficient time on the job to gain an understanding of better regulation and overlap with changing members to ensure continuity.

Box 2. Better Regulation Units and Network

In order to diffuse knowledge of good regulatory practice (GRP) and support the participation and development of capacity across governments for their implementation, OECD and other countries have developed "Better Regulation Units", which are representatives within agencies that ensure the implementation of GRPs within their department and liaise with the central body established to coordinate policy on better regulation; and "Better Regulation Networks" of representatives from government departments that share experiences and exchange idea to promote good practices in better regulation.

Better Regulation Units: United Kingdom

UK Government departments with a responsibility for producing regulations in their respective policy areas and certain regulators have a Better Regulation Unit (BRU). A BRU consists of a team of civil servants which oversees the department's processes for better regulation and advises on how to comply with these requirements. It is at the discretion of each department to determine the scope of

the BRU's role, its resourcing (i.e. staff numbers, composition of policy officials and analysts, and allocation of time on this agenda versus others) and position within the departmental structure.

- Promoting the use and application of better regulation principles in policy making e.g. use of alternatives to regulation.
- Advising policy teams on how to follow the Better Regulation Framework Guidance processes when developing new regulations.
- Advising policy teams on how to develop a RIA (or Post-Implementation Review) including queries on methodology and analysis.
- Advising policy teams on the appropriate time to submit a RIA to the Regulatory Policy Committee for scrutiny.
- Providing advice to departmental policy teams and regulators on how to meet their SBEE Act obligations regarding reporting against the Business Impact Target (e.g. how to produce assessments of the impacts of new regulatory measures).

BRUs are also responsible for keeping a record of their department's new regulatory provisions, which are then listed in the Government's Better Regulation Annual Report, published by the BRE.

The Better Regulation Executive provides advice and support to BRUs, including running regular 'drop-in' sessions where it provides BRU representatives with policy updates and shares best practices.

Better Regulation Network: Brazil's National Land Transportation Agency (ANTT)

The establishment of institutional networks has been a concern of the ANTT in recent years. The Executive Superintendency was remodeled in 2016 specifically to articulate projects and actions, both internal and external to the ANTT, as well as to establish new focal points that, in a network, can facilitate the exchange of experiences.

One of the most important and successful products of the work was the modeling and creation of the Network of Coordination of Regulatory Agencies (RADAR). In a group formed by 11 regulatory entities, the representatives designated as focal point meet frequently to discuss issues in common, exchange experiences, and diffuse solutions that have been already developed. In addition to the meetings, a two-day workshop is held in which each RADAR member presents a successful experience in their area.

Examples of knowledge transfer include the PGA (Annual Management Plan) which was developed independently and shared free of charge to other agencies. Other examples include the sharing of documents on risk management, standards and regulatory tools to apply ex post evaluation, RIA, stakeholder engagement, technical cooperation agreements, integrity, responsive supervision, among others

Source: (OECD, 2020[4]), Review of International Regulatory Co-operation of the United Kingdom, OECD Publishing, Paris, https://dx.doi.org/10.1787/09be52f0-en; Information provided by Brazil through the Regulatory Policy Committee.

Good regulatory governance in producing regulation: Regulatory Impact Assessment

Predictable and systematic procedures for making regulations improve the predictability of the regulatory system and the quality of decisions. The OECD has identified a number of regulatory management tools that contribute to achieving good governance when launching and elaborating regulatory initiatives. These include forward planning (the periodic listing of forthcoming regulations); guidance for legal plain language drafting; as well as *ex ante* regulatory impact assessments (RIA).

RIA in the Thai Government: A general appraisal

The Thai regulatory process follows long-lasting practices that combine strong conformity with the set procedural requirements with instances of wide discretion by decision-makers in shaping both the substance of the chosen course of government action and the form to give to the underlying decision-making process. The requirement to carry out RIAs on the basis of the *OECD Checklist for Regulatory Decision-Making* has also existed since 2004, but the actual evidential information provided by impact assessment has remained below standards. Moreover, decision-makers appear to have not systematically demanded high-quality analyses underpinning new legislative or regulatory initiatives. Good practices by a number of regulators on individual initiatives however are limited and seem to be influenced by specific contextual factors such as availability of data; availability of time; personal commitment and expertise by the responsible services or the political referent; or the constructive attitudes of stakeholders.

There are a number of structural features of the Thai regulatory process that deserve close attention in the framework of the emerging regulatory reform. There is a tendency to have hasted recourse to regulation. Arguably also because of the enhanced stringency with which Parliament exercises its scrutiny, this has become a marked feature

of the current administration, leading the Government to enact several hundreds of laws and allegedly more than ten thousand by-laws over the past few years. A further element of concern is the way in which urgency and emergency procedures are invoked to advance regulatory dossiers. If recourse to such procedures is excessive, poorly justified and not accompanied by specific checks-and-balances, it may undermine the application of established due process standards, predictability and accountability. Regulatory over-production and the pervasive emergency mode in decision-making are partly the result of a series of procedural challenges, including:

- *Forward planning does not seem to be uniformly structured.* The procedures of setting the Government agenda and kicking off the regulatory process rest mainly with individual regulators. There is little transparency of the various actors intervening at the different stages of the decision-making process and practices are not uniform and traceable. Not all planned government and ministerial initiatives are announced on systematic and timely manner.
- *There is little evidence that regulators sufficiently investigate and elaborate on the rationale for their interventions,* be it through new legislative initiatives or through amendments of existing legal instruments. The "necessity test" at the basis of any sound government initiative does not appear to be systematically applied or reviewed with regular stringency. Typically, the default approach seems to privilege legislative and regulatory solutions, and the burden of proof is on the ministries to make the case for non-regulation. OECD guidelines and international good practice suggests the opposite. There appears to be no central mechanism is at play prompting the regulators to investigate alternative approaches more decisively.
- *Regulatory impact assessments are carried out relatively late in the process*. As a principle, RIA should not be a *post facto* justification of decisions already taken, and analyses should not be triggered by the fact that a regulatory intervention is envisaged. In fact, RIA could be used to evaluate the impacts of different implementation approaches associated with a decision. The likely implications of the proposal tend to be highlighted once the course of action is already decided and, most commonly, the related legal text has been drafted to a large extent. When it happens, such practice is not conducive to systematically elaborating and comparing possible alternative options, and appraising the resulting impacts, to inform the choice of the most appropriate government intervention.
- *Analyses and evaluations appear to be rather weak, and their importance tends to be overlooked throughout the various stages of the decision-making process.* It was noted that this is partly due to the difficulty of collecting and utilising relevant, reliable data There are also margins for improving the capacity of government services to develop qualitative cause-effect linkages between the problem at stake and the emergence of impacts from various alternative options. The understanding

among regulators is uneven of the impacts that the envisaged interventions are likely to generate in terms of change in incentives and behaviour of affected parties and across sectors and sub-groups of the Thai population and economy.

- *Barriers to compliance and possible difficulties in enforcing the proposed measures seem to be insufficiently considered.* There is room for improving the understanding among regulators also of the dynamics that lead to cost-effective enforcement strategies. Compliance-related inefficiencies are not trivial in Thailand, given the intense web of competences, procedures and tools across the various levels of government as well as the dense system of regulatory and administrative requirements, licenses and standards.
- *These shortcomings appear to be particularly present when it comes to secondary regulation.* There is little overarching control at the centre of the Government on the nature, content and significance of ministerial by-laws. Ministries and regulatory agencies enjoy wide margins to manoeuvre when it comes to initiating and enacting their subordinate regulations. The application of GRPs is discretionary and procedures unfold in policy and administrative silos. Transparency is also limited for this type of measures.

One of the most sustained efforts by the Government could be the further adoption of the 2017 constitutional provisions by making legislative decisions predictable, standardised and more justified by evidence. The 2019 *Act on Legislative Drafting and Evaluation of Law* that came into force in November 2019 sets out some important foundations for such a reform. Thanks to the 2019 Act and the related Guidelines, the RIA machinery is ready to be launched to produce the first evidential analyse. The OCS is to be commended for the efforts and the expertise shown to prepare the ground in a relatively very short time. The following OECD assessment combines an appraisal of the developments to enhance the technical production of RIAs on one hand, and changes in the overall RIA process on the other.

Improving the quality of RIAs in the Thai Government

The minimum requirements for RIA are one of the most notable improvements brought about by the 2019 Act; however, its scope is limited to the drafting of primary laws. The requirements are sound and broadly in line with the *OECD Best Practices on Regulatory Impact Assessments*. The 2019 Act is supplemented with provisions allowing sectoral legislation to be underpinned by more stringent procedural and regulatory quality standards (Section 9). This might lead the Government to not give sufficient focus to implementing measures that, in fact, are responsible for much of the law's effects, which determine the level of protection of human health, safety and environmental protection. It is also through implementing rule-making that most incentives

to invest in innovation and entrepreneurial activities are formed. The implementation of primary law is a critical determinant of the overall predictability, transparency, effectiveness and proportionality of government interventions. On the one hand, limiting RIA to primary legislation risks committing OCS resources to scrutinising acts that most often set legal frameworks with relatively minor impacts, while significant impacts that may be inherent to subordinate regulations are overlooked. On the other hand, the partial coverage of GRP to government action might jeopardise efforts to achieve national strategic goals concerning inclusive and sustainable growth and prosperity.

The OCS' RIA Guidelines are a robust basis to kick-off the production of RIAs. As mentioned above, OCS has issued *Guidelines on Regulatory Impact Assessment* in November 2019, in compliance with the provisions in the 2019 Act. These are implementing rules that clarify the procedural and methodological steps that the regulators have to consider when carrying out a RIA. The Guidelines are accompanied by a template for submitting a RIA to the OCS for scrutiny; and a short "manual" with explanations and standards for each section of the template. With these guidelines, the OCS contributed to clarifying not only the nature of RIA as a regulatory tool, but also the implication of mainstreaming such a tool throughout the Thai regulatory process. The importance of the latter element is not to be under-estimated: the adoption, communication and enforcement of the RIA Guidelines are a pivotal leverage for the future collaboration between the OCS, the ministries and the regulatory agencies.

OCS has also made significant attempts at aligning their guidelines with those of OECD standards and good international practice. Most of the typical RIA analytical steps are covered and presented with sufficient clarity. Considerable improvements brought about by the RIA Guidelines include the indication for RIA drafters to express policy objectives using measurable performance indicators; and to incentivise the use of quantification of impacts (especially by means of the Standard Cost Model formula). The Guidelines put adequate emphasis on requesting RIA drafters to describe the societal issue at stake (problem definition) and to spell out the reasons for the needed government intervention. Last but not least, the new RIA template attached to the Guidelines requires the Head of the Department responsible for the proposal to sign off on the RIA report. This accreditation reflects international good practice since it fosters the accountability of top managers in the administration to stand behind the impact assessment. This stimulates incentives to produce ever better and more relevant analyses.

On the other hand, the current version of the Thai Guidelines does not put equal emphasis on some considerations in the RIA analysis, compared to what can be found in guidance of mature RIA systems in OECD countries. Particularly, the guidelines could place greater emphasis on the presentation of multiple options, including non-regulatory alternatives; a consideration of a variety of impacts, including indirect effect, distributional impacts, impacts on the regional or local level, and impacts on trade and

international jurisdictions; and, where necessary, conduct forms of quantification using a proportionate use of time, expertise and resources. Distributional impacts, particularly on gender, are also discussed in the OECD (2020) *Thailand: Gender Budgeting Action Plan*.

Leveraging RIA to enhance the quality of the overall regulatory process

When drawing up the new RIA Guidelines, the Thai Government used this as an effective opportunity to address self-diagnosed recurring challenges in the national legislative and regulatory approach. The Government is particularly concerned with addressing the four pressing issues: excessive recourse to licensing and permit schemes; overuse of committee-based approaches; excessive recourse to applying criminal sanction schemes; and unclear / ambiguous use of discretion by government officials. These could be the subject of further examination by the OECD, but were outside the scope of this review. These challenges often lead to disproportionate or unnecessary burdens upon society and the economy and to increase the risk of capture and corruption. The Guidelines and template prompt RIA drafters to address those issues, drawing their attention to the possible issues in case they consider opting for measures likely to contribute to perpetuating those shortcomings. At the same time, the RIA Guidelines assist future staff in oversight bodies as well as external stakeholders with reviewing RIA reports critically and constructively. Furthermore, in order to foster a culture of integrity and to curb corruption in the public service, Thailand may further implement the recommendations of the Integrity Review of Thailand (OECD, 2018[5]), in line of the OECD (2017[7]) Recommendation on Public Integrity.

Comparatively lower attention is given to the potential for RIA to nurture synergies for enhancing GRP implementation throughout the regulatory process. From a governance perspective, mainstreaming a well-designed RIA system can be instrumental in the efforts to push the regulatory governance system forward. Particularly, some areas lacking focus that could be subject to future reforms include:

- *Rationalise governmental forward planning*: The 2019 Act foresees a generalised scope of application of RIA for all draft primary legislation. OECD best practice principles advocates a proportionate approach to conducting RIA in relation to the scale of the problem or the type of the impacts expected from the envisaged government intervention. Resources are scarce; the political agenda is pressing; and not all initiatives require the same type and depth of analysis. It is therefore necessary to target analytical efforts to ensure that investments in more evidential basis are proportionate and are made where they add the greatest value. An overuse of RIA may create the typical “paralysis by analysis” phenomenon or, conversely, spread constrained resources across an excessive number of initiatives. International experience suggests that such full RIAs might not constitute

more than 5-10 percent of the overall impact assessments carried out by the government in a given year.

- *Foster intra-governmental co-ordination*: structural intra-governmental dialogue on assessments of policy issues, evidence-based rule making and coordinated regulatory responses is not fully systematised in Thailand, notably when regulators engage in preparing secondary rules. Timing and duration of such exchanges are not explicitly set. Furthermore, no clear mechanism is in place in case differences emerge between government services in terms of priorities and agendas or of the evidential basis they brought forward. There are no uniform and enforceable criteria to gauge the type and quality of the evidence to be used to determine one course of action over an alternative one. Contrasting stances within the Government are typically addressed at a political level, which could result in political horse-trading behaviour with potentially negative costs to effective Government action.
- *Promote participation and transparency with citizens and stakeholders*: Submitting draft RIA reports to public notice-and-comment enriches the evidential basis for regulators, allows for validating assumptions, and provides preliminary information to stakeholders about the potential course of action that is being considered. RIA reports also contribute to enhancing accountability and transparency by reporting summaries of the contributions submitted by stakeholders during the various consultation rounds together with a government commentary on their actions in response. Anecdotal evidence suggests that this interface has not been exploited sufficiently in the past.
- *Upgrade the expertise and data collection system*: This refers particularly to a set of principles and procedures that governments put into place to ensure that they rely on the most relevant evidence and the best available expertise when defining policy and regulatory options. As currently drafted, the RIA Guidelines do not make reference to any minimum quality standard for the data that officials should use in their analyses, nor do they require them to carefully consider the type of (scientific) experts to involve.
- *Promote a regulatory framework that is fit for purpose within the Thai context:* This is particularly where RIA and *ex post* review can link together. The findings from *ex post* review inform the first stages of the RIA analysis, particularly in the problem definition and when setting policy objectives. Conversely, while well-designed RIAs contribute significantly to the design of post-implementation reviews because they help reconstruct the original intervention logic at the basis of the expected outcomes. The current version of the RIA Guidelines do not put sufficient emphasis on the implications that the RIA reports may have in structuring future *ex post* reviews, nor do they prompt officials to consider the findings from future *ex post* reviews when elaborating their situation analyses.

Recommendations

- ***Promote*** the systematic application by the line ministries and regulatory agencies of the principles and tools for Regulatory Impact Assessment as they are being developed further to the 2019 Act.
- ***Consider*** opportunities to upgrade the current RIA system following an initial period of testing of the OCS RIA Guidelines and the forthcoming Manual, as well as a review of the lessons learned from experience and practice across ministries and agencies. Some revisions based on piloting and monitoring to consider include:
  - Revisit the scope of application for RIA set out by the 2019 Act by extending it to cover also significant secondary regulations to ensure significant regulatory costs and benefits are not overlooked;
  - Define, in parallel, mechanisms to target RIA efforts across Government initiatives in order to allocate most analytical resources where they deliver the greatest added value. In so doing, emphasis could be put on selecting a small number of "policy dossiers" each year and comprehensively look at both RIAs on the primary and secondary measures. More structurally, this could also include i) outlining a governance strategy for exempting certain government initiatives from RIA and ii) developing a tiered approach based on thresholds and filtering mechanisms that progressively tailors the depth and type of the analysis carried out.
  - Promote more systematic inter-ministerial cooperation at early stages of the regulatory process, whereby draft RIAs are actively circulated and commented upon by government services. In order to mitigate the risk of delaying or over-burdening the current procedure, a "silent-is-consent" rule could be introduced, whereby a state agency is invited to comment on a draft RIA, but if it does not do so within a set deadline, the analysis (and the related proposal, if available) is considered adequate and accepted.
  - Fully exploiting the potential of public consultation to validate and enrich draft RIA reports, for instance by requiring explicitly that draft RIAs are posted for together with the draft proposal and other consultation documents. Especially, this should be done as early as possible in the policy process. Particular attention should be paid to fully using the potential of stakeholder consultation as a source for gathering data to use in RIAs as well as a means to verify its quality.
  - Consider implementing mechanisms, requirements or processes in future reforms that could help ensure comments feed back into the final impact analysis, and that the final RIA should be published alongside the draft

legislation with clear explanation of where stakeholder comments were inputted.

- Consider – in the long run – the opportunity to further strengthen the interface between ex ante impact assessments (RIAs) and ex post reviews.
- Implement methodological revisions to the OCS RIA Guidelines after an implementation initial phase, particularly with regard to
  - Insisting on the identification, appraisal and comparison of multiple options, including non-regulatory alternatives to address the problem at stake;
  - Broadening the types of impacts to be considered, providing more guidance on how to identify and value indirect regulatory impacts, dynamic effects, unintended consequences and distributional impacts (i.e. on gender) as discussed in the OECD *Thailand: Gender Budgeting Action Plan* (2020);
  - Outlining methods to quantify impacts; and
  - Including an explicit and clear definition of criteria for regulatory quality for the collection of data and the procurement of (scientific) expertise, that are to be met at all stages of the policy cycle.

- ***Monitor*** the implementation of the RIA guidelines, possibly in line with the execution of the Action Plan referred to above. Particular attention should be paid to keeping track of the quality of the RIA analyses produced by line ministries and regulatory agencies, with a view to develop recommendations for possible changes of the scope, organisation, procedures and methodologies of the current RIA system.

Box 3. Late stage RIA intervention: Australia's case for electoral commitments

In circumstances where RIA is conducted late in the policy development process and a broad legislative direction has already been determined, the RIA may still be effective in drawing out important information for decision-makers by considering the impacts of different implementation approaches.

For example, in the Australian Government's RIA system, a RIA covering matters which were the subject of an election commitment will not be required to consider a range of policy options. That is, only the specific election commitment need be the subject of RIA – and in this situation the focus of the RIA is only on the commitment (with reference to the status quo) and the manner in which the commitment should be implemented. It is, in effect, an "implementation RIA".

This approach has proven useful in identifying how particular implementation strategies can reduce the costs new regulation imposes on businesses – such as where a staged implementation approach allows time for them to adapt to the new requirements.

Source: Information provided by Australia through the Regulatory Policy Committee.

Box 4. Proportionality in RIA

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The development of a Triage Statement (low, medium, high impact) early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA. Also, when there is an immediate and serious risk to the health and safety of Canadians, their security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and

quantitative – what Mexico calls a "calculator for impact differentiation", where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The **US** operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for "economically significant" regulations (which are a subset of all "significant" regulations) is set out in Section 3(f)(1) of Executive Order 12866: "Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

The **European Commission** has a proportionate analysis approach to regulation. Impact assessments are prepared for Commission initiatives that are expected to have significant direct economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

Source: (OECD, 2015[6]), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264238770-en.

Good regulatory governance for participatory decision-making and transparency: Stakeholder engagement

Public consultation and transparency are central pillars for effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more accessible, unduly influenced by special interests, and therefore more open to competition, investment, innovation, and societal welfare improvements. While it can involve a mix of formal and informal processes, participatory and transparent decision-making increasingly benefit from digital government solutions. The *OECD Open and Connected Review of Thailand* (2020) also further explores the intersection of the open government and digital government agendas in the Country and how these could further benefit areas such as public service delivery.

Public consultation in the Thai Government: A general appraisal

Thailand has operated basic yet relatively institutionalised channels for online stakeholder engagement, complemented by less formalised channels undertaken by each regulator on a case by case basis. Anecdotal evidence suggests that consultation practices have remained fundamentally discretionary both in terms of the timing, procedures and levels of openness and of the very purpose of the exercise. In practice, ministries and regulatory agencies each have their established practice. While Government regulation mandates a 15-day mandatory publication of the draft bill on their individual website, some ministries and agencies also have their own system of (tripartite) working committees through which sectoral policy issues are discussed and elaborated thanks also to stakeholders' inputs and feedback. In such contexts, letters are sent to business and civil society organisations and individual stakeholders and meetings are organised with various degrees of formality. Evidence also suggests that impact analyses are not systematically used to inform consultations, and consultation submissions do not systematically inform RIAs.

Consultations appear to be often announced at short notice, and organised without a standardised protocol. This has hindered the capacity of the stakeholders to respond timely with relevant and robust data and meet the needs and expectations of the regulators. At the same time, it has reportedly been difficult for regulators to identify experts among stakeholder organisations (especially the domestic ones), who know sufficiently about the regulatory requirements that their sector is subject to and thus can contribute with informed evidence on likely regulatory impacts of proposed action. As a result, inclusive and transparent approaches to public consultation seem to have served as more of a procedural requirements or symbolic exercises, while closed-door and selective interaction with a few stakeholders may lead to substantial inputs to the final content of the legislative draft. The OECD *Open and Connected Review of Thailand* further finds that engagements tend to be with "the usual suspects" and tend not to extend to traditionally underrepresented groups. There is no centralised record and monitoring of the number of public consultations organised by the various ministries and regulatory agencies.

Leveraging stakeholder engagement for a more participatory and transparent decision-making process

The constitutional and legislative provisions introduced since 2017 gives stakeholder engagement significant prominence and frames its practices in a more rigorous and uniform set of principles and procedural standards. They bear great potential to tackle existing challenges related to participation and transparency. In broad terms, a centralised web-portal managed by the Digital Government Agency (DGA) is planned, which will host information prepared by the regulators on the underlying principles

and rationale for considered legislative measures even before legal drafting has started. Online consultation is the only consultation channels mandated by the 2019 Act (ministries and regulatory agencies may opt to engage stakeholders with additional means on a voluntary basis). To participate, stakeholders and the public must register by submitting their email addresses to the State agency, which informs the OCS accordingly. This is also addressed further in the OECD *Open and Connected Review of Thailand*. This allows stakeholders to also receive notifications of future relevant initiatives put on consultation online. If enforced properly, these new arrangements may bring many new benefits, including:

- Retaining flexibility and complementarity in the use of several tools and channels, making consultation less discretionary and uneven;
- Give regulators more insight on how to differentiate between public consultation and negotiation;
- Set the basis for quality criteria for evidence;
- Take into account comments when finalising draft proposals and RIAs;
- Connect the future centralised consultation web-portal with a central registry of national laws and regulation; and,
- Oblige the government to disclose the results of the consultations and analysis to the public.

Governments committed to enhancing transparency, participation and accountability have often actively engaged with establishing a unified portal that works as an online one-stop-shop for stakeholders and the public, since this maximises the potential of public consultation and communication. In the light of such international experience, OCS has already started the procedure to develop the system.

While broadly in line with OECD best practice, there is still room for improvement in the design and management of stakeholder engagement practices in the Thai Government. The set minimum period of 15 days (see Box 5), in particular, appears rather short compared to international standards and might jeopardise the effectiveness of granting sufficient time to stakeholders for comment. The current version of the Thai Consultation Guidelines, moreover, is yet to provide comprehensive advice to regulators on the procedural steps that they are expected to follow throughout the decision-making process, including on when stakeholder engagement is to be launched and what synergies there are with the RIA process. Furthermore, there could be more detail – either in the Guidelines or in an accompanying manual – to assist officials on the methodology of how to plan, conduct and manage consultation rounds in practice.

Box 5. An international perspective on minimum periods for public consultation

Governments should provide stakeholders with sufficient time to submit their view. Clear timelines should be set and publicised for stakeholder engagement activities, especially for public consultations. Stakeholder engagement is a resource-intensive exercise not only for the administration but also for stakeholders. Stakeholders must be informed sufficiently in advance on ongoing engagement activities they might get involved in and there must be enough time to get involved. Some NGOs, business associations or trade unions have to contact their members and then sometimes synthesise their inputs which makes the process even longer, especially in case of international organisations and associations.

A majority of OECD countries systematically make use of such minimum periods with a view to ensuring stakeholders have sufficient time to provide meaningful input in the rule-making process.

Generally, OECD countries allow for a minimum period of four weeks' consultation, many countries require or recommend minimum periods of 30 or 60 days (or longer, when the regulatory proposal is particularly complex), although there are both shorter and longer periods across members. For instance, Costa Rica, Hungary, Iceland, Lithuania, Poland, and Spain provide for shorter periods, while both Switzerland and the European Union have 12 week minimum periods. Where such minimum periods exist, they are usually applied systematically, i.e. for all or major primary laws or subordinate regulations.

The OECD has series a country examples complied online or in the Pilot database on stakeholder engagement practices in regulatory policy. First set of practice examples (2016) for reference.

Source: (OECD, 2018[3]), OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris, http://dx.doi.org/10.1787/g2g90cb3-en; (OECD, Forthcoming[7]), OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation, OECD Publishing, Paris, https://www.oecd.org/regreform/public-consultation-best-practice-principles-on-stakeholder-engagement.htm.

Recommendations

- ***Fully implement*** the tools and guidance produced to date in accordance with the 2019 Act, particularly by encouraging line ministries and regulatory agencies to

start using provisions on enhanced participation and transparency. To that end, in addition to posting their legislative proposals on the central consultation web-portal, they should also consider allocating time and financial resources to meaningfully involve all stakeholders through various channels for engagement, depending on the purpose of the consultation, the type and significance of the expected impacts, and effective within the Thai cultural context. Possible complementary channels could include public hearings, expert groups, survey, town-hall meetings with citizens.

- ***Consider*** upgrading the current provisions pertaining to stakeholder engagement over the medium term, particularly following a review and gaining lessons from experience and practice operating the current regime. Specifically, attention should be given to possibly:
  - Extend the mandatory minimum consultation period, in line with international best practice;
  - Clarify the timing when consultation should take place during the regulatory process;
  - Draw up a manual with guidance on how to plan consultation (incl. stakeholder mapping); how to design and implement consultation tools and channels; and how to manage consultation feedback;
  - Introduce a monitoring and reporting system, possibly led by OCS, to keep track of the type and number of public consultation organised by the various ministries and agencies, therefore allowing the sharing of good practices on the one hand, and refining the procedures and the methodologies on the other.
  - Develop a clear and overarching policy framework that would govern interactions between stakeholders and public officials to minimise the possibility of undue influence and promote transparency in the policy making process, in line with OECD Integrity Reviews of Thailand (2018 and 2020).
- ***Pursue*** efforts to promote transparency through establishing a single interactive platform for publishing online all legal acts in force in Thailand with also link to the single consultation and communication web-portal, granting the possibility for the public to track the stage at which those initiatives are in the decision-making process and access relevant information. Consider further reforms for promoting transparency in line with the OECD Integrity Review of Thailand (2020).

Good regulatory governance to manage and rationalise existing regulation: *Ex post* review

Ex post reviews of legislation are an integral part of the so-called 'policy cycle' model, whereby authorities strive to consider and act on the inception, elaboration, adoption, implementation, enforcement, monitoring and review of public policies following a continuous and mutually reinforcing approach. As such, *ex post* review should be incorporated in the regulatory policy frameworks of governments explicitly, with a view to ensure comprehensive coverage of the regulatory stock over time.

Introducing evaluation practices in the Thai Government

Since the adoption of the new provisions under the Constitution, the Thai Government has also made significant progress in developing an integrated approach to post-implementation reviews of legislation. Actual practice and experience with *ex post* evaluation will nonetheless have to be promoted in the future. The 2019 Act, in particular, expands the scope of application of the evaluation requirements from primary legislation to also include secondary and implementing rules. When implemented, this will greatly contribute to deepening the understanding of Thai regulators on the implications generated by government interventions and raising the awareness of the importance of taking outcome-based approaches to solving societal problems.

The requirement to publish on the central system the list of laws and the State agencies that are responsible for the related reviews further reflects international good practice. Introduced by the 2019 Act, this requirement, on the one hand, increases the transparency and predictability of the evaluation exercise, thereby providing incentives to properly and timely plan each review. On the other, the requirement signals the high-level political commitment and accountability to making *ex post* evaluation a core pillar of the future regulatory policy strategy of the Government. The transparency principle is further complemented by the requirement to publish the final full evaluation report on the central system.

The 2019 Act also effectively builds on and strengthens requirements set out under previous acts, but the practice of *ex post* review remains limited. In particular, the 2019 Act builds on the so-called *Sunset Law* of 2015, which set out automatic reviews of each law every five years, and the *Licensing Facilitating Act* of 2015, which covers licenses. Despite these formal requirements, evaluation practice has remained very limited in the ministries and agencies and minimum capacities still have to be built. To date only a few State agencies have conducted reviews in accordance with the Sunset Law while no *ex post* review of licenses is reported to have been carried out in the framework of Licensing

Facilitation Act. Since the entry into force of the 2019 Act and the related Guidelines in November 2019, the Sunset Law has been repealed.

Challenges remain with regards to prioritising reviews and setting overarching government goals or targets in strategic documents and development plans. Thailand adopts a regulation-by-regulation approach to evaluation at the moment. The responsible state agency must review every law and regulation that imposes burdens upon the people, following the five-year review clause. While this approach guarantees that no piece of legislation is left behind over time, given the high number of legal acts in force it may take disproportionately long time to be completed and come to reviewing particularly burdensome or problematic provisions. The approach does not seem to follow an overarching vision or goal set out by the Government. There is also no current stipulation on type / depth of review according to any sort of threshold or proportionality requirement, which may raise undue burdens on ministries. The Law Reform Commission may make recommendations to the Cabinet as to which laws, regulations, or areas of law that should be amended or repealed on the ground that they are no longer in keeping with the present needs of the people. However, this has yet to be conceptualised within a strategic framework. The adoption of an explicit Better Regulation Strategy and a tailored implementation Action Plan recommended in this report could help in this respect.

In the medium- to long-run, there is also scope to consider more formally a mixed methods approach to the design of the *ex post* review programme in line with OECD best practice principles. While evaluations triggered by review clauses are one type of review, others including a "stocktake," benchmark or stock management rules (such as the so-called "One In, X Out" off-set mechanisms) may help better grasp the breadth and impact of the regulatory stock and efficiently target burdensome or unnecessary regulation beyond of programmed reviews. While some of these can be resource-intensive processes, there are possibilities to receive significant benefits. **Possible future improvement could focus on improving important areas of *ex post* review, which are sometimes left ambiguous by the 2019 Act**. In terms of planning and execution of the reviews, the 2019 Act allocates general responsibilities to the agency enforcing the law. It further specifies that if the evaluation findings reveal the opportunity to repeal, reform, or amend the law, the decision to do so is to be taken by the responsible agency. There is a potential conflict of incentives in such design, since the same agency is internally responsible to produce the *ex post* analysis and evaluate itself whether changes to the legislation are necessary. This is possibly aggravated by the fact that the 2019 Act remains silent on the explicit scrutiny function of the evaluation draft reports. While the Secretariat of the Cabinet and OCS are formally entrusted with oversight functions with regard to RIA and public consultation, they are not formally identified as the bodies checking the quality of evaluations.

Guidelines and a forthcoming manual on conducting *ex post* reviews, if fully implemented, should provide much need guidance on methodological aspects related to evaluation. Overall, the Guidelines on the Evaluation of Laws provide a good basis to introduce the fundamentals of *ex post* evaluation. Coupled with a planned manual and series of awareness raising events and training workshops that OCS intends to conduct over the next months, this is set to significantly raise expertise compare to the present levels. It will be important to give careful consideration to planning, implementation and execution of these support documents and training. Considering that both practice and expertise in the ministries and agencies are at their infancy at the moment, it will be important to have first experiences with designing the analyses, collecting data, and carrying out evaluations.

Recommendations

- ***Implement*** *ex post* review through a staged approach that progressively familiarises line ministries and agencies with the new requirements for them to carry out such reviews. This could be accomplished with the support of an Action Plan, referred to above, that provides a strategic pace to design the implementation strategy.
- ***Produce*** a user-friendly manual and dedicated capacity building training series to accompany the implementation of the *ex post* review requirements. This should be done in cooperation between the OCS and relevant ministries to ensure the manuals and training events are fit for purpose. Possible areas where further guidance could be provided might notably include placing more emphasis on how to plan the design, management and execution of an evaluation; how to determine the "intervention logic" underpinning the evaluation questions and criteria; and how to map and involve relevant stakeholders in the exercise. Set periodic times to review and revise these provisions in partnership with the line ministries and agencies.
- ***Consider*** alternative approaches to conducting *ex post* reviews in line with the *OECD Best Practice Principles on Reviewing the Stock of Regulation* (OECD, Forthcoming[7]), which could help optimise resources currently available for conducting reviews. For instance, "simpler" conformity checks or evaluations of administrative burdens could help supplement the requirement to conduct full reviews. The choice evaluation methods could be informed by the strategic priorities of the Government, for instance, with regard to simplifying sectoral regulatory frameworks; promoting competition; or seeking more social inclusion.
- ***Upgrade*** *ex post* review practices over the mid-term by i) defining and enforcing clear guidance quality standards for evaluation planning, designing and

management; ii) promoting the establishment of multi-stakeholder groups accompanying and overseeing at least all major evaluations; and iii) linking the findings from (major reviews) to the programming and planning of new government initiatives.

Box 6. Approaches to *ex post* evaluation

The *OECD Best Practice Principles for Regulatory Policy: Reviewing the Stock of Regulation* (OECD, Forthcoming[7]) outline and categorise different approaches to *ex post* review. The broad categories and distinctions of these approaches are outlined below. Country examples and more detail can be found in the Best Practice Principles.

"Programmed" reviews

- For regulations or laws with potentially important impacts on society or the economy, particularly those containing innovative features or where their effectiveness is uncertain, it is desirable to embed review requirements in the legislative/regulatory framework itself.
- Sunset requirements provide a useful "failsafe" mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- Post-implementation reviews within a shorter timeframe (1-2 years) are relevant to situations in which an ex ante regulatory assessment was deemed inadequate (by an oversight body for example), or a regulation was introduced despite known deficiencies or downside risks.

Ad hoc reviews

- Public "stocktakes" of regulation provide a periodic opportunity to identify current problem areas in specific sectors or the economy as a whole.
- Stocktake-type reviews can also employ a screening criterion or principle to focus on specific performance issues or impacts of concern.
- "In-depth" public reviews are appropriate for major regulatory regimes that involve significant complexities or interactions, or that are highly contentious, or both.
- "Benchmarking" of regulation can be a useful mechanism for identifying improvements based on comparisons with jurisdictions having similar policy frameworks and objectives.

Ongoing stock management

- There need to be mechanisms in place that enable "on the ground" learnings within enforcement bodies about a regulation's performance to be conveyed as a matter of course to areas of government with policy responsibility.
- Regulatory offset rules (such as one-in one-out) and Burden Reduction Targets or quotas need to include a requirement that regulations slated for removal if still "active", first undergo some form of assessment as to their worth.
- Review methods should themselves be reviewed periodically to ensure that they too remain fit for purpose.

Source: (OECD, Forthcoming[7]), OECD Best Practice Principles for Regulatory Policy, Reviewing the Stock of Regulation, OECD Publishing, Paris, https://www.oecd.org/regreform/regulatory-policy/public-consultation-oecd-best-practice-principles-reviewing-the-stock-of-regulation.htm.

1 Regulatory governance and reform in Thailand

Thailand's economic development path over the last decades is a widely cited success story – with GDP per capita in PPP terms relative to the US, doubling in the twenty years since 1996 (Harree, 2019[8]). While its growth has slowed down in recent years, GDP growth still hovers at around 3% (ADB, 2019[9]). More importantly, Thailand has significantly reduced poverty from 67% in 1986 to less than 7% in 2017 (World Bank, 2019[10]; OECD, 2019[11]). However, inequality, especially among regions, has narrowed but remains pronounced (OECD, 2018[12]). Informality persists – representing a majority of the labour force – with social protections lacking for these workers and the poor (OECD, 2018[12]). The government has also seen frequent changes since 2006. The National Council for Peace and Order (NCPO) came into power in 2014 to oversee a transition period towards the May 2019 elections. The current administration is adamant about the need to instil more stability after years of significant volatility.

In 2017, together with a new Constitution, the NCPO launched the 20-year National Strategy (2017-36) to ensure continuity of economic and social policies. Section 65 of the Constitution highlights that "the state must develop a national strategy as a goal for sustainable national development according to good governance principles."[1] The Strategy comes on top of the traditional 5-year plans elaborated by the National Economic and Social Development Board (NESDB), in an effort to anchor national goals into a long-term endeavour towards sustainable development. As a result, the Twelfth National Social and Economic Development Plan (2017-2021) is aligned with the Strategy.

Good regulatory practice is central to the Plan. It recognises that revising administrative laws and regulations are vital ingredients for Thailand's development. The Plan further explicitly calls for "the public administration system at every level to pursue good governance, be free from corruption, and adjust laws and regulations accordingly." Improving the overall regulatory framework is thus paramount to reaching the Development Plan and, ultimately, to implement the National Strategy effectively.

As part of the Strategy, the administration also launched its Vision Thailand 4.0 towards an innovation-driven economy. It represents a new economic model anchored around four objectives: economic prosperity, social well-being, raising human values, and environmental protection (Thailand Board of Investment, 2017[13]). Private sector stakeholders, as key drivers of the vision, have identified regulatory reform as a priority area by the government to fulfil this vision (American Chamber of Commerce in Thailand, 2018[14]; Grant Thornton, 2019[15]).

As a member of the Association of Southeast Asian Nations (ASEAN) Thailand adheres to regional commitments and initiatives, such as the Kuala Lumpur Declaration for ASEAN 2025 and the Masterplan for ASEAN Connectivity. Regulatory excellence is one of the five cooperation areas.[2] Within the framework of the Asia Pacific Economic Cooperation (APEC), Thailand focuses, among others, on public sector reform to utilise systemised digital services and enhance data linkages; regulatory reform to support market competition, consumer protection, and ease of doing business; and the development of Regulatory Impact Assessments (RIA).[3]

This review assesses Thailand's regulatory governance and oversight mechanisms, as well as the regulatory practices used by the government. This assessment thus aims to support the government in strengthening its national administration system in line with the 20-year National Strategy, as developing an effecting regulatory oversight function. The latter is indispensable for ensuring regulatory improvements and overall public administration reform.

This assessment is conducted under the auspices of the OECD-Thailand Country Programme, which involves 15 reviews drawing from four strategic pillars: i) good governance and transparency, ii) business climate and competitiveness, iii) "Thailand 4.0", and iv) inclusive growth. This review is conducted under Pillar 1 as part of the OECD Public Governance Directorate, in addition to other related reviews (see Box 1.1).

Box 1.1. Reviews conducted by the OECD Public Governance Directorate under the Thai Country Programme

In addition to this Review of Regulatory Reforms in Thailand, colleagues from the OECD Public Governance Directorate are conducting reviews that should be viewed together as a holistic set of analysis and recommendations for the Government of Thailand. These reviews are:

- Integrity Review of Thailand (2018) and (2020)
- Open and Connected Review of Thailand (2020)
- Thai Gender Budget Action Plan (2020)

Source: (OECD, 2018[5]), OECD Integrity Review of Thailand: Towards Coherent and Effective Integrity Policies, OECD Publishing, Paris; OECD forthcoming.

Overview of regulatory policy making in Thailand

Thailand has strengthened the foundation for regulatory reform through several national documents and strategies. These have explicitly established or implicitly required the use of good regulatory practices and better regulatory policy making measures in the day-to-day operation of the Thai Government. This section will describe first the broader context for enabling better regulation in Thailand, namely through the 2017 Constitution and National Development Strategy and Plans. This section then discusses prior reform efforts and then the current reform efforts underway.

Context for better regulation in Thailand

Constitution

Section 77 of the Constitution of the Kingdom of Thailand (2017) enshrines the principles of good regulatory practice in Thailand. The constitution specifically requires that laws only be introduced to the extent necessary, and to repeal and revise laws that are no longer necessary or suitable. Section 77 further requires an analysis of impacts of laws, public consultation throughout the rule-making process, to abstain from imposing unnecessary burdens on the public, and for laws to be reviewed according to specified periods of time. In addition, Section 258 includes provisions for results that must be met in regards to national reforms, and includes some related provisions to Section 77.

The constitutional provision under Section 77 needed to be implemented into law via an Act. In the interim, Cabinet Resolution of 4 April 2017 temporarily transposed Section 77 into an executive order until an Act formally implementing the provisions could be drafted and passed through the legislature. Additional detail is located in Chapter 2 in relation the use of *ex ante* regulatory impact assessments (RIAs), stakeholder engagement and *ex post* reviews.

The Constitution-Drafting Commission led the drafting of the 2017 Constitution. The constitutional principles have universal application (i.e. to the executive, legislature, government agencies, and sub-national governments) to general rule making. The 2019 Act only requires RIA, for primary laws, and not at subordinate regulations, whereas *ex post* review is required for both primary laws and subordinate regulations. In addition, the legislature may adopt their own regulatory policy that would be applied to laws originating from Representatives.

National Strategy 2018-2037

Section 65 of the Constitution of Thailand requires the State to "set out a national strategy as a goal for sustainable development of the country". In response, the *National Strategy Act, B.E. 2560* (2017 C.E.) was implemented and the National Strategy Committee (NSC) was mandated to develop the National Strategy.

In 2018, Thailand released their National Strategy 2018-2037, which establishes a 20-year vision for becoming a "developed country with security, prosperity and sustainability in accordance with the Sufficient Economy Philosophy". The ultimate goal is the happiness and well-being of all Thai people. The National Strategy is developed by the Office of the National Economic and Social Development Board (NESDB) inside the Office of the Prime Minster.

The National Strategy notes several challenges facing Thailand's development. From the economic perspective, the strategy notes issues with the integration of innovative technologies into the economic structure, low productivity of the agricultural and service sectors, and a workforce not fully equipped for the labour market. Socially, the plan notes low income levels, poverty and inequality, and public service quality and accessibilities as key challenges. The public service is further noted as required more efficiency, continuity and flexibility. Preservation and restoration of natural resources and the environment are also noted as key challenges for sustainable development.

The National Strategy further notes the international impact of rapid changes with regards to an aging society, rise of disruptive technologies, changes to international relations, and more complex connectivity with regards to regional integration, as well as the effects of climate change.

Taken together, the National Strategy notes the impacts of these factors on national security, economic, social and environmental aspects of national development. The plan elaborates a plan based on six key strategies to address each of these factors in the Thai context.

For many of these, better regulatory policy making plays a key role. Good regulatory policy making promotes better economic outcomes and drives competitiveness, while protecting society and the environment. Furthermore, clear and established regulatory processes can help promote more efficient rule making that result in better and more effective regulatory environments for citizens and businesses.

Twelfth National Economic and Social Development Plan

The National Strategy is translated into action through five-year National Economic and Social Development Plans, beginning in this case with the Twelfth (2017-2021). These plans are also developed by the NESDB, though are not as important nor legally binding as the National Strategy.

The Twelfth Plan elaborates 10 development strategies for achieving the goals of the National Strategy, along with objectives/target and implementation, monitoring and evaluation plans. Of particular relevance for regulatory policy, the Twelfth Plan notes the need to grow international trade and investment, domestic investment and economic growth, enhancing international regulatory and institutional linkages/cooperation, developing domestic infrastructure networks and linking these to neighbouring countries, and creating an entrepreneurial society. Generating innovation is also noted as important for the future economy.

Thailand 4.0

As part of the National Strategy, the Government of Thailand has also developed the Thailand 4.0 strategy, which elaborates a new economic model for Thailand. Past models emphasised agriculture (Thailand 1.0), light industry (Thailand 2.0), and advanced industry (Thailand 3.0). The most recent strategy aims to "unlock the country from several economic challenges" resulting from these past models, including what they term as a "middle income trap," "inequality trap," and "imbalance trap".

The strategy aims to encourage the growth of specific industries by providing investors with incentives to participate in the development of target industries. The strategy focuses on the development of future industries around technology, support for entrepreneurs, and integration with ASEAN and global communities. Reducing regulatory burdens and having an innovation-friendly regulatory environment is implicit throughout this strategy.

History of regulatory reform in Thailand

There have been two recent waves of regulatory reform in Thailand, roughly corresponding to the mid-2000s and then again in the mid-2010s. Each wave established new requirements to better manage the quality and flow of regulation through various legal mechanisms provisions and programmes, including through the use of good regulatory practices. Examining these waves demonstrates how the Government of Thailand has progressively implemented better regulation principles, starting with the governance principles of the system and then moving on to administrative burden reduction. As will be seen in the final section of this chapter, this has been capped off by a third wave of reform that introduces regulatory management tools in an attempt to introduce regulatory quality change in Thailand.

Mid-2000s

The first wave of reforms occurred in the mid-2000s, and focused on establishing the foundations of a system of good regulatory governance in Thailand. The first reform of this era is associated with the *State Administration Act (No. 5), B.E. 2545* (2002). Section 3(1) of this act established the expectation that public agencies function under the principles of good governance. This includes promoting public participation, disclosing information and monitoring and evaluating performance. Section 3(1) specifically requires the state administration to make laws that, *inter alia,* address:

- Benefits that accrue to the Thai people;
- Results-oriented administration;
- Effective administration;
- Worthiness of government functions;
- De-layering of work processes;
- Abolishment of unnecessary agencies and functions;
- Empower decision-making; and,
- Facilitate and respond to the needs of the people

Thailand's commitment to improving service delivery is rooted in the *Royal Decree on Criteria and Procedures in Good Governance, B.E. 2546* (2003). The decree was introduced by the government as a way to improve the quality and performance of public administration across the different ministries, agencies, and state institutions in the country and lift up the quality of services provided to citizens and businesses (OECD, 2018[16]). This was part of the Process Improvement Project, which included participation from 144 government agencies (Khampee, 2016[17]).

The decree includes several sections that seek to improve regulatory policy making. The first part of the law establishes the targets for good governance in the Thai administration, including:

- Responsiveness;
- Results-based management;
- Effectiveness and value for money;
- Lessening unnecessary steps of work;
- Reviewing missions to meet changing situations;
- Providing convenient and favourable services; and,
- Regular evaluation.

The following sections further detail the necessary conditions for implementing these targets. This includes the duty to examine and review laws, rules, and regulations for modernisation, including through public consultation (Section 35); empowers the OCS to provide opinions where laws, rules, and regulations do not comply with facilitating national development, impedes business or the living conditions of people (Section 36); and establishes conditions to deal with complaints against laws, rules and regulations (Section 42).

A 2003 Cabinet Resolution first introduced a qualitative checklist for RIA. The checklist is based on the *OECD Checklist for Regulatory Decision-Making*, which is an annex to the *OECD Recommendation of the Council on Improving the Quality of Government Regulations* (OECD, 1995[18]). The OECD Checklist contains 10 questions about regulatory decisions that can be applied at all levels of decision- and policy-making, and are meant to form the foundation for conducting regulatory impact assessments (RIAs) with full evidence-based analysis. While the 2008 Bill introduced the checklist, it appears to be rare that State agencies conduct full RIAs in accordance with the 2008 Bill. More details on this checklist are located in Chapter 2.

Mid-2010s

The next wave of reforms targeted the stock of regulations in Thailand with a specific focus on reducing burdens and repealing unnecessary regulations. Two legal texts were implemented in this period.

First was the *Royal Decree on Revision of Law, B.E. 2558* (2015), also known as the “sunset law”. This law requires that the relevant authority conduct a review of the appropriateness of the law every five years since its implementation. In 2014, a review by the Law Reform Commission of the Office of the Council of State (OCS) found that many

laws governing enterprise activity, particularly subordinate laws, were still based on an outdated licensing system and had not been assessed for regulatory impact.

Also in 2015, the government enacted the *Licensing Facilitation Act, B.E. 2558* to help reduce the administrative burden on licensing procedures. The Act requires each authority to review the laws concerning their respective licensing requirements and determines whether such licensing requirement should be repealed or replaced by another measure every five years since the licensing requirement has come into force.

In response to these legal requirements, a public-private joint initiative, also referred to as the "guillotine project", was launched in 2017 to improve unnecessary regulations that hinder socio-economic development. This reform is led by the Prime Minister's Office and aims to change processes, legal acts and back office efficiency as needed to move Thailand to top 20 in the 2019 World Bank Doing Business rankings (OECD, 2018[16]).

The objective is to modify or repeal obsolete laws that obstruct people's livelihood and the competitiveness of the business sector in Thailand (Simple and Smart License website). The review also ensures that regulations needed in Thailand to protect health, safety and environment, such as appropriate health, safety and environmental rules, are maintained and strengthened, even as unnecessary requirements that distract regulators and businesses from the important protective regulations are removed (OECD, 2018[16]).

The programme's goal is to:

- Substantially reduce the costs and risks of regulations affecting businesses and citizens by simplifying or abolishing rules affecting the doing business procedures and produce concrete and visible results in 2017.
- Improve Thailand's international rankings to signal reforms to the international community.
- Provide credibility and full transparency in the reform process by setting targets for improvements and reporting publicly on improvements in regulations by regulatory agency overtime.
- Stimulate small businesses and entrepreneurship by removing barriers to starting up and expanding businesses.
- Reduce corruption and business uncertainty resulting from complex and discretionary procedures.

As one result of these efforts, Thailand's rank in the World Bank's latest Doing Business indicators improved to 27 from 48 (World Bank, 2019[10]).

2017 reform and future plans

Thailand made substantial efforts to lay the groundwork for better regulatory policy leading up to the 2017 Constitution and emphasis on the national development of the economy and society. Following the 2017 Constitution, the Government of Thailand has made substantial efforts to implement the Section 77 requirements. This section discusses these in more detail.

Following the passage of the 2017 Constitution, the Government promulgated Cabinet Resolution of 4 April 2017[4] as an interim measure, which gave guidelines and rules to follow for the drafting of legislative acts. This included consistency with the National Strategy and Reform Plans, reduction of burdensome laws, and adherence with the principles of Section 77. It also contained a sub-section on guidelines for holding a public hearing for a proposed draft legislation and conducting an assessment of impacts, as well as a checklist for examining the necessity of legislative drafts (including new legislation, amendments to existing legislations, or repeals).

The view has been that this order created a bit of change, but not as dramatic as hoped perhaps due to the interim nature and lack of oversight measures in place to enforce the requirements. Still, some ministries and agencies began producing laws in accordance with the provisions in Section 77. Notably, the Bank of Thailand and the Securities and Exchange Commission have been early adopters. This is in part due to the banking industry being well organised and highly impacted by burdensome regulations, which resulted in strong support by stakeholders to adopt better regulatory policy making methods. Similar support by stakeholders has also led to the Pollution Control Department, Ministry of Natural Resources and Environment and the Ministry of Commerce to be leaders in the adoption of the reforms as well. The Secretariat to Cabinet, who have directly partnered with the OCS as a screening agency for Cabinet meetings, have also served a fundamental early role.

The *Act on Legislative Drafting and Evaluation of Law, B.E. 2562* (2019) implements the requirements of Section 77 into Thai Law. This came into force on 27 November 2019. This law seeks to prescribe rules for drafting legislation, including the use of regulatory impact assessments (RIA), stakeholder engagement, and *ex post* review.[5] Section 5 (General Provisions) requires the use of RIA and stakeholder engagement before the legislative drafting process begins and is taken into account every step of the drafting process and only applies to primary laws. The coverage of this Act extends to all laws and rules produced by the Thai Government in the case of *ex post* review (Section 3).[6]

The general provisions of the Act (Chapter 2) established the requirement for State agencies to enact laws to the extent necessary and repeal or reform laws no longer needed, outdated, or cause burdens to the people. It also established the requirement for legislative

texts to be displayed conveniently, so that people are able to easily comprehend and be in compliance with the law.

A significant part of the law is to assign the OCS as the main responsible government agency for the regulatory policy and related matters. This function was previously less developed in Thailand. Prior to the Constitution and 2019 Act, the OCS was in charge of regulatory policy matters but emphasis was placed on the legal review over regulatory policy management. Principle 3 of the *OECD Recommendation on Regulatory Policy and Governance* (2012) notes the importance of regulatory oversight to supporting and implementing regulatory policy, and fostering regulatory quality. Sections 25 and 26 of the Act instructs the OCS and the Secretariat of the Cabinet to review the draft laws, the summaries of public consultation and the RIA reports that are submitted by responsible ministries and/or other government agencies. The effect has been that OCS now has to equally prioritise legal review and regulatory policy management, establishing it as the regulatory oversight body. According to the law, the Secretariat of the Cabinet also has this function; however, in practice, the Secretariat to Cabinet performs a completion check and OCS performs the substantive review.

If the OCS is of an opinion that a proposed draft law is unnecessary, it can provide an opinion to the Secretariat of the Cabinet, which will, in turn, deliver the opinion to the Council of Ministers. The Council of Ministers will then decide whether the law is necessary. In addition, the Law Reform Commission may initiate a reform agenda, should the Commission is of an opinion that a law imposes unnecessary burdens on the people or the businesses or goes against the government's national policy (Section 17/3 of the *Council of State Act, B.E. 2522* (1979)).

To support the implementation of the 2019 Act, the OCS has developed subordinate regulations, guidelines and manuals, and a long term training programme for Thai officials. These were developed by the Subcommittee on RIA, which is within the structure of the Law Reform Commission. The subordinate regulations develop more clearly the process, requirements and oversight mechanisms for RIA, stakeholder engagement and *ex post* review. This includes templates for submitting proposals to the Council of State and OCS. These came into force with the Act on 27 November 2019, and are discussed in detail in Chapter 2.

The guidelines and manuals were published as of 15 January 2020, and the long term training programme is still under development as of the time of writing this report. There are currently 60 OCS officials who are designated as the first "trainers" with the responsibility of working with ministries and agencies to implement the reforms. This will be a key area of focus for the OCS, as the reforms are still very new and understanding amongst Thai officials is low. As well, it was noted by some that these tools and processes are complex and often there are too many laws to follow, making understanding difficult.

However, it is clear that the Government and Thai officials view these reforms as potentially effective mechanisms for improving regulatory policy making and achieving the long term goals for the country.

Rule-making process

Thailand operates on a civil law system and is primarily statute based, with major codes reassembling those of European civil law. It is a unitary state and a parliamentary constitutional monarchy, which is led by a Prime Minister, who is Head of Government, and a Cabinet, officially, the "Council of Ministers", which forms the leadership of the Executive. The Executive is one of three main branches of government along with the legislative and judicial branches. They are described in more detail in Box 1.2 below. The monarchy is the Head of State in Thailand, and the current monarch is King Maha Vajiralongkorn, who ascended to the Throne in 2016.

Box 1.2. Basic institutional structure

There are three central branches of government in Thailand as detailed below.

The head of state is the Monarchy. The Monarchy functions in a largely ceremonial capacity, leading the military, granting royal assent to bills, officially appointing the Prime Minister and other senior officials, as well as issuing official pardons.

1. Legislative
    - Represented by the *National Assembly* containing 2 chambers:
        - 250 member *Senate* appointed by an application or nomination process based on merit, as well as regional, professional and social representation. An intra-group voting system by other nominees will determine final candidates.
        - 500 elected *House of Representatives* of which 350 are constituency and 150 party seats.
2. Executive
    - Led by the *Prime Minister*

- Cabinet, officially the *Council of Ministers*, is currently 36 members of which 20 lead the central ministries and the remaining are general advisors to the government.

3. Judiciary
   - 4 main branches:
     - Court of Justice
     - Court of Administration
       - responsible for cases between the state, including its ministries, agencies and private citizens
     - Military Court
     - Constitutional Court

Other important institutions include:

Independent Organs

- Executive branch agencies with appointed leadership that are not part of Cabinet whose roles are constitutionally mandated. Selection, term length and specific management structure is dependent on the specific agency though a general set of guidelines is laid out in the constitution.
- There are 7: the Election Commission; Ombudsman; National Anti-Corruption Commission; State Audit Commission; National Human Rights Commission; and the Attorney General Office.

Privy Council

- Body of a maximum of 18 advisors to the monarch of Thailand. Appointed by the monarch himself with no term limit.
- Members cannot hold a political or government position

Source: Administrative Reorganisation Act, B.E. 2545 (2002); Constitution of Government of Thailand, B.E. 2560 (2017); (OECD, 2018[16]).

Developing primary legislation

The Cabinet, as managers of the central government ministries, is responsible for introducing bills to the National Assembly, although a group composing of no less than 10% of members of the Senate or House of Representatives can propose a bill. Eligible voters can also put forward a bill with a petition of more than 10 000 signatures. However, more

than 90% of bills are from the Executive and submitted by the Cabinet to the National Assembly.

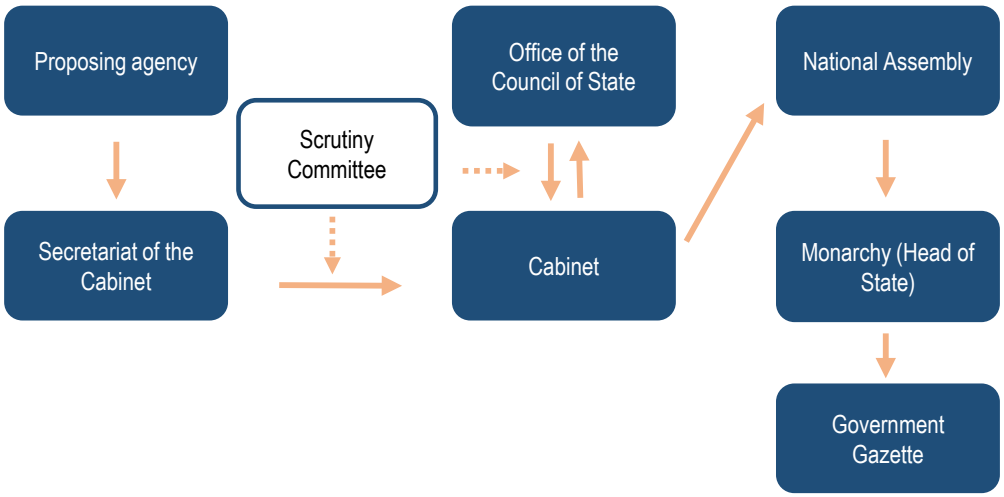
Executive bills can be either as a result of Cabinet instruction or alternatively formulated as a product of demand by constituents or to resolve an issue identified by the agency administration. The degree to which legislation is a product of either varies by agency according to its individual mandate and its leadership. OECD discussions with government representatives indicated that it can vary from roughly half due to constituent demand to almost entirely from Cabinet direction.

The legislative procedure for an Executive Bill is described in along with further details on important institutions in the legislation process in Box 1.2. The process starts with an agency creating a draft bill which is then passed to the *Secretariat of the Cabinet* (SoC) for preliminary checks on its proper formulation and its transmission to Cabinet (see more detail on the SoC's role in Box 1.3).

Before Cabinet formally receives the bill, it can reviewed by a scrutiny committee and cabinet subcommittee for analysis on legal issues, compatibility to cabinet policy and political suitability. The committees analyse the bill and suggest changes if needed. Responsible and related agencies are then consulted on the precept of the draft by the SoC as well. The proposed bill is then sent to Cabinet for approval of its principle and need.

The *Office of the Council of State* (OCS) receives the bill after it receives Cabinet support and then checks for legal compatibility and formally drafts the bill. The OCS in its checks reviews the constitutionality of the law, compatibility with other legislations, suitability of the proposed mechanism and legal form and prepares the explanatory memorandum of the examined bill (Nilpraprunt, 2014). The bill will normally be examined by a Law Committee, made up of members of the *Council of State* (described in Box 1.3), specialised in the relevant field of law of the bill. A scrutiny committee can then analyse the bill for legal issues and compatibility to government policy. Cabinet will then approve the bill, which must then pass first the House and then the Senate, through three readings in each house, to then be brought to the King for signature. Bills that are deemed as national reform will be jointly considered by both chambers simultaneously in the National Assembly. Once a bill has received royal assent, it is published in Government Gazette and becomes law.

Figure 1.1. Simplified primary legislative process



Source: Constitution of Government of Thailand, B.E. 2560 (2017); (Dansubutra, 2015[19]); (Thailaws, 2005[20]).

Principal sources of law

Thai laws derive from the legislative and executive branches. Acts are supported by various administrative laws and regulations, issued by the Cabinet, Minister or Director General of a Department. These regulations include royal decrees, ministerial regulation, and notifications. These legislative instruments are described below (Nilprapunt, 2015[21]; Ongkittikul and Thongphat, 2016[22]; ThaiLaws, n.d.[23]):

- **Acts** (Organic Acts and Acts of Parliament) are legislation passed through the National Assembly and their production is described in the process of .
- **Emergency Decrees** are issued only in the case of an emergency of necessity and urgency which is unavoidable and for the purpose of maintaining national or public safety or national economic security, or avert public calamity. The Council of Ministers is required to submit the Emergency Decree to the National Assembly for consideration in the subsequent sitting. They have the same legal status as Acts.
- **Royal Decrees** are subordinate legislation approved by the Council of Ministers, signed by the King, and proposed by the Minister authorized to implement a specific task under an Act. For example, the *Royal Decree on Revision of Law, B.E. 2558* under the *State Administration Act (No. 5) B.E. 2545* (2002).

- **Ministerial Regulations** are issued by the Minister in charge with the control of the execution of the laws. These regulations are implemented by the Ministry but affect the public at large, therefore approval by the Council of Ministers is necessary.
- **Notifications** are promulgated by the Director General of a Department and executed by the Minister in charge of the department. They do not require Cabinet approval because notifications can be quite sector specific or deal with technical issues. They can also be repealed or amended fairly quickly in comparison with Ministerial Regulations
- **Cabinet Resolution** are of no binding effect but influence government agencies in the enforcement and interpretation of rules and regulations.

Judicial precedent is not binding in Thailand. Courts are not bound to follow their own decisions nor are lower courts mandated to follow the precedents of higher courts. However, courts normally adhere to the precedent of previous cases for stability and fairness.

Box 1.3. Key institutions in the legislative process

The **Office of the Council of State** (OCS) of the Prime Minister's office:

- Is the central legal drafting agency of the government for laws, by-laws, rules and regulations as requested by the executive, with a staff consisting of legal experts and administrative academia. The OCS does not assist with non-Executive bills, this the responsibility of other secretariats.
- Provides legal advice and training to the state agencies or state enterprises as well as coordinating with agencies for the purpose of developing principles of law and administration of state affairs
- Submits opinions to the Council of Ministers for new legislation, amendment or repeal of existing regulations
- Serves as the secretariat of the *Law Reform Commission* (described below in Section x) and the *Council of State*. The *Council of State* is appointed on recommendation of the Council of Ministers, and has the following consultative functions: (1) to draft primary or secondary legislation and (2) to give legal advice to State agencies or enterprises, upon the direction of Prime Minister or by resolution of the Council of Ministers, and, (3) to submit opinions to the Council of Ministers for the creation, amendment or revision of new legislation.

The **Secretariat of Cabinet** (SoC), under the Prime Minister's Office:

- Supports public administration and coordination to drive Cabinet policy implementation
- Administers affairs between the Cabinet and Monarch (requesting amnesty, appointments and asset of bills)
- Acts as a co-ordination centre between the Cabinet and the National Assembly: analysing draft bills; proposing initial drafts to parliament; handling enactments and amendments; processing motions, questions and reports; communicating new legislation to public, for example, in the Gazette.

Scrutiny Committees, typically established to assist in reviewing draft bills throughout the legislative process, are:

- Typically ad hoc and their make-up changes depending on the topic area.
- Usually chaired by a minster, while containing legislative and executive branch members and other relevant personnel

Source: Council of State Act, B.C. 2522 (1979); (OECD, 2018[16]; Ongkittikul and Thongphat, 2016[22]; Thailaws, 2005[20]).

Legislative process after the 2019 Act

Figure 1.2 specifies the primary legislative process with the inclusion of the required *ex ante* regulatory impact assessments under Chapter 4 of the 2019 Act. Chapter 2 of this report describes the details of *ex ante* RIA, stakeholder consultation as well as the *ex post* analysis under the 2019 Act in more detail. The first step in the legislative process is the drafting of the bill by the proposing agency and, according to Section 12 of the 2019 Act, the production of an associated regulatory impact assessment (RIA) and the summary of stakeholder consultation, which are then, in line with Section 25 of the 2019 Act, sent to the Secretariat of the Cabinet.

The SoC does a preliminary completion check with ability to block or provide opinion on the draft laws, the summary of public consultation and the RIA report. These then move to the Cabinet for a review of their rationale and the underlying policy principles. The draft is then handed to the OCS which, besides from checking the legality and drafting of the bill, performs a substantial evaluation of the RIA and the summary of stakeholder consultation. The OCS performs three actions in its review as stipulated in Section 26 of the 2019 Act:

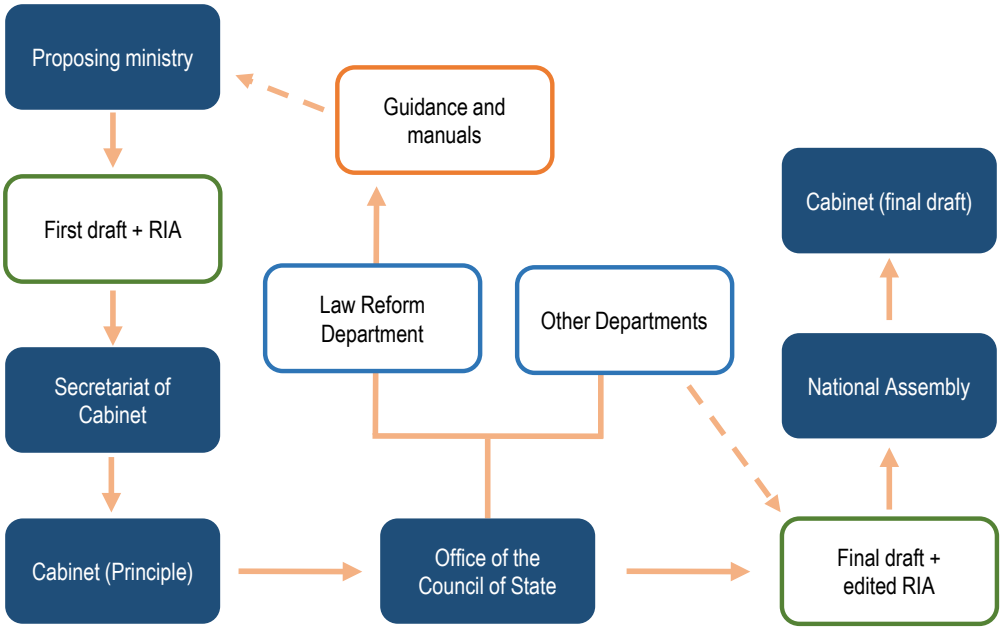
1. Issues an opinion and advice on the necessity of the draft legislation to the attention of the Secretariat of the Cabinet, which transmits this opinion to Cabinet, who then decide whether the law is necessary.

2. Verifies compliance of the draft legislation with Section 5 of the 2019 Act, to ensure the bill is up-to-date, not burdensome as well as underwent impact analysis and public consultation. Laws are also required to be easily comprehendible. New bills must also adhere to the requirements for regulatory impact assessment as discussed below in Chapter 2 and Section 26 of the 2019 Act.
3. Can request for additional public consultation or to re-assess the impacts of the law. The OCS can do the additional assessment itself or ask the relevant government agency to do so.

The OCS also is responsible to train state agency officials in regulatory assessment and provide official guidance with manuals or other ad hoc assistance.

Whichever action is taken by the OCS, the Cabinet then approves and submits the draft bill with the impact assessment report and summary of stakeholder consultation (or the revised versions from the request of the OCS) to the National Assembly for consideration and passage into law. It is not required that the Cabinet share the opinion and advice of the OCS with the National Assembly. The materials shared with the National Assembly are posted on the central system of the government which is publicly available.

Figure 1.2. Legislative process with RIA



Source: Act on Legislative Drafting and the Evaluation of the Outcomes of Law, B.E. 2562 (2019).

Institutions of regulatory policy and governance

Key Institutions in Regulatory Management

Executive leadership

The implementation of regulatory management or oversight is solely under the jurisdiction of the Executive branch, led by the OCS in the Office of the Prime Minister. The 2019 Act gives no specified responsibility to the legislature for oversight or review of regulatory policy, but, the legislative branch retains the power to pass amendments or enact primary legislation to initiate reform. Although, the Executive does holds legislative powers granted to the Prime Minister, as specified in Section 4 in the 2019 Act, and the Cabinet, as stated in Section 7, to issue additional ministerial regulations (secondary legislation) for the execution of this act.

Office of the Council of the State (OCS)

The OCS as stated in the in the legislation preamble of the 2019 Act will be "tasked to lead the administration of the implementation of the national strategy in the area of law and legal reform." Under this role [as well as according to their roles stipulated in the *Council of State Act, B.E. 2522* (1979)], the OCS has the responsibility to train agency officials who will perform regulatory analysis and provide official guidance in the form of manuals or ad hoc support.

The 2019 Act designates the other following responsibilities to the OCS:

- Oversight and quality control of *ex ante* impact assessment and stakeholder consultation as well as issuing opinions to the Cabinet as to whether the legislation and impact assessments warrant legislation. The OCS does not have an explicit, but *de facto*, oversight or quality control function for *ex post* reviews by setting forth guidelines and manuals (as per s. 35 of the Constitution).
- Administering and management of the central system, as stated in Section 11 of the 2019 Act, which the Electronic Government Agency will be responsible for providing, maintaining and developing.

Reflecting international good practice in its oversight role, the OCS does not have the authority to bar legislative action. The OCS can ask an agency for a revised impact assessment but cannot request a revision of the principle and course of action of the legislation itself. This is a prerogative of the Cabinet.

Neither the OCS nor the SoC, as executive agencies, reviews legislation that are proposed as non-executive bills nor assists in their drafting. These bills go through another agency, for example, the Secretariat of the House of Representatives. Non-executive bills will not be subject to impact assessment nor reviewed as such. However, as per Section 20 of the 2019 Act, the National Assembly, the House and Senate, can enact requirements for the *ex ante* or *ex post* evaluation for these bills if deemed appropriate. According to conversations with Thai officials, there are plans to do so. Nonetheless, non-executive bills represent a small portion of law – under 10% – in Thailand.

Law Reform Commission

As established under the *Council of State Act, B.E. 2522* of 1979, the Law Reform Commission[7] (LRC) is responsible for preparing law reform programmes for legislation identified by the OCS as being inadequate and not fit for purpose. This law reform agenda is submitted to the Cabinet which, if approved, allows the Commission to prepare a report on the reforms and corresponding legislation to be submitted to the Cabinet, and eventually passed into legislation, if approved by the National Assembly. This places the LRC as a key body to advise Cabinet on legal reform. The LRC can request assistance from the OCS, which is its secretariat, in the preparation of this report and its complementary draft legislation. The LRC can also create sub-committees, fund research projects, or request input from other government agencies to substantiate its work.

In terms of the 2019 Act, the LRC will hold a similar advisory role to the Cabinet. In Section 7 of the Act, it can advise the Council of Ministers on:

1. The enactment of ministerial regulations
2. The prescription of guidelines
3. An agency's compliance with the act
4. Overall government compliance with the act

Furthermore, the LRC may advise an agency on a course of action if it feels it is not compliant with the act. When the agency follows the LRC's advised plan, it is considered compliant with the law. LRC and OCS share responsibility for legal oversight on regulatory policy (according to Sections 7 and 8 of the 2019 Act). The OCS acts as the Secretariat to the LRC, conducting the analysis and presenting it to the LRC for approval. The OCS then conducts oversight in the first instance and presents their decision to the LRC for approval. The scale as to which the LRC exercises their discretion could be key as to whether this overlap in responsibilities may need further demarcation.

Additionally, the LRC was tasked with producing the guidelines that are a template and general methodology for impact assessment, stakeholder consultation and *ex post* analysis (see Chapter 2). The OCS assisted in the design of these documents but the LRC was

responsible for their final production as well as their submission to the Council of Ministers. The guidelines came into effect on 24 November 2019.

Local government

Thailand is a central state, but is divided into a 76 Provinces (Changwats), with leadership that is appointed by the central Ministry of Interior except where elected in the Bangkok Metropolitan Area (BMA) and the City of Pattaya.[8] The provinces are further divided into Districts (Amphoe), sub-districts (Tambon) and villages (Muban). Village heads are elected by constituents and sub-district officials are generally chosen from among the village heads. However, both sub-district and village heads fall under the guidance and supervision of provincial governors and chief district officers, who are under central government control (Multi-dimensional Review of Thailand: Volume 2. In-depth analysis and recommendations, 2019).

There has existed a separation of power between the central government and local authorities in Thailand since 1953 with the enactment of the *Municipality Act, B.E. 2496* (1953). After, almost all versions of the Constitution have devolved some powers to local government. Specifically, the current Constitution enshrines the right to self-government in Chapter 14. Supplementary primary acts stipulate the jurisdiction of local authorities and grant different powers to them based on the particular administrative structure of an area, for example with the *Provincial Administration Act, B.E. 2540* (1997) in the 76 Changwats and the *City of Pattaya Administrative Act, B.E. 2542* (1999) in Pattaya.

Local authorities have the power to enact rules in certain areas such as public health and natural resource management, however, the exercise of this power may not be in conflict with their empowering legislation or primary law. In general, license and permit systems are managed centrally at the ministerial level, although, the Thai government has traditionally entrusted the local authorities to implement these regulation. Despite this, sub-national units have no responsibility over quality control of the regulations they issue, which is still under the prevue of the central government

Regulatory assessment as stipulated in the Constitutional Articles 77 and 258, have universal application to the executive, legislature, agencies, and sub-national governments. However, the 2019 Act is focused on implementing regulatory policy tools in primary law. Nevertheless, certain aspects, in particular, of the review of the outcomes of the law (*ex post* review), cover both primary and secondary law. Therefore, new secondary legislation is excluded from impact assessment but must undergo this process, along with the existing stock of regulation in Thailand, after 5 years.

Ministerial mandate and regulatory agencies

Ministries, under the 2019 Act, are tasked to prepare impact assessments, perform stakeholder consultations, and complete *ex post* analyses as further described in the Chapter 2 of this report. Ministries in Thailand are responsible for the creation laws in their own remit and either create policy based on government plans, cabinet direction, or through identification of an issue by constituents or agency staff (see above for more detail on the legislative process).

Under the supervision of ministries, regulatory agencies tend to be separated on the subject matter of their jurisdiction and are empowered to enact regulation according to their mandate granted by primary legislation, such as through a licensing regime, supervisory approach, or sanction. The relationship between the central government and regulatory agencies can take different forms but the regulator is often overseen by their respective ministry. For instance, the central government could have a senior government official sit on the board of management of a regulator. The level of independence of a regulator varies upon the subject matter. For example, regulators in capital markets would have little government interference whereas regulators in areas related to public security or national safety would work closely with the agency leadership. Thailand has, depending on the government in power, roughly ten national regulatory agencies which consistently include, the National Broadcasting and Telecommunication Commission, Securities and Exchange Commission, Bank of Thailand, and the Office of Insurance Commission.

Before the 2019 Act, the government, among other observers (e.g., (Ongkittikul and Thongphat, 2016[22])), identified the need for a strong central leading agency on oversight, training and policy coordination of good regulatory practice and that the methods of impact assessment and stakeholder consultation could be more robust and consolidated (Multi-dimensional Review of Thailand (Volume 1): Initial Assessment, 2018; SME Policy Index: ASEAN 2018: Boosting Competitiveness and Inclusive Growth, 2018) . Individual initiative and leadership, in the past, has played a central role as to whether a state agency upheld good regulatory practice. Agencies such as the Bank of Thailand (BoT) and Security and Exchange Commission, for example, have internalized regulatory policy tools as part of their rule making process and have performed structured impact assessments and stakeholder consultations on their stock of regulation.

Previous to the 2019 Act, other ministries could be notified or consulted on drafts bills or their principle when it is relevant to their jurisdiction but there was no formal requirement for this. However, the proposing agency was required to post the law publically for 15 days on their IT system. Under the 2019 Act, stakeholders, including other government officials, must be consulted in the drafting of legislation, and in addition, legislation must be inputted into the central system, which can be reviewed by other government agencies.

Thailand also currently lacks a systemized conflict mechanism for possible ministerial or regulatory overlap in Thailand. Legislation is established discretely and conflict therefore, legally, rarely exists. Disputes in jurisdiction are managed by the ministries involved, and when a solution cannot be reached, the Cabinet or Prime Minister usually makes a final determination.

Box 1.4. Other bodies involved in regulatory reform

National Reform Committee

- providing action plans and procedures for long-term law reform
- monitoring government agencies to comply with the national reform plans
- has several subcommittees, one being specialised in Legal Reform, which sets out various legislative reform agenda including the establishment of the regulatory policy management and central legal database system
- the Fast-Action Law Reform Committee, founded under the Legal Reform Subcommittee, managed the *regulatory guillotine* project and the *Simple and Smart License* initiative to cut obsolete regulation.

National Economic and Social Development Board

- central planning agency for sustainable development
- co-published, with the Ministry of Justice, a set of guidelines in 2016 to improve public awareness and the capacity of officials to conduct RIAs and stakeholder consultation.

Office of Public Sector Development Commission (OPSD) of the Office of the Prime Minister

- responsible for supporting public sector development and the delivery of public services
- monitors the KPIs of ministries to ensure policies are in line with government actions and future plans (the 20-year National Strategy/Thailand 4.0, the 5-year, 12th National Economic and Social Development Plan (2017-2021), and the SDGs)
- role to advise Council of Ministers on the amendment of legislation in the *Licensing Facilitation Act*
- involved in the identification of 6 000-7 000 procedures for the *regulatory guillotine* project and choose 1 000 for adjustment.

Ministry of Justice

- Section 6 of the 2019 Act states that if an individual is subject to sanction due to a regulation and claims that the regulation is not in line with Section 5 of the 2019 Act then the Court of Justice must evaluate the legislation. If the Court of Justice is of the opinion that their claim is substantiated, the Supreme Court will then evaluate the case. If the Supreme Court finds that the regulation is inconsistent with Section 5 of the 2019 Act, the court can refrain from imposing the punishment of the regulation.

Federation of Thai Industries

- private sector representatives which serve as a representative body for industrial operators in the country for issues related to the promotion and development of the Thai industry
- advised in the *regulatory guillotine* project

Joint Standing Committee on Commerce, Industry, and Banking

- private sector initiative comprising of representatives from the Chamber of Commerce, the Federation of Thai Industries, and the Thai Bankers Association
- often included in the deliberation or consideration of proposals to offer their inputs or perspectives from the business sector point of view

Thailand Development Research Institute

- public private think tank which spearheaded the analysis of the regulatory guillotine project in the identification of the Ease of Doing Business reforms, in its first phase, and determining 1000 procedures for amendment in its second phase
- published other research relevant to regulatory reform

Source (OECD, 2018[16]; Apisitniran, 2019[24]; Apisitniran, 2018[25]; Faulder, 2019[26]).

Notes

[1] P. 21, Constitution of the Kingdom of Thailand (translation of the Office of the Council of State).

[2] P. 67, Twelfth National Social and Economic Development plan (2017-2021).

[3] P. 69, Twelfth National Social and Economic Development plan (2017-2021).

[4] https://www.lawreform.go.th/uploads/files/1517818294-th05m-wid8z.pdf.

[5] The Act also addresses transparency, discretion of officials, licensing and permitting, which are beyond the scope of this review but are important elements of the Thai regulatory policy system.

[6] Section 3 of the 2019 Act states that laws are "Organic Act, Acts of Parliament, and Legal Codes," while rules are in relation to "administrative procedural law, the effect of which impose a burden to the people" and carry with it penalties for non-conformity.

[7] According to the *Council of State Act, B.E. 2522*, the LRC is made up of nine but not more than fifteen Law Reform Commissioners appointed by the President of the Council of State from Councillors of State or qualified members from universities and from State or private agencies.

Chairperson and other Councillors of State cannot be less than one half of the total number.

[8] The BMA is considered a special *Local Administrative Organisation* along with the City of Pattaya. However, Pattaya does not hold provincial jurisdiction as does the BMA.

2 Use of good regulatory practices

Regulatory impact assessments

Evidence-based policy making is a well understood and accepted tenant of good regulatory governance (OECD, 2020[27]). This is codified in Principle 4 of the OECD Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012[28]), which states that countries should "Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach". This section provides further details on the Thai system of RIA.

Scope

Article 77 of the 2017 Constitution requires government agencies to conduct *ex ante* impact assessments, or regulatory impact assessments (RIAs), on newly introduced regulations. This is implemented by the *Act on Legislative Drafting and the Evaluation of the Outcomes of Law.* The Act is intended to establish the baseline standards for applying RIA and stakeholder consultation. However, Section 9 allows ministries to enact more stringent requirements, where necessary, in which case their rules would supersede the Act. Since the Act governs the activities of the executive branch, Section 20 further allows the House of Representative, Senate and a joint sitting of the National Assembly to pass resolutions or enact rules of procedure for impact assessments that would apply to themselves.

Section 12 of the Act requires state agencies to "explain the rationale of the necessity in drafting the legislation by demonstrating that it does not impose an unnecessary burden upon the people; that the utility gained… outweighs the burdens on the people; and that there are no other measures except legislation that can achieve the same effect". This is broadly in line with the OECD Best Practices on Regulatory Impact Assessments (see Box 2.1). Section 17 further requires the results of stakeholder engagement to be taken into account with regards to the assessment, and for an impact assessment report – also known as a regulatory impact statement (RIS) – to be produced. The minimum guidelines for the RIS are enumerated as:

1. the necessity of enacting the legislation or rule in order to carry out that mission;
2. redundancy with other laws;

3. The individual right and liberty that must be restricted;
4. the burdens or hindrances of that legislation to the people's livelihood or occupation;
5. economic, social, and environmental impacts or other important impacts;
6. the rationale and necessity of the permit system, committee system, and criminal punishment, including the rules on the exercise of discretion by State officials;
7. the responsible agency, the number of State officials required, the equipment, and the budget to be in compliance with the law;
8. remedial provision for those who are affected, in case of a serious impact.

The State agency is further required to publish a summary report of the RIS and all relevant documents in full via the central system, in addition to other channels or formats if desired by the agency (Section 18). The central system is under construction at the time of writing this report and is intended to serve as a database for legal information in Thailand, including providing access to all documents and laws as well as follow draft legislations and *ex post* reviews laws. Provisions also exist for bypassing these requirements in situations of national emergency (Section 19).

Box 2.1. OECD Best Practice Principles for Regulatory Impact Assessments

1. Commitment and buy in for RIA:
   - Governments should:
     - Spell out what governments consider as "good regulations".
     - Introduce RIA as part of a comprehensive long-term plan to boost the quality of regulation.
     - Create an oversight unit for RIA with sufficient competences.
     - Create credible "internal and external constraints", which guarantee that RIA will effectively be implemented.
     - Secure political backing of RIA.
   - Securing stakeholder support is essential.
   - Governments have to enable public control of the RIA process.
2. Governance of RIA – having the right set up or system design
   - RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.
   - RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
   - Governments need to decide whether to implement RIA at once or gradually.
   - Responsibilities for RIA programme elements have to be allocated carefully.
   - Efficient regulatory oversight is a crucial precondition for a successful RIA.
   - Resources invested in RIA must be carefully targeted.

- Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.

3. Embedding RIA through strengthening capacity and accountability of the administration.
   - Adequate training must be provided to civil servants.
   - Governments should publish detailed guidance material.
   - There should be only limited exceptions to the general rule that RIA is required.
   - Accountability- and performance-oriented arrangements should be implemented.
4. Targeted and appropriate RIA methodology
   - The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.
   - RIA should not always be interpreted as requiring a full-fledged, quantitative cost-benefit analysis of legislation.
   - Sound strategies on collecting and accessing data must be developed.
   - RIA has to be undertaken at the inception stage of policy development.
   - No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
   - All plausible alternatives, including non-regulatory solutions must be taken into account.
   - It is essential to always identify all relevant direct and indirect costs as well as benefits.
   - Public consultations must be incorporated systematically in the RIA process.
   - Insights from behavioural economics should be considered, as appropriate.
   - The development of enforcement and compliance strategies should be part of every RIA.
   - RIA should be perceived as an iterative process.
   - Results of RIA should be well communicated.
5. Continuous monitoring, evaluation and improvement of RIA
   - It is important to validate the real impacts of adopted regulations after their implementation.
   - RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place.
   - A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.
   - It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal
   - Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: (OECD, 2020[27]), *OECD Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment*, OECD Publishing, Paris, https://doi.org/10.1787/7a9638cb-en.

Governance

Section 25 of the Act requires the proposing State agency to submit the RIS to the Council of Ministers when proposing a draft legislation or the principle of draft legislation, along with the summary report of the public consultation. A RIS produced by an agency when proposing the principles of a draft legislation may be more likely to be revised or amended once the principles reach Cabinet and, subsequently, reviewed and scrutinised by the OCS.

Section 26 empowers the OCS to review the documents submitted under Section 25, including the RIS, and perform one of the following actions:

1. Examine the necessity of the draft legislation;
2. Review the draft legislation for compliance with Section 5 and Chapter 3 of the Act.

In addition to the OCS, the Secretariat of Cabinet is also empowered to review the RIS, including the power to provide opinions or block draft legislations and the RIS. However, the OCS and Secretariat operate at different stages of the legislative process, making chances of disagreement between the two bodies a reportedly rare occurrence. The Secretariat usually enters before the proposed legislation reached the Cabinet for initial approval; whereas, the OCS reviews the documents after the Cabinet has given initial approval to move forward towards a final draft. Any potential disagreements between the OCS and Secretariat would be presented in separate documents for Cabinet to decide.

Process

State agencies are required to conduct an impact assessment before proposing any primary law. No such requirements exist for subordinate regulations, which constitute the majority of government action. Compliance with previous checklist requirement tended to vary across government agencies. Due to the infancy of the new law, adoption rates are not yet able to be ascertained. The State agency is then required to send a full impact assessment report (RIS) along with the draft law for review by the Secretariat to Cabinet and the OCS.

Once the RIS is received, the OCS can then give its opinion and advice to the Secretariat of the Cabinet, who presents the matter to the Council of Ministers for review as it sees fit. This review and subsequent opinion is given relatively late in the process, whereby the Council of Ministers has already approved the intent of the law in principle. To help shift oversight and scrutiny earlier in the legislative process, the OCS is considering establishing teams that work with ministries during the initial legislative drafting stages to provide upfront support. Informally, members of the OCS are working with various Thai agencies to implement revised RIAs in accordance with the 2019 Act and OECD guidelines and methods. This includes the Bank of Thailand and the Securities and Exchange Commission.

Section 27 requires the above package of documents and OCS opinion to be submitted to Parliament for consideration upon final decision, and published in full on the forthcoming central system. The exception are enumerated under Section 19, namely when the draft law pertains to national interest, security or public safety. The Act does not specify a time frame for publishing this information.

As part of implementing the Act, subordinate regulations have been developed to provide further guidance for each section on how to meet the requirements of the Act. These came into force at the same time as the Act. With regards to RIAs, the subordinate regulations are composed of three parts:

1. Guidelines for users of on the legal requirements when conducting RIA, based on the Act;
2. Template for submitting a RIS to the OCS for scrutiny, including a requirement for the Head of the Agency to certify its adherence to the Act and other legal requirements; and,
3. A manual with enumerates objectives and standards for each section of the RIS template

The intention of this subordinate regulation is to explain succinctly what is necessary to conduct a RIA and submit a RIS. The OCS has stated that they intend to produce more detailed guidance on how to specifically conduct elements of a RIA, but the timeline for the production of this is unclear.

Finally, the OCS is also empowered to build capacity for implementing RIA around the Thai government. They have designed training programmes for government lawyers with regards to the implementation of the Act. Currently, the Public Lawyers Training and Development Institution, under OCS, regularly provides capacity training courses on effective legislation drafting for State agencies in different levels. RIA lessons have already been incorporated into such courses since the beginning of 2019. Trainings under the Institution occurs regularly throughout the year. For 2020, Law Reform Division, under the OCS, has also planned two separate sets of capacity training courses of about three to four days in length for in-depth RIA training, as well as another joint training programme with Chulalongkorn University in Bangkok.

While most of the staff in the Secretariat of Cabinet and the OCS are lawyers, the LRC has appointed a sub-committee comprising mainly of economists to develop the guideline under Article 17 of the Act and to conduct case studies on real examples of draft legislation.

Methodology

Since 2008, Thailand has required a RIA with every draft legislation that follows the OECD Reference Checklist for Regulatory Decision-Making. This checklist is an annex to the Recommendation of the Council on Improving the Quality of Government Regulation (OECD, 1995[18]).

The checklist is meant to give policy-makers 10 questions about regulatory decisions that can be applied at all levels of decision- and policy-making (see Box 2.2). Ideally, these questions should be supported by a full RIA that seeks to conduct evidence-based analysis for each question. In Thailand, State agencies have tended to simply indicated yes or no to the questions upon submitting a draft to the Council of State without demonstrating further analysis.

The 2017 Constitution and 2019 Act require the Government of Thailand to implement the use of full RIAs. Chapter 5 of the Act dictates the requirements for conducting a RIA, while the subordinate regulation provides further detail on each provision. The goal of impact assessments is defined as (Section 30):

1. Having laws to the extent necessary, by revoking or amending laws no longer necessary, anachronistic, or inconsistent with the current context, or hindering the livelihood and occupation so as to not be a burden for the people;
2. Developing the laws to be consistent with international principles and obligations;
3. Reducing redundancy and conflict among the laws;
4. Reducing inequality and ensuring social fairness; and,
5. Increasing national competitiveness.

As part of this section, the Law Reform Commission is empowered to nominate certain rules for evaluation within a prescribed period of time.

A full manual detailing the methodology for conducting a full RIA in accordance with the 2019 Act has not yet been elaborated. The OCS plans producing a manual in 2020.

In 2016, the NESDB, in collaboration with the Thai Ministry of Justice and APEC, released guidelines on conducting RIA for the Government of Thailand (NESDB, 2016[29]). The guidelines expressly state that the OECD Reference Checklist provides the principles of RIA, but not a guidance on how to undertake a full RIA. The purpose of the NESDB guidelines is to provide this framework for State officials to better understand the RIA process and develop the appropriate skills in the Government's RIA training programme. This was in association with a project with APEC and included two training programmes following the development of the guidance.

The NESDB guidelines provide detailed guidance on seven key sections of a RIA, which make use of OECD research and are broadly in line with current best practice and OECD member country examples, but may require some additional updating or additional information as the system matures. This guidance was considered during the development of the subordinate regulations and guidelines associated with the 2019 Act.

Box 2.2. OECD Reference Checklist for Regulatory Decision Making

The OECD Reference Checklist responds to the need to develop and implement better regulations. It contains ten questions about regulatory decisions that can be applied at all levels of decision- and policy-making:

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?

7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieve?

These questions reflect principles of good decision-making that are used in OECD countries to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent. The Checklist, however, cannot stand alone – it must be applied within a broader regulatory management system that includes elements such as information collection and analysis, consultation processes, and systematic evaluation of existing regulations.

Source: (OECD, 1995[18]), *Recommendation of the Council on Improving the Quality of Government Regulation*, https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0278.

Regulatory Impact Statement (RIS)

As stated in the subordinate regulations elaborated by the OCS and adopted in November 2019, the goal of the RIS is to focus on requirements for the State agency to consider several possible alternatives, including non-regulatory/legal and produce a RIS in accordance with the subordinate regulation (see Box 2.3). The subordinate regulation does not explicitly require a "no action" option. The RIS is required to be in plain language with succinct and comprehensive explanations, and to identify credible, relevant and verified information to base the analysis.

The RIS begins with the requirement to state the nature, extent and impact of the problem, including the reasons why the State must intervene. It then requires that the objective, outcome and approach to solving the problem are describe, including justifying why non-regulatory approaches are not chosen. It does not however require the State agency to detail all options considered with assessments of each option, which the OCS admits is implicitly being conducted but is currently lacking as a formal measure. It is unclear whether State agencies include this information with any frequency in their RIAs.

The following sections require the State agency to detail the overlap with other laws, likely impact of the laws and the costs to be paid by the state for implementing and enforcing the law. The goal of these sections is to address the issue of burden, necessity and redundancy. Costs in this case are expressed in terms of total, existing and additional state officials needed to implement and enforce the legislation with the first three years, as well as details on how the State agency is intending to pay for these expenses.

Costs to the economy, social/community, environment/health and other impacts are required in a different section. In the manual section of the subordinate regulations, the objective of this section is describe as "to ensure that the government agency consider the overall impact of the draft legislation from several dimensions of the

country as a whole, in order to ensure the careful legislative drafting process". Distributional impacts are not expressly requested.

The final section of the RIS requires the State agency to provide rational and describe the necessity for adopting a permitting system, committee-based management system, criminal sanction or exercising discretion by the government officials. These are chosen as they are used in higher frequency in Thai policy making and are perceived as leading to higher and unnecessary burdens to business and the public. These questions are chosen to draw the proposing agency's attention and awareness to such measures, if they choose to include them in their proposed legislation, and their potential impacts. It is also intended to support scrutiny via oversight and consultation with stakeholders.

While many of these requirements are aligned with the *OECD Best Practice Principles on Regulatory Impact Assessments* (OECD, forthcoming), there are some categories missing that are often found in OECD RIA systems. These include a requirement to conduct some form of quantification, presenting multiple options considered, consideration of the impacts on sub-national levels of government, impacts on international jurisdictions, and some sort of threshold or proportionality test.

Box 2.3. RIS Statement Guidelines

1. Nature, extent, and impact of the problem
    - I. What is the problem and the cause(s) of the problem? What are the impacts of the problem?
    - II. Why does the State need to intervene in this matter?
2. The objective and outcome of solving the problem
    - I. What is the objective and expected outcome of solving the problem?
3. Approach to solving the problem
    - I. What are the current measures taken to solve or alleviate the problem?
    - II. How is this problem addressed in other countries? Is such a measure suitable/applicable in the Thai context?
4. Consultation with stakeholders
    - I. Has consultation with stakeholders been conducted?
    - II. Has the consultation results been incorporated into the impact assessment?
5. The proximity or overlap with other laws
    - I. Is this draft legislation related to/overlapping with other existing laws? If so, please explain.
6. Likely impact of the law
    - I. In what way does this draft legislation result in additional responsibility, burden, or freedom of the people?
    - II. The preventative, rectifying, or remedial measure to alleviate the impact on the people in 6.I.
    - III. Please explain the benefits of this draft legislation to the country, the society, or the public at large.

7. Readiness and costs to be paid for by the State in undertaking or implementing and enforcing the law
    I. Responsible government agency/government agency in charge
    II. Is there a mechanism, approach or process and timeframe of implementation in order to achieve the objective of the law? Please explain.
    III. Please explain the approach, process, and timeframe in increasing the public awareness and understanding of the public and related government agencies regarding the compliance and enforcement of the law.
    IV. The estimated costs or expenses of implementation and enforcement in the first 3 years is ____ Baht. Attach details of the calculation of the estimated costs or expenses to be paid for by the State.
        i. Manpower required: _____ persons
        ii. Existing manpower: _____ persons
        iii. Extra manpower required: _____ persons
8. Overall likely impacts from having the law
    I. Economic impact:
    II. Social or community impact:
    III. Environmental or health impact:
    IV. Other important impacts:
9. Rationale and necessity of adopting the permit system:
10. Rationale and necessity of adopting the committee-based management structure:
11. Rationale and necessity of criminal sanction:
12. The criteria for exercising the discretion by the government officials:

Signature of the official in charge of completing the guideline as well as the head of the agency (Director-General or equivalent) is required, certifying that "the information provided in this report has been thoroughly checked and analysed".

Source: Subordinate regulations to the Act on Legislative Drafting and the Evaluation of the Outcomes of Law (2019).

Stakeholder engagement

Public consultation and transparency are central pillars for effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more accessible, unduly influenced by special interests, and therefore more open to competition, investment, innovation, and societal welfare improvements. This is explored further by the *OECD Open and Connected Review of Thailand*, as well as enshrined as central pillars in the OECD Recommendations of the Council on Regulatory Policy and Governance (OECD, 2012[28]), Digital Government Strategies (2014[29]), and Open Government (2017[30]). This section provides further details regarding the current Thai system of stakeholder engagement.

Scope

Section 77 of the Constitution requires State agencies to conduct consultations with stakeholder, disclose the results of consultation and take them into consideration at every stage of the legislative process. This is implemented through the *Act on Legislative Drafting and the Evaluation of the Outcomes of Law*, which requires stakeholder engagement to take place before beginning legislative drafting and taken into account every step of the drafting process (Section 5). However, the Act appears to be superseded by any specific Act on public consultation (Section 9). Section 20 further allows the House of Representative, Senate and a joint sitting of the National Assembly to pass resolutions or enact rules of procedure for conducting a public consultation.

Section 13 further requires the State agency to conduct the public consultation through a central portal and by using one or more of the following methods:

1. Through that State agency's information technology system;
2. A public consultation meeting;
3. An interview or an invitation to explain or express opinions;
4. A questionnaire; and,
5. Other methods.

Governance

The State agency proposing the new legislative draft is responsible for conducting public consultations. Section 25 of the Act requires the proposing State agency to submit a summary report of the public consultation to the Secretariat of the Cabinet when proposing a draft legislation or the principles of draft legislations to the Council of Ministers. In addition to the OCS, the Secretariat of Cabinet is also empowered to review the summary report, including the power to provide opinions or block draft legislations. However, the OCS and Secretariat operate at different stages of the legislative process, making chances of disagreement between the two bodies a reportedly rare occurrence. The Secretariat usually enters before the proposed legislation reached the Cabinet for initial approval; whereas, the OCS reviews the documents after the Cabinet has given initial approval to move forward towards a final draft. Any potential disagreements between the OCS and Secretariat would be presented in separate documents for Cabinet to decide.

Section 26 empowers the OCS to review the documents submitted under Section 25, including the summary of public consultation. The Act allows the OCS to require additional public consultation, either conducted by itself or inform the relevant State agency to do so.

The Council of Ministers is required to submit the consultation summary report and the results of any additional public consultation to Parliament when proposing the draft legislation.

Section 15 of the 2019 Act requires the OCS to register stakeholders "in the interest of public consultation", and may add additional list of other stakeholders who ought to give their opinions. The State agency is required to compile a list of stakeholders including their electronic mailing address, and inform the OCS accordingly. The registration and notification required are carried out according to rules prescribed by the Law Reform Commission.

Public consultations are often conducted through a web-based portal, currently under the responsibility of each agency. The Electric Government Agency is assigned responsibility for providing, maintaining, and developing this central system in accordance with Section 11 of the 2019 Act. They are currently designing one central system for all legal documents and to follow legislative processes, discussed above in the RIA section. This will include public consultations.

Process

According to the Government of Thailand, all State agencies have an open-door policy for receiving public opinions and generally have introduced at least one communication method to receive public opinions and petition for grievances. Data on the number and types of consultations is not readily available for this review. Anecdotal evidence suggests that some agencies engage in regular focus groups and workshops with stakeholders.

The 2019 Act also consolidates the stakeholder engagement tool such that the government agency has to consult its stakeholders regularly in order to review the outcomes of its law (every 5 years at least). The Act defines stakeholder broadly.

The 2019 Act establishes a general rule requiring the proposing State agency to consult with stakeholders before the draft law is written, but does not distinguish at what stage of the policy making process stakeholders must be consulted. Section 14 of the Act requires that, at a minimum, the following are disclosed to stakeholders:

1. Current problems and the necessity of drafting the legislation, including the purpose and expected outcomes;
2. Explanations of the rationale or important issues of the draft legislation in simple language;
3. Persons who are or may be affected by the impacts or potential impacts of the law (including to livelihood, occupation, economic, social, environmental, or other impacts); and,
4. The necessity for the permit system, committee system, and criminal punishment, including the rules on the exercise of discretion by State officials.

The Act requires these elements to be made public, as well as making public the procedure, the time period (start and finish), and the relevant information. Section 14 further allows for direct notification, when the contact details are known.

Once the agency has a draft of the proposing bill already, it must upload the draft to the central stakeholder consultation website lawamendment.go.th for a minimum period of 15 days. This platform lists ongoing public consultations, each link to a dedicated page that gives a brief summary of the proposed draft, the duration of the comment period, a PDF of the proposed draft, and an invitation to share opinions. This appears to be done either through a link to the proposing Agency's website or via a survey tool generated through Google documents. The survey collects basic personal information, and asks if the submitter agrees or not with the proposal and then asks for their comment.

At the bottom of the consultation page is a series of tabs that provide options to give the principle, problem, causes, justification of necessity, overview and key issues associated with the proposal. However, this is not always completed.

In response to the 2019 Act, the OCS is planning to develop a replacement website with the objectives of supporting various regulatory policy tools and becoming the country's central legal database. This platform is set to include a feature that allows the public to register and receive notifications regarding bills they may be interested in. It is the Thai Government's plan to have it ready by the end of 2020.

The Act further establishes two requirements under Section 16 of the 2019 Act. First, the results of public consultation must be taken into account when preparing RIA reports and drafting legislation. Second, the state agency must summarize the results of public consultation, which must, at the minimum, include the topics upon which opinions were expressed and the summarized opinions of each stakeholder for each topic, and must also indicate whether there are amendments or no amendment regarding the key principles or issues of the legislation in accordance with the stakeholder's opinions, as well as the underlying reasons for such decision (to amend or not to amend). The Secretariat to Cabinet or OCS can require the stakeholder engagement to be conducted again (see above).

The State agency is required to publish the summary report on the central system and other methods if need be, which is up to the discretion of the agency. In the case of national interest regarding public safety, economic security or disaster prevention, the State agency is permitted to not disclose the summary report (Section 19). This same section gives discretion to the proposing agency to take the decision to deviate from the default obligation. However, the LRC has the power under Section 8 Para. 2 to suggest otherwise.

Methodology

The OCS has produced subordinate regulations to the 2019 Act set forth guidelines for conducting stakeholder consultation. It states the motivation of stakeholder engagement as allowing the "Government to correctly identify the issues and the needs of stakeholders, as well as to accurately gauge the potential impact of the draft legislation". The subordinate regulation further highlights how effective consultation can promote mutual understanding between the parties involves and encourage wider participation.

The subordinate regulations give five guidelines for conducting stakeholder engagement. They are:

1. Clear, open, and direct communication between the Government and stakeholders.
2. Use accessible and easily comprehensible language to communicate with stakeholders.
3. Consultation exercises must provide equal opportunities for all stakeholders to voice their opinions irrespective of their stance on the issues. A wide variety of responses will yield a better-informed legislative process.
4. Allow sufficient time for each consultation exercise for the targeted stakeholders to participate. Consultation aided by information technology measures must last no less than 15 days. The government agency must provide a public justification if they are not able to meet the minimum duration for stakeholder consultation.

5. Consultation exercise via the Central System is the baseline practice for stakeholder consultation. However, agencies are encouraged to employ other methods of consultation alongside the publication on the Central System to ensure that all relevant parties are heard. This is to be done with careful consideration to the characteristics and size of each stakeholder group, the topic of discussion, and the burden of the consultation on the participants. Where appropriate, agencies may collaborate on consultation exercises for more efficient reach to stakeholder groups, e.g. jointly held interviews or meetings.
6. The result of public consultation should be taken into consideration without regard to the identity of the commenter or whether they specifies their real name or not. It shall not matter who the commenter is; whether they specifies his/her name; or whether they uses their real identity or not.

With the subordinate regulations in place, the OCS plans on preparing manuals and additional guidelines for implementing the above provisions that they expect to complete by 2020.

In 2016, the NESDB released public consultation guidelines produced in collaboration with the Thai Ministry of Justice and APEC. The guidelines provide the following sections with the intention of assisting government officials in identifying, planning and executing stakeholder consultation:

1. Importance of consultation (introduction);
2. Stakeholder analysis and mapping;
3. Methods of public consultation;
4. Approaches during the policy cycle;
5. Consultation plan;
6. Stakeholder engagement; and,
7. Evaluation

Ex post review

The review of regulation is an important element of the regulatory policy making process that can both complete and renew the cycle, as well as work in symmetry with *ex ante* RIA assessments to verify that stated objectives have been met, address unintended consequences, and consider alternative approaches (OECD, Forthcoming[7]). The importance of *ex post* reviews are recognised in the OECD Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012[28]). This states that members should "Conduct systematic reviews of the stock of regulation… to ensure that regulations remain up to date,...cost effective and consistent, and deliver the intended policy objectives [paraphrased]". This section provides further detail on the Thai system of *ex post* review.

Scope

The requirement for *ex post* analysis in Thailand is grounded in Article 77 and 258 of the 2017 Constitution and stipulates the state should "repeal or revise laws that are no longer necessary or unsuitable" and should "undertake an evaluation of the outcomes of the law at every specified period of time … with a view to developing all

laws to be suitable to and appropriate for the changing contexts". The constitutional clause on *ex post* analysis was implemented by the 2019 Act.

Ex post analysis has been previously enshrined in Thai legislation since the *Royal Decree on Revision of Law, B.E. 2558* (2015), the "Sunset Law", which, in Section 5 of the law, requires the review of legislation by the ministry-in-charge every five years from when the law takes effect. The 2019 Act adopts much of the same principles of the Sunset Law – prescribing a review every 5 years – however, it places *ex post* analysis within a framework of regulatory policy and management as explained in previous components of this Chapter. In addition, the *Licensing Facilitation Act, B.E. 2558*, also enacted in 2015, requires an authority to review, every five years, whether a license under their jurisdiction should be repealed or replaced by any other measure. The authority, in this process, also reviews the law that empowers them to grant a license.

The 2019 Act requires in its introductory preamble for the "periodic review of existing laws and their subordinate rules". The scope of *ex post* analysis, as stated again in Section 30 of the act, applies to both the primary legislation and the regulatory rules that are a derivative of them. This is a key distinction in that rules that implement legislation will be subject, for first time in the regulatory cycle, to impact assessment. Alteration will be required if regulations are found not to be fit for purpose (more specifically, not consistent with the goals in Section 30 and 31 of the 2019 Act described below).

As stated in Section 29 of the 2019 Act, the provisions of *ex post* do not apply to limited-time expired legislation or those relevant to symbolic representations, such as those for academic accreditations, neither laws relating to the restructuring of government ministries. Section 29 also states that "Legal Codes" nor "other laws as prescribed in the ministerial regulation" are subject to *ex post* assessment. The current ministerial regulation under this clause exempts 1) palace laws, 2) laws concerning the administration of religious organizations, 3) laws concerning the personnel management of government officials, and 4) laws concerning immunities and the protection of international organizations and meetings in Thailand, What legislation is exempted under the category of "legal codes" is not clear. According to the OCS, in addition to the law itself, the completed report after the *ex post* review will be published in the central system. The *ex post* guidelines stipulate that the responsible agency will also be obliged to share the results of the analysis with the Law Reform Commission.

Ex post review does not yet have a designated process for proportionality or sequencing. Given the relatively high volume of laws passed in recent years and the large stock of regulation in general, it is expected that this will present a challenge to the government without a method of prioritisation, grouping, or threshold criteria.

Process

Section 30 states the goal of *ex post* evaluation is to ensure legislation and regulation:

1. Are only to the extent they are necessary, remain relevant to the current context and are not a burden to the livelihood and occupation of the people;
2. Are consistent with international principles and obligations;
3. Are not redundant and do not conflict;
4. Minimise inequality and ensure social fairness; and,

5. Increase competitiveness.

Section 31 states that an *ex post* review must follow the *ex ante* analysis principles of Chapter 3 of the 2019 Act on *The examination of the content of the draft legislation,* as analysed above. It also stipulates that *ex post* review should:

- Ensure proportionality between the benefits of the law with the burden imposed and resources expended on the successful implementation of the law;
- Be cognisant of the statistics of legal proceedings and criminal prosecutions under the regulation;
- Review consistency under international obligations and law; and,
- Have regard for other matters as prescribed by the Council of Ministers.

The 2019 Act is consistent with the Sunset Law that *ex post* assessment should be conducted every 5 years. Other cases can cause an earlier evaluation if an agency, due to a petition or recommendation letter, decides to review the law; the Law Reform Commission requests its revision; if a regulation prescribes an earlier review; or, in the case the law was passed as an emergency decree, which necessitates an evaluation 2 years after its date of enforcement.

Despite the passage of the Sunset Law and Licensing Facilitation Act in 2015, only a limited number of agencies have undertaken a review under the Sunset Law and none under the Licensing Facilitation Act. An important reason for this was because the first five year period of the acts had not yet elapsed. The first 5 year period will end, next year, in 2020. However, according to Section 37 of the 2019 Act, the Sunset Law will no longer be in force when the guidelines on *ex post* review from the 2019 Act come into force. As of November 24 2019, the guidelines are in force. Despite these reviews no longer being legally binding, discussions with Thai officials have indicated that *ex post* analyses will still take place in 2020.

Methodology

The *Guidelines on the Evaluation of Law* describe the methodology for *ex post* assessment in order to fulfil the goals of the analysis identified in Section 30 and 31 described above. The guidelines (as fully elaborated in Box 2.4) stipulate that the *ex post* review should be complete within one year after it is commenced. It should, in a comprehensive and systematic matter, evaluate the legislation and regulation from the starting date of the law's enforcement or from the date of last evaluation.

The guidelines ask general questions on two central evaluation areas: the necessity and impact of the legislation and the examination on the content of the legislation. The guidelines then end with a number of questions on the evaluation result. The guidelines attempt to identify whether the costs of the regulation outweighs the benefits; if the law is still fit-for-purpose; whether enforcement has been successful and proportionate to costs; and if the regulation corresponds, and does not overlap, with other legislation. *Ex post* reviews are required to be in clear and succinct language and based on adequate and credible sources. Stakeholders must be consulted in accordance with the procedures elaborated above in in section of this chapter above, while additionally taking into account the cost and benefit of enforcement efforts along with evaluating the corresponding statistics gathered in this regard.

As stipulated in Section 30 of the 2019 Act and as provided for in the guidelines, the government agency performing the assessment has the discretion to have a separate, additional evaluation on certain rules, which the agency deems will be particularly burdensome or when violations of the rule result in a significant impact on the individual. The Law Reform Commission may also identify these rules and request they be evaluated. The guidelines also provide an additional template for these individual analyses. However, it seems that, after reviewing both the 2019 Act and the individual templates that these assessments do not substantially differ from the standard procedure.

The OCS plans on expanding this methodology in a manual, which it intends to publish in 2020.

Box 2.4. Guidelines on the evaluation of law

1. General information
    - I. Agency responsible for the evaluation
    - II. Enforcement agency
    - III. Agency in charge of the law
    - IV. The triggers for the evaluation cycle
        - i. Recurring cycle of evaluation (5 years)
        - ii. Complaints or petition from stakeholders
        - iii. Advice from the Law Reform Commission
        - iv. Other, please specify
    - V. List of rules or regulations which are included in this evaluation
    - VI. List of rules or regulations that receives specific evaluation
2. Necessity and impact assessment
    - I. The objectives of the law
    - II. Key measures included to achieve the objectives of the law
    - III. Is the law still necessary to achieve the objective? Is it still compatible to the context of society, technological advancements, and today's way of life?
    - IV. Benefit from the law on society
    - V. Has the law led to one (or more) of the following:
        - i. Hindrance to the people's livelihood and occupation
        - ii. Reduction in inequality and social fairness
        - iii. Obstruct or encourage competition
        - iv. Others (Impact on the economy, society, environment)
    - VI. Statistics on the enforcement of the law
    - VII. Problems or difficulties in the enforcement of the law
3. The examination of the content of the legislation
    - I. Specify the relevance or overlap between this law and others
    - II. Has there ever been any case brought before the Constitutional Court, Administrative Court or received recommendations from the

Ombudsman or the National Human Rights Commission? If so, please provide further information

III. Is a permit system, committee system, the use of discretion by State officials, or criminal sanctions included in the law still appropriate and relevant in today's context?

4. Evaluation Result

I. From consultation, what are the responses from stakeholders on the impact of the law?

II. Has the law achieved its objectives?

III. Has the result been proportionate to the resources used in enforcement and burdens incurred on the people?

IV. Should the law be repealed, amended, or revised?

V. Suggestions for other non-legislative measures to improve the effectiveness of enforcement

Source: Subordinate regulations to the Act on Legislative Drafting and the Evaluation of the Outcomes of Law (2019).

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