

## Chapter Four

# Criteria for Determining Priority of Legislative Bills: Present Practice

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### **Introduction**

All parts of the world nowadays are amalgamated altogether by information technology. Any problem occurred even in a hidden corner of one country may be communicated to the world and eventually becomes trans-bordering problem just in short period. The tragedy of the World Trade Center on September 11, 2001 abruptly alerted all nations to find all measures to prevent and counter any form of terrorism while the two buildings had not yet destructed. Iceberg meltdown, El Niño and La Niña phenomena and other natural disasters in many countries alarm the world of the adverse effect caused by global warming. Another apparent instance should be the hard-hit economic crisis emerged a couple of years ago. The fierce surge of economic downturn originated in the US moved forward through the Atlantic and Pacific to attack the European and Asian countries at a blink. The remarkable growth of such trans-bordering problems requires all States to produce legislation against them timely. The one which is unable to produce law to cope with the existed or expected problem on time may hardly avoid damage to its social and economy. That is the reason why bill prioritization plays importance role in legislative process of all jurisdictions.

The main purpose of this Chapter is to examine the present practice in determining priority of the legislative bills and criteria for the determination of such priority under Thai legislative context. In this regards, summary illustration of Thai legislative process and some substantive development thereof shall be mentioned in the first part of this Chapter so as to make clear of Thai legislative process to the reader before mentioning the fundamental knowledge on development of legislative bill prioritizing practice from the past to the present in the second part. The final part will consider the criteria for the determination of the priority of legislative bills.

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## I. Summary Illustration of Thai Legislative Process

Thai people have settled in *Suvarnabhumi* peninsula for more than 700 years. At the early day, Thailand was governed under absolute monarchy regime in which the King as the supreme sovereign had absolute power all over the realm. In ruling the Kingdom, the King was the only one that had the power to make law. If His Majesty deemed appropriate to have any law for any existing or expected problem, the King entrusted *Alak*, a Royal Court officer, to make draft law in accordance with His Majesty's pleasure. Sometimes, the King required His noblemen to give some comments on that problem with a view to make Him an idea in law making or improving the draft law; however, the consultation with noblemen was limited to the matter that the King deemed appropriate, and was conducted only in very rare cases (KPI 2008: 12). The draft shall become law when His Royal Signature had been given thereto and it shall come into force upon its publication in the Government Gazette (Office of the Council of State 1993: 1-4).

When the western empires turned their gun fleets to the East in the mid nineteenth century, King Rama V<sup>1</sup> strongly realized that the only way His country might avert from the claim for colonization of those countries was to modernize Thailand along the same line with western standard. Roads system, irrigation system, electricity system, trains and rails and other infrastructures were established systematically. Legal system was reconstituted upon the civil law basis of the European continent. Many Ministries and Departments were established in 1888 as helping hands of His Majesty in conducting State administration upon the European model of public administration. In this regard, His Majesty had also decentralized his initiative in law making to the Minister of each Ministry. Despite the King had the supreme power to enact law, each Minister was empowered to propose any bill to the King for His Royal Signature directly if such bill was deemed necessary for the performance of duties of his Ministry.

The evolution of Thai law drafting practice emerged when a law drafting agency, the Department of Legislative Redaction, was established by King Rama VI.<sup>2</sup> According to the Royal Proclamation of October 27, 1923,<sup>3</sup> the Department of Legislative Redaction attached to the Ministry of Justice had the power and duty in examining all

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<sup>1</sup> 1853-1890, generally known as *King Chulalongkorn*.

<sup>2</sup> 1880-1925, generally known as *King Vajiravudh*.

<sup>3</sup> Published in the Government Gazette, Vol. 40, dated October 28, 1923.

draft laws for His Majesty. Ministries had to submit their proposed bills to the Department of Legislative Redaction for examination, and only the examined bills shall be presented to the King for His Royal Signature.<sup>4</sup> In this regard, the bill had to be examined by the Law Councilors consisting of both Thai lawyers and foreign legal consultants of the Royal Thai Government with a view to make legal mechanism of the bill to be compatible with both Thai ways and international standard. It is generally accepted that this agency performed its functions effectively, efficiently and efficacy. The best evidence was none of the bills examined by the Department of Legislative Redaction had been rejected by His Majesty who had prerogative in law making.

After June 24, 1932, Thai legislative process was changed on account of the revolution that turned State administration form of Thailand or Siam at that time from absolute monarchy to democratic regime of government with the King as the Head of State. The Department of Legislative Redaction was renamed as the “Office of the Council of State” and became the agency under the Office of the Prime Minister. The Office of the Council of State still had the powers and duties in making draft laws as the with its ancestor, but for the Cabinet and other government agencies instead of His Majesty. According to law making process under the new regime, which was influenced by the British Parliamentary Government model and has been in-use until now, the sovereign power is deemed to be of Thai people and the King shall be the person who exercises such power through the Legislature, the Executive, and the Court. The Legislature or the National Assembly is bicameral, composing of the House of Representatives (the Lower House) and the Senate (the Upper House). The Constitution requires any bill to be introduced to the House of Representatives. The meeting of the House of Representatives shall be in accordance with its rules and procedure on meeting. Under suchs rules and procedure, the House of Representatives shall deliberate the proposed bill in three consecutive readings. The first reading is a plenary session for consideration of the principles of the proposed bill. The bill shall be in the second reading for detailed deliberation of the House’s Committee after its principles are approved by the majority of votes of the members of the House in the first reading. The third reading is a plenary session to vote for approval of the bill amended by the House’s Committee in the second reading. The approved bill shall then be proceeded to the Senate and the Senate’s deliberation shall be finished within sixty days for a general bill and thirty days for a financial bill. Such period may be extended for not exceeding

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<sup>4</sup> Office of the Council of State, Research on Proposal for Efficiency Enhancement of Thai Legislative Process, 2006, pp.9-11.

thirty days by the resolution of the Senate.<sup>5</sup> The bill's deliberation of the Senate shall be made in three consecutive readings as the same with that of the House of Representatives. If the bill has been approved by plenary session of the Senate in the third reading, it shall be returned to the Prime Minister so as to be presented further to the King for His Royal Signature. The signed bill shall thereafter be published in the Government Gazette and becomes law.<sup>6</sup> The law shall come into force upon the date prescribed therein, normally on the day following the date of its publication in the Government Gazette.

It should be noted that the introduction of a bill to the National Assembly under the Thai Constitution is different from the practice that is seen in other jurisdictions with a bicameral parliament in some aspects. First, in respect of an ordinary bill, the Thai Constitution allows the members of the House of Representatives to introduce a bill to the National Assembly, but the members of the upper house or senators are not allowed to do so, though the senators may participate in the introduction of a bill of organic law.<sup>7</sup> Second, under the Thai Constitution, not only the Cabinet and the members of the House of Representatives are allowed to introduce a bill to the National Assembly, but the constitutional organizations such as the Court, the National Counter Corruption Commission, the State Audit Commission, as well as a group of individuals with the number of 10,000 and more are also allowed to do so.<sup>8</sup> Finally, in spite of the existence of many channels for introducing a bill to the parliament, most of the bills are proposed by the Cabinet, and the number of the bills proposed through other channels remains small.

All bills introduced to the House of Representatives by the Cabinet are prepared by a Ministry which has the charges and duties over matters dealt with the principle of that bill. The preparation of a bill is commenced with the initiative of the responsible Minister. If he is of opinion, after considering all possible measures which may be applied to overcome the specified problem, that legal measure is inevitably required, a legal official of that Ministry shall consult with stakeholders to that problem on legal mechanism to be prescribed in the bill and shall then conduct the regulatory impact analysis (RIA), which is generally known as "Checklist", and prepare drafting instruction and text of the draft legislation.

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<sup>5</sup> Section 146, the 2007 Constitution

<sup>6</sup> Section 150, the 2007 Constitution.

<sup>7</sup> Section 139, the 2007 Constitution.

<sup>8</sup> Section 142, the 2007 Constitution.

The RIA, which was approved by the Cabinet on November 23, 2004, constitutes mandatory requirements for all agencies which intend to submit any proposal for legislation to the Cabinet for its consideration. The objective of the RIA is not for deregulation, but better regulation. It is made along the same line with the RIA of OECD. The agency has to clarify the following prerequisites prior to making a proposal for legislation:<sup>9</sup>

1. What are the objectives and goals of the mission?
2. Who should be responsible for the mission?
3. Is legislation required for the achievement of the mission?
4. Is the proposed legislation duplicated with others?
5. What are burdens of individual caused by the proposed legislation and Is that legislation value for money?
6. Are responsible agencies ready for the enforcement of the proposed legislation?
7. Which agency should be responsible for the proposed legislation?
8. What are working process and audit method?
9. Is there guideline for the enactment of subordinate legislation?
10. Is there public consultation on the proposed legislation and what are the results and responses?

In 2005, the RIA was incorporated into the Regulation on Rules and Procedure for the Submission of Matters to the Cabinet, which was issued under the Royal Decree on the Submission of Matters to the Cabinet and the Rules and Procedure for Cabinet's Meeting of 2005.

Once the RIA report, drafting instruction and draft bill are made, they shall be submitted to the Cabinet for policy approval. The approved bill together with its RIA and drafting instruction shall be forward to the Office of the Council of State (OCS) for consideration. The OCS shall examine the constitutionality and compatibility with other legislations of the bill, the suitability of proposed mechanism, and legal form, and shall prepare the explanatory memorandum of the examined bill for consideration of the Cabinet and the National Assembly. The complete bill and its explanatory memorandum shall be delivered to the Cabinet for consideration. If the Cabinet approves the complete bill, it shall be forwarded to the government's whip for political coordination before introducing to the House of Representatives. In many cases however the Cabinet always

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<sup>9</sup> Office of the Council of State, Regulatory Impact Analysis Manual (13<sup>th</sup> ed.), 2009.

orders the Office of the Council of State to send the complete bill and its explanatory memorandum to the government's whip directly.

## **II. Development of Bill Prioritizing Practice**

As mentioned in the Part I, when Thailand was governed by absolute monarchy, the initiative for legislation came only from the King as the ruler of the Kingdom. If His Majesty is of opinion that solving any problem is urgent, he may order any His Royal Court official to prepare draft law that has the provisions as he thinks appropriate. Priority of laws to be enacted therefore depended on attitude of each King on each problem. This is the reason why some laws were enacted many years after the cause of problem took place, while some took very short period. The outstanding instance for the latter was in 1866 when it appeared to King Rama IV<sup>10</sup> at the beginning of that year that the number of the cases on sale with right to redemption in the court of justice had risen sharply within two months and there was no existing law to govern such matter at that time, His Majesty realized that this problem might eventually cause public unrest since the court procedure in each case took quite a long period of time and decision in each case particularly bound the parties to the case. King Rama IV then enacted the law on sale with right to redemption promptly and that act came into force in the early of March of that year or within a month after that problem had known to His Majesty.<sup>11</sup>

Since King Rama V started State modernization program in 1888, the bill prioritization practice had some changes. Despite the King was the supremacy in law making, His Majesty had also enabled a portfolio Minister to initiate the bill. The main purpose of this was to make each Minister to propose any necessary bill against the problem under his responsibilities timely. The King however still exercised the power to initiate legislation at the same time and His Majesty's initiative deemed to be at first priority. An initiative of King Rama V to make the Penal Code, the Criminal Procedure Code, the Civil and Commercial Code and the Civil Procedure Code in accordance with the European standards was arranged at the first priority since those four Codes were significant counterclaim of Thailand for repealing the extraterritorial right of the western courts over her jurisdiction.<sup>12</sup> The Ministers exercised the power to propose

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<sup>10</sup> 1804-1868, generally known as "*King Mongkut*".

<sup>11</sup> Codification of King Rama IV Laws, 1865-1868.

<sup>12</sup> Preamble of the Penal Code of 1907 (This Code has been repealed and replaced by

legislation as the last resort. An initiative for legislation shall be presented to the King only when it was inevitably to do so. In practice, the Minister tended to propose the bill to the King upon three conditions. Firstly, the Minister was of opinion that any administrative measure made under his existing powers and duties was inadequate or unable to deal with the problem successfully. Second, legal measure was required to cope with that problem unavoidably. Finally, that problem was deemed urgent in the Minister's perspective. The bills initiated by portfolio Ministers mostly approved and signed by the King without regard to their priorities despite some were corrected by His Majesty in details. The bills proposed by each Minister were classified at the same priority. It should also be observed that amongst twelve Ministries that had been established at the commencement of the modernization program, there was no specific organization that was responsible for bills' prioritization for the government holistically and there was no specific rule or guidance for setting up priority of the bills. Though the Department of Legislative Redaction had been established later in 1923 during the reign of King Rama VI, it performed law drafting duty only and, in practice, it considered the bill by order of the date of reception of each bill.

When the country turned to be democratic state in 1932, the sovereign power that belongs to Thai people had been exercised by the King through the Executives, the Legislatives and the Court. Under this structure, the power to prioritize the bill vests in the arms' length of the Executives and the Legislatives.

### **Bill's priority set-up by the Executives**

As mentioned in Part I that most of bills submitted to the National Assembly sponsored by the Cabinet and there was no other establishments within the Executives' branch that having specific power to determine priority of the bill. The Cabinet seemed to be the highest organ to decide the priority of the bill. However, the Cabinet played this role in passive manner. It declared whether what bills were necessary for pushing its State administration policy, but it ignored to spell out when those bill been submitted to the Parliament. In practice, the Cabinet longed for the bill to be submitted upon an initiative of, and priority set up by, each portfolio Minister. Once an approval had been made, a proposal for legislation and the bill would routinely be forwarded to the Office of the Council of State for consideration. In this regard, the Office of the Council of

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the Penal Code of 1956)

State shall consider the bills in order of the date they were approved by the Cabinet, except for tax bills, pardon and amnesty bills and national security bills which shall be taken into consideration at first priority. Nonetheless, there were some rare cases that the Cabinet set up priority of the bills itself. If the Cabinet was of opinion that any legislation was required urgently to contend against any serious problem, it would order the Office of the Council of State to finish that bill “urgently” or within the period specified by the Cabinet. It seemed from the aforesaid practice that in general the priority of the bill set up by each portfolio Minister with approval of the Cabinet, while the Cabinet set up bill’s priority in exceptional case.

However, the legislative process within the Administration does not end up at the Cabinet. When the Office of the Council of State finished examination of any bill, it had not been submitted to the Parliament automatically. It shall be forwarded to the government’s whip for examination on politics’ dimension as to whether such bill accorded to the government’s policies or not and when each bill be submitted to the House. Decision of the whip was deemed final. It could be said that the government’s whip plays significant role in bills’ prioritizing, not the Portfolio Minister or Cabinet.

The reason why the power to set up priority of the bill shifted from the Cabinet to the government’s whip was relevant to specific and complicate characteristic of Thai politics. Most of all elected governments since 1932 were coalition governments and it was normal situation that each government composing of Ministers from at least three political parties. It should be danger for government stability if the coalition government was unable to mingle requirements of all alliance parties. To stand firm, each government employed the government’s whip that composing of politicians from all coalition parties to compromise those different requirements. As a result of that, an attention of the whip had been paid to stability of the coalition government rather than other issues. Bill prioritization was being under this practice as well.

This practice had been performed for more than 60 years until an emerging of the challenging idea of “Rethinking” in 2001. The government of that day which is the strong government in years composing of only two parties found that the aforesaid practice set State administration course to unknown direction. To greater extent, it made State administration inefficiently since the government had no legal measures to execute its extravagance policies as promised to people during election campaign and as stated to the Parliament. While laws were required by the government so as to drive State administration and development, the whip spent most of its time for constancy of the government instead of pushing bills approved by the Cabinet to the Houses. In many



cases, the bills which were necessary for the accomplishment of the urgent government policy had been suspended, delayed or discarded just because the whip's members from different parties were unable to agree upon some technical terms used in the bills which were in the arms' length of such technician as law drafters. Some were amended by the whip even though Cabinet's approval on details of that bill had been given. Sometimes such bill drafted in accordance with policy approved by the Cabinet as Land and Building Tax Bill had long been suspended by the whip despite it was declared urgent policy of many past governments on the ground that it might affect key sponsors of political parties and might cause extensive destruction to the coalition government.

The 2001 strong government then decided to renovate the bills prioritization practice on the grounds that the government supposed to know best about its policies stated to the Houses and their priorities. The government should therefore be the one that having decisive power to determine as to when each policy should be conducted and when it should be finished. In the case where the achievement of such policies required supporting legislations, the government should know best what were the required legislations and their details, which agency should be responsible for such legislation and when that laws supposed to be enacted. The government, with help of its legal advisory body, should also be the one to set priority of the supporting bills for each policy accordingly. The whip should become government assistant in monitoring the government agencies related to each bill to conduct their works as scheduled and in defending the bill in the Houses.

Based upon the new paradigm, the government of that day enacted the Royal Decree on Rules and Procedure for Good Governance, 2003 (B.E. 2546), which required the Office of the Secretary of the Cabinet, the Secretariat of the Prime Minister and the Office of National Economic and Social Development Board (NESDB) to prepare the Cabinet the "State Administration Plan" within ninety days as from the date the Cabinet states its policies to the Houses in order to make fantastic words written in such policies paper to be concrete plan.<sup>13</sup> Further, the Office of the Council of State and the Secretariat of the Prime Minister shall jointly prepare and submit the "Legislative Plan" in response of the State Administration Plan to the Cabinet for approval. The Legislative Plan shall be composed of the names and principles of bills that are required for the achievement of the government policies as stated to the National Assembly and the State Administration Plan, as well as the names of responsible agencies and priority

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<sup>13</sup> Section 13 and Section 14 of the Royal Decree on Rules and Procedure for Good Governance, 2003 (B.E. 2546).

of each bill (Section 15).<sup>14</sup> This initiative has nowadays been endorsed by Section 76 of the current 2007 Constitution.<sup>15</sup>

In practice, the government policy as stated to the Parliament shall be composed of two parts. The first part is called as “Urgent Policy”, which is composed of the policies of first priority that is supposed to be implemented normally within one year. The second part is composed of the policies, which are supposed to be done during the rest of the period of the government.

The State Administration Plan shall clarify the targets, strategies, projects and activities that are to be executed for the achievement of both urgent and non-urgent policies. The Office of the Council of State, together with legal liaison officers of each Ministry, shall consider what laws are required for the fulfillment of each target, strategy, project or activity specified in the State Administrative Plan and how urgent they are, and how the Legislative Plan be prepared and submitted to the Cabinet for approval. In determining priority of legislations in the Legislative Plan, the laws that support the urgent policy shall be classified to two categories: first, the laws of high priority that should be submitted to the House of Representatives within one year, and the laws of low priority that support other policies, depending on readiness of the responsible Ministry in proposing that bill to the Cabinet. If the Cabinet approves the Legislative Plan, all Ministries and Departments are required to propose the bills in accordance with priority set out in the Legislative Plan. The Office of the Council of State monitors and assesses the accomplishment of the plan and reports the result thereof to the Cabinet from time to time. It should be noted that legislation to be specified in the Legislative Plan includes the subordinate legislation such as a Royal Decree and a Ministerial Regulation enacted by the Executive power.

The first Legislative Plan was made under the Thaksin Administration in 2005.<sup>16</sup> It was composed of 362 bills that were supposed to be made, amended or repealed for the compliance with the government policies and the State Administration Plan together

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<sup>14</sup> Section 15, *ibid.*

<sup>15</sup> Section 76 of the 2007 Constitution provides that:

“Section 76 The Cabinet shall prepare plans for the administration of the State affairs in order to put on view measures and details embodying guidance on the discharge of official duties for each year, which must be consistent with the directive principles of fundamental State policies.

In the administration of the State affairs, the Cabinet shall cause to be prepared a legislative plan as necessary for the implementation of the policies and the plans for the administration of the State affairs.

<sup>16</sup> 2001-2006

with 614 draft Royal Decrees and 344 draft Ministerial Regulations.

The second Legislative Plan, which was made under the Samak Administration,<sup>17</sup> in 2008, contains 141 bills, 119 draft Royal Decree and 74 draft Ministerial Regulations. The present third Legislative Plan which was made under the Abhisit Administration<sup>18</sup> in 2009, is composed of 152 bills to be enacted and 4 draft Royal Decrees and 11 Ministerial Regulations.

At the outset, prioritizing new bills seemed to be successful. Many bills were proposed in accordance with their priorities set out in the Legislative Plan. The government whip offered many efforts to push the bills to be submitted to the National Assembly as scheduled, even though the whip did not participate into bill prioritization. Some features of the government at that time may have contributed to the productive performance of the Plan. It was the strong coalition government and the extension of session period of the Houses from ninety days to one hundred twenty days.<sup>19</sup> Unlike other coalition governments in the past, the strong coalition government that was formed in 2001 had overwhelming majority in the House. Also, the period of time of the session of the National Assembly was extended from ninety days to one hundred twenty days under the 1997 Constitution (KPI 2002: 207). The government's whip never need to worry about the maintenance of government stability. Rather, the Legislative Plan became a significant tool of the government for pushing the bills to the National Assembly as scheduled.

On the contrary, all three coalition governments that was formed from 2007 to the present are not as strong as that of 2001 Administration. Stability emerged as a critical concern of the government again, especially after the bloodshed rally in May 2010. As a result, the government whip reincarnated as the institution that plays a substantial role in bills prioritization again. Although the priority of bills had been set out in the Legislative Plan, many of them were suspended or delayed by the government whip for the reason that they might cause the government to be unstable. Under the current Legislative Plan, the whip pushed five out of eight bills that support the urgent policy specified in the State Administration Plan to the House of Representatives on time, while many bills that support other policies remained pending. The bill amending the Penal Code which empowers the Court to forfeit and confiscate any form of

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<sup>17</sup> 2008

<sup>18</sup> 2008-present

<sup>19</sup> King Prajadhipok's Institute, Research on Effectiveness of Thai National Assembly, 2002, p.207.

proceeds of crimes is an obvious example. This bill was submitted to the government whip in the mid 2009, but it still in process until now, even the Ministry of Justice, the responsible agency of that bill, affirms that this bill is necessary for ratification of the Counter Corruption Convention. It is noteworthy that a couple of bills are given priority by the provisions of the Constitution. The 1997 Constitution required the government to submit a couple of Organic bills and ordinary bills to the National Assembly for deliberation within specific period. This fashion was succeeded to the 2007 Constitution. The transitory provisions of the 2007 Constitution requires many bills to be enacted within specified period. Some of these bills were incorporated in the Legislative Plan, but they are kept awaiting for submission to the House of Representatives, even though the period of time within which such bills should be submitted as prescribed by the Constitution has elapsed. Another example is the bill of the Act regarding the Rules and Procedures for the Making of Treaties with Foreign Countries and International Organizations, which needs to be enacted before the end of February 2009 under Section 190 and Section 303(3) of the 2007 Constitution. This bill was withdrawn from the House of Representatives by the Cabinet during its first reading for on the ground that the purpose of improvement as well as to avoid friction among coalition parties for government stability. When the improved bill reaches the whip once again, the whip establish its sub-committee to rewrite the amended bill and it is in process of the whip until now.

In the research on Proposal for Efficiency Enhancement of Thai Legislative Process, the researchers argues that the aforesaid practice produce adverse effect to the legislative process. The research suggested that the government whip should play an active role in prioritizing a bill rather than passive role as present. The whip should take part in bill prioritization at the stage the bill has been approved in principle by the Cabinet and it should determine when the Office of the Council of State should finish bill's examination, when the examined bill should be submitted to the House of Representatives for deliberation and when the bill should be passed by the Lower House. This Australian model may help the government to enact law that is required for State administration timely.<sup>20</sup>

It could be summarized from the foregoing that in Thai context the institution having authority in prioritizing the bills depends on the nature of the government. The coalition Administration with more than three parties always calls for service of the

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<sup>20</sup> Office of the Council of State, Research on Proposal for Efficiency Enhancement of Thai Legislative Process, op.cit., pp.229-230.

government's whip in bills prioritization with a view to maintain political stability of the government. Subject to this sort of practice, the whip sometimes seems to have superior power than the Cabinet and the Legislative Plan because it may freeze any bill if the whip is of opinion that that bill may undermine government's stability even though Cabinet's approval has been given to that bill. The strong coalition government however performs in contrast. The whip become change agent of the government with the duty to push the bills to be enacted as the Acts of Parliament within schedule as set out by the Cabinet itself.

## (2) Bill's Priority set up by the Legislatives

Under the meeting rules of both Houses, the Speaker of the House of Representatives and the Speaker of the Senate shall be responsible for setting up priority of the bills submitted to the Lower House and the Senate respectively.

In case of the Lower House, the meeting of the House shall be made in order of the agendas set up by Clause 16 of the Rules for the Meeting of the House of Representatives of 2008 as follows:

- Agenda 1 Motions
- Agenda 2 Information from Speaker
- Agenda 3 Approving the minute of the meeting
- Agenda 4 Report of the Committees
- Agenda 5 In awaiting matters
- Agenda 6 Newly submitted matters
- Agenda 7 Other matters

If a new bill is submitted to the Lower House, the Speaker shall set priority of the newly submitted bill to Agenda 6 in order of the date of receiving of each bill upon first come first serve basis. In the case where the Speaker is of opinion, whether on his own initiative or upon request of the government, that the newly submitted bill should be considered urgently, he may put that bill at the first priority of Agenda 6, but that bill has to be deliberated after the agenda on Report of the Committee.<sup>21</sup> The Speaker however exercises such special power only rare case. In practice, if the Administration intends to hasten any bill, it shall signal the government's whip or its members to ask for the House's resolution to rearrange the meeting Agendas by putting such bill at top

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<sup>21</sup>Clause 16 of the Rules for the Meeting of the House of Representatives of 2008

priority of Agenda 6 and asking for putting off the consideration of Agendas 3-5. As for the Organic Law Bill, the Rules for the Meeting of the House of Representatives request the Speaker shall put that bill as urgent agenda.<sup>22</sup> There is no need in this case for the government or the whip to request for rearrangement of the meeting Agendas.

As for the Senate, the Rules for the Meeting of the Senate of 2008 has similar provisions of that of the Lower House. Clause 19 of that Rules requires the Speaker of the Senate to conduct the meeting in 7 Agendas as same as that of the House of Representatives and the newly submitted matter, including the bill approved by the House of representatives, shall normally be put in Agenda 6 that has to be considered after Agenda 4 Report of the Committee and Agenda 5 In-awaiting matters. However, Clauses 131, 134 and 158 of the Rules for the Meeting of the Senate provides that the bill approved by the lower House, irrespective of whether it is the Organic Law bill, normal bill or Emergency Decree, shall be put at the first priority of Agenda 6. In the case where there are many bills put in Agenda 6 at first priority, they shall be considered by the Senate in order of the date the Senate receives those bills, except where the senators have a resolution to rearrange such order.

### **III. Legislative Bill Prioritization Criteria**

According to the development of legislative bill priority setting practice as mentioned in the Part II, the criteria for the determination of priority seems to be normative rather than concrete. Such norm however explicitly shown that legislative bill prioritization in Thailand depends on two criteria, *viz.* seriousness of each problem and government stability.

Generally, legislative bill prioritization is determined by the attitude of the government itself and the degree of the problems that the country is facing or anticipated to face. Any problems are classified by the government into some categories. The problems that may affect national security, public safety, national economy, public order or good moral and public health are classified of high importance, and the legislative bills for tackling with this kind of problems are always classified as first priority as well. If we are looking at the content and details of the State Administration Plan and the Legislative Plan, we will find this implication distinctly. It is notably that

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<sup>22</sup>Clause 104, *Ibid.*

there is no concrete rule for specifying which matter relates to the matter of national security, public safety, national economy, public order or good moral and public health. The determination thereof is based upon the subjective perspective of the Cabinet, the whip and the related government agencies. For example, when the Bill of the National Security Act was submitted to the National Assembly in 2007, the government of that day argued that the bill was necessary for the situation of the country. The public at large seemingly did not support that bill because there was no clear threat to national security as claimed by the government; however, that bill passed the National Assembly one year later. Similarly, in 2010, the government's plan to submit the Peaceful Assembly Bill, failed to gain the support from the public and non-governmental organizations.

In sorting out the degree of the problems, the Cabinet shall take into consideration with current situation of the country in both domestic and international level, in conjunction with prediction of possible scenario, with the assistance of technocrats of relevant government agencies such as the Office of the NESDB and the Office of Secretariat of the Prime Minister. The result of classification together with solutions against those problems shall be made in the form of State Administration Plan. The bills that support each solution shall be incorporated in the Legislative Plan. In this regard, the bills supporting the urgent policy as specified in the State Administration Plan should be identified as urgent bills to be submitted to the National Assembly normally within the first year of the Administration while the bills that are necessary for the fulfillment of other policies shall be identified as lower priority depending on readiness of the responsible agencies in preparing those bills under the complicate legislative process. Due to the fact that the priority set out in the Legislative Plan depends on the attitude of the government on degree of each problem, the government may, upon the changing of economic, social and political situations, rearrange bills' priorities set up in the Legislative Plan from time to time.

Government stability is an important criterion in legislative bill prioritization process, especially the coalition government composed of two and more political parties. Whenever political dilemma or harsh political situation arises, many sensitive bills are withheld by the government whip in order to assure the Administration avoiding further complications that may affect government stability, even though those bills have been put in the Legislative Plan as necessary legislations for the achievement of the State Administration Plan. Those bills however will be submitted to the House of Representatives for deliberation after the political condition is "safe."

Among the two criteria, the first one seems to be general principle for legislative bill prioritization while the latter seems to be an exception; however, in practice, the exception prevail the general principle however. This situation is the reflection of political instability of Thailand which requires the political parties to pay more attention to government stability than the State Administration Plan and the Legislative Plan. This characteristic is not permanent situation, but temporally one. When the Administration becomes strong government, e.g. the 2001 government, there is no need for the government's whip to play as government guardian and it will play government supporter role in pushing the bills specified in the Legislative Plan to the Parliament instead.

## **Conclusion**

Bill prioritization is the key factor that enables all countries to enact laws against any problem responsively and timely. In the context of Thailand, there is no specific criterion for the determination of bill's priority. Nonetheless, an implication of the legislative process itself shows that the bill prioritization related to two norms, namely, attitude of the government on degree of the problem and political situation. The first mentioned norm is general principle in deciding priority of the bills akin to any other country. The RIA requires the Administration to analyze necessity and urgency of the bill to be submitted to the Cabinet. The State Administration Plan and the Legislative Plan urge the government to set up priority of problems and bills against those problems with regard to degree of each problem. However, Thai government has specific character. It always be coalition government of many political parties. Under this situation, attentions of all governments have been paid to government stability inevitably. This is the reason why the second norm plays important role in determining priority of the bill rather than degree of seriousness of problems as specified in the State Administration Plan and the Legislative Plan.

## **Bibliography**

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