

Chapter 7

Regulatory Coherence: The Case of Thailand

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Chapter VII

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Part 1: Evolution of Regulatory Management in Thailand

1. Introduction

Thailand is a middle-income country in Southeast Asia, which is ranked 89th and 80th place in the world in terms of the Human Development Index (HDI) and income per capita, respectively. It is also in the fourth place for these two indices, after Malaysia, in Southeast Asia. **Table 7.1** shows the social performance of Thailand in 2012 and 2013.

Thailand has been ranked in the medium range of quality of government and regulatory quality. According to the Worldwide Governance Indicators (World Bank, 2013), the percentile ranks for quality of government measured by the aggregate governance indicators show that more than 50 percent of countries

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worldwide are ranked lower than Thailand for government effectiveness (61 percent), regulatory quality (58 percent), rule of law (52 percent), and control of corruption (49 percent). The percentile ranks for accountability and political stability are 34 percent and 9 percent, respectively, which indicate the lower rank of Thailand compared to 215 countries around the world. According to the Rule of Law Index (World Justice Project, 2014), Thailand is ranked 47th overall and earns high marks on the effectiveness of the criminal justice system (ranking 35th globally and 7th among its income peers). The country's performance in order and security has improved, while political violence remains a major problem. Corruption still remains, despite the significant improvement during the past years. The difficulties in enforcing court decisions are impediments to civil justice.

Table 7.1. Thailand's Human Development Index and Components, 2012 and 2013

Items	Human Development Index (HDI) in 2013	Life Expectancy at Birth in 2013	Mean Years of Schooling in 2012	Expected Years of Schooling in 2012	GNI per Capita in 2013
Thailand (Ranking)	0.722 (89)	74.4 (76)	7.3 (116)	13.1 (91)	13,364 (80)
HDI Groups					
Very high human development	0.890	80.2	11.7	16.3	40,046
High human development	0.735	74.5	8.1	13.4	13,231
Medium human development	0.614	67.9	5.5	11.7	5,960
Low human development	0.493	59.4	4.2	9.0	2,904
Regions					
East Asia and the Pacific	0.703	74.0	7.4	12.5	10,499
World	0.702	70.8	7.7	12.2	13,723

GNI = gross national income; HDI = Human Development Index.
Source: World Bank, 2014.

Overall, the Thai economy experienced gross domestic product (GDP) growth of around 3 percent in 2009–2013 despite political tension in 2010–2013; GDP growth in 2014 was 2.3 percent. According to the *Asian Development Outlook*

2014 (ADB, 2014), the Thai economy slowed sharply in 2013 due to the weakening of domestic demand and the sluggishness of exports. Political disruption was another significant impediment for the economy since 2010. Further, growth was forecast to remain subdued until it rebound to 3.6 in 2015 and was expected to rebound to 4.1 percent 2016, respectively (ADB 2015). According to the *Asian Development Outlook 2015* (ADB, 2015), the need for stronger public sector investment to help revive Thailand's economy and to improve its infrastructure depends on state-owned enterprises (SOEs), which need reform.

The regulatory system of Thailand is mostly related to the traditional institution of public administration: the bureaucracy, the system of administrative law, and political patronage are the key influences of state institution and economic policy instruments (Christensen et al. [1993], in Poapongsakorn and Nikomborirak, 2003). The patronage system is attached to the administrative system in Thailand. For example, Thailand's code of administrative law relies mostly on subordinate laws, which are issued by permanent officials and ministers. Since they are able to introduce whichever regulations they see fit, the system is criticised about the transparency from business lobbying, particularly before the 1997 Constitution.

Further, Poapongsakorn and Nikomborirak (2003) point out other key characteristics of the Thai regulatory system. Public participation traditionally has not occurred in the system; as a result, many agencies did not have proper measures to inform the public despite the requirement to do so. Besides, the legal authority to issue, change, or amend a regulation is always vested with a committee consisting of senior officials from the core agency, relevant ministries, academicians, business people, and representatives from business associations; some members might have conflicts of interest. Conflict resolutions are taken to court, which is costly and leads to weak enforcement and non-transparent procedures since many businesses try to avoid harsh penalties with a bribe. Finally, simultaneous functions of some state enterprises, i.e., policymaking, regulators, and operators, especially in transport and waterworks, result in serious conflict of interest problems.

According to the World Bank report *Doing Business 2014*, Thailand is ranked 18th out of 189 countries and 6th in Asia behind Singapore, Hong Kong, Malaysia, South Korea, and Taiwan. However, Thailand's performance with ease of doing

business (EODB) has remained the same as in 2006, unlike the marked improvement of Malaysia, South Korea, and Taiwan. This reflects the existence of the red tape problem in redundant processes and procedures required to gain bureaucratic approval, such as licensing and registration, without explicit regulation.

There are many regulations from approximately 8,000 laws in Thailand that most people do not know exist until unintentional violations occur; many of these regulations are rarely enforced. Therefore, it is time for Thailand to undertake a comprehensive law and regulations review (Nikomborirak 2016).

Part 1, Section 2 discusses the evolution of the regulatory system in Thailand since it was reformed to democracy, and Part 1, Section 3 analyses the current state of the regulatory management system (RMS) and the significant initiatives for regulatory reform in Thailand. After that, Section 5 assesses the role of RMS in Thailand. Finally, Parts 2 and 3 analyse, respectively, two studies on the role of RMS in regulatory failure and in successful regulatory reform.

2. Evolution of the Regulatory System in Thailand

RMS in Thailand has been formed by economic and political factors that have changed dynamically for more than 20 years. The impact reforms in 1992 are a relevant factor in driving the regulatory system in Thailand today.

To understand Thailand's regulatory system, this study describes the development of economic and political situations in Section 2.1. Section 2.2 mentions the impetus and the political drivers for the regulatory reforms and how they have changed over time.

2.1. Development of Economic and Political Situations in Thailand

The regulatory system in Thailand has improved throughout four periods of social and economic development (**Table 7.2**).

Before 1992

The reformation of the political regime in Thailand from absolute monarchy to democracy in 1932 led to a structural change of the administrative system, which was divided into central, provincial, and local administration under the State Administration Act (1933).

Table 7.2. Significant Situations of the Regulatory System in Thailand, 1992–present

Period	Significant Situation
Pre-1992	<ul style="list-style-type: none"> • Political democratic reform in Thailand • Economic boom and the 1991 coup d'état
1992–1997	<ul style="list-style-type: none"> • Political crisis in 1992 with interim government • Regulatory reform for PPP project • Enactment of the 1997 Constitution • Pre-Asian economic crisis in 1997
1998–2006	<ul style="list-style-type: none"> • Privatisation of state-owned enterprises • Economic recovery since 1997 • RIA was required in 2001 • 2006 coup d'état
2007–2013	<ul style="list-style-type: none"> • Minor regulatory revision, especially with the regulator-related laws • Enactment of the 2007 Constitution • World economic crisis in 2008 • Flooding in 2011 • Political tension during 2011–2013
2014–2016 (Present)	<ul style="list-style-type: none"> • 2014 coup d'état • National peacekeeping or reconciliation is priority agenda • Drafting of new constitution • Counter corruption • Increasing Thailand competitiveness

PPP = public–private partnership; RIA = regulatory impact assessment.
Source: Authors.

The administrative system experienced great development in 1932–1979. This was during the industrialisation period of the country under the third and the fourth national economic and social development plans that aimed to create economic growth. However, this structural development focused more on increasing the number of organisations rather than providing other benefits.

Since 1933, the bureaucratic regime has had a strong impact on the social and political system, decentralisation has not been implemented, and the regulatory system has not been effective. Thus, this period was so-called 'red tape' from the large expansion of the bureaucratic system. The reform of the administrative system, therefore, became a significant policy since the bureaucratic polity impeded administrative efficiency.

The major reform started in 1980. Red tape reduction called for ease of doing business, especially in the early 1990s, when previous governments had been trying to reduce the bureaucratic size by decentralisation to improve the efficiency of the administration.

Regulatory impact assessment (RIA) was introduced in 1988 under the Regulation of the Office of the Prime Minister to reduce the submission of regulations that caused red tape and duplication in public governance, which was a complaint of the 'deregulation concept' in that time. However, only Cabinet members and some officials knew of the existing RIA requirement and the reason and benefit of its implementation. Thus, the RIA in this period did not succeed.

1992–1997

The relevant development of the RMS was clearly seen in 1992 when the state allowed private participation in public service investment to downsize the bureaucracy and make operations more efficient. Due to the rapid growth in the pre-Asian crisis period, public infrastructure and services provided by SOEs were not adequate. Then, private participation in state enterprises was called upon. The state allowed private participation in public services through privatisation, concessions, and public–private partnerships.

Many important regulations were legislated and concessions were effective during that time. Examples are the Private Participant in State Undertaking (1992), the concession for landline telephones and mobile phones with the Telephone Organization of Thailand¹, and the concession for independent power producers, among others, which affected key sectors of the country. Further, the 1997 Constitution was legislated. The economic policy provided in this Constitution clearly emphasises market mechanisms through the enforcement of the anti-monopoly and consumer protection provisions. Therefore, government is called on to support a competitive market by protecting the market from all anti-competitive practices.

However, the reforms, especially the establishment of regulatory bodies and the implementation process, did not go smoothly because of delays caused by political factors. This delay was considered a positive sign though because of the increasing public awareness of and people's participation in the reform process (Poapongsakorn and Nikomborirak 2003).

1998–2006

The economic downturn after the 1997 crisis was another factor for the government's call for aid from the International Monetary Fund (IMF). This led to the state's privatisation of state utility enterprises in order to generate credibility, reliability, and efficiency of services, per conditions in the IMF agreement.

Hence, the Cabinet approved the Master Plan for State Enterprise Sector Reform in 1998 to initiate regulatory reforms of SOEs and other policy reforms. The Master Plan dealt with the four infrastructure sectors: telecommunications, energy, transport, and water. Thus, the Telephone Organization of Thailand, the Communication Authority of Thailand, Airports of Thailand Public Co., Ltd., Thai Airways, and PTT Public Co., Ltd. were privatised.

After the Asian crisis in 1997, the government realised that the deregulation policy was among the factors that de-escalated the crisis, especially deregulation

¹ Telephone Organization of Thailand was corporatised as TOT Public Co., Ltd. on 31 July 2002.

in the financial sector. The government then set the new course of RIA – from a mechanism for deregulation to a tool to help strengthen the economic and social resilience process. The Legal Reform Committee for the Development of the Country (LRCDC) proposed to the Cabinet in 2003 the mandatory requirement of RIA, being in line with the Organisation for Economic Co-operation and Development (OECD). It was then approved by the Council of Ministers in 2004. Since then, government agencies have to comply with the RIA checklists in order to propose any regulation to be considered by the Cabinet.

Due to political conflicts since 2005, a faction of Thailand's military led by General Sonthi Boonyaratglin staged a bloodless coup, suspended the Constitution, and declared martial law on 19 September 2006. This resulted in Thailand's short-term economic uncertainty, and impacted on investors and developed country governments (Schmidt, 2007).

2007–2013

After the 2006 coup d'état, the 2007 Constitution was legislated. This Constitution preserves the concept of the state's policy directive on the economy by encouraging a free and fair economic system through market forces, ensuring free and fair competition, and protecting consumers. Further, through its basic public utilities provision, the Constitution prohibited the monopoly by private investment that could be a detriment to the state; it provided that the ownership of private investment in basic public utilities should not be more than 49 percent.

2014–2016 (Present)

After the political tension in 2011–2013, General Prayut Chan-o-cha, Commander of the Royal Thai Army, launched the 12th coup d'état since the country's first coup in 1932. The military established a junta called the National Council for Peace and Order (NCPO) to govern the nation. The NCPO issued an interim constitution granting itself amnesty and sweeping power. It then established a military-dominated National Assembly which later unanimously elected General Prayut as Prime Minister of the country.

The top priority agendas of the current government are not only national peacekeeping, constitution drafting, and counter corruption but also improvement of national competitiveness. Therefore, the current government

starts directly with the problem of ease of doing business and aims to override this issue in the road map of the government as declared to the public. The Law Reform Commission (LRC) of the Office of the Council of State (OCS), entrusted to do the tough research, found that about 90 percent of Thai legislation, even the bills proposed at that time, was based on the closed government control system, or licensing, which is not compatible with the trade liberalisation environment of the world today. Another issue is dated legislation, particularly subordinate laws, which have not been continually reviewed for regulatory impacts.

Based on the findings, the LRC proposed the optimal solution for those problems to the Council of Ministers for further action: (i) enactment of the Licensing Facilitation Act (2015) for ease of doing business and enhancement of transparency; (2) enactment of the Royal Decree on Revision of Law (2015) or the Thai Sunset Law to make all Thai laws and regulations dynamic; and (3) drafting of a law on RIA, which is now under consideration of the LRC, and adopt the scientific method in the policymaking process to attain sustainable development and better the lives of people.

2.2. The Impetus and Political Drivers for Regulatory Reform in Thailand

Akin to the mainstream concept of regulatory reform, Thailand has exercised techniques for reform in accordance with international best practices. However, many existing regulations are evidence that Thai regulations are not in line with current global conditions or with the current needs of the public. These let the country down in boosting competitiveness ranking, particularly the legal mechanism, based on the strict control system used in existing regulations (Nilprapunt, 2015a). This section explores the impetus and political drivers for the regulatory reforms, including the political agenda behind the reforms.

The continuation of government policy is the relevant factor for regulatory reform in Thailand (as evidenced in the period before 1932 and after the economic crisis in 1997 until 2006). Regulatory reform policy was driven strongly and continually and the output and outcome of this effort produced a satisfactory effect to the country as a whole.

Strong policy leadership from the King led to the establishment of the Penal Code, the Civil and Commercial Code, the Civil Procedure Code, and the Criminal Procedure Code along the same lines as the laws of European countries in 1897–1925; it also drove the country from absolute monarchy to democracy in 1932. Moreover, a benefit from this reform is the establishment of the Office of the Council of State (OCS), a central legal agency of the government and the successor of the Laws Drafting Commission of 1897, which had been responsible for regulatory drafting and which dealt with regulatory reform for a long period.

Even though RIA implementation in 1988 failed, academics and progressive politicians stimulated the idea of regulatory reform. The country realised the need for regulatory reform in order to compete in world trade as protectionism has relaxed. According to Nilprapunt (2015a), in 1992 the government therefore decided to establish the LRC to ensure the continuity of regulatory reform work and established the Law Reform Revolving Fund, especially for regulatory reform work. With strong government backing and financial support, the LRC initiated many regulatory reform projects; and the first priority was to bring the regulations in line with current conditions and ensure that these meet current needs.

Unfortunately, long political turbulence in Thailand that began in mid-1992, in conjunction with the economic crisis in 1997, had frozen the LRC initiative. After recovery from the economic crisis in 2002, regulatory reform became a dominant policy of the government once again until 2006. During that period, the government invested much effort and resources for regulatory reform work, particularly in the public sector, and the RIA had been reincarnated, upon the OECD checklist. The Office of Cabinet Secretariat was entrusted the RIA, and the OCS prepared its manual. This period could be called the golden period for regulatory reform in Thailand when its national competitiveness received a satisfactory ranking, as assessed by many international institutions in 2003–2005.

However, Thai politics had again become unstable from late 2006 until 2013; this has always been a key obstacle to regulatory reform in Thailand. Poapongsakorn and Nikomborirak (2003) point out that Thailand's reform process usually lacks a consistent policy framework. The sectoral policy is fragmented at the department level. Political officials come from a government consisting of a number of coalition parties that would not interpose in the other parties' line of duties.

Therefore, policy planning is done inconsistently. Even so, the government could actively consolidate its power and was capable of carrying out its policies without any resistance from the bureaucrats in the period of the first Thaksin government.

Thailand's experience with the 1999 Trade Competition Law shows the helplessness of the Thai bureaucratic system, which is influenced by politicians and the business community. Consequently, Thai laws cannot be the panacea without proper institutional design and political will that will not intervene in the market.

Evidence from Poapongsakorn and Nikomborirak (2003) likewise found that the elected popular governments of developing countries can legitimately choose to carry out policies promised during election campaigns, thus, reflecting the fact that governments of developing countries always put development objectives in front of other targets.

Therefore, the achievement of the regulatory reform to improve Thailand's competitiveness since 2014 could not depend only on the 'arm's-length' of the LRC or the OCS, but also the continuation of government policy that depends on political stability. If the government can overcome this hurdle, it is possible for Thailand to move forward dramatically (Nilprapunt 2015a).

3. Current State of Regulatory System in Thailand

This section attempts to study the current state of Thailand's regulatory system through the legal system and legislative process. Finally, the study focuses on examining the gap of regulatory reform development in Thailand.

3.1. Legal System in Thailand

Thailand is a constitutional monarchy with a parliamentary form of government. Its legal system follows the pattern of civil law countries of Europe. All laws derive from two major sources: the legislative and executive branches of both central

and local governments. **Box 1** provides the details of sovereign power under the constitutional monarchy system of Thailand.

Box 1. The Constitutional Monarchy System

Under the constitutional monarchy system of the Thai democratic administration, sovereign power is divided into judicial, legislative, and executive branches. Each of these branches is headed by the President of the Supreme Court, the President of the National Assembly, and the Prime Minister.

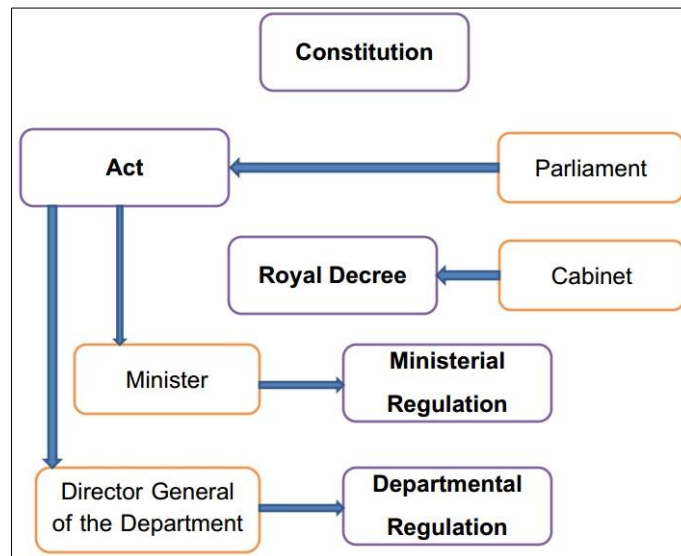
For the judicial branch, the courts of justice are classified into three levels consisting of the Courts of First Instance, the Courts of Appeal, and the Supreme Court. For the legislative branch, the National Assembly consists of the Senate and the House of Representatives. The President and the Vice-President of the National Assembly are the Speaker of the House of Representatives and the President of the Senate, respectively. For the executive branch, there are three levels of the Royal Thai government administration: central, provincial, and local administration.

Sources: Prepared by the authors; www.ThaiLaws.com (2014).

Thailand's primary laws are embodied in Acts of Parliament. The Acts, made by Parliament, are supported by various administrative laws and regulations, issued by the Thai Cabinet, minister, and director general of the department. These regulations include royal decrees, ministerial regulations, notifications of directors general, as well as less formal policies and procedures adopted by departments in the Thai government or departmental regulations. The policies have not gone through formal legal processes but can be as important as an Act of Parliament for one doing business in Thailand.

Figure 7.1 illustrates Thailand's legal system.

Figure 7.1. Legal System in Thailand



Source: Prepared by the authors.

3.2. Legislative Process in Thailand

Since the primary laws or enactments are produced by Parliament, this section explains the legislative procedure. The primary reason for enactment in Thailand is to resolve a problem through a new law or amending an old one. The policy agenda that the Cabinet declared to the Parliament is also another driver for the legislative plan or legislative development plan.

According to the 2007 Constitution, a bill or legislation can be proposed through the following channels: the Council of Ministers, composed of no fewer than 20 members of the House of Representatives, courts or statutory agencies, and eligible voters. Nevertheless, the courts or the statutory agencies can be involved in the proposal process only for laws that are linked with the establishment of those agencies and laws under the concern of these representations. The eligible voters of no fewer than 10,000 who sign a petition can propose new legislation under Part 3 of the Constitution (Rights and Properties of the Individual) and Part 5 (Property Rights). Further, the Prime Minister is required to endorse a bill connected with money that the Council of Ministers does not propose.

Legislation Processed by the Executive Branch (drafting and consideration)

Both the legislative plan and the legislative development plan need to start with the recognition of the problem. The policy analysis or legal inquiry is directed in parliamentary procedure to determine the problem and then the potential answer. If the legislation is projected by the executive branch, the ministerial office has to respond to the draft making and initiate the process of its section and puts forward the draft to Cabinet through the Office of Secretariat of Cabinet.

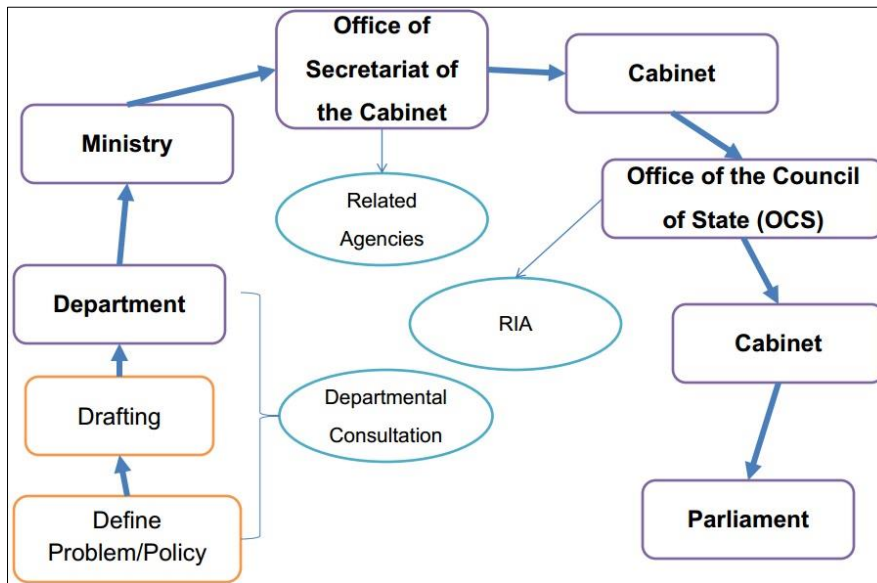
The law submitted to Cabinet will be scrutinised for approval on the need for legislation and the principle of legislation. Particularly, a law that is compatible with the Cabinet's policy, political suitability, or legal issue will be considered by the Scrutiny Committee, the Cabinet Subcommittee, before submission to the Cabinet. Consequently, consultations are done during the process. The first is departmental consultation for appropriate answers from both related agencies and other stakeholders after the policy analysis or legal research, and the other is the formal consultation with concerned agencies on the precept of the draft with responsible agencies before the Cabinet's consideration.

The law approved by the Cabinet will be transmitted to the OCS, the government body tasked with drafting national laws. However, for a law related to the policy that the government declared to Parliament, the legislative branch or the Cabinet can propose said law to the OCS.

The law approved by the OCS will be presented again to the Office of Secretariat of Cabinet for reconsideration before handing in the approved bill to the Parliament through the Whip. The Whip will consider the draft for political suitability and submit the bill to the legislative plan of the House.

Figure 7.2 illustrates the legislative process of the executive branch in Thailand.

Figure 7.2. Legislative Process of the Executive Branch in Thailand



Source: Prepared by the authors.

Legislation Processed by the Legislative Branch (consideration)

The period for consideration depends on the rule of the House of Representatives. There are normally three readings that the House of Representatives and the Senate need to consider. The first reading is for the approval of the bill in principle; the second one scrutinises it by section; and the last reading is to pass the bill.

During the first reading, the principle of the legislation will be explained to the House by the proposed body. The House will discuss the merits of the bill, and approve its principle (if the House is satisfied).

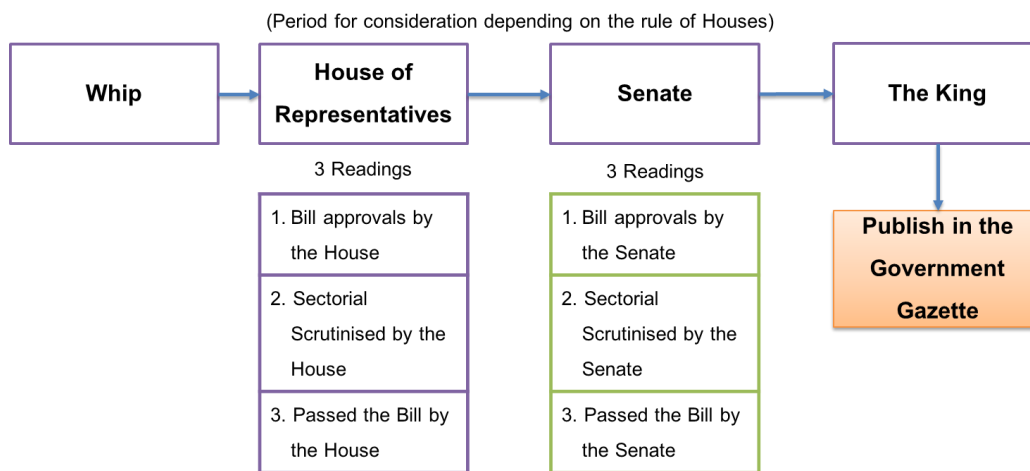
During the second reading, the commissioner will consider the bill, and the House of Representatives will reconsider it by each section and the whole content.

During the third reading, the bill is passed and submitted to the Senate to be scrutinised also during three readings: approval, sectoral scrutiny, and passing of the bill. Nevertheless, the Senate needs to consider the bill within 60 days (and within 30 days for the extended period of some cases). A bill that was not passed will be returned to the House of Representatives and reconsidered after 180 days.

The Prime Minister will present the bill to the King to obtain the royal signature within 20 days after the submission of the National Assembly. Then the Act will be published in the Government Gazette and become effective, if not vetoed.

Figure 7.3 illustrates the legislative process of the legislative branch in Thailand.

Figure 7.3. Legislative Process of the Legislative Branch in Thailand



Source: Prepared by the authors.

Legislation Processed by Eligible Voters

The 2007 Constitution is concerned about people’s direct political participation. According to Section 163, eligible voters of no fewer than 10,000 shall have the right to sign a petition to the President of the Senate to cause the National Assembly to study the legislation under Sections 3 and 5 of this Constitution. The request must be accompanied by the bill being proposed, and the rules, including procedures for the petition and scrutiny, shall conform with jurisprudence.

Eligible voters can sign a petition to cause the consideration of the National Assembly or sign it through the Election Commission.

In adopting the petition, the House of Representatives and the Senate shall permit the eligible voters to explain each petition. The extraordinary committee shall be composed of not less than one-third of the eligible electors of the extraordinary committee.

3.3. Regulatory Reform Initiatives in Thailand

Soft infrastructure such as laws and regulations, normal day-to-day working procedures of government officials, and dated bureaucratic process are real impediments to improving the national competitiveness of the current government.

The LRC of the OCS, which was entrusted to research on this matter, found three main problems of the regulatory management system (RMS) in Thailand:

- (1) The legal mechanism of most of Thai's laws and regulations is still based on the close government control system, which was fit for the trade protectionism regime but is a hurdle for the market-oriented economy of the world today. The close control system requires permissions for and licensing of all activities, where voluminous documents are submitted to authorities for consideration with no standard rules on licensing procedures. This system burdens businesses and people who need to apply for such licences, particularly those with compliance costs, and may lead to corruption if the licensing has no standard procedures and depends only on the discretion of dishonest authorities.
- (2) Thai legislation in the past mostly depended on the order of the portfolio minister who had authority to legislate subordinate law. As a consequence, as the research revealed, almost all subordinate legislation was made to ease the performance of their power and duties rather than facilitate public service. Subordinate laws may not be responsive to the current world situation since they have not changed much after enactment.
- (3) Most politicians, officials, and the public are not aware of the impact caused by the outcomes of legislation. Further, the RIA that portfolio ministers have to submit for Cabinet approval since 1988 is just a form to be filled with short 'yes' and 'no' answers (details of the RIA in Thailand are described in **Box 2**).

Box 2. Regulatory Impact Assessment in Thailand

In 1988, there was the first effort to measure the impacts of regulation when the Council of Ministers passed the Regulation of the Office of the Prime Minister on Rules and Procedure for Submission of Any Matter to the Council of Ministers for Consideration. The objective of the 1988 Regulation was to deregulate by reducing the submission of red-tape regulations that was popular at that time.

However, the RIA procedure under the 1988 law did not succeed since its concept did not fit the situation at that time. No government, other than Cabinet, knew the existence of the RIA requirements and no specific agency had been entrusted to let the public and government officials recognise the reason and benefit of RIA implementation.

After reviewing the failed RIA, the Council of Ministers added more details into the 1988 Regulation on specific impacts to be considered by the agency. Nonetheless, the government did nothing to equip government officials with the correct and appropriate understanding of the RIA, and that this measure aimed to make RIA easy for the government agency. Since 1992, the RIA statement measure was cleared on the 'yes and no' answer basis.

The deregulation policy was considered to be important after the 1997 Asian economic crisis. The government changed the RIA from a mechanism for deregulation to a tool for fashioning better regulations to strengthen the economic and social resilience process. The Legal Reform Committee for the Development of the Country (LRCDC) was set up as an ad hoc commission to conduct legal reform for better regulations. After learning from the failures of past governments, the LRCDC agreed that RIA should be a mandatory procedure for the submission of any regulation to the Council of Ministers for policy approval. Any submission of regulation without a detailed RIA cannot be presented to the Cabinet for consideration. As a result, the LRCDC proposed the mandatory requirement of RIA to the Cabinet in 2003, which set of RIA is in line with that of OECD.

The Office of the Council of State (OCS), as legal advisor, is the central unit that equips government officials with knowledge and know-how in conducting the RIA and prepares the RIA statement for Cabinet consideration. The explanatory note and manual for RIA was approved by the Council of Ministers in 2004. As a consequence, government agencies have to follow the RIA manual and checklists when proposing any ordinance to the Cabinet for consideration.

Due to the attempt to use RIA as the main tool management, the Thailand Development Research Institute (TDRI) (2014a) found that some impediments still exist as follows.

- Although the OECD guideline was indicated at the beginning, no dedicated agency examined the report thoroughly.
- Most RIA reports consist of only 3–4 pages; thus, the RIA reports were not useful in the lawmaking process.
- The RIA process will be initiated when the conscription bill was settled. Thus, the RIA seems to be an obstacle rather than an advanced mechanism.
- RIA is required only with an Act that will bear on the Parliament, but not with the lower level of legislation, e.g., royal decree or ministerial regulations.
- There is no RIA guideline, or any template to comply with.
- There is no stakeholder consultation and/or public participation in the RIA process.
- No dedicated agency scrutinises the RIA report.

Source: Prepared by the authors.

The LRC, thus, proposed three regulatory reform initiatives to the current government to cope with the above-mentioned problems.

- (1) To ease doing business and enhance transparency in the Thai administrative procedures by enacting the Licensing Facilitation Act (2015). This aims to narrow discretionary power of government officials and make the licensing process, workflow, and duration of the process known to the public, thus establishing a transparent and accountable environment for the licensing process.
- (2) To establish a mandatory review of all legislation, especially subordinate laws, through the enactment of the Royal Decree on Revision of Law (2015) or the Thai Sunset Law. By this law, ministers are responsible for the review of laws and regulations every 5 years or earlier and to control the execution of outdated ones, in close consultation with stakeholders. The results of the review need to be disclosed to the public; thus, these should be translated into English for foreigners as the way forward. Further, the results should also be tabled to Cabinet and the Parliament in order to follow the open government doctrine. This ex post evaluation of legislation should make Thai laws and regulations become dynamic and fit for the current world situation.

The RIA must undergo the same legal process for any regulation submission to the Cabinet for approval. Nevertheless, the draft law on the RIA is now under consideration by the LRC, with plans to get approval from Cabinet by August 2016. This initiative will make the policy decision-making be based on scientific methods, which is more sustainable than making decisions to gain political popularity. These three reform initiatives shall be evaluated by using Thailand's ranking in both the Global Competitiveness Index (World Economic Forum) and the IMD World Competitiveness Ranking (IMD World Competitiveness Center,) as the key performance indicators for achievement. The LRC target is to move two levels up from the existing rank in the first 2 years after the completion of all three initiatives (Nilprapunt, 2015b).

4. Analysis of the Current State of Thailand's Regulatory Management System

Despite performing well in the ease of doing business indicators, Thailand's performance in 2014 does not show a marked improvement from previous years as neighbouring states in Asia such as South Korea, Taiwan, and Malaysia. This result shows that domestic rules and regulations in Thailand do not accommodate businesses or there is no effective regulatory system reform in Thailand to remove burdens and improve national competitiveness before the enactment of two landmark laws: the Licensing Facilitation Act (2015) and the Royal Decree on Revision of Law (2015). However, the achievement of these reform initiatives, as described in Section 1.3.3, needs to be evaluated continuously.

This section attempts to map the details explained in Section 1.2 on the elements of Thailand's RMS.

Flow Management

Regulatory impact assessment is the 'flow' policy tool that the government has attempted to develop. However, gaps include the fact that stakeholders in the Thai regulatory system are not aware of a regulation's impact and the RIA policy has not been implemented on subordinate laws.

Further, the RIA process in Thailand does not comply with the principles of good regulatory practice. Consultation with stakeholders, or the public hearing process, has not been conducted efficiently; the assembly could not create an environment of constructive comments between policymakers and stakeholders, and define explicit topics to discuss with empirical evidence. Moreover, the RIA report publicised as a regulatory impact statement needs to be supervised and appraised by a central body to ensure that quality complies with international standards. Finally, the cost-benefit and cost-effectiveness relationship in the regulatory impact statement should be assessed scientifically and systematically.

Nonetheless, the present government will improve the RIA to ensure it complies with the Good Regulatory Practice of ASEAN and APEC to improve the quality of

legislation, to ease of doing business, and to create a business-friendly environment in Thailand.

Stock Management

Reducing red tape has been the 'stock management' tool to improve efficiency in the bureaucratic system and to realise benefits from not only facilitating people but also attracting domestic and foreign investors through deregulation.

According to Nikomborirak (2016), cutting red tape and burdensome administrative procedures is considered to be less costly and a more effective means to attract foreign investors than the conventional incentive tax that costs the country dearly each year. Since administrative burdens bombard foreign investors, Thailand has put much effort to attract investors by using an incentive tax. Removing the administrative difficulties has been the 'policy focus' of the government.

Nonetheless, policy implementation still has some impediments. An initiative on this topic is the enactment of the Licensing Facilitation Act (2015) to prevent the burdensome processes. Examples of this are the cumbersome paper work required in menial procedures like producing and signing a photocopy of an identification card or house registration. However, it does not tackle the root of the problem. On the other hand, 'how necessary these licences or steps are' should be promoted and reviewed for the Thai regulatory system since most involved people do not know these existed.

Therefore, the enactment of the Thailand Sunset Law or the Royal Decree on Revision of Law (2015) is another initiative to ensure that this ex post evaluation shall make legislation compliant with the dynamic world. Under the Sunset Law, the review shall be conducted with close consultation with stakeholders and the report of such a review shall be disclosed to the public. It shall also be tabled to both the Council of Ministers and both Houses for consideration in accordance with public participation and the open government doctrine. A minister who fails to comply with the duties under the Sunset Law shall be regarded as causing wilful omission of the performance of his official duty. It shall be grounds for recall from office under the Organic Law of the Counter Corruption Commission and for criminal liability under Section 157 of the Penal Code. Moreover, the

Sunset Law requires all government agencies to take and publish English translations of all laws and regulations under their responsibility to create an investor-friendly and transparent environment (Nilprapunt 2015a).

Policy Coherence

Before the reform initiatives described in Section 1.3.3, Thailand had never taken a stock of regulations and laws under each line ministry's purview for reviewing and proposing those needing to be eliminated or amended. The incoherence of regulations and laws is likely to occur, even in the same line ministry since the less formal legislation of ancillary laws, such as administrative regulations of ministries and departments, is set independently.

Despite the OCS being responsible for the drafting of an Act, some decision-making problems remain. For instance, the government creates a policy decision without knowing what problem needs to be removed or what deregulations need to be prioritised in order to create policy consistency. To promote 'digital economy' policies, there should be executive action plans to remove cumbersome paper work required in menial procedures.

Since almost all authorities do their work without collaborating with others, even within the same agency, working with others in a concerted manner is something strange in Thailand's bureaucracy. Consequently, people and investors have to do hard work with their own cost, which is high and may not be estimated if they want to run their activities or businesses legally. This might also be a stairway to corruption and bribery of the corrupt officials (Nilprapunt, 2015a).

Therefore, according to Nilprapunt (2015a), the LRC research proposed that each government agency shall, in facilitating licensing procedures for the public, establish a service link centre to accept all applications for licences, and to provide licence-related information as prescribed by the laws related to licensing, under its responsibilities to the public in accordance with the guideline laid down by the Public Sector Development Commission. Additionally, the one-stop service centre shall also be established as the centre for receiving all applications under the laws related to licensing.

Consultation

Since consultation is not common in Thailand, many agencies did not have proper measures to inform the public even with the requirement under the 2007 Constitution. After policy analysis and legal research, consultations with stakeholders should be conducted before and after drafting.

However, before the reform initiatives described in Section 1.3.3, there was no regulation or procedures requiring public consultation. As a result, most public hearings do not reach the objective of the procedure, for example, the topics are too broad or have no evidence data support.

Fortunately, the Thailand Sunset Law requires that the review be conducted in close consultation with stakeholders and that the report of such review shall be disclosed.

'Big Policy' Focus

The 'big policy' of Thailand focuses on what improves national competitiveness and promotes better life for the people. The LRC is the relevant body for doing the regulatory research and found that soft infrastructure, such as laws and regulations and public administrative procedures, are the real impediment.

Therefore, the LRC proposed optimal solutions to generate transparency in permits and licensing, make Thai laws and regulations dynamic, and improve policy decision-making to be more scientific or systematic. These are significant initiatives for regulatory reform in Thailand.

Before these initiatives, in order to develop policy, intervention analysis by each ministry tasked with and responsible for regulating is, de facto, used as a tool in the RMS. Nonetheless, most interventions are considered to be reckless for process design and legal analysis since there is no cost-benefit analysis to make new regulations or amend existing ones. The RIA or an ex ante evaluation has not been well adopted in the decision-making process, and all government agencies responsible for changing regulations do not have to account for the failure of any change. Fortunately, the draft law on RIA, now being considered by the LRC,

should lift the quality of conducting it and make it the legal procedure for relevant authorities to follow.

Further, these initiatives target to move up national competitiveness in the first 2 years with an action plan.

Governance and Coordination

Good governance is in progress in Thailand. Because it is time for regulatory review and strong political will and commitment are necessary, the Cabinet has considered a legislation development plan. Consequently, the Thailand Sunset Law was enacted. Despite the fact that a current RIA criterion of Thailand complies with OECD guidelines, the quality of the regulatory impact statement does not.

The OCS is supporting institutions with national legal consultants who can provide impact evaluations on both existing and new regulations if the protocol is created. Further, the protocol should support the government and each ministry will develop policy for assessment and capacity building.

5. Assessment of the Regulatory Management System

The RMS in Thailand is involved mainly with the legislative process, summarised as follows. First, Thailand is under a parliamentary democratic system with a bicameral Parliament, composed of the House of Representatives and the Senate. However, in exceptional circumstances, after the 2006 and 2014 coups d'état, the National Legislative Assembly represents the vote of the House of Representatives and the Senate. Second, the political party with the majority vote usually forms a coalition government, which is not stable; hence, the negotiation process of Thailand's RMS more frequently occurred between the coalition government parties than between the government and the opposition parties in the House of Representatives. Finally, under the 2007 Constitution, the Council of Ministers, Members of the House of Representatives with no fewer than 20 people, courts or statutory agencies, and eligible voters signing a petition can propose legislation. Two types of a bill draft have to be proposed for

consideration; one involving money needs to be endorsed by the Prime Minister before submitting.

From the legislative process, the regulatory system is evaluated to have no coherence among the relevant authorities and does not focus on policy development. All stakeholders have their own interests when proposing a law that mostly does not focus on policy development. Despite the fact that legal research is conducted in the drafting process, a law is proposed separately by each authority, and has no link with the policy agenda within their categories; for example, the laws engaging in promoting competition policy should be improved under the same political agenda. Hence, this leads to the legislative process being ineffective. Further, the incoherence between stakeholders' objective of proposing a law and the conflict of interest among them are described below.

Objective of Government Agencies

Permanent government officers prefer to propose laws to improve their convenience and discretionary power of their enforcement. Besides, government agencies sometimes use legislation as a tool to boost their resources (Tangkitvanich et al., 2012).

The Council of Ministers and Government Agencies

The Council of Ministers often has no incentive to legislate a new law since the administrative process could be handled by the executive branch. Further, the legislative process takes longer, thus, proposing a new Act is not the priority. Most legislative processes from the Cabinet will occur only for 'de-restriction' of existing laws in order to facilitate policy implementation by the government (Tangkitvanich et al., 2012).

National Assembly and the Cabinet versus the Senate

Since the objective of Members of the House of Representatives is to be re-elected, the representatives always focus on the legislative process involving the rights and participation of people, including the impact on their voters (Tangkitvanich et al., 2012).

Meanwhile, the House of Representatives and the Council of Ministers usually have similar interests since the Cabinet needs to have the majority vote in Parliament. Tangkitvanich et al. (2012) show that sometimes the Cabinet did not amend the draft of a bill approved by the OCS, if its content did not fit with the Cabinet's interest, but the House amended that draft according to what Cabinet wanted even it was approved by the OCS. On the contrary, the Senate intended to amend the draft to be more concise and to stabilise the power of the government.

Fortunately, there are initiatives to improve the regulatory system in Thailand with the enactment of the Licensing Facilitation Act (2015) for ease of doing business and enhancing transparency, and the Royal Decree on Revision of Law (2015) or Thai Sunset Law to make all Thai laws and regulations dynamic. However, in-house communication and capacity building are required to make government officials understand and comply with the laws.

In Parts 2 and 3 of this chapter, we explore the details of regulatory changes to (i) the protection of car accident victims (a success), and (ii) the licensing of passenger vans (a failure). In particular, we explore the drivers of the regulatory changes and the extent of the role played by RMS elements and institutions.

Part 2: The Case of the Protection of Car Accident Victims Act

1. Introduction

The legislative amendments to the Protection of Car Accident Victims (1992) implemented the first financial risk protection assurance for motor victims, particularly third party passengers. This case demonstrates the usefulness of RMS in decision-making support that was an important driver for legislation to protect car accident victims, and the benefit of monitoring and reviewing the regulations under the Act. The next section discusses how this legislation was effective through the successful combination of process design, legal analysis, organisational analysis, political backing, and a clear definition of the problem. A stronger RMS would have enhanced the effectiveness of the legislation process:

the implementation of the RIA would have contributed a more efficient consultation process and strategic planning for implementation and monitoring.

Because the life and property of victims lost and/or damaged by road accidents are invaluable, the idea of protecting and helping car accident victims is necessary to compensate for such loss.

Before 1992, the regulatory system for road accident victims in Thailand was not well organised. Few measures from the Land Traffic Act (1979) and the Motor Vehicle Act (1979) were used to handle road accidents, but only 10 percent of all cars in Thailand were restricted under these Acts. After proposing a draft of the Third Party Motor Insurance Act in 1963, the Protection of Car Accident Victims Act (1992) was legally approved in 1992.

The objective of the Act is to ensure that all car accident victims – drivers, passengers, and pedestrians – would be compensated for health, including medical care costs, other costs for physical injuries, disabilities, or death, and other costs such as loss of earnings and lawsuit expenses. Further, the sanatorium will also be guaranteed for medical expenses incurred. Therefore, this legislation is beneficial not only for the quality of life of Thai people but also for the development of connectivity within the ASEAN region.

This case study discusses the development of the overall regulatory system of the insurance sector in Thailand. Sections 2.3 and 2.4 analyse the drivers for the legislation and describe the sequence of the events, respectively. The role of the RMS is explained in Section 2.5 and the study attempts to analyse how the enhanced RMS could make this reform different in Section 2.6.

2. Development of the Regulatory System of the Insurance Sector

Insurance is a method of transferring risks on one's life and property, which is an important financial tool for strengthening society and the economy; it also improves the quality of life of the population as a whole. There are three main

insurance sectors in Thailand: life, non-life, and motor insurance, which are the responsibility of the Office of Insurance Commission (OIC). As all sectors are concerned with creating an impact on people's welfare, then they need to be regulated by the government.

The insurance business originated in the reign of King Rama V, initiated by foreign investors who operated through Thai agents, even though the records of marine insurance were discovered in the King Rama V era. With rapid growth during the reign of King Rama VI, insurance became strictly regulated and required registration of an insurance business licence.

Regulation of the insurance business had been taken care of by the state since 1927 with the Act on Control of Trade Possibly Caused Impact to Public Security or Peace (1928), and a specific government unit controlled and supervised the insurance business, which was later developed into the Insurance Commission and the Office of Insurance Commission. In 1929, the Insurance Division was established to take on the role of registering insurance businesses and was subject to the Office of Permanent Secretary of the Ministry of Commerce and Transport (which was later changed to the Ministry of Economic Affairs) after the political regime became a democracy.

After the Second World War, the number of life insurance and casualty insurance companies in Thailand multiplied, and the Insurance Division came under the Department of Commerce Registration. In 1968 it was transferred to the Office of Permanent Secretary of the Ministry of Economic Affairs for the expediency of official services and the expansion of insurance work.

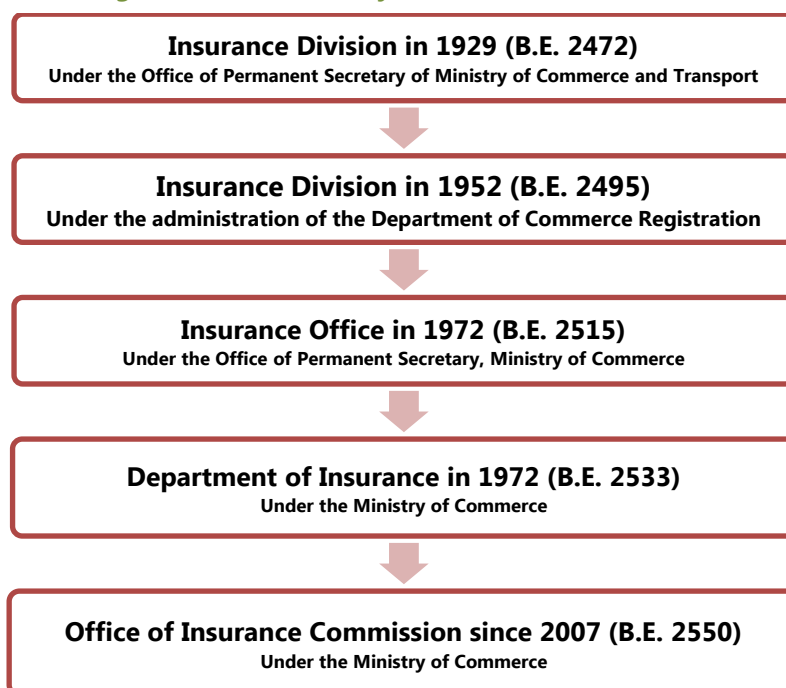
Many necessary regulations were launched to prevent future problems caused by the cancellation of licences of leading companies in 1965 and specific measures were imposed to reinforce the financial conditions and administration of the insurance business in Thailand in 1967. In 1972, the Insurance Division was changed to the Insurance Office, but still maintained its status as a division under the Office of the Permanent Secretary of Ministry of Commerce. The office was changed again to the Department of Insurance under the administration of the Director General of the Department of Insurance, Ministry of Commerce, in 1980.

Fortunately, the insurance business felt less impact from the Asian financial crisis in 1997, compared to other business sectors, since the investments and operations of insurance companies were closely supervised and controlled by the government.

Since the role of the Department of Insurance is to encourage the environment fostering the insurance business in Thailand to become more competitive, the Department of Insurance had to improve businesses in response to environmental changes and avoid the red tape, being under government supervision.

Consequently, the transformation of the structure and role of the Department of Insurance to the Office of Insurance Commission (OIC) took place under the Insurance Commission Act (2007) with competent personnel and public hearings. The OIC's responsibilities include amendments to three major insurance Acts: the Life Insurance Act (1992), the Non-Life Insurance Act (1992), and the Protection of Car Accident Victims Act (1992). The OIC is successful in its role and operations in several areas, such as the cooperation with insurance companies to develop skills of insurance personnel, the supervision of all types of insurance services, and the development of insurance policies that satisfy people's needs. **Figure 7.4** displays the evolution of the Insurance Commission from 1929 to the present.

The OIC achieves its goal by implementing policies to relieve the burden of the insured and aimed at the long-term goal of insurance excellence on an international level by setting out the Insurance Business Development Plan. The Insurance Development Plan is a national plan resulting from the public and private sectors' determination to set measures to develop the insurance system in Thailand. The first plan was done in 2006–2011 with three strategies: reducing insurance cost, promoting competition and a variety of insurance services, and promoting the insurance system's potential. The second plan was acknowledged by the Cabinet in 2010 and has four strategies: (i) strengthening the confidence and access to the insurance system, (ii) strengthening the stability of the insurance system, (iii) upgrading service quality and policyholder's interest, and (iv) promoting the infrastructure of the insurance business.

Figure 7.4. Brief History of Insurance Commission

Source: Office of Insurance Commission (2014).

3. Drivers for the Protection of Car Accident Victims Act (1992)

The Third Party Motor Insurance Law was initiated in 1963 and aimed to set mandatory insurance for the owner of a motor vehicle who uses or possesses a motor vehicle – including one registered abroad and imported into Thailand – against loss for motor vehicle victims with the company in the country to protect a third party from the consequence of a road accident.

After that, the Third Party Motor Insurance law was drafted and changed to the Protection of Car Accident Victims Act B.E., after adding principles consisting of (i) the compensation of preliminary damage fees with no-fault system, (ii) the punishment for the owner of a motor vehicle who violates this law, (iii) the establishment of the Protection for Motor Vehicle Victims Committee, and (iv) the establishment of the car accident victim's guarantee fund.

In the 1990s, two tragedies influenced the awareness of having a system to take care of victims' medical costs from road accidents: a tank truck carrying liquefied petroleum gas crashed and exploded in downtown Bangkok and a trailer truck carrying dynamite exploded after it crashed at Thung Maphrao in Phang Nga province. Meanwhile, the legislative system in 1992 was under the National

Legislative Assembly after the 1992 coup d'état. Therefore, the Protection of Car Accident Victims Act (1992) was enacted on 9 April 1992.

4. Sequence of Events

This section describes the historical background involving the legislation of the Protection of Car Accident Victims Act (1992), and the development of relevant measures and their impact for social welfare.

4.1. Historical Background of the Protection of Car Accident Victims Act (1992)

Before 1992, Thai people did not have universal health coverage. Approximately 30 percent of the Thai population was uninsured despite the consistent coverage extension of (i) the medical welfare scheme to the poor, the elderly, and children under 12 years; (ii) the social health insurance scheme for private sector employees; (iii) the civil servant medical benefit scheme for government employees, retirees, and dependents; and (iv) publicly subsidised voluntary health insurance for the informal sector (WHO, 2010). As a consequence, some people, especially the poor, could not afford medical costs and were rejected to receive treatment.

Meanwhile, the number of road accidents in Thailand kept increasing, resulting in a higher number of death and injuries. Without the effective financial risk protection scheme, motor vehicle victims were not usually cured on time; some of them were even rejected by some sanatoriums. Further, all victims received an inequitable compensation for their loss at that time.

Relevant situations involving the legislation of the Protection of Car Accident Victims Act (1992) are summarised in **Table 7.3**.

Table 7.3. Relevant Situations to the Legislation of the Protection of Car Accident Victims Act (1992)

Period	Relevant Situations
1954	<ul style="list-style-type: none"> • The first regulation on automobile insurance under the Land Transportation Act concerns only the owners of a commercial truck and damages to the health and life of third parties.
1963	<ul style="list-style-type: none"> • The initiation of insurance scheme for all types of motor vehicles as the Motor Vehicle Insurance for the Third Party Act. • Disapproved by the ministry
1968	<ul style="list-style-type: none"> • The second draft of a traffic accident insurance, proposed by the MOC, focuses on third party coverage and employed private insurance as the primary provider of insurance benefits. • Disapproved by the ministry
1977	<ul style="list-style-type: none"> • The third draft of a traffic accident insurance improved two additional features: (i) the preliminary coverage under the no-fault system and (ii) the development of the Guarantee Fund with financial contribution from insurance companies. • Disapproved by the ministry
1983	<ul style="list-style-type: none"> • The proposed third draft was revised.
1984	<ul style="list-style-type: none"> • Related transportation and traffic laws mandated some kind of insurance for public transport such as buses, taxis, and trucks.
Before 1992	<ul style="list-style-type: none"> • The fourth draft was revised for clarity and practicality such as (i) elaborating a legal measure dealing with vehicle liable for accident damage, (ii) designation of a committee overseeing the traffic accident law, and (iii) establishment of the Office of the Guarantee Fund. • The title of the proposed legislation was changed to the 'Protection for Motor Vehicle Accident Victims Act'.
1992	<ul style="list-style-type: none"> • Two mass casualties from road accident tragedies fast-tracked the fifth draft. • The proposal was terminated when the military took control of the government. • The current version of the law was legally approved by the National Legislative Assembly to become the Protection of Car Accident Victims Act (1992) on 9 April 1992.

Source: Prepared by the authors.

There were few traffic accident insurance regulations before 1992. The first regulation on automobile insurance was enacted in 1954 under the Land Transportation Act, which was enforced by the Ministry of Transportation. This

policy mandates only owners of commercial trucks, and the benefit under this insurance scheme is coverage compensation of at least B5,000 for damages to health and life of a third party. Later, in 1963, the Department of Police, Ministry of Interior initiated and proposed the first insurance scheme for all types of motor vehicles, the Motor Vehicle Insurance for the Third Party Act. This proposed Act would require the owner of a motor vehicle to have the vehicle insured for traffic injury and death. The scheme would totally rely on private insurance businesses to provide the benefits to road accident victims who are the third party. However, this proposed act was not legally approved. Nine years later, in 1968 and 1977, the Ministry of Commerce proposed two drafts of similar traffic accident insurance Acts. The scheme still focused on third party coverage and employed private insurance as the primary provider of insurance benefits. Two additional features were improved in the latest draft: (i) preliminary coverage under the no-fault system and (ii) the development of the Guarantee Fund with financial contributions from insurance companies. Nevertheless, none of the three drafts were approved by the ministry since the public found it difficult to accept the drafts.

In 1983, the third draft, which was proposed earlier, was considered by the National Committee on Accident Protection. The reason for the revision was that road accident victims had to bear substantial losses from accidents; some of them had to pay out of their own pockets for medical expenses, without adequate financial compensation, or the government had to bear the financial costs.

At the same time, there were related transportation and traffic laws which mandated some kind of insurance for certain motor vehicles such as buses, taxis, and trucks. However, these kinds of public transportation represented only about 10 percent of all registered vehicles.

After that, the fourth draft was revised for clarity and practicality to contain several provisions (i) elaborating a legal measure dealing with vehicles liable for accident damage; (ii) designating a committee to oversee the traffic accident law; and (iii) establishing the Office of the Guarantee Fund, which took almost 2 years to finish. Then the title of the proposed legislation was changed to the 'Protection for Motor Vehicle Accident Victims Act'. Because of administrative delays, the government completed its administrative term before the proposal was approved by Parliament.

Before the approval of the fourth draft, there were massive casualties as a consequence of two road accident tragedies in Bangkok and Phang Nga province. Therefore, Prime Minister Chatchai Chunhawan fast-tracked the fifth draft of the Act. Even though the proposal was terminated when the military took control of the government, the current version of the law was proposed by the Ministry of Commerce and was legally approved on 9 April 1992 by the National Legislative Assembly to become the Protection of Car Accident Victims Act (1992).

The Protection of Car Accident Victims Act (1992) have been amended five times to ensure that the content of the Act is in line with the social and economic situations and to maximise its benefit to society.

4.2. Development of Motor Insurance in Thailand

Motor insurance in Thailand is divided into two types: compulsory motor insurance and voluntary motor insurance. Compulsory insurance in Thailand, as the name implies, is mandatory for all cars. It covers not only third party liability but also other motor vehicle victims, drivers who are not the owner of the car, and heirs of dead victims.

Under this Act, the violators will need to pay the maximum of B10,000 penalty. The following types of cars must have compulsory car insurance:

- All types of cars under the law on land transport, under the law on military cars which are used by the owners
- Cars that could be controlled by any type of machinery like engines and electricity. These include cars, motorcycles, motorised tricycles, public vehicles, trucks, tow trucks, trailers, road rollers, and motorised carts.
- Cars which are not required by the Department of Land Transport to be registered but use engines, electricity, or other types of machinery
- Rented cars and imported cars that are used in Thailand.

As previously mentioned, the law on Protection of Car Accident Victims protects car accident victims, including all people who are in car accidents such as drivers, passengers, or pedestrians. If they are affected by car accidents, they are

protected under the Act (1992). The car accident victims will receive preliminary damage fees when accidents occur for them to use the money for medical care in case of injuries and for funeral expenses in case of death with no-fault system.

For more than 20 years, there were few adjustments of measures for the coverage of claiming compensation for compulsory motor insurance (**Tables 7.4 and 7.5**).

Table 7.4. Adjustment of Preliminary Compensation, 1992–present

Year	Amount of Compensation for Each Criteria (US\$*)		
	Medical Cost	Permanent Disability/Death	Medical Cost and Permanent Disability/Death
1992	308	308	616
1997	462	462	924
2004	-	1,078	1,539
2014	924	1,078	2,001

Note: * Exchange rate in 2014 for US\$1 was around B32.48.

Source: Calculated by the authors from data of the Office of Insurance Commission (OIC) and Bank of Thailand.

Table 7.5. Adjustment of Compensation Coverage, 1992–present

Year	Amount of Compensation for Each Criteria (US\$*)					
	Per Person				Per Case	
	Injured	Permanent Disability	Death	Daily Compensation **	≤ 7 Passengers	> 7 Passengers
Sept 1992	1,539	1,539	1,539		153,941	307,882
Dec 1997		2,463	2,463			
Apr 2004		3,079	3,079			
Dec 2009		6,158	6,158			
Jan 2010***				6		

Notes: * Exchange rate in 2014 for US\$1 was around B32.48.

** Daily compensation must be paid for having inpatient service for not more than 20 days.

*** The maximum coverage including daily compensation must not exceed US\$6,164/person.

Sources: Authors, based on data from the Office of Insurance Commission (OIC) and Bank of Thailand, 2014.

Therefore, the victims will receive damage fees and compensation based on the insurance coverage of the compulsory car insurance which has been adjusted a number of times since 1992. The amount of the damage fees and the compensation are presented in **Table 7.6**.

Table 7.6. Preliminary Damage Fees and Car Accident Victims Insurance Coverage

Items	Injuries	Disabilities	Death	Injuries-Disabilities or Injuries-Death
Preliminary damage fees	US\$924 (B30,000)	US\$1,078 (B35,000)		Maximum of US\$1,539 (B50, 000)
Preliminary car accident victim insurance coverage	Under US\$1,078 (B50, 000)	Under US\$6,158 (B200, 000)		
	Car accident victims who are not guilty have the right to a daily compensation of US\$6/day (B200/day) when admitted in a hospital (maximum of 20 days)			

Note: Exchange rate in 2014 for US\$1 was around B32.48.

Source: Ongkittikul et al., 2013.

In general, filing an insurance claim under the current compulsory motor insurance regulation has to be done by the injured patient. This reimbursement process is the traditional indemnity insurance system. The patient has to pay out-of-pocket healthcare expenses, and then submit the claim to an insurance company. The claim has to be initiated within 180 days after the accident occurs.

For preliminary coverage, the reimbursement is intended to be fast-tracked. It is based on the no-fault system in which the claim process does not require final agreement on which party caused the accident and is consequently liable for the damages. According to Section 25 of the Protection of Car Accident Victims Act (1992), payment has to be made by the insurance company or the Guarantee Fund to the injured patient within 7 days after receiving the claim. The hospital that provides healthcare to the patient may be authorised as the patient's agent in providing a direct bill to the insurance company or the Guarantee Fund. Documents needed for reimbursement are minimal. These include a hospital bill and patient identification. An additional police record is needed for claims to the Guarantee Fund and a police record and death certificate are required for death cases.

For additional coverage, reimbursement relies on tort liability. Under the fault system, an insurance company of the insured party who is proven guilty in causing the accident is responsible for the additional compensation. The process of patient authorisation to the hospital has to be approved by the insurance company prior to filing the insurance claim.

Therefore, benefit coverage and reimbursement process under the Protection of Car Accident Victims Act (1992) are conditioned on characteristics of the second party and the third party involved in the accident. **Table 7.7** summarises the

compulsory insurance feature by type of traffic-injured patients and insurance status of the vehicles involved in the accident.

The compulsory insurance premium is a fixed rate under the Protection of Car Accident Victims Act (1992) but it was adjusted every year in 2001–2005 and readjusted again in 2008. The premium rate is divided by the types and forms of vehicles. However, the premium rate of compulsory insurance in Thailand could not reflect the real risk of each vehicle type since the premium rate of motorcycles is the lowest, while the number of policies is the highest compared to the others.

Table 7.7. Summary of Insurance Coverage and Payment Source by Type of Status

Cases	Preliminary Compensation*	Right Side from Fault-Based System	Accountability
Personal Injury			
Insured cases	US\$924 (B30,000)	US\$1,539 (B50,000)	Insurance Company
Uninsured cases	US\$924 (B30,000) The owner has to pay additional 20%	-	Guarantee Fund
Hit and Run	US\$924 (B30,000)	-	
Death/Permanent Disability			
Insured cases	US\$1,078 (B35,000)	US\$6,158 (B200,000)	Insurance Company
Uninsured cases	US\$1,078 (B35,000) The owner has to pay additional 20%	-	Guarantee Fund
Hit and Run	US\$1,078 (B35,000)	-	

Note: Exchange rate in 2014 for US\$1 was around B32.48.

Sources: Calculated by the authors from data of the Office of Insurance Commission (OIC) and Bank of Thailand (BOT), 2014.

The compulsory motor insurance is a public policy that relies on private insurance businesses in carrying risk agreement on health and life damages due to traffic accidents. The number of insurance companies has increased over time.

Currently, 54 domestic and international insurance companies administer over 27 million policies for compulsory motor insurance in Thailand. The number of insurance policies of compulsory motor insurance increased significantly from the

first year of the law enforcement in 1993 until 1998, with an average growth per year at 37 percent (**Table 7.8**). This table also presents the loss ratio of insurance business which is computed as the ratio between the insurance payment amounts for incurred loss and the insurance premium earned from the owners of vehicles carrying the policies. The ratio tells that the payment amounts are less than the earned premium.

Table 7.8. Earned Premium and Incurred Loss of Insurance Business, 1993–2013

Year	Number of Policies		Earned Premium (US\$ thousand)	Incurred Loss (US\$ thousand)	Loss Ratio, %
	Total	Growth, %			
1993	3,227,084		33,436	15,283	45.71
1994	4,410,236	36.66	152,678	60,035	39.32
1995	7,851,708	78.03	174,087	70,520	40.51
1996	9,536,287	21.45	235,557	87,915	37.32
1997	9,212,921	-3.39	221,580	83,731	37.79
1998	8,567,042	-7.01	209,047	79,856	38.20
1999	9,606,453	12.13	199,054	N/A	N/A
2000	10,131,286	5.46	208,720	88,094	42.21
2001	11,227,657	10.82	225,721	97,893	43.37
2002	11,699,529	4.20	215,600	98,945	45.89
2003	13,665,718	16.81	225,703	115,266	51.07
2004	15,435,522	12.95	251,736	120,348	47.81
2005	16,096,323	4.28	254,071	123,537	48.62
2006	18,801,237	16.80	318,653	122,425	38.42
2007	19,314,472	2.73	322,150	120,649	37.45
2008	19,577,811	1.36	323,665	126,906	39.21
2009	20,587,443	5.16	333,455	136,792	41.02
2010	21,237,927	3.16	339,483	184,084	54.22
2011	22,511,750	6.00	359,800	191,605	53.25
2012	25,273,932	12.27	375,696	191,471	50.96
2013	27,284,804	7.96	426,535	210,742	49.41

N/A = not available.

Note: Exchange rate in 2014 for US\$1 was around B32.

Source: Collected from the Office of Insurance Commission (OIC) by the authors, 2014.

Comparing the number of policies with the total number of registered motor vehicles shows the coverage of compulsory motor insurance. According to TDRI (2013), calculating the ratio of vehicles with insurance is different based on the operating life and the coverage of motor insurance in 2011 for motorcycles, pick-up cars, and passenger cars are 60 percent, 86 percent, and 89 percent, respectively (**Table 7.9**).

Therefore, increasing the number of insured vehicles would be the next agenda for the compulsory motor insurance sector since the victim of an uninsured vehicle is limited to preliminary compensation. Under Section 23 of the Protection of Car Accident Victims Act (1992), preliminary compensation is provided by the Guarantee Fund. The patients may not be aware of this special provision if healthcare expenses are not that high. Other patients who are inside an uninsured vehicle may hesitate to file a compulsory motor insurance claim to the Guarantee Fund, especially if they are the owners of an uninsured vehicle.

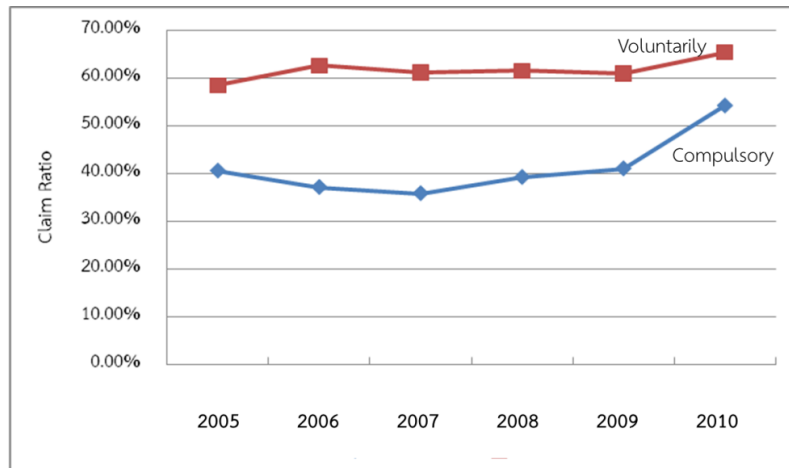
Table 7.9. Ratio of Insured Vehicles, 2011

2011	Passenger Cars	Pick-up Cars	Motorcycles
Number of accumulative registered vehicles	5,001,442	5,137,564	18,018,066
Number of non-accumulative registered vehicles (out of system)	Very few	Very few	3,098,505
All vehicles	5,001,442	5,137,564	21,116,571
Number of insured vehicles	4,452,947	4,400,440	12,723,070
Ratio of insured vehicles	89%	86%	60%

Source: TDRI, 2014b.

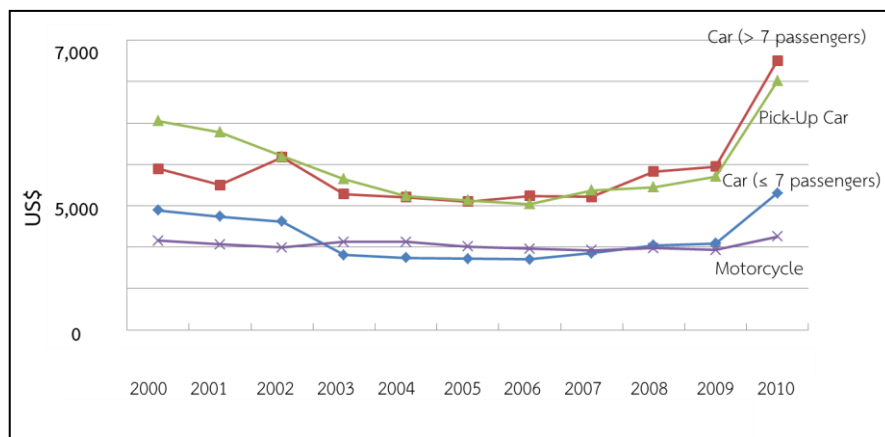
As a result of the adjustment of maximum coverage, from US\$3,079 to US\$6,158 in 2009, the impact of the claim ratio and average claim per case of compulsory motor insurance is shown in **Figures 7.5 and 7.6**. The amount of claim payment is higher, which means that the victims obtain better compensation.

Figure 7.5. Claim Ratio of Compulsory Motor Insurance, 2000–2010



Source: Calculated from Thai Reinsurance Public Co., Ltd. and Bank of Thailand by the Authors, 2014.

Figure 7.6. Average Claim per Case of Compulsory Motor Insurance, 2000–2010



Source: Calculated from Thai Reinsurance Public Co., Ltd. and Bank of Thailand by the authors, 2014.

5. Role of the Regulatory Management System

At the time of legislation of the Protection of Car Accident Victims Act (1992), the RIA was not required intensively as nowadays. Only the Regulation of the Office of the Prime Minister on Rules and Procedure for Submission of Any Matter to the Council of Ministers for Consideration was passed by the Council of Ministers in 1988. As a result, any agency that submitted any regulation, particularly a bill, needed to include an analytical statement on the social, economic, and international relations' perspectives of such regulation, together with the draft of

the regulation, to the Cabinet for policy approval (Nilprapunt, 2012). Therefore, the legislative process on the Protection of Car Accident Victims Act (1992) has gone through the process of justification for regulatory action and the search for alternatives representing a logical first step.

Considering the RMS elements, the 'big policy' development is relevant for this reform. The problem is clearly defined since at that time the number of road accidents in Thailand kept increasing, which resulted in a higher number of deaths and injuries. Besides, since there was no effective financial risk protection scheme, motor vehicle victims were not usually cured on time; some were rejected treatment by some sanatoriums. Therefore, the intervention was necessary during that time.

However, apart from the Protection of Car Accident Victims Act (1992), there was traffic accident insurance in Thailand, which regulates automobile insurance under the Land Transportation Act. It mandates only owners of commercial trucks and is concerned with damages to the health and life of third parties. Legislation of the Protection of Car Accident Victims Act (1992) is the most effective intervention. Since road traffic accidents are a major threat to public health, life, and the Thai economy, the limited healthcare resources make the consequences of accidents more drastic. Insurance is thus an appropriate mechanism to transfer the risk of financial loss from an individual to an insurance pool.

Under the Act, compulsory insurance in Thailand is mandatory for all cars, including rented cars and imported cars. However, the difference of insurance coverage among countries is the issue for cross-border transportation nowadays.

Since it was difficult for the public to accept the drafts, the combination of process design, legal analysis, and organisational analysis helped move the legislative process to be more suitable for social benefit. As a result, the dynamic process of evaluation and clause revisions has been applied.

The enactment of the Protection of Car Accident Victims Act (1992) is practical for the social and economic environment since the legislative process combined process design, legal analysis, and organisational analysis.

Monitoring, consultation, communication, and engagement were not significant at the beginning of the legislation; however, these elements became more relevant for later amendments, especially those in 2007.

The regulator of the overall insurance sector is the OIC, the statutory independence changed from the Department of Insurance. Therefore, compulsory motor insurance sector is also under the OIC authority. As a result, establishing the OIC could avoid the red tape resulting from government supervision and ensures the compliance with the policy regime by citizens and businesses.

Since the OIC is the lead institution that regulates the Protection of Car Accident Victims Act (1992), learning from the current market and the effect of compulsory motor insurance is usually done by analysing the insurance database. Consultation with the relevant stakeholders from the Protection for Motor Vehicle Victims Committee is another tool to learn and make appropriate regulations.

6. What Difference Could An Enhanced RMS Have Made?

Implementing the RIA for new legislation or law amendments is what an enhanced RMS could have made different. Since Thailand has yet to review laws and regulations in a wide scope, it is recommended to improve the RIA process first.

According to TDRI (2014a), the recommendations for improving the RIA process involve three most important factors: (i) implementing the RIA at the right timing, (ii) influencing stakeholder participation, and (iii) influencing public–private cooperation. Moreover, to apply the RIA to new legislation or law amendments, the following process should be implemented:

- There should be three public hearings to assess the impact of the proposed law. The first time must be done before its drafting in order to evaluate the necessity of such law and its alternatives. Then two public hearings should be held to compare the costs and benefits of the law.

- Stakeholder participation should be arranged in a public hearing, following OECD procedure. The public hearing process should be according to international standards to increase transparency in law issuance.
- In order to have a report with a comprehensive assessment, a committee or agency responsible for monitoring the RIA should have an equal share of representatives from both the public and the private sectors.

The next section explores the failure of passenger van licensing in Thailand. This case study typifies some of the recurring problems in Thailand's legislative process: the lack of an effective RMS, including the absence of a RIA, clear problem definitions, clear policy process, consultation, public hearing, scrutiny and analysis of the implications of legislative amendment. A stronger RMS would have included impact assessment, cost–benefit analysis, and an action plan for effective implementation. These requirements would likely have stopped or significantly altered the passenger van licensing policies because of the foreseeable creation of negative externalities.

Part 3: The Case of Passenger Van Licensing (Failure)

1. Introduction

Since the issue of population growth became a concern in Thailand, especially Bangkok, the development of road transport policies has faced many challenges. Public passenger buses and vans are modes of passenger road transport in Thailand. However, the urbanisation of the city has resulted in inadequate public transport provisions, particularly public buses in suburban areas.

The policy to allow illegal vans to be registered was an example of implementing new policy without theoretical consideration since the policymaker applied an ad hoc approach. It was based on actual situations and political considerations instead of conducting a market study on passenger vans and economic efficiency of urban public transport. On the one hand, the result of this reform has induced more public vans into the market, which might bridge the gap between public air-conditioned buses and demand for faster and more comfortable vehicles,

especially from commuters travelling from the outer areas into the city of Bangkok. On the other hand, licensing public vans without studying the cost structure of public bus operations owing to the previous failed licensing system influenced new entry into the profit-making routes. Illegal vans also get into the market, signalling profit, and van owners choose to pay bribes instead of being legalised. As a consequence, this intervention is inefficient and not necessary. Further, it creates a negative externality – an unsafe service, which becomes a problem for road safety management.

This case study discusses the characteristics of public road transport in Thailand. It describes the impetus for change to public van services in Section 3. Meanwhile, Section 4 summarises the process and effects of licensing passenger van services. Finally, the study aims to analyse the role of the RMS for this case study and attempts to analyse in Sections 3.5 and 3.6, respectively, the changes that an enhanced RMS will provide.

2. Characteristics of Public Road Transport in Thailand

Since the Thai government has been investing heavily in a road network system for more than 20 years, the Thai transport sector of passengers and freight is dominated by road nowadays (APEC, 2011). According to the Land Transport Act (1979), the Department of Land Transport (DLT), under the Ministry of Transport (MOT), is the main regulator of road transport. The DLT is responsible for the designation and regulation of land transport by monitoring and inspection, which ensure the smooth running of and conformity with the relevant land transport rules and regulations (APEC, 2011). This study focuses only on passengers' land transport and will discuss the role of the DLT's regulation of public passenger buses and vans. The passenger transport market is regulated through licensing conditions and pricing.

2.1. Route Licensing and Its Problem

Public and private bus operators must obtain a licence to operate from the DLT under one licence per route and one operator per licence basis. Each licence has a lifespan of 7 years. Fixed routes under operations are classified into four

categories and their licences to operate are provided to the SOEs: the Bangkok Mass Transit Authority (BMTA) and the Transport Company Limited, and private entities (**Table 7.10**). Therefore, according to Cabinet Resolution No. 45/1959, the Transport Co. Ltd. is permitted to operate the routes of Categories 2 and 3. Meanwhile under Cabinet Resolution of 11 January 1983, the routes of Categories 1 and 4 in Bangkok are operated by the BMTA. Private companies are entitled to operate the routes of Categories 1 and 4 in the provinces, Categories 1 and 4 in Bangkok, and Category 3.

Table 7.10. Licensing Routes of Public Bus Services

Bus Route Category	Government or Private Operations
Category 1: Routes within city or town areas	
<u>Category 1 in Bangkok</u> has contiguous routes in the perimeter area by running on main roads in community areas which are crowded with people, business centres, schools and universities, government agencies, etc.	The BMTA has been exclusively granted licences to operate and has sublicensed to private operators: <ul style="list-style-type: none"> – The Premier Metro Bus Company – The Thonburi Bus Service Company Ltd.
<u>Category 1 in provincial areas</u>	Services are provided by private companies.
Category 2: Long distance routes between Bangkok and regional provinces	
Category 2 has routes link Bangkok and the provinces.	The state enterprise, Transport Co. Ltd., has been exclusively granted the licence to operate buses under this category. However, Transport Co. Ltd has delegated services to private operators under the joint service scheme.
Category 3: Interprovincial long-distance routes	
Category 3 has interprovincial routes which link one province to another and may pass through other provinces.	
Category 4: Intercity or town routes within a province	
<u>Category 4 in Bangkok</u> has routes mainly on subordinate roads and the feeder roads to the main road to link with Category 1 in Bangkok.	Services are mainly provided by private operators. Routes under this category have the highest number of licences granted, operators, and number of passengers.
<u>Category 4 in provincial areas</u>	

BMTA = Bangkok Mass Transit Authority.
Sources: APEC (2011) and authors.

Boxes 3 and **4** provide a brief overview of two SOEs: BMTA that was granted the licences to operate in Category 1 in Bangkok metropolitan region, and the Transport Co. Ltd. which has operated in Categories 2 and 3 throughout Thailand.

**Box 3. BMTA and its Operations under Category 1
in the Bangkok Metropolitan Region**

Before 1975, in Bangkok, the competitive nature of the market for fixed-route land transportation service resulted in problems such as aggressive competition and oversupply of operating vehicles, which led to traffic congestion and road accidents, among others. Furthermore, higher operating costs resulting from the sudden hike in oil price left a number of operators in financial difficulties. As a response to these problems, the government intervened by merging the existing operators into one state enterprise which became the Bangkok Mass Transit Authority (BMTA) formally established by the Royal Decree in 1976. Licences to operate in the Bangkok metropolitan region are exclusively granted to BMTA. The aim of enforcing such market arrangements was to ensure a stable and reliable urban transport scheme for the general public while allowing for supervision and regulatory procedure to be carried out with minimal complication (one dominant operator instead of multiple disjointed operators to be investigated). As of September 2008, BMTA employed 17,534 personnel with a fleet of 3,526 vehicles operating over 118 routes and serving around 3 million passengers daily in the Bangkok metropolitan region. While maintaining its statutory monopoly position, BMTA's role as an operator has diminished over the years as the result of extensive sublicensing with private operators supplying up to 17,372 vehicles operating over 463 routes.

However, BMTA has never been financially successful. In order to consider the positive externalities associated with an effective public transport system by facilitating transport for employees or agents to carry out economic transactions, fares are kept low at a perceivably affordable level for the general public at the expense of operations' cost effectiveness. Nevertheless, cases have been made regarding the inefficiency of BMTA's operations, which is claimed to be the primary reason for BMTA's debt accumulation and losses. Further criticisms are directed towards the quality of BMTA's service. A significant portion of the BMTA's fleet is seemingly worn down after years of operation not to mention being perceived as out of date. Particular attention is also given to the exhaust emissions of older buses and the conduct of BMTA's personnel – dangerous driving by bus drivers and poor general manner have been reported over the years.

Source: Leeahtam, 2010.

**Box 4. Transport Co. Ltd. and its Operations
throughout Thailand under Categories 2 and 3**

The origin of Transport Co. Ltd. traces back to July 1930 when a group of businessmen set up Aerial Transport of Siam Co. Ltd. to service both land and air transportation on both international and domestic routes. After World War II, the company became a state enterprise under the name Transport Company Ltd., and experienced heavy losses over the years. Fleets of vehicles were worn down alongside the accumulation of debts as loans were acquired from the public sector to finance daily operations and repairs of equipment and vehicles. The company terminated its air transportation service and had short-lived success for its venture into water transportation. In 1958, a state intervention took place which involved an upheaval of the company's board of directors. Around the same time, private operators gradually entered the market for fixed-route long-distance bus services, hence, an increase in competition. Operators competed aggressively for passengers, resulting in reckless driving, which put the general public at risk. As a response, the government exclusively granted Transport Co. Ltd. the licence to operate routes under Categories 2 and 3, with the company being able to sublicense route operations under joint service schemes. By establishing Transport Co. Ltd. as the central operating body for long-distance land transportation service instead of having a vast number of disjointed operators, regulatory function was expected to be carried out with much less complication. Such market arrangements remain more or less unchanged to date. As of September 2008, the company had a fleet of 808 vehicles serving around 12 million passengers annually.

Source: Leeahtam, 2010.

According to the Royal Decree for Land Transport (1979), the Minister of Transport, the Minister of Interior, and the Land Transport Policy Committee are responsible for the policy design of fixed-route public bus services, which involves short-term and long-term planning of the schemes' direction and structure. The regulatory functions were designated by the Central Land Transport Control Board, the Provincial Land Transport Control Board, and the Department of Land Transport. Functions include route designs, capping of fees, granting of licences effectively controlling the quality and number of operators on designated routes, and enforcement of general rules.

The Central Land Transport Control Board is authorised to do the following:

- Stipulate the category of fixed-route bus.
- Set the routes, the number of bus operators and vehicles for fixed routes in Bangkok, between provinces, and between economies.
- Set the rates of transport charges and other service charges.

- Designate the sites, arrange for or set up and regulate the bus terminals; specify the types or conditions of vehicles not acceptable for registration.
- Prescribe the classes or categories of vehicles which must stop or park to pick up and set down passengers or to load and unload goods at the bus terminal.
- Stipulate places for bus stops.
- Lay down measures for prescribing, permitting, and controlling the transport business.
- Carry on other actions as provided in the Act and according to the regulations of the Land Transport Policy Committee.

The Provincial Land Transport Control Board is authorised to:

- Set bus routes, the number of transport operators, and the number of vehicles in the provincial area.
- Set the rates of transport charge in the provincial area (the same criteria prescribed by the Central Land Transport Control Board).
- Carry out other actions as provided in the land transport regulation, according to the Land Transport Policy Committee and the Central Land Transport Control Board.

For route licensing, generally, the licence for a fixed route is B7,000 (US\$217) and is valid for 7 years.² Since there is a 'one licence per one route' policy, each route is monopolised in the sense that the operator can renew the licence as long as the firm complies with the DLT even if its licence is terminated after operating a route for 7 years. However, the operator is able to apply for a licence to provide services for a fixed term usually; the firm that received a fixed-term licence will not operate the whole fleet but subcontract some of its operations to other operators without competitive tendering. Further, one operator can apply for a licence for more than one route. As a consequence, monopolistic licensing from the 'one licence per one route' policy can lead to too many sublicensing operators in one route, thus creating competition. Therefore, this problem

² A non-fixed route bus is a 'for hire' vehicle like a taxi. The DLT regulates only the licences of drivers and vehicle standards. There is no regulation on entry to the taxi market.

reduces the incentive for dynamic efficiency, for introducing new technology, or for improving services to increase profit.

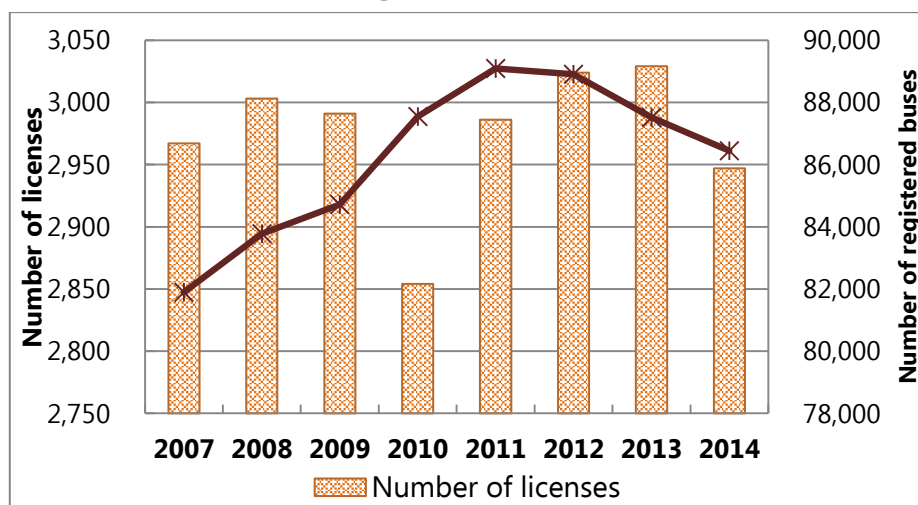
Table 7.11 shows the number of licences for operating public passenger transport service from 2007 to 2014 while **Figure 7.7** illustrates the imbalance between the number of licences and registered fixed route buses. From the average of licence numbers in 2007–2014, the highest number of licensing belongs to Category 4 (54 percent), followed by Category 1 (22 percent), Category 3 (17 percent), and Category 2 (7 percent). However, the average growth rate of licence numbers (0.3 percent per year) is lower than the average growth rate of registered bus numbers (0.98 percent per year) in 2007–2013. As a result, the rate of registered buses per route has also increased.

Table 7.11. Number of Licences for Operating Public Passenger Transport Service, 2007–2014

Category	2007	2008	2009	2010	2011	2012	2013	2014	Average 2007–2014
1	667	658	658	594	646	653	621	602	637
2	199	207	190	200	202	206	206	204	202
3	522	505	503	514	514	524	528	526	517
4	1,579	1,633	1,640	1,546	1,624	1,641	1,674	1,615	1,619
Total	2,967	3,003	2,991	2,854	2,986	3,024	3,029	2,947	2,975

Source: Data obtained from the Department of Land Transport (DLT) (2015) by the authors.

Figure 7.7. Comparative Figures between Licences of Public Passenger Transport Service and Registered Fixed Route Bus



Source: Prepared by the authors.

2.2. Price Regulation and Its Problem

According to Pisarnporn and Polpanich (2008), price regulation, cost calculation, and fare rate of public transport are prescribed by similar factors in each route category. For Categories 1 and 4, cost calculation of non-air-conditioned buses is used to estimate operating costs per head in one trip, while the price rate of air-conditioned buses is based on distance. For Categories 2 and 3, cost calculation would be different for three distances (0–40 kilometres [km], 41–150 km, and more than 150 km). Further, the price rate is based not only on a cost-plus formula; it is also adjusted according to the type of roads, a target rate of return, an allowance for an expected load factor, and a change in diesel prices (with 25 steps ranging between B10.07 and B40.57). The Cabinet will make the final decision of increasing bus fares; however, this decision is often a sensitive political issue. The authorities who regulate public bus fares are the Land Transport Committee, the Land Transport Policy Committee, the Central Land Transport Control Board, and the Provincial Land Transport Control Board.

Although the bus fare calculation is based on the assumption of a maximum use of 7 years and 70–90 percent load factor depending on the bus standard, this cost plus pricing does not take into account the addition to capacity and changes in load factor caused by the issuing of new licences and the entry of passenger vans which have been popular from the mid-1980s to 1996, especially among middle-income passengers.

As a consequence, this policy on pricing caused the operation of standard public buses to become unprofitable since the actual load factor and profit margin are lower than the DLT's assumption. Thus, the operators have less incentive to invest in their services and the fare regulation process contributes to the falling quality of service, inappropriate maintenance and replacement. Further, the impact of higher demand to the price change and the wide gap between quantity supplies and demand at the regulated price lead to the growth of an illegal service.

2.3. Other Problems of Public Bus Provision

There are many concerns related to public bus provision. First, coordination between public bus services and other modes of public transportation, specifically

rail stations and airport linkages, are inadequate. Furthermore, facilities and infrastructure such as bus stops and stations should be improved since the location of a number of stops and stations can be deemed as unsuitable, while information on bus routes and schedules are either unreliable or difficult to access.

In terms of bureaucratic structure, the existing arrangements and logistics are regarded as overly complicated and inefficient, resulting in delayed decision-making and implementation of reform. The DLT also lacks the resources, particularly personnel, to optimally carry out its regulatory functions. Specifically, the issue of unlicensed operators remains to be tackled. The current network of designated routes possesses a number of overlaps of routes from different categories, resulting in the oversupply of services hindering operational efficiency.

Finally, private operators are generally small, disjointed firms and are thus unable to take advantage of economies of scale. These operators tend to be primitive and lacking in terms of vision and resources. The current sublicensing scheme put in place by BMTA and Transport Company Ltd. also does not promote a high enough level of competition, hence, limiting the incentives for private operators to innovate.

3. Impetus for Change in Public Van Services

Since public bus provision was unable to meet the demand for bus services in suburban residential areas, investors who saw the benefits in responding to the needs of commuters in suburban Bangkok started the business of passenger van services (Leopairojana and Hanaoka, 2006). The popularity of vans grew steadily from the mid-1980s to 1996; however, these vans operated outside the regulatory system and were technically illegal. Later in 1984, the DLT declared that operating vans as bus-like services was illegal, and the MOT had a policy to eliminate the van services in 1986.

The advantages of vans over bus services are shown in **Table 7.12** (APEC, 2011). Passenger vans also offer a different service quality. They offer shorter, faster

routes with guaranteed seats and a door-to-door service. They are supposed to operate in passenger van terminals which are in housing estates, markets, or community centres. However, they are not supposed to pick up passengers at bus stops (although in practice they do so). Leopairojana and Hanaoka (2006) found that van passengers value shorter travel times and the comfort of a guaranteed seat. However, the drawbacks of vans are the narrow space and the higher fares.

Table 7.12. Advantages of Vans over Buses by Category

Bus Route Category	Advantages of Vans over Buses
<p>Category 1 in Bangkok has contiguous routes in the perimeter area by running along the main roads in the community areas which are crowded with people, business centres, schools and universities, government agencies, etc.</p>	<ul style="list-style-type: none"> – Passenger vans have to pick up passengers only at the origin and drop them off at bus stops along routes or at destinations. – They undercut the bus operators since they operate on the more profitable route (cutting routes), pick up and drop off of passengers at bus stops, residential areas, markets, community (more like a door-to-door service).
<p>Category 2 routes link Bangkok and the provinces. Category 3 are interprovincial routes which link one province to another and may pass through other provinces.</p>	<ul style="list-style-type: none"> – Buses of the Transport Co. Ltd and its subcontractors are required to pick up passengers at official bus terminals (only one or few terminals in a province). – However, passenger van terminals are usually located in residential areas (in housing estates, markets, or community centres) which are not proclaimed officially. They also provide door-to-door service by charging extra, which is actually prohibited.

Source: APEC, 2011.

Van operators can charge fares that cover their costs; these fares are usually higher for the non-regulated companies. Further, illegal vans provide alternative services on the profit-making routes. Vans generate less average trip length than buses and the gap between van fares and bus fares increased with trip length. Since most low-income passengers live farther from the city and bus fares tend to be flatter over long distances, competition from vans on shorter routes undermine the ability to cross-subsidise on the longer routes of buses (Leopairojana and Hanaoka, 2006).

Although passenger van operations cause lower revenues for the normal bus services and the drivers are often criticised as reckless and undisciplined, they can bridge the gap between the lack of public air-conditioned buses and the increasing demands of Bangkok-vicinity commuters (APEC, 2011).

4. The Sequence of Events

This section describes the process of licensing passenger van transport and its impact on the road safety problem.

4.1. Process of Licensing Passenger Van Services

Passenger van services were initiated by investors who saw the benefits in responding to the demands of commuters in the suburbs of Bangkok (Leopairojana and Hanaoka, 2005). With the simple entry to the market of drivers and operators, the number of vans grew steadily from the mid-1980s to 1996.

Table 7.13 shows the relevant situations of licensing passenger van services.

Table 7.13. Relevant Situations of Licensing Passenger Van Services

Period	Relevant Situations
Pre-1984	<ul style="list-style-type: none"> • Considered increase of passenger van services from the mid-1980s to 1996 • DLT declared that operating vans as bus-like services were illegal in 1984.
1985–1996	<ul style="list-style-type: none"> • MOT had a policy to eliminate the van services in 1986. • The services of passenger vans kept expanding, despite the MOT policy of eliminating van services in 1986–1996.
1997–1999	<ul style="list-style-type: none"> • MOT assigned DLT and BMTA to regulate the entry and operation of van services as well as their price in Bangkok in 1999.
2002	<ul style="list-style-type: none"> • A deputy minister of MOT aimed to complete the van-regulating task to support the campaign 'Bangkok Traffic Order' and solve the problems of corruption and influential figures.
2009	<ul style="list-style-type: none"> • The DLT licensed another 6,400 passenger vans to provide services on 60 routes in category 2.
2010	<ul style="list-style-type: none"> • MOT promulgated the policy '1 passenger bus for 3 licensed vans' since the operator requested to operate passenger vans instead of the passenger buses of the Transport Co., Ltd.

BMTA = Bangkok Mass Transit Authority; DLT = Department of Land Transport; MOT = Ministry of Transport.

Source: Prepared by the authors.

Despite the popularity of passenger van services, these vans operated outside the regulatory system and were technically illegal.

- According to the Land Transport Act (1979), operating public transport services requires official permission from the DLT.

- Only BMTA is authorised to provide bus transport in Bangkok and its vicinities under the Royal Decree Establishing BMTA (1976).
- The Motor Vehicle Act (1979) provides that drivers are not allowed to operate private vehicles as public vehicles; passenger van services are considered private vehicles.

Therefore, the DLT declared that operating vans as bus-like services was illegal in 1984. However, the number of van services continued to increase despite the elimination policy of MOT in 1986. The rapid growth of the population and development of residential areas in the suburbs of Bangkok were a consequence, from the demand side, of the high popularity of van services. Because of the insufficient provisions from BMTA, the commuters chose to travel by van, which charged similar fares to BMTA buses but offered more convenient and faster services. For the supply side, both drivers and operators could enter the market easily. The drivers could operate van services and earn higher incomes than previous jobs in the formal sector, their working hours were flexible, and it was easy to transfer the business to new drivers. The operators or the investors could establish van terminals by renting space and using public spaces or curbs, and determined routes between city centres and suburbs (Leopairojana and Hanaoka, 2005).

Therefore, in 1999, there was a policy to regulate passenger vans by licensing them. **Figure 7.8** presents the process of passenger vans regulated by the DLT and BMTA. Only BMTA was granted the licence to operate passenger van services. However, it was able to subcontract this work to van drivers. Even if the licensed van drivers were under BMTA authority, the DLT monitored the service and had authority to withdraw the licences of passenger van routes which were below DLT standards. Further, van drivers had to pay an entry fee, contact fee, deposit money, and monthly concession fee to BMTA. Motor vehicle victim insurance or compulsory motor insurance for passengers is also required. After receiving the sublicense contracts, obtaining the DLT standards and paying the public transport vehicle taxes were required in applying for a fixed route public transportation vehicle licence from the DLT. After getting approval from the DLT, the van drivers received black/yellow licence plates, decorated with the BMTA symbol and dark blue and yellow stripes, to display their licensed and legal services.

The DLT had a quota for allocating the licensed vans on the routes. However, van companies or drivers could request for additional vans and routes if they were able to gather 500 signatures from passengers and propose the request through district councils. BMTA submitted the request to the DLT for approval.

Per DLT's regulation, the passenger vans had to maintain a minimum number of trips per day to ensure adequate services even though van companies and drivers set their own particular progress and dispatched on their routes.

The price regulation for van services were as follows:

- Fares were regulated at not more than B1 per kilometre (km) for the first 10 km.
- The fare charged was not more than B0.60/km for the excess distance.
- Additional fare was restricted to not more than B5/passenger/trip and was allowed for routes on expressways or tollways.
- Minimum fare was not regulated.

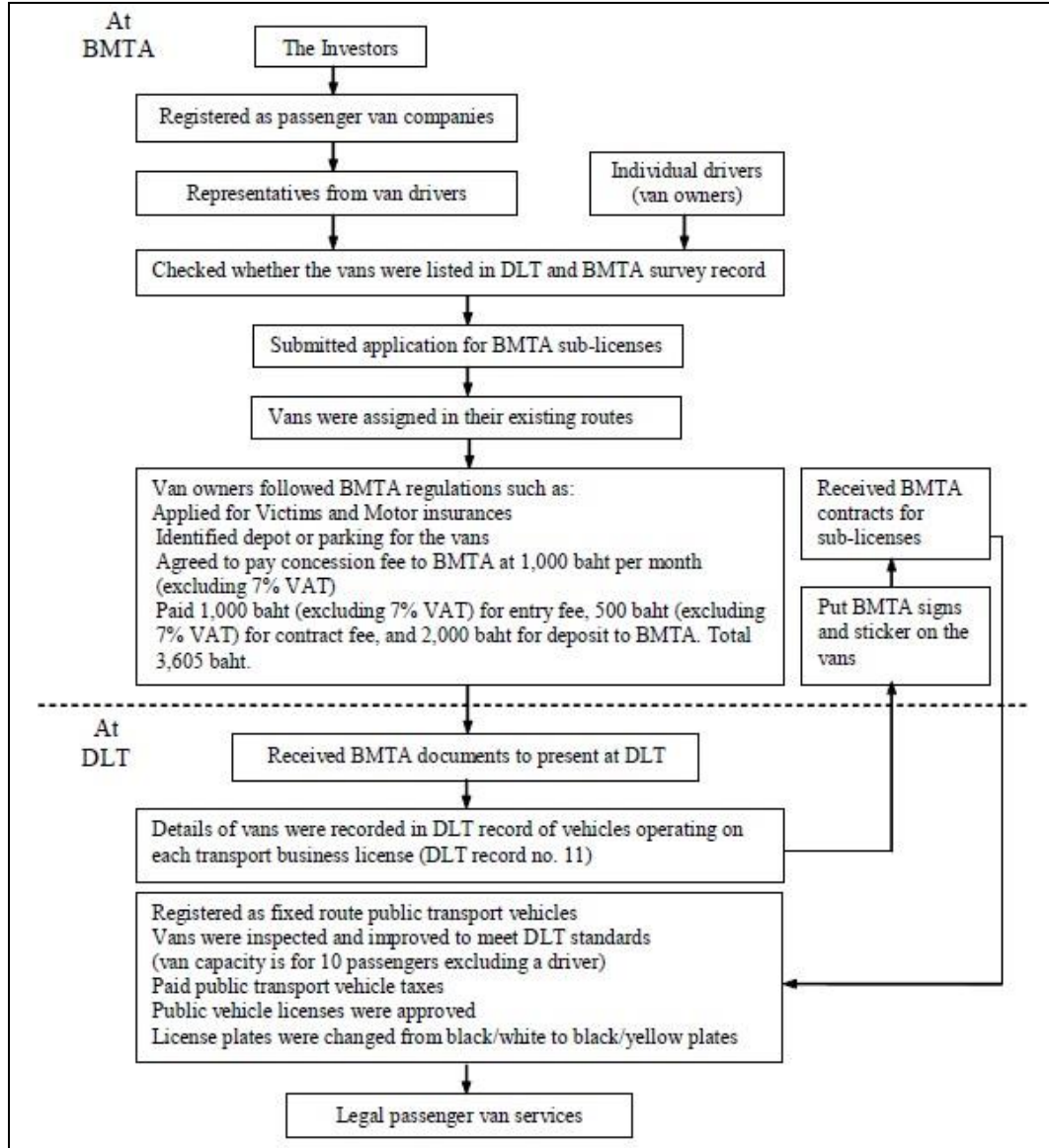
Despite the simple process of regulating passenger vans, many illegal vans still existed since many van drivers, including illegal van owners, benefited from operating on profitable routes. Further, illegal vans did not have to comply with DLT conditions and could operate on profit-making routes in peak hours. Besides, they could offer more convenient services to the commuters, such as door-to-door transport, even though these violated the law.

Even the quota of licensing vans was set according to the number of van drivers who applied for a BMTA subcontract and then was adjusted according to passenger demand. The given passenger vans quota was lower than the actual number of vans. Therefore, policymakers could not collect the true numbers and usually implemented the policy with the wrong quota.

In 2009, another 6,400 passenger vans were licensed to provide services on 60 routes from Bangkok to other provinces which were the routes in Category 2. Meanwhile, van fares offered the same as normal air-conditioned buses for routes on Category 2 but the passengers were willing to pay more for more convenient services (APEC, 2011). After gaining some requests to operate passenger vans from bus operators, MOT declared the policy 'one passenger bus for three

licensed vans' without considering market structure and theoretical support. The number of passenger vans continued to increase as a result.

Figure 7.8. Process of Registering Passenger Vans in Bangkok



BMTA = Bangkok Mass Transit Authority; DLT = Department of Land Transport; VAT = value added tax.

Source: Leopairojana and Hanaoka, 2005.

4.2. Impact of Licensing

The licensing of passenger vans resulted in two consequences: the ongoing corrupt system of passenger van management and the problematic enforcement of quality and safety services.

The Ongoing Corrupt System of Passenger Van Management

From the study of Leopairojana and Hanaoka (2006), after the van licensing policy was introduced in 1999, only BMTA was granted the licence to operate passenger van services; but it was able to subcontract this operation to the van drivers. Therefore, the licences were allocated to the existing routes between important locations in the city and suburbs with distances of 8–56 km.

Before the regulation, investors or operators required support to pay bribes and paid huge kickbacks in return to establish the passenger van routes and terminals. Van drivers had to pay the operators entry and monthly membership fees for drivers to be allowed to operate van services under a van route. After the regulation, the operators still operated the licensed van routes and played a role as route associations. The fee system remained but the entry and monthly membership fees were increased. However, illegal van drivers were able to pay these fees to get protection from some bribes. Because there were only 2-year contract licensed drivers with the BMTA, some did not renew their contracts. As a result, the illegal van drivers had a chance to get contracts and become legal. Thus, the problem of passenger van operators or the former investors and corruption remained in van management.

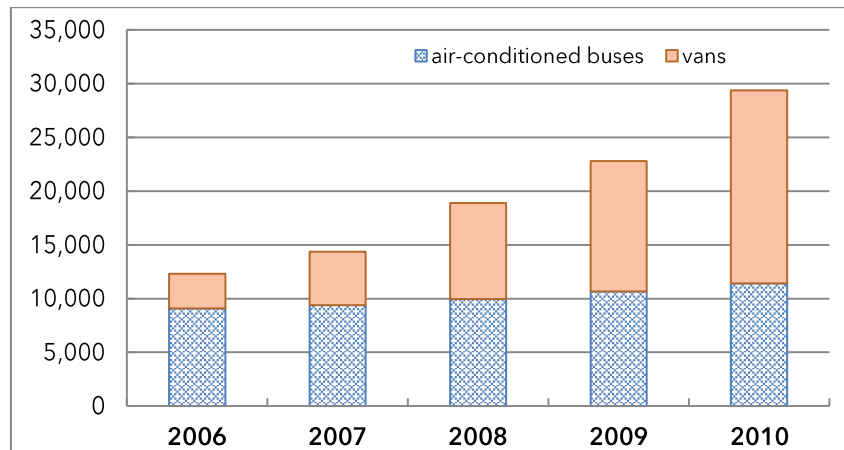
Enforcement of Quality and Safety Services

Although the legitimacy of passenger vans is a good regulatory reform based on the market-driven demand principle, the existing regulations cannot bridge the gap between the demand and supply of legal van services. The gap in the market has been filled by the entry of illegal vans. As a result, the DLT legalised the illegal van operation. However, a large number of passenger vans kept operating illegally. This affected the demand of public passenger vehicles on legal routes, especially air-conditioned buses, which affected the ability to meet the service obligation of good safety and service quality.

According to Ongkittikul (2013), the unclear and inefficient licensing system of public buses and vans results in accountability of the operators and drivers. The research separates this accountability into two aspects: responsibility for liability from an accident and responsibility for good quality service provision.

The number of newly registered public buses and vans had a positive trend in 2006–2010 while the proportion of the accumulative number of registered public vans had been significantly higher than public buses (**Figure 7.9**). Therefore, an increase in registered public vans became more significant because some operators or drivers requested to operate passenger vans instead of passenger buses, with a ratio of 3:1 (Ongkittikul et al., 2013).

Figure 7.9. Accumulative Number of Registered Public Vans and Buses in Thailand



Sources: Ongkittikul et al., 2013 and the authors.

Further, Ongkittikul et al. (2013) also found that 1,256 companies are under the licensing and subcontracting system. The majority of bus companies are small and owned by families: only 0.1 percent of the private companies have more than 50 buses, around 8 percent have between 2 and 48 buses, and around 92 percent own only 1 bus. This means that most operators are licensed but decide to subcontract to other drivers and earn the revenue from the entry and membership fees of drivers. As a result, many operators are able to get a licence without owning a van until now, which leads to the impetus for regulating the public van services. Moreover, if there is an accident, claiming compensation for victims and relatives, the real third party, is difficult. In this context, the drivers who cause the accidents and the operator who subcontracts them should share the liability and account for the co-payment of compensation to the victims. Unfortunately, there are many accidents without this co-accountability.

The result of the Foundation for Consumers in 2013 survey shows the number of accidents caused by public vans was around 32 percent of all accidents from October 2014 to November 2015; this was the highest number among all vehicles. Further, there was a positive trend of public van accidents in Thailand, 81

times in January 2012 (Road Safety Thai Organization), 76 times per month in 2014 (Royal Police), and 5 deaths per month in 2014 (DLT). This related problem is due to the poor policy design process and the research before intervention was reckless.

5. Role of the Regulatory Management System

The licensing of passenger vans is another situation showing that policymakers implement new policies without analysing the true problem and formulating the policy decision from alternative assessments. They applied an ad hoc approach, based on actual situations and political considerations instead of conducting a market study on passenger vans and the economic efficiency of urban public transport. As a result, the reform only filled a gap in the public vehicle services market, but did not eliminate illegal vans in the market.

Two relevant issues arise from the real problems of passenger van operation: operating as an individual, which leads to an unsafe service. The small private operators are unable to exploit economies of scale and have a lack of vision and resources to innovate their operation. Further, a number of individual operations would result in lower revenue and more complicated regulations for better safety standards such as speed limit, load limit, and use of seat belts, since individual operators do not have to respond to any operational risks. Therefore, licensing passenger vans cannot solve all these relevant problems, but can create more externalities.

The reasons behind the ineffectiveness of licensing passenger vans are:

- The problem of pricing policy is setting a standard price for all, making standard buses unprofitable to operate. The pricing structure has not been adjusted to comply with economic development, inflation changes, and oil price fluctuations. Furthermore, route licensing for public buses is unsystematic; there is a mix of regulations between allowing competition on profitable routes and subsidising and controlling competition on unprofitable routes. Therefore, pricing without proper subsidies leads to bad public transport.

- The competition between standard buses and illegal vans on high-demand routes results in many operators entering the market. Since passenger vans entered the market and gained more popularity because of convenience, standard buses cannot compete with illegal vans without proper licensing and non-tendering regulation.

Since illegal vans were able to enter the market as a result of bad policy and regulation, therefore, licensing passenger vans was just a temporary solution; yet it created a long-term effect of more complicated regulations on quality and safety standards of public transport services.

Nevertheless, reform was done by focusing only on the problem of market imperfection; an inadequate public bus provision, which was actually reasonable. However, there has never been an intensive study to understand the issue of poor pricing policy without studying the cost concept of creating a low-cost operation for public bus services. Therefore, this intervention is inefficient and not necessary since it creates the negative externality of an unsafe service, which then becomes a problem for road safety management.

Further, this reform seems not to be involved in 'Little and Legal Policy' development since the policy should be declared as a ministerial regulation from the DLT, under the MOT. According to the Thai legal system, the policymaker, the Minister of Transport, has the right to submit that regulation to Cabinet; after the Cabinet grants approval, the policymaker would publish it in the Government Gazette. Moreover, the policy was implemented by announcing the Notification of the Land Transport Control Board. Unfortunately, there was no evidence—that is, a Cabinet resolution—for this policy. There was no check and balance system when this policy was introduced because other stakeholders—including consumer representatives, van drivers, and investors—were not considered; also, no public hearing was conducted for this intervention. Moreover, without appropriate scrutiny, this new unnecessary regulation is inconsistent with the superior laws such as the Land Transport Act (1979), the Motor Vehicle Act (1979), and the Royal Decree Establishing BMTA (1976).

For the capability of reform management, this regulation can bridge the gap between public bus provisions and the demand of commuters in suburban areas.

However, it cannot regulate more efficient, better quality, and safe public vehicle services. Besides, the issue of illegal vans remains.

After receiving many complaints regarding disciplining public van service operators, the DLT has been trying to improve the safety standard of services despite the licensing reform. Since the DLT cannot cancel the licensing, many regulations and measures have been implemented instead, such as installation of a speeding detection system with an RFID device and the mandatory use of seat belts.

6. What Difference Could An Enhanced RMS Have Made?

After public vans were licensed, the number of passengers had been growing, resulting in the impetus for quality and safety control. Public van accidents have become more serious; therefore, the DLT mostly attempts to improve safety and quality.

The case study points out that the regulatory framework for public transport in Thailand needs a radical change. According to Ongkittikul (2007), it is necessary to reorganise the public transport services in a way that will improve efficiency and quality as in many European countries. The public transport sector should be organised so that it can compete with cars; this requires service integration between modes, and integration between transport policy, transport pricing, and public transport policy.

However, this reform in the case study could have been more effective if the problems were clearly defined at the beginning. Conducting intensive research and consultation with stakeholders, particularly those who are not in the system, would have been beneficial to legalise the system. Further, in order to assess the impact of the regulation, cooperation between the public and the private sectors is important for driving the regulatory system to correctly respond to the needs of business and improve social welfare. Cost–benefit analysis should be applied when considering alternative regulations in order to obtain the most appropriate intervention, while considering the context of social and economic constraints.

Since road transport has been the most essential mode for passenger traffic for all time, an action plan that covers both shortcoming and potential developments is needed for effective implementation. An example is the effect on cross-border traffic since Thailand is working with other ASEAN economies to liberalise cross-border transport and to improve the transportation corridors which link markets in ASEAN (APEC, 2011).

Even if this reform was promulgated by the DLT, the check and balance system is necessary for building the accountability system for the regulator and service providers. Moreover, apart from the check and balance system, there should be a clear strategic action for practical implementation to guarantee that the regulation is clear, consistent with superior laws and other requirements, comprehensive, and proportional to the nature of the problem. Again, there should be an official forum for stakeholders to exchange views on the proposed regulation.

Although this legislative process reform does not require a RIA in Thailand, impact assessment, especially public hearings, is still essential, both before and after the proposals. Further, the impact assessment should be promoted as a tool to counter corruption since the problem has received broad attention (TDRI, 2014a). Therefore, this would comply with the objective of eliminating corruption in the public van system.

Finally, there should be a central agency, independent from both executive branch and government bodies, that monitors and regulates assessment of the regulations.

Summary Comment

This chapter has explored the evolution of regulation in Thailand since it became a democracy in 1932. It showed how Thailand is in a catch-22 situation: the current system is not adequate to develop a robust RMS for legislation and regulatory reform. For example, the Thai government has been unable to effectively implement the RIA. The authors identify two key issues: (i) the conflicting interests of different authorities, which hinder effective collaboration;

and (ii) the lack of focus on policy development. Overall, the authors conclude that there is no coherence among relevant authorities. Parts 2 and 3 explore how regulatory reform is conducted in Thailand. The cases of the protection of car accident victims and passenger van licensing demonstrate the difficulty of regulatory reform in the absence of a robust RMS.

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