

Introduction

The Thai political situation is now significantly changing. The drafted constitution shall be approved by the Thai people through a national referendum, which is the first ever in the Thai political history that will affect definitely the future of Thailand. The Election Commission of Thailand, as the body responsible for disseminating all the relevant information about the referendum procedure and organizing the referendum, therefore prepares this information in order to provide the knowledge about referendum as well as stimulate the public awareness on this matter. The ECT strongly hopes that the upcoming referendum will be proceeded effectively and successfully as well as can respond the public will.

Office of the Election Commission of Thailand
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Important Information on Referendum

(Preparation for the first ever national referendum in Thailand)

1. Definition

Referendum is a process in which people use their votes to “approve” or “disapprove” an important subject affecting the national interest or fundamental rights and freedom of people before its implementation as law.

“Referendum” differs from “public hearing” on which a referendum has the public decision on an important subject through voting; meanwhile, a public hearing is a forum opened for any opinion of the authority or people concerned before the relevant state agencies will take an action.

2. The concept of referendum

2.1 A subject for being decided by a referendum shall be a considerably important matter affecting the national interest and people, not a person.

2.2 A question shall be clear enough for people to vote “yes” or “no”.

2.3 Open for everyone and every opinion

2.4 Free voting

2.5 A result of a referendum shall be binding.

Referendum is one of the mechanisms of “direct democracy” in which people can express their thinking and preference on an important state matter affecting their rights and freedom. In addition, it promotes checks and balances by obliging the ruling political elites not to do any activity without the public consent.

3. Types of referendum

3.1 Mandatory referendum

A mandatory referendum is a referendum that must be held in certain circumstances, or in relation to certain issues. The outcome of a mandatory referendum is usually binding. The requirement for mandatory referendums is usually specified in a country's constitution or other laws.

3.2 Optional referendum

An optional referendum does not by law have to be held, but can be initiated by the government, and in some cases by other parties.

Additionally, a referendum can be categorized in accordance with an area of which a referendum takes place; for example, a national referendum, a state referendum, or a local referendum.

4. Referendum in Thailand

In Thailand, we have had so far 5 constitutions (1949, 1968, 1974, 1996, and 1997) excluding the 2006 interim constitution that have a provision concerning a referendum. A referendum would be initiated by His Majesty The King to ask approval from people when he realized the drafted amended constitution submitted for his consideration might affect the national or public interests (under the constitution of 1949, 1968, and 1974). When the National Assembly, with the presence of less than one-half of the total number of the existing members of both Houses, did not ratify the drafted constitution presented by the Constitution Drafting Assembly, a referendum would be conducted for people to approve such a draft (under the amended 1991 constitution vol.6 in 1996). For the 1997 constitution, the council of ministers may initiate to conduct a referendum if there is an important matter affecting the administration of the state affairs for asking public consultation.

The comparative table of the provisions concerning a referendum
of the Constitutions of the Kingdom of Thailand

Constitutions (s)	Section (s)	Causes in holding a Referendum	Date	Result Requirement
1949 1968 1974	174-176 170-172 229-231	To approve or disapprove the drafted constitution which the king realized it would affect the national or public interests	within 90 days as from the date of the Royal Decree calling for a referendum was declared	Majority of the turnout
1991 amended vol.6 in 1996	211	To approve or disapprove the drafted constitution which was not ratified by the presence of less than one-half of the total number of the existing members of both Houses of the National Assembly	Not earlier than 90 days and not later than 120 days as from the date of a referendum was declared to be held by the President of the National Assembly	Majority of the turnout but not less than one-fifth of the eligible voters

Constitutions (s)	Section (s)	Causes in holding a Referendum	Date	Result Requirement
1997	214	To ask public consultation when there is an important matter affecting the administration of the state affairs	Not earlier than 90 days and not later than 120 days as from the date of a referendum was declared in the Government Gazette	- Majority of the turnout but not less than one-fifth of the eligible voters - The result is just a consultation not binding
Interim 2006	29, 31, 32	To approve or disapprove the whole drafted constitution	Not earlier than 15 days and not later than 30 days as from the date of the draft is disseminated	Majority of the turnout

Even though there have been provisions regarding a referendum, in practice Thailand has never held any referendum. Therefore, the referendum according to section 29, paragraph 2 of the Constitution of the Kingdom of Thailand 2006 (Interim) is the first ever referendum of the Thai political history.

5. The referendum according to the Constitution of the Kingdom of Thailand 2006 (Interim)

It is stipulated in sections 29, 31, and 32 as follows:

5.1 The referendum shall be organized for people to vote on whether to approve or disapprove the whole drafted constitution;

5.2 The referendum shall be held on the same day throughout the Kingdom; additionally, not earlier than 15 days and not later than 30 days as from the draft is disseminated;

5.3 The rules and procedure of the referendum shall be prescribed by Constitution Drafting Assembly;

5.4 If the result of the referendum show that people approve the draft by majority vote, the President of the National Legislative Assembly shall present it to His Majesty The King. When the King has affixed signature thereon, it shall come into force upon publication in the government gazette. However, if the majority votes disapprove the draft, the Constitution Drafting Assembly shall cease to function and the Council for National Security shall hold a joint meeting with the Council of Ministers to consider and revise one of the previously promulgated constitutions within 30 days as from the date of the referendum for being promulgated.

The referendum according to the 2006 interim constitution is not compulsory; therefore, there is no penalty for a person who does not turn out to vote. It is different from an election which is compulsory.

6. Important contents of the referendum according to the announcement of the Constitution Drafting Assembly: The Rules and Procedure of the Dissemination of the Drafted Constitution and the Referendum 2007

6.1 The Constitution Drafting Assembly has duty to disseminate the draft and the Election Commission disseminates the rules and procedure of voting in the referendum to the public throughoutly.

6.2 The Election Commission has duty to hold and control voting in the referendum to be proceeded in an honest, free, and fair manner.

6.3 The Constitution Drafting Assembly shall determine the date of referendum.

6.4 People vote in the referendum through a direct and secret ballot.

6.5 A province shall be regarded as a constituency.

6.6 A village shall be regarded as a polling station which has about 800 eligible voters.

6.7 Qualification of an eligible voter in the referendum;

- 1) Thai nationality (Not less than 5 years of acquiring the Thai nationality by naturalization),
- 2) 18 years of age on the 1st January of the year of election,
- 3) Has the name appeared on the house register in the constituency for not less than 30 days up to the date of referendum.

6.8 Prohibition;

- 1) being of unsound mind or of mental infirmity,
- 2) being Buddhist priest, novice, monk or clergy,
- 3) being detained by a warrant of the Court or by a lawful order.

An eligible voter shall cast only one vote at the polling station which has the name appeared on the electoral roll.

6.9 The electoral roll shall be made and publicized for not less than 20 days prior to the date of referendum. A person can then inspect the roll for adding or withdrawal the name for not less than 10 days prior to the date of referendum.

Adding/ Withdrawal Names on the Electoral Roll: An eligible voter or the owner of a house can submit a request attached with a copy of the house register and other required evidences to the district officer or the local registrar of the constituency for not less than 10 days prior to the date of referendum.

6.10 An eligible voter shall cast a vote by marking only one cross on a “Yes” or “No” blank of a ballot paper.

6.11 The polling period for the referendum is between 08.00 AM – 04.00 PM that is more than an ordinary election 1 hour (between 08.00 AM – 03.00 PM).

In case there is still an eligible voter, not receiving a ballot paper, left at the polling station at the time of closing of the poll, the polling station committee shall give a ballot paper for each of every voter presented at the polling place for voting.

6.12 The counting of votes shall be done openly at the polling station after closing of the poll. The result of votes counting shall be reported to the district referendum sub-committee, then to the Provincial Election Commission and the National Election Commission respectively.

6.13 Voters who are residing outside their provinces where their names are in the electoral roll, which are based on the house register, can cast their votes at the province where they are now actually living. Such voters shall enroll with the district officer or the local registrar of the district or municipality in which they are now living at least 30 days prior to the date of referendum.

An eligible voter can enroll for voting outside the province either by himself/ herself or authorize other person to do instead. Such a voter shall cast his/ her vote at the central polling station of the province he/ she is now actually living on the date of referendum. (No pre-poll voting)

6.14 In case there is unpredictable situation hindering voting, the polling station committee shall cease the voting of that polling station and let the voters vote at the emergency central polling station of that province within the same date and time.

6.15 An objection on the referendum can be made by not less than 10% of persons turning out to vote petition to the Election Commission of Thailand within 24 hours as from closing of the poll. The Election Commission will consider the case and may order a new round of voting of that polling station. The new round of voting shall be proceeded not later than 30 days as from the date of dissemination of the drafted constitution. However, the Election Commission may consider to reject the objection if it sees that the new round of voting will not affect the result of referendum as a whole.

6.16 The Election Commission of Thailand shall report a result and voters turnout of the referendum to the Constitution Drafting Assembly for being officially announced by the latter.

7. Preparation of the people's readiness in the referendum

The referendum according to the 2006 interim constitution is the first ever national referendum in the Thai political history which will definitely affect the future of Thailand. The people must therefore prepare their readiness for the success and effectiveness of the upcoming referendum. The followings are the guideline:

7.1 Pay very much attention to and follow news and information regarding the important contents of the drafted constitution in order to have correct understanding before voting in the referendum;

7.2 Actively participate in expressing view and opinion on the drafted constitution in order to provide diversity of thinkings;

7.3 Reasonably review and analyze before making a decision. Not be influenced by any situation or induced by any illegal offer. Should differentiate between the preference to a person and contents of the drafted constitution as well as view the draft as a whole;

7.4 Should learn and study about the rules and procedure of the referendum in order to vote correctly;

7.5 Should realize the importance of turning out to vote. Although the referendum is not compulsory, it will be the fundamental principle of the country. Therefore, everybody shall express their will through the referendum.
