Administrative Procedural Law
Study material

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This paper is prepared to support a baseline study related to the question whether and how an administrative procedural code/law can be launched in Cambodia.
10 Steps to conduct the Research Program

Step 1
Defining the objective of the research program

Step 2
Defining a precise question of the subject matter of the research

Step 3
Literature review (What is already existing?) and summary

Step 5
Conclusion draw from the review in regard to intended field research

Step 6
Developing questionnaires and interview guidelines

Step 7
Data collection

Step 8
Evaluation of the collected data

Step 9
Conclusion and final report

Step 10
Presentation of the results
Administrative law

Administrative law (or regulatory law) is the body of law that arises from the activities of administrative agencies of government which is distinguished from private law which originates from the activities of private individuals, corporations, and non-governmental entities. Government agency action can include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (including tribunals, boards, and commissions) that are part of a national regulatory scheme in such areas as international trade, manufacturing, the environment, taxation, broadcasting, immigration, and transport.

As governments grew in size and power, there came the necessity of developing a framework of laws governing the administration of the public to keep order, ensure efficiency, preserve the economy, and to maintain a control over a burgeoning bureaucracy. As a framework which uses constitutional, judicial and political powers, administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more governmental agencies to regulate the increasingly complex social, economic, and political spheres of human interaction and to enhance the development of individuals, families, and communities.

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Legal aspects of administrative law

Administrative law in the United States often relates to, or arises from, so-called "independent agencies"—such as the Federal Trade Commission ("FTC"). Here is FTC's headquarters in Washington, D.C.

Rulemaking

In administrative law, **rulemaking** refers to the process that executive agencies use to create, or **promulgate**, regulations. In general, legislatures first set broad policy mandates by passing laws, then agencies create more detailed regulations through **rulemaking**.

By bringing detailed scientific expertise to bear on policy, the rulemaking process has powered the success of some of the most notable government achievements of the twentieth century. For example, science-based regulations are critical to modern programs for environmental protection, food safety, and workplace safety. However, explosive growth in regulations has fueled criticism that the rulemaking process reduces the transparency and accountability of democratic government.

Adjudication

**Adjudication** is the legal process by which an arbiter or judge reviews evidence and argumentation including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved.

Three types of disputes are resolved through adjudication:

1. Disputes between private parties, such as individuals or corporations.
2. Disputes between private parties and public officials.
3. Disputes between public officials or public bodies.

Enforcement

**Coming into force** (also called enforcement or enactment) refers to the date and process by which legislation, or part of legislation, comes to have legal force and effect.

It is important to note that the process whereby a Bill becomes an Act is an entirely different process from that of bringing the Act into force. A Bill, even though passed by law makers, which does not amount to an Act cannot be of any force and effect.

Of course it may be that a country's law determines that on being passed by the law makers, a Bill becomes an Act without further ado. However, more usually, the process whereby a Bill becomes an Act is well prescribed in general constitutional or administrative legislation. This process varies from country to country, and from political system to political system.

Typically, the process by which a Bill becomes an Act would include that the Bill be signed by the head of state, and that it be published in the *Official Gazette*, so that people know the law exists and generally releases it in the public domain.
Administrative law in common law countries

Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking.

Administrative law may also apply to review of decisions of so-called quasi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decision, it must be noted, is different from an appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in appeal the correctness of the decision itself will be under question. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is ultra vires. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is patently unreasonable (under Canadian law), Wednesbury unreasonable (under British law), or arbitrary and capricious (under U.S. Administrative Procedure Act and New York State law). Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts viz. legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain Common Law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary.

Administrative law in Australia

Australian administrative law define the extent of the powers and responsibilities held by administrative agencies of the Australian government. It is a common law system, with a highly significant statutory overlay that has shifted focus to generalist tribunals and codified judicial review.

Australia possesses well-developed ombudsman systems, and Freedom of Information laws, both influenced by comparable overseas developments. Its notice and comment requirements for the making of delegated legislation has parallels to the United States. Australia’s borrowings from overseas are still largely shaped by its evolution within a system of parliamentary democracy that loosely follows a Westminster system of responsibility and accountability.
The development of administrative law over the past three decades has been described as a "quiet revolution."[1] Administrative law's application are currently being influenced by the shift toward deregulation, and privatization.

**Administrative law in Canada**

**Canadian administrative law** is the body of law in Canada addressing the actions and operations of governments and governmental agencies.[2] That is, the law concerns the manner in which courts can review the decisions of administrative decision-makers (ADM) such as a board, tribunal, commission, agency or minister. The body of law is concerned primarily with issues of substantive review (the determination and application of a standard of review) and with issues of procedural fairness (the enforcement of participatory rights).

**Administrative law in India**

The Constitution of India is the longest written constitution for a country, containing 444 articles, 12 schedules, numerous amendments and 117,369 words.

**Indian law** refers to the system of law which operates in India. It is largely based on English common law because of the long period of British colonial influence during the British Raj period. Much of contemporary Indian law shows substantial European and American influence. Various acts and ordinances first introduced by the British are still in effect in modified form today. During the drafting of the Indian Constitution, laws from Ireland, the United States, Britain, and France were all synthesized to get a refined set of Indian laws as it currently stands. Indian laws also adhere to the United Nations guidelines on human rights law and environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India.

Indian civil law is complex, with each religion having its own specific laws which they adhere to. In most states, registering of marriages and divorces is not compulsory. There are separate laws governing Hindus, Muslims, Christians, Sikhs, and followers of other religions. The exception to this rule is in the state of Goa, where a Portuguese uniform civil code is in place, in which all religions have a common law regarding marriages, divorces, and adoption.

**Administrative law in the United States**


- English antecedents & the American experience to 1875
- 1875 - 1930: the rise of regulation & the traditional model of administrative law
- The New Deal
- 1945 - 1965: the Administrative Procedure Act & the maturation of the traditional model of administrative law
- 1965 - 1985: critique and transformation of the administrative process
- 1985 - present: retreat or consolidation

It is the culmination of the advances in these six periods which give the American legal system the power over many government agencies which are organized under the executive
branch of government, rather than the judicial or legislative branches. The departments under the control of the executive branch, and their sub-units, are often referred to as executive agencies. The so-called executive agencies can be distinguished from the many important and powerful independent agencies, that are created by statutes enacted by the U.S. Congress. Congress has also created Article I judicial tribunals to handle some areas of administrative law.

The actions of executive agencies independent agencies are the main focus of American administrative law. In response to the rapid creation of new independent agencies in the early twentieth century, Congress enacted the Administrative Procedure Act (APA) in 1946. Many of the independent agencies operate as miniature versions of the tripartite federal government, with the authority to "legislate" (through rulemaking; see Federal Register and Code of Federal Regulations), "adjudicate" (through administrative hearings), and to "execute" administrative goals (through agency enforcement personnel). Because the United States Constitution sets no limits on this tripartite authority of administrative agencies, Congress enacted the APA to establish fair administrative law procedures to comply with the requirements of Constitutional due process.


The American Bar Association's official journal concerning administrative law is the [[Administrative Law Review]].

**Administrative law in civil law countries**

Unlike most Common-law jurisdictions, the majority of civil law jurisdictions have specialized courts or sections to deal with administrative cases which, as a rule, will apply procedural rules specifically designed for such cases and different from that applied in private-law proceedings, such as contract or tort claims.

**Administrative law in France**

The basis of French civil law was formed from the Code Civil or Code Napoleon which incorporated some of the freedoms gained by the people because of the French Revolution. Moreover, Napoleon introduced administrative law codes which fostered efficient governments and created public order.

Most claims against the national or local governments are handled by administrative courts, which use the Conseil d'État as a court of last resort. This court acts as an arm of the French national government and is the supreme court for administrative justice as well as assisting the executive with legal advice.

**French 'droit administratif'**

Administrative law governs the relationship between the State (in its various manifestations) and private citizens or organizations. The rules of administrative law are set forth in particular in the Code administratif, or Administrative Code, although - as with criminal law - there are also a large number of legislative and regulatory texts that stand alone, such as the texts
governing the status and powers of industry regulators (most of which have the status of autorité administrative indépendante or AAI).

Administrative law in France can be considered to comprise two main categories: general administrative law and sector-specific administrative law.

**Administrative law in Germany**

In Germany, the highest administrative court for most matters is the federal administrative court Bundesverwaltungsgericht. There are federal courts with special jurisdiction in the fields of social security law (Bundessozialgericht) and tax law (Bundesfinanzhof).

Public law (Öffentliches Recht) rules the relations between a citizen or private person and an official entity or between two official entities. For example, a law which determines taxes is always part of the public law, just like the relations between a public authority of the Federation (Bund) and a public authority of a state (Land). Public law is normally based on the so-called Über-Unterordnungs-Verhältnis ("superiority inferiority relationship"). That means that a public authority may define what is to be done, without the consent of the citizen. (Thus, for example, if the authority orders a citizen to pay taxes, the citizen has to pay, even without an agreement.) In return, the authority has to abide by the law and may only order, if empowered by a law.

**Administrative law in the Netherlands**

In the Netherlands, administrative law provisions are usually contained in separate laws. There is however a single General Administrative Law Act (Algemene Wet Bestuursrecht or AWB) that applies both to the making of administrative decisions and the judicial review of these decisions in courts. On the basis of the AWB, citizens can oppose a decision (besluit) made by a public body (bestuursorgaan) within the administration and apply for judicial review in courts if unsuccessful.

Unlike France or Germany, there are no special administrative courts of first instance in the Netherlands, but regular courts have an administrative "sector" which specializes in administrative appeals. The courts of appeal in administrative cases however are specialized depending on the case, but most administrative appeals end up in the Judicial Section of the Council of State (Raad van State).

In addition to the system described above there is another part of administrative law which is called administratief beroep (administrative appeal). This procedure is available only if the law on which the primary decision is based specifically provides for it and involves an appeal to a higher ranking administrative body. If administrative appeal is available, no appeal to the judicial system may be made.

**Administrative law in China**

Chinese law is one of the oldest legal traditions in the world. For most of the history of China, it has been based on the Confucian philosophy of social control through moral education, as well as the Legalist emphasis on codified law and criminal sanction. These influences remain in the Soviet-influenced system of the People's Republic of China and the German-influenced system of the Republic of China.
Unlike many other major civilizations where written law was held in honor and often attributed to divine origin, law in China was viewed in purely secular terms and its initial appearance was greeted with hostility by many as indicative of a serious moral decline, a violation of human morality, and even a disturbance of the total cosmic order. Ordinary people's awareness and acceptance of ethical norms was shaped far more by the pervasive influence of custom and usage of property and by inculcating moral precepts than by any formally enacted system of law. As regards the Chinese belief in the cosmic order, it was held that correct behavior was behavior consonant with the immanent order which set boundaries to appropriate responses. Fa defines these boundaries while xing state the potential costs to the individual of exceeding them and impose penalties for these actions.

**Examples of administrative law decisions**

**United States Supreme Court**


**Conseil d'Etat**

- Compagnie Alitalia, Lebon 44, 1989. (The executive branch has the duty to cancel illegal regulations, even if initially legal).

**Supreme Court of India**

- Golaknath v. State of Punjab, 1967. (Parliament did not have the power to abrogate the fundamental rights and provisions on private property).

**References**


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ADMINISTRATIVE PROCEDURES IN EU MEMBER STATES

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ADMINISTRATIVE PROCEDURES IN EU MEMBER STATES

What is an administrative procedure?

1. An administrative procedure is the formal path, established in legislation, which an administrative action should follow. Usually, an administrative action has to be carried out through a number of steps, which should be known in advance. A pre-established decision-making procedure is essential to any complex organisations if their activities have to be controlled internally and externally, which is particularly crucial if the organisation deals with public interests. At the same time, the procedure has to guarantee the rights of those dealing with the administration. The double guarantee, of the public interest and of the private interest of the citizens, is the crucible of the public administration of any democratic State ruled by law.

Is it efficient being constrained by administrative procedures?

2. Certain public managers tend to sacrifice the administrative procedures for the sake of efficiency. They consider the procedure as something cumbersome and merely formal, a pure legal formality, which should retreat in front of the demanding requirements of efficiency in modern competitive societies. The dilemma between efficiency and due procedure is a false dilemma, as it is not possible in a state that describes itself as subject to the rule of law to speak of efficiency having a “priority” over legality, since these values are of such different orders. Procedural transparency and predictability as well as procedural (formal) guarantees to citizens in their dealings with the public powers are a fundamental piece of the rule of law and consequently those procedures clearly have a constitutional dimension in all EU Member States.

3. On the other hand, given the values that EU Member States have chosen to uphold under Article 6 of the EU Treaty (i.e. the “principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”), it is almost certainly no longer an option for those states to subordinate legality to efficiency. Any government pursuing such a policy would be exposed to internal legal challenge and, very possibly, also to external legal challenge, either before the European Court of Human Rights or (if an EU Member State) under the mechanism of Article 7 of the EU Treaty.

4. In democratic welfare states, the quality of public services provided or produced by the state requires managerial efficiency, but public services must be delivered on the basis of equity and entitlements of individuals, as defined and recognised in legislation. Consequently, efficiency in the management of public services is legitimate if it falls within the procedural and entitlement parameters set down in law.

The Main Goals of Administrative Procedures

5. In modern democratic States, three main broad goals can be singled out for administrative procedures, namely to provide a formal guarantee to the rights of the individuals through a practical application of the principle of legality; to provide a formal guarantee to the public interest through demanding transparency in public decision-making and consequently allowing for the administrative action to be controllable; and to create the conditions for
capital investments and economic development through providing a guarantee of that administrative, and by extension, any public decision will be predictable and will respect the legitimate expectations of individuals. Along with sound administrative procedures an adequate organisation of the administration and a professional merit-based civil service should complete the administrative picture.

6. The institutionalisation of the merit system for the civil service and relatively good administrative procedures are a fact in all developed countries, but it is still very weak in, or absent from, countries in transition from planned economies, and even more markedly so in developing countries. These countries are often referred to euphemistically as countries having a “weak institutional environment”, which mainly means that they have an unprofessional civil service often accompanied by insufficient constitutional and administrative legal arrangements to effectively constrain the actions of the administration. The end result is usually a public administration incapable of producing the minimal legal certainty necessary for launching economic and social development.

7. In many developing countries the problem is often summarised by an assessment that they do not have the “administrative capacity” or the “necessary institutional minimum”. This “institutional minimum” includes several elements, ranging from the very minimal to a more complete threshold, which the state should guarantee: 1) personal safety of individuals and families; 2) guarantee of property rights and contract enforcement; 3) an institutional framework that guarantees macroeconomic and fiscal stability and therefore a positive investment climate; 4) democracy and the rule of law. Each of these elements – we could call them public goods - subsumes all of the preceding elements.

1. Guarantee of individual rights

8. Administrative law is the specific law for doing administrative actions and decisions where the administration has the prerogative of imposing its will to individuals. However, the individuals, or citizens, have personal rights and interests, which in a democracy are legitimate. Public authorities while imposing their will upon individuals have to respect those rights and interests. In order for this to happen, the public authorities have to be subject to the law and take their decisions according to the formal procedures established in legislation (principle of legality).

9. If the principle of legality is to have any effectiveness it needs to be made applicable in practice. Administrative procedures are intended to make effective and operational the principle of legality in the acts and decisions of the administration. Administrative procedures represent a legal technique to make the respect of legality effective in practice. The legal doctrine of the lawful administrative act rests upon the notion of the act having been shaped according the established procedure.

10. For a long time in certain countries (e.g. France) what was considered important was the administrative act itself, whereas everything preceding or surrounding the act was considered as being of the exclusive incumbency of the administration, something what happened in the secret shadows of the bureaus. Administrative law was the law on the administrative act understood as something awarding or removing individual’s rights. The important element was the administrative act itself, not the way through which it was produced. It was necessary
that the notion of administrative act evolved --basically by virtue of the jurisprudence of the Conseil d’État-- to encompass the ways and means through which an administrative act was created. When this finally happened, administrative procedures became an essential part of administrative law. The procedure became the essential required path to be followed by the administration in order for it to produce lawful decisions which could legitimately be imposed upon individuals and impinge upon their rights. Nowadays no valid administrative act can exist which is not shaped by following a pre-established administrative procedure.

11. In continental Europe it is important to understand the difference between individual and general administrative acts, a distinction which is based on the contents of the act and on the singularity or plurality of those affected by the act. In certain countries (France, Belgium, Italy, Portugal, Spain) the notion of administrative act refers to both individual acts and general acts i.e. to acts impinging upon rights of individualised parties as well as to acts regulating a matter of general interest (regulatory acts).

12. In other countries (Germany, Netherlands, Denmark) the notion of administrative act was intimately linked to subjective rights, this is to say to rights or personal interests of an individual. It means that the notion of administrative act was traditionally applied only to individual administrative acts, not to acts affecting a generality of persons or the whole country. However, nowadays administrative procedures are also applied for the preparation of regulatory acts, for example in urban zoning.

13. In UK and Ireland the distinction between individual and general administrative acts is almost irrelevant because the law of administrative acts is mostly a law on the procedure, not on substance or in the generality or singularity of those affected by the act. In UK and Ireland the courts have only recently started to look into substantive aspects of administrative decisions. Previously their focus of interest was almost exclusively whether or not the public authorities had followed a due procedure (i.e. based on well established court case law principles) to shape their decisions.

2. Efficiency and order in the protection of the public interest (transparency)

14. The second goal of a well designed administrative procedure is to ensure a prompt and economically efficient protection of the general interest by the public authorities, which are one of the crucial legitimate interpreters of that general interest. One could add that administrative procedures have also the goal to ensure that decision-making will be transparent, along with orderly and efficient. However, transparency is a relatively recent value in the administration of EU Member States (except in Sweden where the right to anybody to view the files was established by a Law of 1766).

15. Administrative procedures present a problem from the viewpoint of fairness. Public authorities (or administration) are a party in the procedure and also the judge in the procedure insofar as the procedure is aimed at producing an administrative act, i.e. a decision of the administration. For this reason it is crucial that administrative procedures are designed in a way that protects at the same time the public interest or public needs (as interpreted by the public authorities) and the personal or private rights and interest of individuals. This has consequences that we will see below.
3. Economic development

16. Investments occur where there is an adequate legal environment. Good administrative procedures are necessary for preventing arbitrariness in administrative decision-making and to keep administrative discretion under control, i.e. making it controllable by other administrative bodies and by the courts. Administrative procedures help making the administration predictable and respectful of legitimate expectations of individuals. In this regard, as a sub-goal, administrative procedures are important to attract investment and promote economic growth.

17. It is useful at this point to turn to Max Weber, one of the most insightful analysts of modern capitalism and its instruments. Max Weber considered that the rational state rests upon an expert civil service and a rational legal order that is “the only within which modern capitalism can thrive” (Max Weber, Economic History (1923), French Translation by Gallimard, Paris, 1991. 6). The preconditions for the original development of capitalism included: a predictable legal system, and behind that a state bureaucracy; and a habit of treating all people as having rights and as possible partners in law-regulated commercial dealings, which is a requirement for establishing wider markets intertwined with regular and frequent commercial exchanges.

18. The legal order also requires a bureaucratic state to enforce the law, i.e. professional administrators in the administration and competent jurists in the judiciary. Reliable application of legal procedural and substantive rules is one of the highest values in a well organised bureaucracy. Another feature is the impersonal application of general rules, both to outsiders the organisation deals with and to its own staff. This impartiality is the most important feature of the bureaucracy for Weber – the bureaucracy should act regularly, in a predictable way, and according to what is foreseen in law.

General Principles of Administrative Procedures

1. Adversarial principle

19. It is also called principle of contradiction, meaning that the parties should be as equal as possible in the procedure in spite of the prominent position that the administration has in the procedure (being a party and the decider). This principle converges with that of defence of an individual in front of any public power, which is a consequence of the transformation of the subjects or administered into citizens. The creation of a democratic notion of citizens cannot be dissociated from the adversarial principle. The development of the adversarial principle contributes to the metamorphosis of the subject into citizen within the administrative law order (Jean Louis Autin, based on J. Rivero : « Les progrès du contradictoire contribuent à la métamorphose du justiciable en citoyen dans l’ordre administratif », page 399 dans « Réflexions sur le principe du contradictoire dans la procédure administrative » in Conseil d’État, Rapport Public 2001, Études et Documents no. 52, pp. 389-400. La Documentation Française, Paris 2001.)

20. The adversarial principle is linked to the right of defence of an individual in front of the administration, but it does not mean that the inquisitive principle is excluded (see below). Non-contentious administrative procedures have to respect both the adversarial principle (contradiction principle) and the inquisitive principle (finding out the truth ex officio by the
administration regardless of what the interested parties say) even if these two principles traditionally have represented two opposite ways of proceeding.

21. The adversarial principle has important consequences; many of them have been endorsed by the jurisprudence of the European Court of Justice (ECJ) and the European Court of Human Rights by operating an extension of the literal meaning of article 6 of the European Convention of Human Rights of 1950 from only penal to any kind of legal procedures. More recently the European Charter of Fundamental Rights of the European Union attached to the Treaty of Nice (2000), reinforces this approach, in particular by virtue of its article 41. This article considers this principle as forming part of the right to a good administration.

22. One of the consequences of the adversarial principle is the obligation to hear the interested parties along the whole procedure and especially before producing the resolution. This should enable a party to view the dossier immediately before the resolution is pronounced. The parties should be entitled to propose any proofing means and be present while proofs are being practised. The adversarial principle entails also that the parties are awarded the right to recourse to higher administrative authorities (administrative recourses) and to courts (judicial review), as well as to be noticed of any decision occurring during the procedure and of available recourses.

23. Connected with the adversarial principle is the notion of interested party, which at the beginning of the administrative law development was very narrow, as only those with a direct and personal interest on the issue could be a party. In the course of time the notion of interested party has been enlarged under the influence of democracies developing and deepening.

24. Nowadays the notion of interested party in many countries includes those organisations and institutions which are in whatever way interested in an issue such as environmentalists, trade unions and others and even those individuals who are only remotely interested in the issue at stake. This enlargement of the notion of interested party has been introduced under the banner of increasing citizens' participation in administrative decision-making. An important recent development is represented by the Aarhus Convention of 25 June 1998, in force since October 2001, and forming part of the EU Law since the Decision of the EU Council of 17 February 2005 (2005/370/EC). This Convention considers the public at large as interested party in environmental matters not only concerning administrative procedures but also concerning the access to justice.

2. Procedural Economy

25. The public administration is obliged to act with promptness and efficiency. Procedural economy should also inspire the interpretation of the procedural rules by distinguishing essential and non-essential procedural steps and the legal consequences of not complying with them, which should be commensurate with their particular importance, because administrative procedures should be designed in a way that favours procedural economy. Additional consequences of this principle are the possibility of accumulating or merging several different procedures into a single one if they deal with the same matter (sort of class action) or, if several ministries or authorities have to intervene in the procedure, that such intervention be simultaneous rather than successive whenever possible.
3. In dubio pro actione

26. In case of doubts based on formal grounds, the idea should prevail that the procedure should continue up until a final resolution is pronounced on the substance of the matter. Formal shortcomings should always be allowed to be corrected in order to keep the administrative procedure alive because this represents a better guarantee of substantive rights of those interested in the procedure.

4. Official impulse

27. Given the fact that the public interest is at stake, the procedure should be pushed on ex officio. The administration is obliged to carry on the procedure by implementing all kinds of activities necessary to reach a final resolution to the procedure and to take, on its own motion, any action aimed at knowing the truth (inquisitive principle, which is connected to the principle of official impulse). There are thus reasons why in administrative procedures the adversarial principle (connected to the rights of defence of individuals) has to co-exist with the inquisitive principle (connected with the necessity of objectivity and impartiality of administrative action and decision).

28. This principle bears consequences, particularly in the field of discipline of civil servants in charge of the procedure and in the field of the administration incurring responsibilities for compensating those who result negatively affected in their rights or interest by negligent behaviour of the public officials.

5. Impartiality

29. The principle of impartiality is structurally weakened in administrative procedures because the administration is party and judge in the procedure. Therefore it is necessary to establish legal measures to re-establish the equilibrium between the parties or at least to reduce the likelihood of unfairness. A minimum of impartiality should be guaranteed. Therefore the withdrawal from the procedure of those officials who have a personal interest (typical conflict of interest situation) in the outcome of the procedure should be mandatory. Otherwise the administration would incur into abuse of power. Another requirement for impartiality is that any party in the procedure should be entitled to recuse any intervening official suspect of having an interest in the outcome of the procedure or having qualified friendship or enmity or kinship relationships with any of the parties.

General Law on Administrative Procedures and Special Procedures

30. In the majority of countries the creation of principles and rules for administrative decision-making has been the result of the jurisprudence of the courts. Judicial case-law pressured for the administration to develop administrative procedures. The view is prevailing that a modern administration needs systematised (or even codified) and publicised procedural rules for decision-making. However, not all EU MS have a general Law on Administrative Procedures.
31. The first General Law on Administrative Procedures in Europe was probably the Spanish Law of 19 October 1889 (known as the Azcárate Law after the MP who proposed it). It was a framework Law establishing a number of principles giving guidance to ministries to write their own ministerial procedures. This approach proved to be a failure because the Law was so general and imprecise that it left plenty of room for different and contradictory developments through ministerial secondary regulations and finally it did not prevent ministries from multiplying their special procedures.

32. In spite of the Spanish Law’s failure, it revealed an underlying problem which was common to many national administrations in the Europe of the time and which the Law wanted to address. That problem was the proliferation of special procedures, which created intricacy and opaqueness of administrative decision-making. This is still a problem in many national administrations of EU Member States and EU candidates. The Spanish Law of 1889 was replaced by the Law on Administrative Procedures of 17 July 1958, which is still in force as amended by a Law of 1992. This Law had several drawbacks and was amended several times (1993, 1999, and 2003). The Spanish Law regulates the successive phases of the decision, its revision and redress through administrative recourses, the delegation of competences and of signature, the withdrawal and recusation and the administrative responsibility. It also contains an inventory of rights for citizens such as the right to access to administrative documents.

33. Austria enacted its first Law on Administrative Procedures in 1925, which as several times amended, is still in vigour. This Law was influential on other national Laws in European countries. Along with Spain and Austria a number of countries have a General Law on Administrative Procedures (or a codification): Germany (1976), Denmark (1986), Italy (1990), Netherlands (1994), Poland (1960), Hungary (1957), Portugal (1991).

34. The current trends in administrative law are towards a codification of administrative procedures through a General Law, as a modern administration is considered as needing codified and published procedural rules with a view to limit the bureaucracy (See J. Ziller: Administrations Comparées: Les systèmes politico administratifs de l’Europe des douze. Paris, Montchrestien, 1993, pages 297 ff.). Even if the number of countries having a codification tends to increase, not all EU Member States have a General Law on Administrative Procedures. This is the case, among others, for countries such as Belgium, France, Greece, Ireland, and the United Kingdom.

35. The fact that these countries do not have a general codification does not mean that they do not have general procedural rules for administrative decision making. Usually they have been created by courts as general principles for administrative decision-making. For example the British principle of using public powers according to what is authorized by statute law (law adopted by parliament), which translates into principles such as procedural fairness or reasonableness. In France principles created by the jurisprudence have been translated into specific pieces of legislation such as the French Laws on access to administrative documents (1978) or on the obligation to give reasons for administrative decisions (1979) and, especially by the Decree of 28 November 1983 reinforced by Law of 12 April 2000, which represents a sketch of a true non-contentious Administrative Procedural Code in France. 36. The dilemma arises, though, between the tendency to codify the administrative procedure into a single general procedure on the one hand and on the other the proliferation of specific procedures for decisions that are to be taken in this or that administrative or ministerial sectoral field or for
decisions taken by local self-governments or other public administration settings. As a matter of principle, special procedures should be limited to a minimum and cross-references should be made to the general codification.

**Main characteristics of a (good) General Law on Administrative Procedures**

37. The Law should take into account constitutional requirements and constraints, in particular those stemming from international covenants on human rights and those reflecting the principles upon which the state is built (rule of law, subjection of all authorities to the law, etc.).

38. The scope of the Law should be precise but wide enough to ensure that—with very justified exceptions—all types of public actions and decisions that could impinge upon individual rights or legitimate interests of citizens are awarded full legal protection.

39. Administrative disputes (also called administrative process) should not be regulated in the Law on Administrative Procedures. Although it can be said that “no complete separation exists between the administrative phase and the judicial phase” (Jean Marie Woehrling: "Judicial Control of Administrative Authorities in Europe: Toward a Common Model". Paper presented at Sigma Workshop in Budva, 5 December 2005,) those who are called to apply the law are different. The ones are civil servants or public authorities whereas the others are judges. From a practical viewpoint thus, the organisation of appeal processes before administrative courts should be the object of a different law on contentious-administrative. Administrative Procedures regulate the administrative non-contentious decision making process as well as recourses (hierarchical or not) within the administration. Administrative Process is the process whereby administrative decisions are reviewed by the courts.

40. It is not appropriate to use the Law on administrative procedures to allocate competences among public authorities. This matter should be dealt with in a separate piece of legislation such as a Law on Organisation and functioning of the State Administration. However, the procedure to solve conflict of competences between two or more bodies should be regulated in the Law on Administrative Procedures.

41. Likewise the conditions and circumstances of the delegation of administrative decision-making powers should be regulated in the Law on Administrative Procedures. Certain ways and means for inter-administrative cooperation should also be the object of the Law on Administrative Procedures. 42. Concerning evidences, the Law should not define at length which are the proofs legally admitted in the administrative procedures. A cross-reference to the general regulation, which is usually contained in the Civil Procedural Code or in the Penal Procedural Code for sanctions, should suffice. Administrative discretion in deciding which facts can be taken as evidence should be restricted.

43. The notion of interested party should be clearly regulated in a way that allows for administrative openness while protecting the privacy of individuals. The notion should be neither too narrow nor too wide. The regulation of access to administrative documents by interested parties should be a matter to be dealt with in the Law on Administrative Procedures, although in some countries this is the object of a specific law on access to public information. The same could be said regarding the protection of individual personal data. This regulation
could be either included within the Law on Administrative Procedures or regulated in a separate piece of legislation.

44. Regarding standing rights, that is the right to be heard in the procedure, it is advisable that the Law on administrative procedures establishes clearly them by distinguishing the hearing in administrative individual acts of an adjudicating nature and those acts of a regulatory nature. The hearing procedures in either case require to be organised differently

**Administrative Procedures in Context: The Legal Framework for the Administration**

45. As concluding remarks we need to draw attention to the fact that administrative procedures regulations operate within a broader legal framework which is necessary to develop if the administration is to be well equipped with legal instruments. We could name it as the General Legal Framework for the Administration.

46. The general legal framework for the administration is comprised, first and foremost, of administrative law. A first approximation of the definition of administrative law is that it is a part of national public law (in EU countries it is now also a part of the supranational legal order of the EU) regulating the powers, competences (responsibilities), organisation and functioning of public authorities or the public administration as a whole. This includes relations established internally between administrative bodies and externally with other administrative bodies and with the general public. Administrative law is the refined product of the pursuit in the course of history of the liberal goal to submit public powers to the law, which is crystallised in the fact that any action of the state is subject to the law or ruled by law. Modern states derive their administrative law from their constitutions. The study of administrative law cannot be dissociated from that of constitutional law, even if in academic circles the two have been divided into separate disciplines. Likewise, administrative reform cannot ignore the country’s constitutional set-up.

47. The general legal framework for the administration is composed of all necessary laws, by-laws and regulations to ensure that the administration as a whole – as a legal system and as a system of organisations – works in line with the general principles of administrative law and with the generally accepted tenets of organisational theory. This leads us to include within the general legal framework of the administration, in addition to general administrative laws such as the law on administration, law on administrative procedures, judicial redress and appeals (administrative justice), all laws regulating horizontal systems of the public administration as an organisation, even if such laws regulate sub-systems, aspects or elements of the organisation. 48. From this standpoint, general regulations on the organisation and functioning of the administration, on self-governments and regions, and on administrative procedures (including access to information and personal data protection), as well as general legislation on the civil service, taxation, financial management, public procurement, external audit, normative production, ombudsman, judicial control of the administration and so forth would all belong to the category of horizontal administrative systems. These regulations are applicable everywhere, throughout the administration. Other regulations that could be included in this category are those on the functioning of the government (insofar as they contain rules for decision-making and policy-making), on normative production, and on conflict resolution among ministries.
49. No administrative reform would be complete without reviewing all these horizontal systems of governance and the legislation shaping them.
French Administrative Law

Introduction:

French Administrative law is paradigmatically different from most of the administrative laws of its foreign counterparts & is one of the best contributions to international culture. No doubt French administration is unique in nature but English law has also got quite an elaborate system of administrative law & administrative justice which is no less significant. Dicey was responsible for misunderstanding of French administrative law by the English.[1] One of the best way of how French administrative law is perceived in England is provided by Professor William Wade who said that Dicey mistook droit administratif as providing special privileges, special rights, prerogatives as against private citizens so as to make a law unto themselves. Dicey mistook French administration as making the executive supreme which became a common caricature in England but French administration has a system of compensation for the acts of public offices which in some respects is more generous than English law.[2] French administration is used as a model & authentic paradigm – a kind of perfect & absolute body of complete & separate body of both procedural & substantive law.[3] With this apprehension of an authentic paradigm many foreign nations have started to rely upon French administration including Israel.

Nature and Scope

Through this project the researcher tries to define droit administratif in details & its impact on the French administration & the evolution through which the system have developed & gained popularity. The scope of this project is limited to discussing French administration & its influence in France & comparative study with other common laws of the world are touched upon but not with that details.

What is droit administratif?

Droit Administratif found origin in France approximately following the out-break of French Revolution (1789) & re-establishment of order by Bonaparte in the year VIII (1799-1800) & gradually gaining strength from then.. It was feared that it would stifle all liberty under its shadow as liberty was inadequately protected & the coming of the new law coincided with the old traditional system & the establishment of the Napoleonic institutions. [4] But today the fear has vanished totally. Droit Administratif consists of all the legal rules governing the relation of public administrative bodies to one another or individuals. In England it doesn’t exist as the agents of the crown are in theory subject to any law other than those govern private persons.[5] According to the common law no one is allowed to take the law in his hand. This elementary fundamental principle has no application in public administrative offices. The administration can take the law in its own hand & doesn’t need to apply to a judge. A claimant who approaches the court in protest of saying that the particular minister has crossed its legal limits of exercising power will face obstacles in proving his case unless he can satisfy the proper judge but the claimant will succeed his case if he places it before droit administratif. Droit administratif is constructed in a peculiar manner so that it be distinct from
ordinary courts. The officials chosen to fill the high posts are personally eligible for so &
clothed with peculiar authority. They have a joint responsibility towards the public known
as "esprit de corps" which in matters of jurisdiction displays itself in a special mode of
approaching such problems as arise & as a consequence in the process of solving them. [6]
Most of the members of the constituent assembly of France being lawyers, they realized what
tough opposition could be raised against the best established legislative or administrative
measures by the hostility of judges, hence gave birth to the separation of power doctrine
whereby the judges couldn’t interfere in the workings of the administration. After the doctrine
of separation of power was brought into force the next problem was whether administrative
action be entirely free from judicial control & should the administration be allowed to exercise
unfettered discretionary power? Earlier organizations to control administrative actions had
vanished in the whirlpool during the revolution, so the next successful step was to organize
under the name of administrative justice a scheme of jurisdiction which were independent of
the judicature & free from the control of "Cour de Cassation". It composed of magistrates full
of administrative zeal. It was supposed to guarantee impartiality & technicality. It comprised of
two departments –Counsel de Prefecture & on appeal Counsel d’Etat.[7] These counsels first
had consultative functions & Counsel d’Etat theoretically used to assist the chief of a state who
alone had the right to decision making. In May 1872, Counsel d’Etat acquired absolute power &
ceased to be technical assistance of the chief. Henceforth it has been exercising power of
delegated legislation independently. It is from 1872, that droit administratif started functioning
properly whose seeds were sown in the year VIII. The 2nd characteristic of droit administratif is
that it is not codified, which distinguishes it from other civil laws. The author of a code are
naturally inclined to consider their work as a monument of legal literature which almost
completely stabilizes the law at a given moment.[8] Droit Administratif most fortunately
escaped codification which characterized the napoleonic era. Finally droit administratif is
compared with common law, autonomous in character. The two essential things responsible
for this autonomy are- the existence of separate courts & legal inequality set up in the interests
of the administration to enable it to execute as effectually as possible the public services.[9]
The two leading principles of droit administratif is –responsibility of public administrative
offices, avoidance of irregular administrative acts. A well organized magistracy, which was free
from any suspicion of impartiality in the exercise of power, that could have sufficient weight to
make public authorities accept the principle of responsibility. Thus in present France anyone
who is injured, in his person or property by any wrong –doing on the part of public services
can recover compensation adequate to his loss, provided that he can prove to the satisfaction
of Counsel d’Etat the damages & wrong doing.[10]

Droit Administratif is that part of the French Public Law which affects every Frenchman in
relation to the acts of the public administration as the representative of the state.[11]

Administrative law and Droit Administratif:

In the 16th century French administrative tribunals started to get over shadowed by the
growing jurisdiction of Counsel de Roi (originally but a reduced form of first Capetians’ curia
Regis) but its growing power was not totally un challenged. In the 17th century under Louis
XIV & Richelieu Counsel de Roi was in contradiction to Counsel Commun. It had along with
other jurisdiction that of a superior administrative court – "over appeals from the orders of the
intendents for redress against the acts of the state or acts of grace emanating from the
chancellory.[12] In 1789 when the State's General was convoked, his attitudes towards the regular courts was one suspicious hostility & among its first acts was a prohibition of their interference with administration.[13] The constitution of France in 1791 provided that the courts shouldn’t perform administrative functions which or summon administrators on account of them. In 1799, Napoleon revived Conseil de Roi under the title Conseil d’Etat & conferred upon it the jurisdiction to adjust administrative disputes & required its authorization for proceeding against govt. agents except ministers connected to their duties. Thus Conseil d’Etat grew in both jurisdiction & independence for nearly one & a half century & its later history virtually coincides with that of droit administrative. In 1889 the Conseil asserted exclusive jurisdiction of actions involving excess of power by administrative authorities. France has got many administrative tribunals among which include Conseil d’Etat, Conseil Interdepartmmetal de Prefecture, Cour des Comptes, Conseil de l'instruction publique, Conseils Militaries des Revision, of which Conseil d’Etat is the most important. The members of the Conseil d’Etat are appointed by the executive decree with the advice & consent of the council of ministers & they can be removed only in the same manner. Nor is the govt. free to select councilors of state at its pleasure, for one half of the seats in the council must be filled by maitres des requests & ¾ th of these must be filled with auditeurs de premiere classe.[14] Thus these councilors have become administrative judges from the point of view of their practical permanence of tenure & independence. Since they are originally administrative officers they are familiar with the administrative problems, they understand its difficulties & needs. For the same reason they do not arouse distrust in the governmental mind which the judges of the ordinary court might inspire & on the other hand they confront the govt. without that timidity which is not infrequently displayed by the ordinary judges.[15] Le Tribunal des Conflicts is composed of nine judges of whom three chosen from Cour de Cassation , three from Conseil d’Etat , & rest two from the above mentioned six. The ex-officio president is the Minsiter of Justice but he rarely attends & in place Vice-President presides. Le Tribunal de Conflicts has attained almost equal importance like its contemporary counterpart Conseil d’Etat. By this dual system of courts France has attained complete separation pf power between legislative, administration & judiciary. Conseil d’Etat is compared on the one hand with Privy Council of England & United States Court of Claims on the other.[16]

(a) Jurisdiction: Its jurisdiction is fundamentally different from English Law. The ordinary court to which one must resort for breach of droit administratif is Conseil d’Etat. Its jurisdiction is exercised through processes namely:

(i) Le Recours pour excès de pouvoir ( ultra vires): The plea of ular vires is the general synthesis which dominates all French law. The plea of ultra vires is based not on the violation of individual right but upon the destruction of an organic rule of service.[17] Initially the activity was just annulment, setting aside the ultra vires Act, but droit administrative ahs undergone evolution & since the close of the century’s first decade, it has been permissible to join in the same requetec, a claim for annulment, or revocation with one for damages & interest.

(ii) Le Recours Detournment de Pouvoir ( Abuse of power) :This remedy seems to have been applied as early as 1864 has greatly expanded. A threat by a prefect to disapprove certain municipal council proceedings until the commune had leased its presbytery, was declared an
abuse of power although a law of 1884 empowered prefects to control those municipal councils which appeared to oppose the government's political & religious views.[18]

(b) Procedure: Procedure in the great administrative courts is modeled on modern ideas of cheap, simple & effective justice.

(i) Parties: The moving party is called Requetant. Earlier it was necessary to show that the act complained of violated a legal right but that rule has been abandoned & it is now sufficient to show that the complainant possess interest which any other citizen would have in seeing the act nullified. After the separation Law 1905, vesting ownership of church in the state, the Conseil revoked on the Reque of the curate assigned by the Roman Catholic Bishop, a mayor's order forbidding religious services in the local church. Hence according to Garner any citizen may knock at its door & get annulment of an illegal administrative act. [19]

(ii) Pleadings: The moving party's plea is termed as requete & his opposition might present a defense by exception. Art 47 of French Code Penal was amended in 1872 so as to punish those who have infringed ordinances made by the administrative authority.

(iii) Proof: The plaintiff to be successful has to furnish direct & positive proof that the official had been actuated by motives foreign to the service. In religious cases it is sufficient for the plaintiff to establish that the reason given by the police upon which mayoral action must be based, did not exist in fact.

(iv) Appeals: When a suit is brought in a judicial court against a public functionary for an alleged faute personelle he often raises the controversy to the Tribunal des Conflicts & obtains an arrete de conflict, thus challenging the original court's decision. The tribunal des Conflicts may annul the arrete & remand the cause to a judicial court or let the arrete stand on the theory that the ground of the action is really a faute de service. [20]

(v) Costs: The complaint is required to be filed in a stamped paper & there is no enregistrement tax & since the function of the attorney is not obligatory. With limited costs a citizen can reach the supreme administrative court & get an illegal act annulled by the court.

Modern French Administrative law

Until the Revolution the State could expropriate money without giving indemnity. In France it is now agreed that the immunity of a state exists only when the act in question was a act of certain kind- a sovereign act in a restricted sense of the term & the tendency is to limit within the narrower & narrower bounds the immunity of the state.[21] In France the course has been to restrict within narrow limits the actes de Governement as to which the state is immune & to enforce liability for other acts. Governmental acts can be referred to as those which have been held by the administration to have that character. But broadly the chief acts which constitute the sovereign nature are:

(i) Acts of legislation including subordinate legislation of such official bodies 7 persons as have power to make regulations possessing statutory force;

(ii) The acts of diplomatic agents;
(iii) Acts done for the public security in time of war by competent military authorities, provided there was urgency;

(iv) Certain other acts of govt. such as declaration of material law & the expulsion of aliens from the territory.[22]

An important legislative change in France is the "Workmen's Compensation Act". It would have been unfair if a workman in course of his employment gets injured & the state takes the defense of carrying out sovereign power. But apart from this important statute, adapting law to modern conditions so as to satisfy our ideas of justice has been done by French courts. French law as to the responsibility of the state is one of the largest blocks of judge made law. The administrative law of France has shown remarkable development. The administrative law today is quite different from what it was 25yrs back. This change has been brought about by the courts & wholly by the courts. In France it is most important that the Govt. shouldn't be at the mercy of ordinary courts.[23] It was some time before it came to be settled in France that when damages were sought against the state in respect of acts done by the officials it shouldn't go to ordinary courts & decided by applying ordinary rules of civil law. The French courts enjoy a freedom which no other court of justice possess. The administrative courts are not bound by the civil laws or by their own previous judgments.[24] For more than forty years the administrative courts have been trying to build up their won law which is very modern in origin. The French administrative courts asseverate their power their freedom from civil laws & proclaim that the law which they administer is equity using that term as equivalent to natural justice. Accordingly the results which they have reached do not satisfy natural justice the decisions are self condemned. The French law in dealing with vicarious liability of employers do not speak of master & servant but of commettant & prepose which are far more correct than the English terms master & servant. [25] According to the French law a state is not a master who gives instructions to his servants .it is a moral person which like all other moral persons, acts by its organs. The moral person manifest its juridical life entirely in the acts of those who represent it. [26] Now if the act which caused the damage was official, the next question that arises is that whether there was an administrative fault. The administrative faults consist in an error a want of judgment, an omission or act of negligence such as the agent would not have been guilty if he would have lived up to this average standard, provided that the act or omission is official & not a personal act. A personal act would constitute a workman negligently throwing cigarette & setting the factory on fire as this is outside the purview of the act that has been assigned by the master. [27] This shows the refined nature of French administrative law which is unique & different from other common laws of England America.

The French legal system is monoistic, as soon as a legal treaty is duly ratified & implemented by the parties, the treaty becomes a part of the french law & is superior to the laws enacted by the parliament. The EEC treaty is not the only that takes precedence over domestic statutory laws within the hierarchy of norms: Article 55 of the constitution does not distinguish between EEC & other international treaties, but the impact of EEC law on daily life is much greater than the impact of most of other treaties ratified by France.[28] The most difficult question concerning EEC is that since the treaty is superior to legislation, therefore superior to regulations, so are French regulations void is they do not conform to the treaty. The counsel d'Etat has been questioned many times about this. The solution is that the treaty prevails & the regulations must conform to it. Two reasons for such a solution is – (i) Couseil d'Etat cannot
set aside legislation, & moreover it has never allowed itself to bring statutory law into conformity with the constitution or with any superior law, ( ii) if the court recognized the superiority of the treaty it would mean that the parliament had acted in violation of the constitution & breached the hierarchy of norms.[29] Conseil d’Etat has relied on the theory of, "statutory law as a screen." The important change was implemented in a case regarding contesting EEC parliamentary elections. Some years ago Conseil d’Etat declared that EEC regulations should have the same status as that of EEC treaty within the hierarchy of norms & consequently prevail over previous domestic laws. When an administrative authority fails to comply with these principles its decisions will be declared void. Due to various reasons about 30yrs ago the administrative law concerning sources of law & the relationships between international & domestic law has been reversed in a spectacular way but the result of this reversal that the High Administrative Courts will maintain its influence. In this respect we can point out to the court’s recent attribute towards the European Convention for the protection of Human Rights which shows how Conseil d’Etat broadens the source of law to which administrative action is subject in order to better protect the rights of the individuals.[30]

Conclusion

Through this essay we come across about quite a few details about the droit administratif & the influence it exerts on French administrative system. It’s a unique piece of administrative process which is very typical to France though other nations are trying to catch up to the essence of it because of the popularity that it has gained. Through this system France is able to comply with the doctrine of separation of power where different parts of the govt. is not supposed to interfere with other part of the govt. Since its birth, droit administratif has grown & improved over the period of time & has acquired efficiency & has become a paradigm for administrative law in the world.

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[2] Ibid 1 , pg- 112

[5] Ibid 5. pg- 356-357
[7] Ibid 6. pg- 360
[9] Supra 6. pg- 361
[17] Ibid 17. , pg- 43
[19] Ibid 18. , pg- 46
[21] F.P.Walton, French Administrative Courts & the Modern French Law as to the responsibility of the State for the faults of its officials in comparison with common law, HeinOnline -- 31 Jurid. Rev. 226 1919
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[23] F.P.Walton, French Administrative Courts & the Modern French Law as to the responsibility of the State for the faults of its officials in comparison with common law, HeinOnline -- 31 Jurid. Rev. 233 1919
[24] Ibid 23. , pg- 234
[26] Supra 23. , pg-236
[27] , F.P.Walton French Administrative Courts & the Modern French Law as to the responsibility of the State for the faults of its officials in comparison with common law, HeinOnline -- 31 Jurid. Rev. 238 1919
[29] Ibid 28. , pg- 99
Some basic consideration regarding to Administrative Procedural Law
**Rule of law: Main Principles**

- **Legality**
  - Law has to be in line with superior rules
  - No ambiguous regulations and decisions
- **Proportionality**
  - Necessity
  - Suitability
  - Proportionality in a strict sense
- **Legal Certainty**
  - Necessity
  - Suitability
  - Proportionality in a strict sense
  - No ambiguous regulations and decisions
  - Retroactivity limited
- **Parliamentarian Reservation**
  - Main decisions by the Parliament

**Law and administrative decisions**

- **Legislation**
  - General regulation
    - By Parliament
      - Statute law
        - Statutory power
  - Individual regulation
    - By Executive bodies
      - Ordinance (decrees...)
        - Statutory power

- **Execution**
  - Administrative decision/act

**Law and Administrative Acts**

- **Legislative Branch**
  - General regulations
    - Law
  - Individual regulations
- **Executive Branche**
  - Administrative Act
The Pyramid of Law

Regulations
(sub-decrees)
Statutes
Law enacted by Parliament
By-laws (Deika)

Constitution

Every statute, regulation and the by-law has to be in line with the constitution, otherwise it is null and void.

Regulations are legally binding stipulations enacted by an executive body (mostly ministry) on the base of a statutory authorization.

By-laws are legally binding stipulations enacted by an self-governed entity (commune e.g.) on the base of a statutory authorization.

Administrative decisions

Delegated Legislation
Administrative Act

The bylaw (Deika) banning tuk-tuk drivers from parking their tuk-tuks in front of the tourist area is a general regulation. It applies to each and everybody.

The order of the police to dissolve the demonstration is an individual regulation. It applies to a precise number of persons. You can count the demonstrators.

Public Law
Private Law

Delegated Legislation
Administrative Act
Private Contracts

Bylaw(Deika)
Sub-decret

Under certain circumstance AA can be replaced by public contracts.

Public administration acts like a private person (e.g. purchasing computers, office cars).
Three kinds of AA

Administrative Act

- Impose obligation
- Establish rights
- Declaratory AA

... have to...
must not

Permission Licence

Verification

Administrative proceedings

Can be triggered by:
- Legal obligation
- Application
- Discretion

Procedure:
1. Collecting all facts
2. Weighting
3. Consideration
4. Decision

Hearing – all parties concerned

Inquiry – Investigation on the facts

Notification to all parties concerned

Execution

Juridical review

AA with impact on third parties

Example: Construction permission

Wong (Applicant)

Application constr. permission

Permission (AA)

Authority

Third party

Neighbor

1. Have to be heard before permission is granted
2. Notification of AA
3. Right to file objections against AA
Discretion

Discretion

Option 1

Option 2

Option 3

Administrative/Judicial Review

1. Filing an objection with in 1 month after notification to the authority.
   - Remedy with the authority or ruling on objections of the (superior) authority.

2. Legal action to the Administrative Court

3. Appeal to the Administrative Court of Appeal (reviewing facts and law)

4. Further appeal to the Federal Administrative Court (review limited to federal law)

5. Constitutional complaint to the Constitutional Court (review limited to the Constitution)
How can Administrative Law Principles be Codified?

- Constitutional Provisions
- Administrative Code / Procedure Code
- Special Legislation
- Sub-Decrees and Prakas
- Code of Administrative Behaviour
- Alternative: Acceptance as "Customary Law"
### How to Research on Administrative Principles?

- Collecting Administrative Laws in Cambodia
- Collecting Foreign Administrative Codes
- Analysing Cambodian Textbooks
- Preparing a Glossary with “Working Definitions”

### Eight Principles

- Legality
- Proportionality
- Legal Certainty
- Equality, Impartiality, Neutrality and Fairness
- Due Administrative Procedure
- Remedies
- Liability
- Effectiveness and Efficiency

### Legality

- Supremacy of the Constitution
- Priority of the Law
- Necessity of the Law
- Limits to Delegated Legislation
- Publication and Accessibility of laws and regulations
Proportionality

1. Rationality / Suitability (Can the action achieve the goal?)
2. Necessity (Is it the mildest possible action?)
3. Adequateness / Balancing (Is the action not out of proportion to the designated end?)

Legal Certainty

- Clarity of legal provisions
- Limits to Retroactivity
- Protection of Justified Expectations

Equality, Impartiality, Neutrality and Fairness

- No discrimination based on gender, ethnicity, religion, membership in political party, personal relationships etc.
- Disqualification of officials with (potential) interest in a case
- Clear and structured procedure (see due procedure)
- No harrassment
Due Administrative Procedure

- Right to Hearing
- Right to Transparent Procedure
- Right to Representation
- Right to Access necessary Information
- Right to Confidentiality
- Right to get Advise
- Right to get a Decision
- Right to Recieve Reasons
- Right to be informed about Complaint Mechanisms
- Right to Clear Rules on Costs

Remedies

- Administrative Complaints (to same authority and/or higher authority)
- External informal Complaint Bodies (Ombudsman, Parliamentary Commissions, other watchdog bodies)
- Administrative Tribunals, Administrative Courts / Ordinary Courts
- Constitutional Court / Council
- International Complaint Mechanism (e.g. under CEDAW)

Liability

- What are the main reasons for compensation?
  - Compensation for expropriation
  - Compensation for legal limitation of property and other rights
  - Compensation for illegal action
- Who is liable?
  - Liability of the State
  - Liability of Public Servants
## Effectiveness and Efficiency

- Clear, transparent and enforceable rules
- Effective administrative structures / procedure
- Avoidance of unnecessary “red tape”
- „In dubio pro libertate“
Germany
Administrative Procedure Act
(Verwaltungsverfahrensgesetz, VwVfG)

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Part I: Scope, local competence, electronic communication, official assistance

Section 1 Scope
(1) This Act shall apply to the administrative activities under public law of the official bodies:

1. of the Federal Government and public law entities, institutions and foundations operated directly by the Federal Government,

2. of the Länder and local authorities and other public law entities subject to the supervision of the Länder where these execute federal legislation on behalf of the federal authorities,

where no federal law or regulation contains similar or conflicting provisions.

(2) This Act shall also apply to the administrative activities under public law of the authorities referred to in paragraph 1, no. 2 when the Länder of their own authority execute federal legislation within the exclusive or concurrent powers of the Federal Government, where no federal law or regulation contains similar or conflicting provisions. This shall apply to the execution of federal legislation enacted after this Act comes into force only to the extent that the federal legislation, with the agreement of the Bundesrat, declares this Act to be applicable.

(3) This Act shall not apply to the execution of federal law by the Länder where the administrative activity of the authorities under public law is regulated by a law on administrative procedure of the Länder.

(4) For the purposes of this Act "authorities" shall comprise any body which performs tasks of public administration.

Section 2 Exceptions
(1) This Act shall not apply to the activities of churches, religious bodies and communities of belief and their associations and institutions.

(2) This Act also shall not apply to:
1. procedures of the federal or local tax authorities under the German Fiscal Code,
2. criminal and other prosecutions and the punishment of administrative offences, judicial proceedings carried out on behalf of foreign legal authorities in criminal and civil matters and, notwithstanding section 80, paragraph 4, to measures relating to the legal status of the judiciary,
3. proceedings at the German Patent and Trade Mark Office and before its appointed arbitrators,
4. proceedings under the Social Code,
5. the law on the Equalisation of Burdens,
6. the law on restitution.

(3) As regards the activities:

1. of the court administrations and the administrative bodies of the judiciary, including the public law entities under their supervision, this Act shall apply only in so far as re-examination is subject to control in administrative court proceedings;
2. of the authorities in assessing individuals’ performance, suitability and the like, only sections 3a to 13, 20 to 27, 29 to 38, 40 to 52, 79, 80 and 96 shall apply;
3. of representatives of the Federal Government abroad, this Act shall not apply.

Section 3 Local competence

(1) The following shall be the provisions as regards local competence:

1. in matters relating to immovable assets or to a right or legal relationship linked to a certain place: the authority in whose districts the assets or the place is situated;
2. in matters relating to the running of a firm or one of its places of business, to the practice of a profession or to the carrying out of other permanent activity: the authority in whose district the firm or place of business is or is to be run, the profession practised or the permanent activity carried out;
3. in other matters relating to:
   a) natural persons: the authority in whose district the natural person is or last was normally resident,
   b) legal persons or associations: the authority in whose district the legal person or association is or last was legally domiciled;
4. in matters for which competence cannot be derived from nos. 1 to 3: the authority in whose district the event giving rise to the official action occurs.

(2) In the event of several authorities being competent under paragraph 1, the decision shall be taken by the authority first concerned with the matter unless the supervisory authority with overall competence in such matters determines that the decision shall be taken by another locally competent authority. In cases in which one and the same matter involves more than one place of business of a firm, the supervisory authority can appoint one of the authorities competent under paragraph 1, no. 2 as the authority with overall competence where this is called for in the interests of a uniform decision for all concerned. The said supervisory authority shall also decide as to local competence when a number of authorities consider themselves either to possess or not to possess the relevant competence or when for other reasons there is some doubt in the matter of competence. Where an overall
supervisory authority does not exist, the supervisory authorities competent in the matter shall take a decision jointly.

(3) If in the course of the administrative process some change in the circumstances determining competence occurs, the authority hitherto competent may continue the administrative process when this doing so is in the interest of simplicity and efficiency of execution while protecting the interests of those concerned and where the agreement of the authority now competent is obtained.

(4) Where delay involves a risk, any authority shall be locally competent to take measures which cannot be postponed when the event giving rise to the official action occurs in its district. The authority locally competent under paragraph 1, nos. 1 to 3 shall be informed immediately.

Section 3a Electronic communication

(1) The communication of electronic documents is permissible provided the recipient establishes access for this.

(2) Where legal provisions stipulate that a document be in written form, this may be replaced by electronic form unless determined otherwise by a legal provision. In this event the electronic document is to be provided with a qualified electronic signature in accordance with the Digital Signature Act. Signing with a pseudonym that makes it impossible to identify the person holding a signature key shall not be permissible.

(3) If an electronic document communicated to the authority is not suitable for processing by that authority, the authority shall inform the sender immediately, stating the technical specifications that apply. If a recipient claims that he is unable to process the electronic document communicated by the authority, it shall send it to him again in a suitable electronic format or as a written document.

Section 4 Authorities' duty to assist one another

(1) Each authority shall, when requested to do so, render assistance to other authorities (official assistance).

(2) It shall not be deemed official assistance when:

1. authorities assist each other in the course of a relationship in which one issues directives to another;

2. assistance involves actions which are the task of the authority approached.

Section 5 Circumstances permitting and limits to official assistance

(1) An authority may request official assistance particularly when:

1. for legal reasons it cannot itself perform the official action;

2. for material reasons, such as the lack of personnel or equipment needed to perform the official action, it cannot itself do so;

3. to carry out its tasks it requires knowledge of facts unknown to and unobtainable by it;

4. to carry out its tasks it requires documents or other evidence in the possession of the authority approached;

5. it could only carry out the task at substantially greater expense than the authority approached.

(2) The authority approached may not provide assistance when:

1. it is unable to do so for legal reasons;
2. such assistance would be seriously detrimental to the Federal Republic or to a Land thereof.

The authority approached shall not be obliged to submit documents or files nor to impart information when proceedings must be kept secret either by their nature or by law.

(3) The authority approached need not provide assistance when:

1. another authority can provide the same assistance with much greater ease or at much lower cost;
2. it could only provide such assistance at disproportionately great expense;
3. with regard to the tasks carried out by the authority requesting assistance, it could only provide such assistance by seriously jeopardizing its own work.

(4) The authority approached may not refuse assistance on the grounds that it considers the request inappropriate for reasons other than those given in paragraph 3, or considers the purpose to be achieved by the official assistance inappropriate.

(5) If the authority approached does not consider itself obliged to provide assistance, it shall so inform the authority making the request. If the latter insists that official assistance be provided, the decision as to whether or not an obligation to furnish such assistance exists shall be taken by the supervisory authority with overall competence in the matter or, where no such authority exists, the supervisory authority competent in matters with which the authority of whom the request is made is concerned.

Section 6 Choice of authority
If more than one authority comes into question as a possible provider of official assistance, assistance shall where possible be requested of an authority of the lowest administrative level of the administrative branch to which the authority requesting assistance belongs.

Section 7 Execution of official assistance
(1) The admissibility of the measure to be put into effect by official assistance shall be determined by the law applying to the authority requesting assistance; the official assistance shall be carried out in accordance with the law applying to the authority of which the request is made.

(2) The authority requesting assistance shall be responsible vis-à-vis the authority from which assistance is requested for the legality of the measure to be taken. The authority of which assistance is requested shall be responsible for the execution of the official assistance.

Section 8 Cost of official assistance

(1) The authority requesting assistance shall not be liable to pay the authority from which official assistance is requested any administrative fee for such assistance. It shall, however, reimburse the latter for individual expenses in excess of thirty-five (35) euros upon request. If authorities belonging to the same legal entity provide each other with assistance, no expenses shall be reimbursed.

(2) If the authority from which official assistance is requested undertakes an official action for which fees are charged, then that authority shall be entitled to such fees paid by a third party (administrative charges, fees, expenses).

Part II: General regulations governing administrative procedure

Division 1: Procedural principles

Section 9 Definition of administrative procedure

For the purposes of this Act, administrative procedure shall be the activity of authorities having an external effect and directed to the examination of basic requirements, the preparation and adoption of an administrative act or to the conclusion of an administrative agreement under public law; it shall include the adoption of the administrative act or the conclusion of the agreement under public law.

Section 10 Administrative procedure not tied to form

The administrative procedure shall not be tied to specific forms when no legal provisions exist which specifically govern procedural form. It shall be carried out in an uncomplicated, appropriate and timely fashion.

Section 11 Capacity to participate

The following shall be capable of participating in such procedures:

1. natural and legal persons,
2. associations, in so far as they can have rights,
3. authorities.

Section 12 Capacity to act

(1) The following shall be capable of acting in administrative procedures:

1. natural persons having legal capacity under civil law,
2. natural persons whose legal capacity is limited under civil law, where they are recognised as having legal capacity for the object of the procedure under civil law or capable of acting under public law,
3. legal persons and associations (section 11, no. 2) represented by their legal representatives or of specially appointed individuals,

4. authorities represented by their heads, representives or persons appointed by them.

(2) If there is a reservation of consent under section 1903 of the Civil Code regarding the object of the procedure, a person of legal capacity under the care of a custodian shall be deemed capable of acting in administrative procedures only in so far as he can act, under the provisions of civil law, without the consent of the custodian, or he is recognized as being capable of acting under the provisions of public law.

(3) Sections 53 and 55 of the Code of Civil Procedure shall apply mutatis mutandis.

Section 13 Participants
(1) Participants shall be:

1. those making and opposing an application,

2. those to whom the authority intends to direct or has directed the administrative act,

3. those with whom the authority intends to conclude or has concluded an agreement under public law,

4. those who have been involved in the procedure by the authority under paragraph 2.

(2) The authority may ex officio or upon request involve as participants those whose legal interests may be affected by the result of proceedings. Where such result has a legal effect for a third party, the latter may upon request be involved in the proceedings as a participant. If the authority is aware of such third parties, it shall inform them that proceedings have commenced.

(3) A person who is to be heard, but is not a participant within the sense of paragraph 1, does not thereby become a participant.

Section 14 Authorized representatives and advisers
(1) A participant may cause himself to be represented by a person authorised for that purpose. The authorisation shall empower the person to whom it is given to take all actions related to the administrative proceedings except where its contents indicate otherwise. The authorized person shall provide written evidence of his authorisation upon request. Any revocation of authorisation shall only become effective vis-à-vis the authority when received by it.

(2) Authorisation shall not be terminated either by the death of the person granting such authorisation, or by any change in his capacity to act or in his legal representative; when however appearing in the administrative proceedings on behalf of the legal successor, the authorized person shall upon request furnish written evidence of his authorisation.

(3) Where a person is appointed to act as representative in proceedings, he shall be the person with whom the authority deals. The authority may approach the actual participant where he is obliged to cooperate. If the authority does approach the participant, the authorized representative is to be informed. Provisions governing service on the representative shall remain unaffected.

(4) A participant may appear in negotiations and discussions with an adviser. Any points made by the adviser shall be deemed to have been put by the participant except where the latter immediately contradicts them.

(5) Authorized representatives and advisers shall be rejected where they provide legal services in violation of section 3 of the Legal Services Act.
(6) Authorised representatives and advisers may be refused permission to make submissions if they are unsuitable to do so; they may be refused permission to make a verbal submission only if they are not capable of proper representation. Persons authorized under section 67, paragraph 2, first and second sentence, items 3 to 7 of the Code of Administrative Court Procedure to act in administrative proceedings, may not be refused such permission.

(7) Refusal of permission under paragraphs 5 and 6 shall also be made known to the participant whose authorised representative or adviser is refused permission. Acts relating to the proceedings undertaken by the authorised representative or adviser after such refusal of permission shall be invalid.

Section 15 Appointment of an authorised recipient

A participant with no permanent or habitual residence, registered office or agency in Germany shall on request give to the authority the name of an authorised recipient in Germany within a reasonable period. Should he fail to do so, any document sent to him shall be regarded as received on the seventh day after its posting, and a document transmitted electronically shall be regarded as received on the third day after its transmission. This shall not apply if it is established that the document did not reach the recipient or reached him at a later date. The participant shall be informed of the legal consequences of this failure.

Section 16 Official appointment of a representative

(1) Where no representative is appointed, the guardianship court shall, at the request of the authority, appoint a suitable representative for:

1. a participant whose identity is unknown;

2. an absent participant whose residence is unknown or who is prevented from looking after his affairs;

3. a participant without residence within Germany who does not comply with the authority's request to nominate a representative within the period set;

4. a participant whose mental illness or physical, mental or emotional disability does not permit him to take part personally in the administrative proceedings;

5. matters which are the subject of proceedings and where there is no owner, claimant, or person responsible to defend the rights and obligations in question.

(2) In cases covered by paragraph 1, no. 4, the court responsible for appointing a representative shall be the guardianship court in whose district the participant has his habitual residence; otherwise, the court responsible shall be the guardianship court in whose district the authority making the request is located.

(3) The representative shall be entitled to claim a reasonable remuneration and refund of his expenses from the legal entity of the authority requesting his appointment. The authority may require the person represented to refund its expenses. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

(4) In other respects, the appointment and office of the representative in cases listed in paragraph 1, no. 4 shall be governed by the provisions on guardianship [Betreuung]; in other cases, the provisions on trusteeship [Pflegschaft] shall apply as appropriate.

Section 17 Representatives in the case of identical submissions

(1) In the case of applications and petitions submitted in an administrative proceeding signed by more than fifty persons, or presented in the form of duplicated and identical texts (identical submissions), the person deemed to be representing the other signatories shall be that signatory who is identified by
his name, profession and address as being their representative unless he is named by them as authorised representative [Bevollmächtigter]. Only a natural person may be a representative [Vertreter].

(2) The authority may disregard identical submissions which do not contain the information referred to in paragraph 1, first sentence clearly visible on each page containing a signature or which do not comply with the requirements of paragraph 1, second sentence. If the authority wishes to proceed in this manner, it must make the fact known by giving notice in accordance with local custom. The authority may, moreover, disregard identical submissions when the signatories have failed to give their name or address or have done so in an illegible manner.

(3) The power of representation shall lapse as soon as the representative or the person represented informs the authority in writing that this is the case. The representative may only make such a statement in respect of all the persons represented. If the person represented makes such a statement, he shall at the same time inform the authority whether he wishes to maintain his submission and whether he has appointed an authorised representative.

(4) Once the representative is no longer entitled to act, the authority may require the persons no longer represented to appoint a joint representative within a reasonable period. When the number of persons subject to such a requirement exceeds 50, the authority may make the fact known by giving notice in accordance with local custom. If the requirement is not complied with within the period set, the authority may ex officio appoint a joint representative.

Section 18 Representatives for participants with the same interests

(1) If more than fifty people are involved as participants in administrative proceedings with the same interests and are unrepresented, the authorities may require them within a reasonable period to appoint a joint representative where otherwise the regular execution of administrative proceedings would be impaired. If these persons do not comply within the period set, the authority may ex officio appoint a joint representative. Only a natural person may be a representative.

(2) The power of representation shall lapse as soon as the representative or person represented informs the authority in writing that this is the case. The representative may make such a statement only in respect of all the persons represented. If the person represented makes such a statement, he shall at the same time inform the authority whether he wishes to maintain his submission and whether he has appointed an authorised representative.

Section 19 Provisions relating to representatives in the case of identical submissions and those for participants with the same interests

(1) The representative shall protect carefully the interests of the persons he represents. He may undertake all actions relating to the administrative proceedings and shall not be tied to instructions.

(2) The provisions of section 14, paragraphs 5 to 7 shall apply mutatis mutandis.

(3) The representative appointed by the authority shall be entitled to claim from its legal entity a reasonable remuneration and refund of his expenses. The authority may require the persons represented to refund its expenditure in equal shares. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

Section 20 Persons excluded

(1) The following persons may not act on behalf of an authority:

1. a person who is himself a participant;

2. a relative of a participant;
3. a person representing a participant by virtue of the law or of a general authorisation or in the specific administrative proceedings;

4. a relative of a person who is representing a participant in the proceedings;

5. a person employed by a participant and receiving remuneration from him, or one active on his board of management, supervisory board or similar body; this shall not apply to a person whose employing body is a participant;

6. a person who, outside his official capacity, has furnished an opinion or otherwise been active in the matter. Anyone who may benefit or suffer directly as a result of the action or the decision shall be on an equal footing with the participant. This shall not apply when the benefit or disadvantage is based only on the fact that someone belongs to an occupational group or segment of the population whose joint interests are affected by the matter.

(2) Paragraph 1 shall not apply to elections to an honorary position or to the removal of a person from such a position.

(3) Any person excluded under paragraph 1 may, when there is a risk involved in delay, undertake measures which cannot be postponed.

(4) If a member of a committee (section 88) considers himself to be excluded, or where there is doubt as to whether the provisions of paragraph 1 apply, the chairman of the committee must be informed. The committee shall decide on the matter of exclusion; the person concerned shall not participate in the decision. The excluded member may not attend further discussions or be present when decisions are taken.

(5) Relatives for the purposes of paragraph 1, nos. 2 and 4 shall be:

1. fiancé(e)s,
2. spouses,
3. direct relations and direct relations by marriage,
4. siblings,
5. children of siblings,
6. spouses of siblings and siblings of spouses,
7. siblings of parents,
8. persons connected by a long-term foster relationship involving a shared dwelling in the manner of parents and children (foster parents and foster children).

The persons listed in sentence 1 shall be deemed to be relatives even where

1. the marriage producing the relationship in nos. 2, 3, and 6 no longer exists;
2. the relationship or relationship by marriage in nos. 3 to 7 ceases to exist through adoption;
3. in case no. 8, a shared dwelling is no longer involved, so long as the persons remain connected as parent and child.

**Section 21 Fear of prejudice**

(1) Where grounds exist to justify fears of prejudice in the exercise of official duty, or if a participant maintains that such grounds exist, anyone who is to be involved in administrative proceedings on behalf of an authority shall inform the head of the authority or the person appointed by him and shall
at his request refrain from such involvement. If the fear of prejudice relates to the head of the 
authority, the supervisory authority shall request him to refrain from involvement where he has not 
already done so of his own accord.

(2) Section 20, paragraph 4 shall apply as appropriate to a member of a committee (section 88).

**Section 22 Commencement of proceedings**
The authority shall decide after due consideration whether and when it is to instigate administrative 
proceedings. This shall not apply when the authority by law

1. must act ex officio or upon application;

2. may only act upon application and no such application is submitted.

**Section 23 Official language**

(1) The official language shall be German.

(2) If applications are made to an authority in a foreign language, or petitions, evidence, documents 
and the like are filed in a foreign language, the authority shall immediately require that a translation be 
provided. Where necessary the authority may require that the translation provided be made by a 
certified or publicly authorised and sworn translator or interpreter. If the required translation is not 
furnished without delay, the authority may, at the expense of the participant, itself arrange for a 
translation. Where the authority employs interpreters or translators, they shall receive remuneration in 
accordance with the appropriate provisions of the Judicial Remuneration and Compensation Act 
(Justizvergütungs– und –entschädigungsgesetz, JVEG).

(3) If a notice, application or statement of intent fixes a period within which the authority is to act in a 
certain manner and such notifications are received in a foreign language, the period shall commence 
only at the moment that a translation is available to the authority.

(4) If a notice, application or statement of intent received in a foreign language fixes a period for a 
participant vis-à-vis the authority, enforces a claim under public law or requires the 
fulfilment of an 
action, the said notice, application or statement of intent shall be considered as being received by the 
authority on the actual date of receipt where at the authority's request a translation is provided within 
the period fixed by the authority. Otherwise the moment of receipt of the translation shall be deemed 
definitive, unless international agreements provide otherwise. This fact should be made known when a 
period is fixed.

**Section 24 Principle of investigation**

(1) The authority shall determine the facts of the case ex officio. It shall determine the type and scope 
of investigation and shall not be bound by the participants’ submissions and motions to admit 
evidence.

(2) The authority shall take account of all circumstances of importance in an individual case, including 
those favourable to the participants.

(3) The authority shall not refuse to accept statements or applications falling within its sphere of 
competence on the ground that it considers the statement or application inadmissible or unjustified.

**Section 25 Advice and information**

(1) The authority shall cause statements or applications to be made or corrected when it is clear that 
these were not submitted or were incorrectly submitted only due to error or ignorance. It shall, where 
necessary, give information regarding the rights and duties of participants in the administrative 
proceedings.
(2) Where required, the authority shall proceed, even before an application is made, to discuss with the prospective applicant what evidence and documents he will have to submit as well as options for expediting the proceedings. Where it serves to expedite the proceedings, the authority should inform the applicant immediately upon receipt of the application about the expected duration of the proceedings and confirm whether or not the application and the relevant documents received are complete.

Section 26 Evidence

(1) The authority shall utilise such evidence as, after due consideration, it deems necessary in order to ascertain the facts of the case. In particular it may:

1. gather information of all kinds,
2. hear the evidence of participants, witnesses and experts or gather statements in writing or electronically from participants, experts and witnesses,
3. obtain documents and records,
4. visit and inspect the locality involved.

(2) The participants shall assist in ascertaining the facts of the case. In particular they shall state such facts and evidence as are known to them. A more extensive duty to assist in ascertaining the facts, and in particular the duty to appear personally or make a statement, shall exist only where the law specifically requires this.

(3) Witnesses and experts shall be obligated to make a statement or furnish opinions, when the law specifically requires this. When the authority has called upon witnesses and experts, they shall receive compensation or remuneration upon application in accordance with the appropriate provisions of the Judicial Remuneration and Compensation Act (Justizvergütungs- und -entschädigungsgesetz, JVEG).

Section 27 Affirmation in place of oath

(1) In ascertaining the facts of a case, the authority may require and accept an affirmation in place of oath only when the acceptance of such an affirmation concerning the matter involved and in the proceedings concerned is allowed by law or regulation and the authority has been legally declared competent. An affirmation in place of oath shall only be required where other means of establishing the truth are not available, have been without result or require disproportionate expense. An affirmation in place of oath may not be required of persons who are unfit to take an oath under section 393 of the Code of Civil Procedure.

(2) If an affirmation in place of oath is recorded in writing by an authority, the only persons authorised to make such a recording shall be the head of the authority, his general deputy and members of the civil service qualified for judicial office or who fulfil the requirements of section 110, first sentence of the German Judiciary Act. The head of the authority or his general deputy may authorise in writing other members of the civil service to act generally in this capacity or for individual cases.

(3) The person making the affirmation shall confirm the correctness of his statement on the matter concerned and declare "I affirm in place of an oath that to the best of my knowledge I have told the pure truth and have concealed nothing". Authorised representatives and advisers may take part in the recording of an affirmation in place of oath.

(4) Before an affirmation in place of oath is accepted, the person making the affirmation shall be informed of the significance of such an affirmation and the legal consequences under criminal law of making an incorrect or incomplete statement. The fact that this has been done must be included in the written record.
(5) The written record shall in addition contain the names of those present and the place and date of the record. The written record shall be read to the person making the affirmation for his approval, or, upon request, shall be made available for him to inspect. The fact that this has been done should be noted and signed by the person making the affirmation. The written record shall then be signed by the person receiving the affirmation in place of oath and by the person actually making the written record.

Section 28 Hearing of participants

(1) Before an administrative act affecting the rights of a participant may be executed, the latter must be given the opportunity of commenting on the facts relevant to the decision.

(2) This hearing may be omitted when not required by the circumstances of an individual case and in particular when:

1. an immediate decision appears necessary in the public interest or because of the risk involved in delay;
2. the hearing would jeopardise the observance of a time limit vital to the decision;
3. the intent is not to diverge, to his disadvantage, from the actual statements made by a participant in an application or statement;
4. the authority wishes to issue a general order or similar administrative acts in considerable numbers or administrative acts using automatic equipment;
5. measures of administrative enforcement are to be taken.

(3) A hearing shall not be granted when this is grossly against the public interest.

Section 29 Inspection of documents by participants

(1) The authority shall allow participants to inspect the documents connected with the proceedings where knowledge of their contents is necessary in order to assert or defend their legal interests. Until administrative proceedings have been concluded, the foregoing sentence shall not apply to draft decisions and work directly connected with their preparation. Where participants are represented as provided under sections 17 and 18, only the representatives shall be entitled to inspect documents.

(2) The authority shall not be obliged to allow the inspection of documents where this would interfere with the orderly performance of the authority's tasks, where knowledge of the contents of the documents would be to the disadvantage of the country as a whole or of one of the Länder, or where proceedings must be kept secret by law or by their very nature, i.e. in the rightful interests of participants or of third parties.

(3) Inspection of documents shall take place in the offices of the record-keeping authority. In individual cases, documents may also be inspected at the offices of another authority or of the diplomatic or consular representatives of the Federal Republic of Germany abroad. The authority keeping the records may make further exceptions.

Section 30 Secrecy

Participants shall be entitled to require that matters of a confidential nature, especially those relating to their private lives and business, shall not be revealed by the authority without permission.

Division 2: Time limits, deadlines, restoration

Section 31 Time limits and deadlines
(1) The calculation of time limits and the setting of deadlines shall be subject to the provisions of sections 187 to 193 of the Civil Code as appropriate, except where otherwise provided by paragraphs 2 to 5.

(2) A time limit set by an authority shall begin the day after the announcement of the time limit, except where the person concerned is informed otherwise.

(3) If the end of a time limit falls on a Sunday, a public holiday or a Saturday, the time limit shall end with the end of the next working day. This shall not apply when the person concerned has been informed that the time limit shall end on a certain day and has been referred to this provision.

(4) If an authority has to fulfil a task only for a certain period, this period shall end at the end of the last day thereof, even where this is a Sunday, a public holiday or a Saturday.

(5) A deadline fixed by an authority shall be observed even when it falls on a Sunday, a public holiday or a Saturday.

(6) When a time limit is fixed in terms of hours, Sundays, public holidays and Saturdays shall be included.

(7) Time limits fixed by an authority may be extended. Where such time limits have already expired, they may be extended retrospectively, particularly when it would be unfair to allow the legal consequences resulting from expiration of the time limit to stand. The authority may combine the extension of the time limit with an additional stipulation under section 36.

Section 32 Restoration of the status quo ante

(1) Where a person has through no fault of his own been prevented from observing a statutory time limit, he shall, upon request, be granted a restoration of his original legal position. The fault of a representative shall be deemed to be that of the person he represents.

(2) Such an application must be made within two weeks of the removal of the obstacle. The facts justifying the application must be substantiated when the application is made or during the proceedings connected with the application. The action which the person has failed to carry out must be effected within the application period. If this is done, restoration may be granted even without application.

(3) After one year has elapsed from the end of the time limit which was not observed, no application for restoration may be made and the action not carried out cannot be made good, except where it was impossible for this to be done within the period of a year for reasons of force majeure.

(4) The application for restoration shall be decided upon by the authority responsible for deciding on the matter of the action not carried out.

(5) Restoration shall not be permitted when this is excluded by legal provision.

Division 3: Official certification

Section 33 Certification of documents

(1) Every authority shall be authorised to certify as true copies of documents it has itself issued. In addition, authorities empowered by statutory instrument of the Federal Government under section 1, paragraph 1, no. 1 and the authorities empowered under the law of the Länder may certify copies as true where the original document was issued by an authority or the copy is required for submission to an authority, except where the law provides that the issuing of certified copies of documents from official records and archives is the exclusive province of other authorities; the statutory instrument does not require approval of the Bundesrat.
(2) Copies may not be certified as true when circumstances justify the assumption that the original contents of the documents, the copy of which is to be certified, have been changed, and particularly when the document concerned contains gaps, deletions, insertions, amendments, illegible words, figures or signs, traces of the erasure of words, figures or signs, or where the continuity of a document composed of several sheets has been interrupted.

(3) A copy is certified as true by means of a certification note placed at the end of the copy. This note must contain:

1. an exact description of the document of which a copy is being certified,
2. a statement that the certified copy is identical with the original document submitted,
3. a statement to the effect that the certified copy is only issued for submission to the authority specified, when the original document was not issued by an authority,
4. the place and date of certification, the signature of the official responsible for certification and the official stamp.

(4) Paragraphs 1 to 3 shall apply accordingly to the certification of

1. photocopies, phototypes and similar reproductions produced by technical means,
2. negatives of written documents, which are produced by photographic means and stored by an authority,
3. print-outs of electronic documents,
4. electronic documents,
   a) produced to reproduce a written document,
   b) which have been given a technical format different to that of the initial document associated with a qualified electronic signature.

(5) In addition to what is stated in paragraph 3 second sentence, the certification note must in the case of certification of

1. the print-out of an electronic document associated with a qualified electronic signature contain a statement of
   a) whom the signature check identifies as holder of the signature,
   b) the date shown by the signature check for the application of the signature, and
   c) which certificates containing which data this signature was based on;
2. an electronic document contain the name of the official responsible for certification and the designation of the authority carrying out certification; the signature of the official responsible for certification and the official seal in accordance with paragraph 3 second sentence number 4 shall be replaced by a permanently verifiable qualified electronic signature.

If an electronic document given a different technical format to the initial document associated with a qualified electronic signature is certified in accordance with sentence 1 number 2, the certification note must in addition contain the statements described in sentence 1 number 1 for the initial document.

(6) Where certified, the documents produced in accordance with paragraph 4 shall be equivalent to certified copies.

**Section 34 Certification of signatures**
(1) The authorities empowered by statutory orders by the Federal Government under section 1, paragraph 1, no. 1 and the authorities empowered under the law of the Länder may certify signatures as true when the signed document is required for submission to an authority or other official body to which the signed document must be submitted by law. This shall not apply to:

1. signatures without accompanying text,
2. signatures which require public certification under section 129 of the Civil Code.

(2) A signature may only be certified when it has been made or acknowledged in the presence of the certifying official.

(3) The certification note shall be placed immediately adjacent to the signature to be certified and must contain:

1. a statement that the signature is genuine,
2. an exact identification of the person whose signature is certified, and also a statement as to whether the official responsible for certification was satisfied as to the identity of the person and whether the signature was made or acknowledged in his presence,
3. a statement that the certification is only for submission to the authority or other body mentioned,
4. the place and date of certification, the signature of the official responsible for certification and the official stamp.

(4) Paragraphs 1 to 3 apply mutatis mutandis to the certification of personal identificatory marks.

(5) Statutory instruments under paragraphs 1 and 4 do not require the approval of the Bundesrat.

Part III: Administrative acts

Division 1: Materialisation of an administrative act

Section 35 Definition of an administrative act
An administrative act shall be any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. A general order shall be an administrative act directed at a group of people defined or definable on the basis of general characteristics or relating to the public law aspect of a matter or its use by the public at large.

Section 36 Additional stipulations to an administrative act
(1) An administrative act which a person is entitled to claim may be accompanied by an additional stipulation only when this is permitted by law or when it is designed to ensure that the legal requirements for the administrative act are fulfilled.

(2) Notwithstanding the provisions of paragraph 1, an administrative act may, after due consideration, be issued with:

1. a stipulation to the effect that a privilege or burden shall begin or end on a certain date or shall last for a certain period (time limit);
2. a stipulation to the effect that the commencement or ending of a privilege or burden shall depend upon a future occurrence which is uncertain (condition);
3. a reservation regarding annulment;
or be combined with

4. a stipulation requiring the beneficiary to perform, suffer or cease a certain action (obligation);

5. a reservation to the effect that an obligation may subsequently be introduced, amended or supplemented.

(3) An additional stipulation may not counteract the purpose of the administrative act.

Section 37 Determinateness and form of an administrative act

(1) An administrative act must be sufficiently clearly defined in content.

(2) An administrative act may be issued in written, electronic, verbal or other form. A verbal administrative act must be confirmed in writing or electronically when there is justified interest that this should be done and the person affected requests this immediately. An electronic administrative act shall be confirmed in writing under the same conditions; section 3a, paragraph 2 shall not apply in this respect.

(3) A written or electronic administrative act must indicate the issuing authority and contain the signature or name of the head of the authority, his representative or deputy. If electronic form is used for an administrative act for which written form is ordered by a legal provision, the qualified certificate on which the electronic signature is based or an associated qualified certificate of attribution shall also indicate the issuing authority.

(4) For an administrative act, permanent verifiability may be prescribed by a legal provision for the signature required in accordance with section 3a, paragraph 2.

(5) In the case of a written administrative act issued by means of automatic equipment, the signature and name required in paragraph 3 above may be omitted. Symbols may be used to indicate content where the person for whom the administrative act is intended or who is affected is able to comprehend its contents clearly from the explanations given.

Section 38 Assurance

(1) The agreement by a competent authority to issue a certain administrative act at a later date or not to do so (assurance) must be in writing in order to be valid. If, before the administrative act in respect of which such assurance was given, participants have to be heard or the participation of another authority or of a committee is required by law, the assurance may only be given after the participants have been heard or after participation of such authority or committee.

(2) Notwithstanding the provisions of paragraph 1, first sentence, section 44 shall apply as appropriate to the invalidity of the assurance; section 45, paragraph 1, nos. 3 to 5 and paragraph 2 shall apply as appropriate to the remedies of deficiencies in the hearing of participants and the participation of other authorities or committees; section 48 shall apply as appropriate to withdrawal; and, notwithstanding paragraph 3, section 49 shall apply as appropriate to revocation.

(3) After an assurance has been given the basic facts or legal situation of the case change to such an extent that, had the authority known of the subsequent change, it would not have given the assurance or could not have done so for legal reasons, the authority is no longer bound by its assurance.

Section 39 Grounds for an administrative act

(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of grounds. This statement of grounds must contain the chief material and legal grounds led the authority to take its decision. The grounds given in connection with discretionary decisions should also contain the points of view which the authority considered while exercising its powers of discretion.
(2) No statement of grounds is required:

1. when the authority is granting an application or is acting upon a declaration and the administrative act does not infringe upon the rights of another;

2. when the person for whom the administrative act is intended or who is affected by the act is already acquainted with the opinion of the authority as to the material and legal positions and able to comprehend it without argumentation;

3. when the authority issues identical administrative acts in considerable numbers or with the help of automatic equipment and individual cases do not merit a statement of grounds;

4. when this derives from a legal provision;

5. when a general order is publicly promulgated.

Section 40 Discretion
Where an authority is empowered to act at its discretion, it shall do so in accordance with the purpose of such empowerment and shall respect the legal limits to such discretionary powers.

Section 41 Notification of an administrative act
(1) An administrative act shall be made known to the person for whom it is intended or who is affected thereby. Where an authorized representative is appointed, the notification may be addressed to him.

(2) A written administrative act shall be deemed notified on the third day after posting if posted to an address within Germany. An administrative act transmitted electronically within Germany or abroad shall be deemed notified on the third day after sending. This shall not apply if the administrative act was not received or was received at a later date; in case of doubt the authority must prove the receipt of the administrative act and the date of receipt.

(3) An administrative act may be publicly promulgated where this is permitted by law. A general order may also be publicly promulgated when notification of those concerned is impracticable.

(4) The public promulgation of an administrative act in written or electronic form shall be effected by advertising the operative part in accordance with local custom. Promulgation shall state where the administrative act and its statement of grounds may be inspected. The administrative act shall be deemed to have been promulgated two weeks after the date of advertising in accordance with local custom. A general order may fix a different day for this purpose but in no case may this be earlier than the date following advertisement.

(5) Provisions governing the promulgation of an administrative act by service shall remain unaffected.

Section 42 Obvious errors in an administrative act
The authority may at any time correct typographical mistakes, errors in calculation and similar obvious inaccuracies in an administrative act. When the person concerned has a justifiable interest, correction must be undertaken. The authority shall be entitled to request presentation of the document for correction.

Section 42a Fictitious approval
(1) Upon expiry of a specified decision-making period, an approval that has been applied for shall be deemed granted (fictitious approval) if this is stipulated by law and if the application is sufficiently clearly defined in content. The regulations concerning the validity of administrative acts and the proceedings for legal remedy shall apply mutatis mutandis.

(2) The decision-making period pursuant to paragraph 1 fist sentence shall be three months unless otherwise stipulated by law. The period starts upon receipt of the complete application documents.
It may be extended once by a reasonable period of time if this is warranted by the complexity of the matter. Any such extension of the decision-making period shall be justified and communicated in good time.

(3) Upon request, the fact that the approval is deemed granted (fictitious approval) shall be confirmed in writing to the person to whom the administrative act would have had to be notified pursuant to section 41, paragraph 1.

**Division 2: Validity of an administrative act**

**Section 43 Validity of an administrative act**

(1) An administrative act shall become effective vis-à-vis the person for whom it is intended or who is affected thereby at the moment he is notified thereof. The administrative act shall apply in accordance with its tenor as notified.

(2) An administrative act shall remain effective for as long as it is not withdrawn, annulled, otherwise cancelled or expires for reasons of time or for any other reason.

(3) An administrative act which is invalid shall be ineffective.

**Section 44 Invalidity of an administrative act**

(1) An administrative act shall be invalid where it is very gravely erroneous and this is apparent when all relevant circumstances are duly considered.

(2) Regardless of the conditions laid down in paragraph 1, an administrative act shall be invalid if:

   1. it is issued in written or electronic form but fails to show the issuing authority;
   2. by law it can be issued only by means of the delivery of a document, and this method is not followed;
   3. it has been issued by an authority acting beyond its powers as defined in section 3, paragraph 1, no. 1 and without further authorisation;
   4. it cannot be implemented by anyone for material reasons;
   5. it requires an action in contravention of the law incurring a sanction in the form of a fine or imprisonment;
   6. it offends against morality.

(3) An administrative act shall not be invalid merely because:

   1. provisions regarding local competence have not been observed, except in a case covered by paragraph 2, no. 3;
   2. a person excluded under section 20, paragraph 1, first sentence, nos. 2 to 6 is involved;
   3. a committee required by law to play a part in the issuing of the administrative act did not take or did not have a quorum to take the necessary decision;
   4. the collaboration of another authority required by law did not take place.

(4) If the invalidity applies only to part of the administrative act it shall be entirely invalid where the invalid portion is so substantial that the authority would not have issued the administrative act without the invalid portion.
(5) The authority may ascertain invalidity at any time ex officio; it must be ascertained upon application when the person making such an application has a justified interest in so doing.

Section 45 Making good defects in procedure or form

(1) An infringement of the regulations governing procedure or form which does not render the administrative act invalid under section 44 shall be ignored when:

1. the application necessary for the issuing of the administrative act is subsequently made;
2. the necessary statement of grounds is subsequently provided;
3. the necessary hearing of a participant is subsequently held;
4. the decision of a committee whose collaboration is required in the issuing of the administrative act is subsequently taken;
5. the necessary collaboration of another authority is subsequently obtained.

(2) Actions referred to in paragraph 1 may be made good up to the final court of administrative proceedings.

(3) Where an administrative act lacks the necessary statement of grounds or has been issued without the necessary prior hearing of a participant, so that the administrative act was unable to be contested in good time, failure to observe the period for legal remedy shall be regarded as unintentional. The event resulting in restoration of the status quo ante under section 32, paragraph 2 shall be deemed to occur when omission of the procedural action is made good.

Section 46 Consequences of defects in procedure and form

Application for annulment of an administrative act which is not invalid under section 44 cannot be made solely on the ground that the act came into being through the infringement of regulations governing procedure, form or local competence, where it is evident that the infringement has not influenced the decision on the matter.

Section 47 Converting a defective administrative act

(1) A defective administrative act may be converted into a different administrative act when it has the same aim, could legally have been issued by the issuing authority using the procedures and forms in fact adopted, and when the requirements for its issue have been fulfilled.

(2) Paragraph 1 shall not apply when the different administrative act would contradict the clearly recognisable intention of the issuing authority or when its legal consequences would be less favourable for the person affected than those of the defective act. Conversion is not permissible when the withdrawal of the administrative act would not be allowable.

(3) A decision dictated by a legal requirement cannot be converted into a discretionary decision.

(4) Section 28 shall apply mutatis mutandis.

Section 48 Withdrawal of an unlawful administrative act

(1) An unlawful administrative act may, even after it has become non-appealable, be withdrawn wholly or in part either retrospectively or with effect for the future. An administrative act which gives rise to a right or an advantage relevant in legal proceedings or confirms such a right or advantage (beneficial administrative act) may only be withdrawn subject to the restrictions of paragraphs 2 to 4.

(2) An unlawful administrative act which provides for a one-time or continuing payment of money or a divisible material benefit, or which is a prerequisite for these, may not be withdrawn so far as the beneficiary has relied upon the continued existence of the administrative act and his reliance deserves
protection relative to the public interest in a withdrawal. Reliance is in general deserving of protection when the beneficiary has utilised the contributions made or has made financial arrangements which he can no longer cancel, or can cancel only by suffering a disadvantage which cannot reasonably be asked of him. The beneficiary cannot claim reliance when:

1. he obtained the administrative act by false pretences, threat or bribery;

2. he obtained the administrative act by giving information which was substantially incorrect or incomplete;

3. he was aware of the illegality of the administrative act or was unaware thereof due to gross negligence.

In the cases provided for in sentence 3, the administrative act shall in general be withdrawn with retrospective effect.

(3) If an unlawful administrative act not covered by paragraph 2 is withdrawn, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on the existence of the act to the extent that his reliance merits protection having regard to the public interest. Paragraph 2, third sentence shall apply. However, the disadvantage in financial terms shall be made good to an amount not to exceed the interest which the person affected has in the continuance of the administrative act. The financial disadvantage to be made good shall be determined by the authority. A claim may only be made within a year, which period shall commence as soon as the authority has informed the person affected thereof.

(4) If the authority learns of facts which justify the withdrawal of an unlawful administrative act, the withdrawal may only be made within one year from the date of gaining such knowledge. This shall not apply in the case of paragraph 2, third sentence, no. 1.

(5) Once the administrative act has become non-appealable, the decision concerning withdrawal shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be withdrawn has been issued by another authority.

Section 49 Revocation of a legal administrative act

(1) A lawful, non-beneficial administrative act may, even after it has become non-appealable, be revoked wholly or in part with effect for the future, except when an administrative act of like content would have to be issued or when revocation is not allowable for other reasons.

(2) A lawful, beneficial administrative act may, even when it has become non-appealable, be revoked in whole or in part with effect for the future only when:

1. revocation is permitted by law or the right of revocation is reserved in the administrative act itself;

2. the administrative act is combined with an obligation which the beneficiary has not complied with fully or not within the time limit set;

3. the authority would be entitled, as a result of a subsequent change in circumstances, not to issue the administrative act and if failure to revoke it would be contrary to the public interest;

4. the authority would be entitled, as a result of an amendment to a legal provision, not to issue the administrative act where the beneficiary has not availed himself of the benefit or has not received any benefits derived from the administrative act and when failure to revoke would be contrary to the public interest, or

5. in order to prevent or eliminate serious harm to the common good. Section 48 paragraph 4 applies mutatis mutandis.
(3) A lawful administrative act which provides for a one-time or a continuing payment of money or a divisible material benefit for a particular purpose, or which is a prerequisite for these, may be revoked even after such time as it has become non-appealable, either wholly or in part and with retrospective effect,

1. if, once this payment is rendered, it is not put to use, or is not put to use either without undue delay or for the purpose for which it was intended in the administrative act;

2. if the administrative act had an obligation attached to it which the beneficiary either fails to satisfy or does not satisfy within the stipulated period. Section 48 paragraph 4 applies mutatis mutandis.

(4) The revoked administrative act shall become null and void with the coming into force of the revocation, except where the authority fixes some other date.

(5) Once the administrative act has become non-appealable, decisions as to revocation shall be taken by the authority competent under section 3. This shall also apply when the administrative act to be revoked has been issued by another authority.

(6) In the event of a beneficial administrative act being revoked in cases covered by paragraph 2, nos. 3 to 5, the authority shall upon application make good the disadvantage to the person affected deriving from his reliance on the continued existence of the act to the extent that his reliance merits protection. Section 48, paragraph 3, third to fifth sentences shall apply as appropriate. Disputes concerning compensation shall be settled by the ordinary courts.

**Section 49a Reimbursement, interest**

(1) Where an administrative act is either withdrawn or revoked with retrospective effect, or where it becomes invalid as a result of the occurrence of a condition which renders it null and void, any payments or contributions which have already been made shall be returned. The amount of such a reimbursement shall be stipulated in a written administrative act.

(2) The amount to be reimbursed, excepting interest, is governed by the relevant provisions of the Civil Code on surrendering undue enrichment. The beneficiary is not entitled to claim that enrichment no longer exists where he was either aware of the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid, or failed as a result of gross negligence to be aware of this.

(3) Interest shall be due on the amount to be reimbursed from the date on which the administrative act becomes invalid at a rate of 5 (five) per cent per annum above the currently valid Discount Rate of the German Federal Bank [Deutsche Bundesbank]. The payment of interest may be waived where the beneficiary cannot be held responsible for the circumstances which led to the administrative act being withdrawn, revoked or becoming invalid, or repays the amount in full within the time limit stipulated by the authority.

(4) If a reimbursement is not put to use upon receipt immediately and for the intended purpose, the payment of interest may be demanded at the level stated in paragraph 3, first sentence for the period up to the date at which it is put to its designated use. The same shall apply as far as a reimbursement is claimed, even when other funds are to be used proportionally or preferentially. The provisions of section 49, paragraph 3, first sentence, no. 1 remain unaffected.

**Section 50 Withdrawal and revocation in proceedings for a legal remedy**

Section 48, paragraph 1, second sentence and paragraphs 2 to 4 and section 49, paragraphs 2 to 4 and 6 shall not apply when a beneficial administrative act which has been contested by a third party is annulled during a preliminary procedure, or during proceedings before the administrative court, and the annulment operates in favour of the third party.
Section 51 Resumption of proceedings

(1) The authority shall, upon application by the person affected, decide concerning the annulment or amendment of a non-appealable administrative act when:

1. the material or legal situation basic to the administrative act has subsequently changed to favour the person affected;
2. new evidence is produced which would have meant a more favourable decision for the person affected;
3. there are grounds for resumption of proceedings under section 580 of the Code of Civil Procedure.

(2) An application shall only be acceptable when the person affected was, without grave fault on his part, unable to enforce the grounds for resumption in earlier proceedings, particularly by means of a legal remedy.

(3) The application must be made within three months, this period to begin with the day on which the person affected learnt of the grounds for resumption of proceedings.

(4) The decision regarding the application shall be made by the authority competent under section 3; this shall also apply when the administrative act which is to be annulled or amended was issued by another authority.

(5) The provisions of section 48, paragraph 1, first sentence and of section 49, paragraph 1 shall remain unaffected.

Section 52 Return of documents and other materials

When an administrative act has been revoked or withdrawn and appeal is no longer possible, or the administrative act is ineffective or no longer effective for other reasons, the authority may require such documents or materials as have been distributed as a result of the administrative act, and which serve to prove the rights deriving from the administrative act or its exercise, to be returned. The holder and, where this person is not the owner, also the owner of these documents or materials are obliged to return them. However, the holder or owner may require that the documents or materials be handed back to him once the authority has marked them as invalid. This shall not apply to materials for which such a marking is impossible or cannot be made with the necessary degree of visibility or permanence.

Division 3: Legal effects of an administrative act on the statute of limitations

Section 53 Suspension of the statute of limitations by administrative act

(1) An administrative act which is issued in order to determine or enforce the claim of a legal entity under public law suspends the statute of limitations in respect of the claim. This suspension shall continue until the administrative act has become non-appealable or 6 months after it has been otherwise settled.

(2) If an administrative act has become non-appealable within the meaning of paragraph 1, the time limit shall be set at 30 years. As far as the administrative act involves a claim to regularly recurring payments due in the future, the time limit that applies to this claim shall remain in force.

Part IV: Agreement under public law

Section 54 Admissibility of an agreement under public law

A legal relationship under public law may be constituted, amended or annulled by agreement (agreement under public law) in so far as this is not contrary to legal provision. In particular, the
authority may, instead of issuing an administrative act, conclude an agreement under public law with
the person to whom it would otherwise direct the administrative act.

Section 55 Compromise agreements
The authority may conclude an agreement under public law within the meaning of section 54, second
sentence, which eliminates an uncertainty existing even after due consideration of the facts of the case
or of the legal situation by mutual yielding (compromise) if the authority considers the conclusion of
such a compromise agreement advisable in order to eliminate the uncertainty.

Section 56 Exchange agreements
(1) An agreement under public law within the meaning of section 54, second sentence and under
which the party to the agreement binds himself to give the authority a consideration may be concluded
when the consideration is agreed in the contract as being for a certain purpose and serves the authority
in the fulfilment of its public tasks. The consideration must be in proportion to the overall
circumstances and be materially connected with the contractual performance of the authority.

(2) Where a claim to the performance of the authority exists, only such considerations may be agreed
which might form the subject of an additional stipulation under section 36, were an administrative act
to be issued.

Section 57 Written form
An agreement under public law must be in written form except where another form is prescribed by
law.

Section 58 Agreement of third parties and authorities
(1) An agreement under public law which infringes upon the rights of a third party shall become valid
only when the third party gives his agreement in writing.

(2) If an agreement is concluded instead of an administrative act, the issuing of which by law would
require the acceptance, agreement or approval of another authority, the agreement shall not become
valid until the other authority has collaborated in the form prescribed.

Section 59 Invalidity of an agreement under public law
(1) An agreement under public law shall be invalid when its invalidity derives from the appropriate
application of provisions of the Civil Code.

(2) An agreement within the meaning of section 54, second sentence shall also be invalid when:

1. an administrative act with equivalent content would be invalid;

2. an administrative act with equivalent content would be unlawful not merely for a deficiency
   in procedure or form under section 46, and this fact was known to the parties;

3. the conditions for conclusion of a compromise agreement were not fulfilled and an
   administrative act with similar content would be unlawful not merely for a deficiency in
   procedure or form under section 46;

4. the authority requires a consideration which is not permissible under section 56.

(3) If only a part of the agreement is invalid, it shall be invalid in its entirety, unless it can be assumed
that it would also have been concluded without the part which is invalid.

Section 60 Adaptation and termination in special cases
(1) If the circumstances which determined the content of the agreement have altered since the agreement was concluded so substantially that one party to the agreement cannot reasonably be expected to adhere to the original provisions of the agreement, this party may demand that the content of the agreement be adapted to the changed conditions or, where such adaptation is impossible or not reasonably to be expected of the other party, may terminate the agreement. The authority may also terminate the agreement in order to avoid or eliminate grave harm to the common good.

(2) Termination must be in written form, except where the law prescribes another form. Reasons for termination must be stated.

Section 61 Submission to immediate enforcement

(1) Any party to an agreement may submit to immediate enforcement deriving from an agreement under public law within the meaning of section 54, second sentence. The authority must in this case be represented by the head of the authority, his general deputy or a member of the civil service qualified for judicial office or fulfilling the requirements of section 110, first sentence of the German Judiciary Act.

(2) The federal law on administrative enforcement shall apply mutatis mutandis to agreements under public law within the meaning of paragraph 1, first sentence when the party entering upon the agreement is an authority within the meaning of section 1, paragraph 1, no. 1. If a natural or legal person under private law or an association not having legal capacity effects enforcement for a monetary claim, section 170, paragraphs 1 to 3 of the Code of Administrative Court Procedure shall apply mutatis mutandis. If enforcement is designed to obtain performance, suffering or non-performance of an action against an authority within the meaning of section 1, paragraph 1, no. 1, section 172 of the Code of Administrative Court Procedure shall again apply as appropriate.

Section 62 Supplementary application of provisions

As far as sections 54 to 61 do not provide otherwise, the remaining provisions of this Act shall apply. The provisions of the Civil Code shall also additionally apply as appropriate.

Part V: Special types of procedures

Division 1: Formal administrative proceedings

Section 63 Application of provisions concerning formal administrative proceedings

(1) Formal administrative proceedings pursuant to this Act take place when required by law.

(2) Formal administrative proceedings are governed by sections 64 to 71 and, unless they provide otherwise, the other provisions of this Act.

(3) Notice under section 17, paragraph 2, second sentence and the requirement under section 17, paragraph 4, second sentence shall be publicly announced in formal administrative proceedings. Public announcement shall be effected when the notification or the requirement is published by the authority in its official bulletin and also in local daily newspapers which circulate widely in the district in which the decision may be expected to have its effects.

Section 64 Form of applications

If formal administrative proceedings require an application, this shall be made in writing or be recorded in writing by the authorities.

Section 65 Participation of witnesses and experts
(1) In formal administrative proceedings witnesses are obliged to give evidence and experts to provide opinions. The provisions of the Code of Civil Procedure regarding the obligation to give evidence as a witness or to furnish an opinion as an expert, the rejection of experts and the hearing of statements by members of the civil service as witnesses or experts shall apply mutatis mutandis.

(2) If witnesses or experts refuse to give evidence or to furnish an opinion in the absence of any of the grounds referred to in sections 376, 383 to 385 and 408 of the Code of Civil Procedure, the authority can ask the administrative court competent in the area in which the witness or expert has his domicile or normal residence to take evidence. If the domicile or normal residence of the witness or expert is not at a place where there is an administrative court or specially constituted chamber, the competent municipal court may be requested to take the evidence. In making its request the authority must state the subject of the examination and the names and addresses of those concerned. The court shall inform those concerned of the dates on which evidence will be taken.

(3) If the authority considers it advisable for statements to be made under oath in view of the importance of the evidence of a witness or of the opinion of an expert, or in order to ensure that the truth is told, it may request the court competent under paragraph 2 to administer the oath.

(4) The court shall decide as to the legality of a refusal to give evidence or an opinion or to take the oath.

(5) An application under paragraph 2 or 3 to the court may be made only by the head of an authority, his general deputy or a member of the civil service qualified for judicial office or fulfilling the conditions of section 110, first sentence of the German Judiciary Act.

Section 66 Obligation to hear participants

(1) In formal administrative proceedings the participants shall be afforded the opportunity of making a statement before a decision is taken.

(2) Participants shall be afforded an opportunity of attending hearings of witnesses and experts and inspecting the locality concerned and of asking pertinent questions. They shall be furnished with a copy of any opinion existing in written or electronic form.

Section 67 Need for an oral hearing

(1) The authority shall decide after an oral hearing, to which the participants shall be invited in writing on due notice. The invitations should point out that if a participant fails to appear, the discussions can proceed and decisions be taken in his absence. If more than 50 invitations must be sent, this may be done by public announcement. Public announcement shall be effected by publishing the date of the hearing at least two weeks beforehand in the official bulletin of the authority, and also in the local daily newspapers with wide circulation in the district in which the decision may be expected to have its effect, reference being accordingly made to the third sentence. The period referred to in the fifth sentence shall be calculated from the date of publication in the official bulletin.

(2) The authority may reach a decision without an oral hearing when:

1. an application is fully complied with by agreement between all concerned;
2. within the period set for this purpose no party has entered opposition to the intended measure;
3. the authority has informed the participants that it intends to reach a decision without an oral hearing and no participant opposes this within the period set for this purpose;
4. all participants have agreed to waive the hearing;
5. an immediate decision is necessary because of the risk involved in delay.

(3) The authority shall pursue proceedings so as to ensure that if possible the matter can be settled in one session.

**Section 68 Conduct of oral hearings**

(1) The oral hearing shall not be public. It may be attended by representatives of the supervisory authority and by persons working with the authority for training purposes. The person in charge of the hearing may admit other people if no participant objects.

(2) The person in charge of the hearing shall discuss the matter with the parties concerned. He shall endeavour to clarify applications which are unclear, to see that relevant applications are made, inadequate statements supplemented and that all explanations necessary to ascertain the facts of the case are given.

(3) The person in charge of the hearing shall be responsible for keeping order. He may have persons who do not observe his orders removed. The hearing may be continued without such persons.

(4) A written record shall be made of the oral hearing and must contain the following information:

1. place and date of the hearing,
2. the names of the person in charge of the hearing and of the participants, witnesses and experts appearing,
3. the subject of the inquiry and the applications made,
4. the chief content of statements by witnesses and experts,
5. the result of any visit to the location concerned.

The written record shall be signed by the person in charge of the hearing and, where the services of such a person are used, by the person keeping the written record. Inclusion in a document attached in the form of an appendix and designated as such shall be equivalent to inclusion in a written record of the hearing. The record of the hearing shall make reference to the appendix.

**Section 69 Decisions**

(1) The authority shall take its decision having considered the overall result of proceedings.

(2) Administrative acts which conclude the formal proceedings must be in written form, must contain a statement of grounds and be sent to the participants; in cases referred to in section 39, paragraph 2, nos. 1 and 3, no statement of grounds is required. An electronic administrative act as described in sentence 1 shall be provided with a permanently verifiable qualified electronic signature. Where more than 50 notifications have to be sent, this may be replaced by public announcement. Public announcement shall be effected by publishing the operative part of the decision in the official bulletin of the authority, and also in the local daily newspapers with circulation in the district in which the decision may be expected to have its effect. The administrative act shall be deemed to have been delivered two weeks from the day of publication in the official bulletin, which fact shall be included in the announcement. After public announcement has been made and until the period for appeal has expired, the administrative act may be requested in writing or electronically by the participants, which fact shall also be included in the announcement.

(3) If formal administrative proceedings are concluded in another manner, those concerned shall be informed. If more than 50 notifications have to be sent, this may be replaced by public announcement; paragraph 2, fourth sentence shall apply mutatis mutandis.
Section 70 Contesting the decision
No examination in preliminary proceedings is required before an action is brought before the administrative court against an administrative act issued in formal administrative proceedings.

Section 71 Special provisions governing formal proceedings before committees
(1) If the formal administrative procedure takes place before a committee (section 88), each member shall be entitled to put relevant questions. If a participant objects to a question, the committee shall decide as to the question’s admissibility.

(2) Only committee members who have attended the oral hearing may be present during discussions and voting. Other persons who may attend are those employed for training purposes by the authority forming the committee, subject to the chairman’s approval. The results of the voting must be recorded.

(3) Any participant may reject a member of the committee who is not entitled to take part in the administrative proceedings (section 20) or who may be prejudiced (section 21). A rejection made before the oral hearing must be explained in writing or recorded. The explanation shall not be acceptable if the participant has attended the oral hearing without making known his reasons for rejection. Decisions as to rejection shall be governed by section 20, paragraph 4, second to fourth sentences.

Division 1a: Procedures dealt with by a single authority

Section 71a Applicability
(1) Where it is stipulated by law that an administrative procedure may be dealt with by a single authority, the provisions of this division and, where they do not stipulate otherwise, the remaining provisions of this law shall apply.

(2) The duties pursuant to section 71 b paragraphs 3, 4 and 6, section 71 c paragraph 2 and section 71 e shall be incumbent on the competent authority even in cases where the applicant or the person who is under an obligation to notify, addresses himself directly to the competent authority.

Section 71b Procedure
(1) The single authority shall receive notices, applications, statements of intent and documents and shall transfer them immediately to the competent authorities.

(2) On the third day following receipt by the single authority, notices, applications, statements of intent and documents shall be deemed received by the competent authority. Time limits shall be deemed observed if the notice, application, statement of intent or document is received in good time by the single authority.

(3) If a notice, application or statement of intent fixes a time limit within which the competent authority is to take action, the competent authority shall issue a receipt. The receipt shall indicate the date on which the notice, application or statement of intent was received by the single authority and state the time limit, the preconditions for fixing the time limit and the legal consequences resulting from expiry of the time limit and the legal remedy available.

(4) If the notice or application is incomplete, the competent authority shall immediately request the applicant or the person who has filed the notice to submit the missing documents. The request shall contain a reference pointing out that the time limit pursuant to paragraph 3 is fixed by the receipt of the complete documentation. The date on which the subsequently submitted documents are received by the single authority shall be confirmed to the applicant or the person who has filed the notice.

(5) To the extent that the single authority is involved in the handling of the procedure, notices by the competent authority to the applicant or the person who has filed a notice should be passed on through the single authority. Upon the request of the person for whom it is intended, an administrative act shall be made known immediately to him by the competent authority.
(6) A written administrative act shall be deemed notified one month after posting if posted to a foreign address. Section 41, paragraph 2, third sentence shall apply mutatis mutandis. The applicant or the person who has filed a notice must not be required to appoint an authorized recipient pursuant to section 15.

Section 71c Duty to provide information

(1) Upon request, the single authority shall immediately provide information on the relevant regulations, the competent authorities, the access to public registers and data bases, the procedural rights available and the institutions which support the applicant or the person who has filed a notice in taking up or exercising his activity. It shall immediately inform the applicant or the person who has filed a notice if such a request is too unspecific.

(2) Upon request, the competent authorities shall immediately provide information on the relevant regulations and their customary interpretation. Encouragements and information required pursuant to section 25 shall be provided immediately.

Section 71d Mutual Support

Together, the single authority and the competent authorities shall strive for an orderly and expeditious handling of the procedure; all single authorities and competent authorities shall be supported in these efforts. The competent authorities shall make available to the single authority in particular the necessary information concerning the status of the procedure.

Section 71e Electronic Procedure

Upon request, the procedure under this division shall be handled electronically. The provisions under section 3 a, paragraph 2, second and third sentence and paragraph 3 shall remain unaffected.

Division 2: Procedures for planning approval

Section 72 Application of provisions on planning approval procedures

(1) Where the law requires proceedings for planning approval, these shall be governed by sections 73 through 78 and, unless these provide otherwise, by the remaining provisions of this Act. Section 51 and sections 71a to 71e shall not apply and section 29 shall apply with the condition that files shall be open to inspection at the due discretion of the authority.

(2) Notice under section 17, paragraph 2, second sentence and the requirement under section 17, paragraph 4, second sentence shall be publicly announced in planning approval proceedings. Public announcement shall be effected by the authority publishing the notification or the requirement in its official bulletin and also in local daily newspapers which circulate widely in the district in which the project may be expected to have its effect.

Section 73 Hearings

(1) The project developer shall submit the plan to the hearing authorities to enable the hearing to be held. The plan shall comprise the drawings and explanations to clarify the project, the reasons behind it and the land and structures affected.

(2) Within one month of receiving the complete plan the hearing authorities shall gather the opinions of those authorities whose spheres of competence are affected by the project and shall make the plan available for inspection in those communities on which the project is likely to have an impact.

(3) Within three weeks of receiving the plan, the communities referred to in paragraph 2 shall make the plan available for inspection for a period of one month. This procedure may be omitted where those affected are known and are given the opportunity to examine the plan during a reasonable period.
(3a) The authorities referred to in paragraph 2 shall report their opinions within a period to be stipulated by the hearing authority, and not to exceed three months. Comments made after the date set for discussion shall be disregarded, unless the matters raised are already or should already have been known to the planning approval authority or have a bearing on the legality of the decision.

(4) Any person whose interests are affected by the project may, up to two weeks after the end of the inspection period, lodge objections to the plan in writing or in a manner to be recorded with the hearing authority or with the community. In the case referred to in paragraph 3, second sentence, the period for lodging objections shall be determined by the hearing authority. Following the closing date for lodging objections, no objections shall be allowed except those which rest on specific titles enforceable under private law. This fact shall be noted in the announcement of the inspection period or in the announcement of the closing date for lodging objections.

(5) Those communities in which the plan is to be made public shall give advance notice of the fact according to local custom. The announcement shall state:

1. where and for what period the plan is open to inspection;
2. that any objections must be lodged with the authorities mentioned in the announcement within the time limit set for that purpose;
3. that if a participant fails to attend the meeting for discussion, discussions may proceed without him;
4. that:
   a) those persons who lodge objections may be informed of the dates of meetings for discussion by public announcement,
   b) the notification of decisions on objections may be replaced by public announcement, if more than 50 notifications have to be made or served. Persons affected who do not reside locally but whose identity and residence are known or can be discovered within a reasonable period shall, at the instigation of the hearing authority, be informed of the plan’s being made available for inspection, with reference to sentence 2.

(6) Following the closing date for lodging objections, the hearing authority shall discuss those objections made to the plan in good time, and the opinions of the authorities with regard to the plan, with the project developer, the authorities, the persons affected by the plan and those who have lodged objections to it. The date of the meeting for discussion must be announced at least a week beforehand in the manner usual in the district. The authorities, the project developer and those who have lodged objections shall be informed of the date set for discussion of the plan. If apart from notifications to authorities and the project developer more than 50 notifications must be sent, this may be replaced by public announcement. Public announcement shall be effected, notwithstanding sentence 2, by publishing the date of the meeting for discussion in the official journal of the hearing authority, and also in local daily newspapers with wide circulation in the district in which the project may be expected to have its effect. The period referred to in the second sentence shall be calculated from the date of publication in the official bulletin. In other respects, the discussion shall be governed by the provisions concerning oral hearings in formal administrative proceedings (section 67, paragraph 1, third sentence, paragraph 2, nos. 1 and 4 and paragraph 3, and section 68) as appropriate. Discussion shall be concluded within three months of the closing date for lodging objections.

(7) Notwithstanding the provisions of paragraph 6, second to fifth sentences, the date of the meeting for discussion may already be fixed in the announcement in accordance with paragraph 5, second sentence.
(8) If a plan already open for inspection is to be altered, and if this means that the sphere of competence of an authority or the interests of third parties are affected for the first time or more greatly than hitherto, they shall be informed of the changes and given the opportunity to lodge objections or state their points of view within a period of two weeks. If the change affects the territory of another community, the altered plan shall be made available for inspection in that community; paragraphs 2 to 6 shall apply as appropriate.

(9) The hearing authority shall issue a statement concerning the result of the hearing and shall send this, together with the plan, the opinions of the authorities and those objections which have not been resolved, to the planning approval authority, if possible within one month of the conclusion of the discussion.

Section 74 Decisions on planning approval, planning consent

(1) The planning authority shall consider and decide on the plan (planning approval decision). The provisions concerning decisions and contesting decisions in formal administrative proceedings (sections 69 and 70) shall apply.

(2) The planning approval decision shall contain the decision of the planning approval authority concerning the objections on which no agreement was reached during discussions before the hearing authority. It shall impose upon the project developer the obligation to take measures or to erect and maintain structures or facilities necessary for the general good or to avoid detrimental effects on the rights of others. Where such measures or facilities are impracticable or irreconcilable with the project, the person affected may claim reasonable monetary compensation.

(3) Where it is not yet possible to make a final decision, this shall be stated in the planning approval decision; the project developer shall at the same time be required to submit in good time any documents still missing or required by the planning approval authority.

(4) The planning approval decision shall be sent to the project developer, those people known to be affected by the project and those people whose objections have been dealt with. A copy of the decision, together with advice on legal remedies and a copy of the plan as approved, shall be open for inspection in the communities concerned for two weeks, the place and time at which the plan may be inspected being made known in accordance with local custom. With the end of the inspection period, the other parties affected shall be regarded as having been notified, which fact shall be made known in the announcement.

(5) If apart from the project developer more than 50 notifications have to be made under paragraph 4, this may be replaced by public announcement. Public announcement shall be effected by publishing the operative part of the decision of the planning approval authority, as well as advice on legal remedies and a reference to the fact that the plan is open to public inspection pursuant to paragraph 4, second sentence, in the official bulletin of the competent authority, and also in local daily newspapers with wide circulation in the district in which the project may be expected to have its effect. Any impositions shall be indicated. At the end of the period of public inspection, those affected by the decision and those who have lodged objections to it shall be regarded as having been notified, which fact shall be indicated in the public announcement. Between the time of the public announcement and the end of the period during which legal remedies may be sought, those affected by the decision and those who have lodged objections may make written requests for copies of the decision; this shall likewise be indicated in the public announcement.

(6) Planning consent may be issued in place of a planning approval decision where

1. there is no impairment of the rights of others or where those affected have declared in writing that they consent to the utilisation of their property or of some other right, and

2. agreement has been reached with those public agencies whose spheres of competence are affected.
Planning consent has the same legal effects as planning approval except for the predetermining legal effect with regard to later expropriation; the granting of such consent shall not be governed by the provisions on planning approval procedures. Re-examination in preliminary proceedings is not required prior to the filing of an action with the administrative court. Section 75, paragraph 4 applies mutatis mutandis.

(7) Planning approval and planning consent are not required in cases of minor significance. Such cases are deemed to exist where

1. no other public concerns are affected, or the required decisions on the part of authorities have already been taken and are not in conflict with the plan, and

2. rights of others are not affected, or the relevant agreements have been reached with those affected by the plan.

Section 75 Legal effects of planning approval

(1) Planning approval has the effect of establishing the admissibility of the project, including the necessary measures subsequently to be taken in connection with other installations and facilities, having regard to all public interests affected thereby. No other administrative decisions, in particular consent issued under public law, grants, permissions, authorisations, agreements or planning approvals are required. Planning approval legally regulates all relationships under public law between the project developer and those affected by the project.

(1a) Flaws in the weighing of public and private interests touched by the project shall be deemed to be significant only where they have clearly exerted an influence on the outcome of deliberations. Significant flaws in weighing public and private interests shall result in the annulment of the decision on planning approval or of planning consent only where such flaws cannot be rectified by means of modifications to the plan or by a supplementary procedure.

(2) Once the decision on planning approval has become nonappealable, no claims to stop the project, to remove or alter structures or to stop their use will be allowed. If unforeseeable effects of the project, or of structures built in accordance with the approved plan, on the rights of another become apparent only after the plan has become nonappealable, the person affected may demand that measures be undertaken or structures erected and maintained to counteract the detrimental effects. Such measures shall be imposed on the project developer by a decision of the planning approval authority. If such measures or the installation of such structures are impracticable or irreconcilable with the project, a claim may be made for reasonable voluntary compensation. If measures or structures within the meaning of sentence 2 become necessary because of changes which occur on a neighbouring piece of land after the planning approval procedure has been concluded, the costs arising shall be borne by the owners of the adjacent land, unless such changes are the result of natural occurrences or force majeure; sentence 4 shall not apply.

(3) Applications seeking to enforce claims to the erection of installations or structures or for reasonable compensation in accordance with paragraph 2, second and fourth sentences shall be made to the planning authority in writing. These shall only be acceptable if made within three years of the date on which the person affected became aware of the detrimental effects of the project resulting from the non-appealable plan, or of the installations. They may not be made once thirty years have passed from the creation of the situation shown in the plan.

(4) If work is not commenced on the project within five years of the plan becoming non-appealable, it shall become invalid.

Section 76 Changes to the plan before the project is finished

(1) If the approved plan is to be changed before the project is finished, a new approval procedure shall be required.
(2) If the changes to the plan are of negligible importance, the planning approval authorities may waive the need for a new procedure where the interests of others are not affected or where those affected have agreed to the change.

(3) If, in the cases referred to in paragraph 2, or in other cases of a negligible change to a plan, the planning approval authority conducts an approval procedure, then no hearing and no public notification of the planning approval decision is required.

Section 77 Annulment of a planning approval decision

If a project on which work has commenced is permanently abandoned, the planning authority shall annul the approval decision. The annulment decision shall require the project developer to restore the status quo ante or to take other suitable measures where these are necessary for the common good or in order to avoid detrimental effects to the rights of others. If such measures are required because changes occur on an adjacent piece of land after the planning approval procedure has been completed, the planning approval authority may decide to require the project developer to undertake suitable measures. However, the cost thereof shall be borne by the owner of the adjacent piece of land except where such changes are the result of natural occurrences or force majeure.

Section 78 Coincidence of several projects

(1) If a number of independent plans, the execution of which requires planning approval procedures, coincide in such a manner that only a uniform decision is possible for these projects or parts thereof, and if at least one of the planning approval procedures is regulated by federal law, these projects or parts thereof shall be the subject of one single planning approval procedure.

(2) Competence and procedures shall be governed by the regulations relating to planning approval proceedings prescribed for that structure or facility which affects a larger number of relationships under public law. In the event of uncertainty as to which legal provision applies, the Federal Government shall decide, if according to the relevant provisions a number of federal authorities within the remit of a number of supreme federal authorities are competent; otherwise, the highest competent federal authority shall decide. Where there is uncertainty as to which legal provision applies, and if according to the relevant provisions, a federal authority and a Land authority are competent, and the highest federal and Land authorities are unable to reach an agreement, the federal and Land governments shall come to an agreement as to which legal provision shall apply.

Part VI: Procedures for legal remedies

Section 79 Remedies for administrative acts

Formal remedies for administrative acts shall be governed by the Code of Administrative Court Procedure and its implementing legislation, except where the law determines otherwise; in other respects, the provisions of this Act shall apply.

Section 80 Refund of costs in preliminary proceedings

(1) Where an appeal is successful, the legal entity whose authority issued the disputed administrative act shall refund to the person appealing the costs involved in the legal prosecution or defence proceedings. This shall also apply where the appeal is unsuccessful only because the infringement of a prescription as to form or procedure is insignificant under section 45. Where the appeal is unsuccessful, the person entering the appeal shall refund to the authority which issued the disputed administrative act the costs involved in the necessary legal prosecution or defence proceedings. This shall not apply when an appeal is entered against an administrative act which was issued:

1. in the context of an existing or previously existing relationship of employment or official service under public law, or
2. in the context of an existing or previously existing official duty or an activity which may be performed instead of the legally required official duty.

Costs arising due to the fault of a person entitled to a refund shall be borne by him; the fault of a representative shall be regarded as that of the person represented.

(2) The fees and expenses of a lawyer or other authorised representative in preliminary proceedings are refundable when the use of a lawyer's services was necessary.

(3) The authority making the decision as to costs shall upon application fix the amount of the costs to be refunded. If a committee or advisory board (section 73, paragraph 2 of the Code of Administrative Court Procedure) has made a decision as to costs, the fixing of costs shall be the responsibility of the authority forming the committee or advisory board. The decision as to costs shall also determine whether the services of a lawyer or other authorised representative were necessary.

(4) Paragraphs 1 to 3 shall apply also to preliminary proceedings connected with measures relating to the legal status of the judiciary.

Part VII: Honorary positions, committees

Division 1: Honorary positions

Section 81 Application of the provisions on honorary positions

Sections 82 to 87 govern participation in an administrative procedure in an honorary capacity as far as legal provisions do not provide for exceptions.

Section 82 Duty of honorary participation

A duty to assume an honorary position shall exist only when the duty is provided for by legislation.

Section 83 Performance of an honorary function

(1) A person acting in an honorary capacity shall perform the function in a conscientious and impartial manner.

(2) Upon assuming the position, he shall be expressly obliged to carry out the tasks in a conscientious and impartial manner and to observe secrecy. A written record of the conferring of this obligation shall be made.

Section 84 Duty to observe secrecy

(1) A person acting in an honorary capacity shall observe secrecy concerning the official business revealed to him, even after the honorary activity has ended. This obligation shall not apply to official communications or facts which are common knowledge or whose significance requires no obligation of secrecy.

(2) A person acting in an honorary capacity may not without permission testify in court, make statements outside court or make declarations concerning the official business he is obliged to keep secret.

(3) Permission to testify as a witness may be refused only if the testimony would be detrimental to the welfare of the Federation or a Land, or would seriously endanger or significantly interfere with the execution of public duties.

(4) If the person who holds an honorary position is a participant in a legal action before a court, or if his arguments serve to protect legitimate personal interests, permission to testify may be refused, even if the conditions in paragraph 3 are fulfilled, only if required by a compelling public interest. If
permission is refused, the person holding an honorary position shall be provided protection as allowed by the public interest.

(5) Permission granted in cases covered in paragraphs 2 to 4 shall be granted by the specially competent supervisory authority which appointed the person to the honorary position.

Section 85 Compensation
A person who performs an honorary function shall have a right to compensation for necessary expenses and for loss of earnings.

Section 86 Dismissal
Persons who have been appointed to perform an honorary function can be dismissed for good cause by the authority which appointed them. Good cause is shown in particular if the person who holds an honorary position

1. violates his duty in a grievous manner or proves to be unworthy;
2. is no longer capable of performing the duties in a proper manner.

Section 87 Administrative offences
(1) An administrative offence shall be deemed to have been committed by any person who

1. does not assume an honorary position although he is obliged to do so;
2. lays down an honorary position which he is obliged to assume without a valid and sufficient reason.

(2) The administrative offence can be punished by a fine.

Division 2: Committees
Section 88 Application of the provisions on
Sections 89 to 93 shall govern committees, advisory councils and other collegial bodies (committees) when they participate in an administrative procedure, unless legislation provides otherwise.

Section 89 Order of meetings
The chairman shall open, preside over and close the meeting; he shall be responsible for order.

Section 90 Quorum
(1) Committees shall constitute a quorum when all the members have been duly summoned and more than half, but at least three members who are eligible to vote are present. Resolutions may also be passed in a written procedure if no committee member objects.

(2) If a matter of official business has been deferred due to lack of a quorum and the committee is again summoned to take action on the same subject, the committee shall constitute a quorum regardless of the number of committee members present as long as this provision has been indicated in the summons.

Section 91 Adoption of resolutions
Resolutions shall be adopted by a majority of votes. In the case of a parity of votes, the chairman shall have the casting vote as long as he is eligible to vote; otherwise a parity of votes shall be considered a rejection of the resolution.

Section 92 Elections by committees
(1) Unless a member of a committee objects, voting shall be carried out by voice or signal, or else by ballot. A secret ballot shall be used if a committee member so requests.

(2) The candidate who receives the greatest number of votes cast shall be elected. In the case of a parity of votes, the official in charge of the election shall decide the election by drawing a lot.

(3) Unless otherwise resolved by unanimous vote, the election procedure to be used when a number of similar elective positions are to be filled shall be the d'Hondt highest number procedure. In the event of the highest number being shared, the official in charge of the election shall determine the allocation of the last elective position by drawing a lot.

**Section 93 Minutes**

Minutes of the meeting shall be kept. The minutes must contain the following information:

1. time and place of the meeting,
2. name of the chairman and of the committee members present,
3. subject dealt with and the motions presented,
4. resolutions passed,
5. election results.

The minutes shall be signed by the chairman and by a secretary if a secretary has been called in to keep the minutes.

**Part VIII: Concluding provisions**

**Section 94 Delegation of municipal duties**

By legal ordinance, the governments of the Länder shall be able to transfer duties which are incumbent on the communities under sections 73 and 74 of this Act to other local authorities, or to an administrative community. The legal provisions of Länder which already contain the appropriate regulations shall not be affected.

**Section 95 Special arrangements for defence matters**

If a state of defence or a state of tension has been declared, the following can be dispensed with in case of defence matters: hearing of participants (section 28, paragraph 1); confirmation in writing of an administrative act (section 37, paragraph 2, second sentence); written statement of grounds for an administrative act (section 39, paragraph 1). In derogation of section 41, paragraph 4, third sentence, an administrative act shall be deemed to have been promulgated in these cases on the day following the date of announcement. The same shall be valid for the other applicable regulations pursuant to Article 80a of the Basic Law.

**Section 96 Transitional proceedings**

(1) Proceedings which have already begun shall be concluded according to the provisions of this Act.

(2) The admissibility of a legal remedy for decisions issued before this Act came into force shall be governed by the provisions formerly in effect.

(3) Time limits which began before this Act came into force shall be calculated according to the provisions formerly in effect.

(4) The provisions of this Act shall be valid for the refund of costs in preliminary proceedings if the preliminary proceedings have not been concluded before this Act enters into force.
Section 97 Amendment of the Code of Administrative Court Procedure
[Verwaltungsgerichtsordnung] - revoked

Section 98 Amendment of the Law Concerning Federal Long-Distance Highways
[Bundesfernstraßengesetz] (revoked)

Section 99 Amendment of the Immissions Act [Bundes-Immissionsschutzgesetz] (revoked)
[Bundes-Immissionsschutzgesetz] - revoked

Section 100 Regulations under state law
The Länder shall be able to make laws which

1. provide for a regulation pursuant to section 16;

2. stipulate that for planning approval procedures executed on the basis of provisions under state law, the legal effects of section 75, paragraph 1, first sentence shall also be valid vis-à-vis the necessary decisions under federal law.

Section 101 City-state clause
The Senates of the Länder Berlin, Bremen and Hamburg are authorized to regulate local competence in derogation of section 3 in accordance with the particular administrative structure of their respective states.

Section 102 Transitional rule on section 53
Article 229, section 6, paragraphs 1 to 4 of the Introductory Act of the Civil Code applies mutatis mutandis to the use of section 53 in the version effective 1 January 2002.

Section 103 Entry into force
Concept Note
(Draft for Discussion)

Proposed Legal Drafting Process Leading to an Administrative Code
Introducing Regulatory Impact Assessment (RIA)\(^1\) in Policy Development and Legal Drafting

by Kai Hauerstein\(^2\)

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\(^1\) Regulatory Impact Assessment will be explained in more detail. For the start it is defined as a systematic approach to prepare better regulation
\(^2\) Advisor to the General Secretariat, Council for Legal and Judicial Reform (The Council of Ministers)
Executive Summary

**Purpose:** The purpose of this Concept Note is to communicate the approach and the methodology underpinning the legal drafting process leading to an Administrative Code.

**Process based approach:** The Concept Note proposes to focus more on the process and less on the outcome. A process-based approach includes a diagnosis by asking: What, in general terms, is the problem to be addressed? What is the specific policy objective to be achieved? And what are the different ways of achieving this objective at what costs? Regulatory Impact Assessment (RIA) is one diagnostic tool, which can answer these questions in a systematic way and is, therefore, proposed in the process.

**Chapter 01** provides the understanding of the legal drafting process and proposes to separate the policy development process from the legal drafting process. A legislative handbook setting out the process, common standards, and uniform practices for preparing and drafting legislation is still lacking in Cambodia. The Royal Government currently prepares instructions for the legal drafting process within Government but has not adopted them yet. There is however a well established practice how to prepare draft laws within government and the Council of Legal and Judicial Reform. The Concept Note builds on this established practice.

- **Separation between policy development and legal drafting:** the Concept Note proposes to develop the policy underpinning the legal instrument first. It argues that otherwise the policy objective remains unclear, or other, more effective alternatives to the proposed law cannot be identified.

- **Considerations going beyond the scope of work:** The Concept Note limits its scope to support a draft law within Government. This means that other steps in the legislative process are not included. However, it is the understanding that the proposed legislation should reflect good politics. The legal draft must be acceptable to those in power and able to pass the legislature easily. That may mean avoiding issues that would raise political questions, stir up rival ministries, or force referral to multiple parliamentary committees.

**Chapter 02** highlights the need for clarifying and interpreting fundamental legal terms prior to the legal drafting process. The Concept Note, therefore, proposes to further clarify the terms and to establish a glossary with legal terms, their translation and working definitions. For example, Administrative Procedures Code has multiple meanings. Therefore the term is defined in relation to its specific use as either Administrative Litigation Procedures Code or Administrative Procedures Code.

**Chapter 03** describes the institutionalization process for a RIA Working Group. Never draft alone! The preparation of a policy as well as drafting legislation involves too many technical, stylistic, and

3 Draft Circular on “Instructions on Procedures and Rules for Drafting Laws and Legal Instruments”, 2008
substantive questions for one person alone and it involves continuous involvement, sometimes over years. The concept paper recommends a Core Working Group under GD-CLJR complemented by an Ad Hoc Working Group and build on third party support (see Chapter 07).

**Chapter 04** explains in detail what RIA is and how it can be applied for the preparation of a policy proposal. **Attachment 02** breaks down the RIA process in seven, easy to understand steps. It provides an example how RIA can be used in preparing a policy underpinning an Administrative Code. Regulatory Impact Assessment provides a **systematic** and transparent approach to prepare **better regulations** and, as a result, improves Government effectiveness and efficiency.

**Chapter 05** outlines the legal drafting process in a technical sense and highlights key implementation issues such as referring to established processes, practice, and forms, institutionalizing legal drafting processes, building on previous analytical steps as well as key policy decisions, re-applying RIA in the legal drafting process, and making good style the first priority.

**Chapter 06** proposes a tentative workplan for the next two years. The overall objective is to support the GS-CLJR in the process to prepare an Administrative Code/Administrative Procedures Act. The tentative work plan **reflects** the issues set out in the concept note. It is intended that GS-CLJR will lead the process supported by the CIM expert. In addition, third party support is required to finance specific activities.

**Chapter 07** provides entry-points for third party support. Resources to implement activities in the work plan are limited. The CIM expert supports the process full-time. In addition, GS-CLJR staff can be assigned to specific activities supporting the Working Group and the Secretariat. Organizations supporting the Council for Legal Reform and other interested donors can contribute to following activities: **Glossary Administrative Law Terms**, **Legal Dialogues**, **RIA workshops**, **Legal Drafting Workshops**, **Stakeholder Workshops**, **Lectures**, **Study Tour**.

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4 Attachment 04: Overview Organizations supporting the GS-CLJR and other Relevant Donor Programs
Introduction and Background

The Council of Legal and Judicial Reform (CLJR), established in 2002, manages the legal and judicial reform process. In order to coordinate the implementation of the CLJR decisions and to ensure the coordinated participation of involved line ministries, the Permanent Coordination Body (PCB) was created. The PCB was replaced by the General Secretariat of the CLJR (GS-CLJR) in 2009, which now oversees the implementation of 93 priority actions set out in the Plan of Action (2005). One of these actions is activity 2.1.1, which is to draft an Administrative Code and Procedural Code. In 2010 the GS-CLJR submitted a request to the Centrum fuer Migration und Entwicklung (CIM) to support the preparation of an Administrative Code/Administrative Procedures Code. The CIM expert arrived in January 2011 and started to work for the GS-CLJR complementing the GIZ support on reviewing administrative principles in Cambodia from an international perspective.

The following Concept Note summarizes the work of the Inception Phase and briefly describes the approach, the methodology, the objectives and proposed activities underpinning the legal drafting process leading to an Administrative Code/Administrative Procedures Code.

Implementing the legal and judicial reform strategy: The Plan of Action For Implementing the Legal and Judicial Reform Strategy states, among others, that an Administrative Code should be drafted, adopted, and implemented and intends to strengthen the protection of citizen’s rights through the introduction of an administrative appeal court. For a complete overview of interrelated activities targeting a new comprehensive administrative law reform see Attachment 01, Overview Interrelated Activities in the Plan of Action (2005).

The Plan, if put into action, will introduce a new comprehensive administrative law system, that will restrain activities of government agencies and prevent them from violating individual rights. In addition, it lets administrative courts protect these rights and correct wrong activities of government agencies that are not conform with laws or principles derived from the Constitution.

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5 CIM is a German development aid instrument to place and fund technical experts in partner organizations

6 GIZ and the GS-CLJR started to conduct a series of workshops on administrative principles. The workshop results are part of a survey on administrative law and principles in Cambodia, which will form the basis for the legal drafting process (see also Attachment 03, Tentative Work plan

7 Royal Government of Cambodia, Legal and Judicial Reform Strategy, 2003, further referred to as Reform

8 Activity 2.1.1 states “Drafting, adoption, and implementation of the Administrative Code and Procedural Code, including rules for court appeal”
The system, which is proposed by the Action Plan, codifies administrative procedures and introduces a complaint mechanism against negative government decisions as well as against negative decisions. This is a major improvement to the current situation, where administrative procedures including rights of citizens and government’s obligations are not codified and where in practice no complaints to the judiciary can be filed. What is yet unclear, whether administrative appeal procedure to a higher government agency is included in the process or not.

Limitations: The Plan of Action sets out two very important steps, which will breathe life into the principle “Rule of Law” as it is stated in Cambodia’s Constitution. However, to put a plan into action the terminology of the objective must be clear. A very important question is therefore. What was meant with Administrative Procedural Code? The other limitation is, that the Plan focuses more on the outcome, i.e., prescribing a pre-determined set of laws, rather than on the process, i.e., analyzing, for example, why a law is needed? The latter reflects the understanding, that a Law is a means to an end, rather than an end in itself.

Two sides of the same coin; but first things first: Providing rights to citizens and protecting these rights through independent courts are two sides of the same coin. One cannot be established without the other. The first step, however, is to focus on the legal drafting process leading to an Administrative Act/Administrative Procedures Code. This has to reasons: First, the mandate of the CIM Expert does not include the support drafting administrative court procedures. The second reason is timing. The Council for Legal and Judicial Reform currently reviews the Law on Court Organization including the judicial review of administrative actions. How the judicial review of administrative actions and their appeal will be organized is still unclear. Therefore rules of the court appeal (in administrative cases) need to be considered when the new law on Court Organization will be enacted.
1. Fundamental Understanding of the Legal Drafting Process

A legislative handbook setting out the process, common standards and uniform practices for preparing and drafting legislation is still lacking in Cambodia. The Royal Government is in the process of preparing instructions for the legal drafting process within Government but has not adopted them yet.\(^9\)

**Established drafting practice:** There is however a well established practice how to prepare draft laws within government and the Council of Legal and Judicial Reform\(^10\) (Annex 01, Process to prepare a Draft Law within Government). The Concept Note builds on this established practice and proposes a stronger separation between policy development and legal drafting.

**Separation between policy development and legal drafting:** As a doctor makes a diagnosis before prescribing medicine, this Concept Note proposes to develop the policy underpinning the legal instrument first. It argues that otherwise the policy objective remains unclear, or other, more effective alternatives to the proposed law cannot be identified. It makes good sense to analyse the situation first, develop a sound policy, and think through the consequences of alternative legal instruments targeted to achieve the policy objective before starting the legal drafting process. In the current process one can find the practice, that the underlying policy for a law is developed together with the law itself. Unfortunately, this practice tends to conflate the policy-development and legal drafting processes – processes, which should, in fact, be treated separately.

**Role of the legal drafter:** Based on this understanding the actual legal drafting process starts before writing the first paragraph. The role of the legal drafter is to get involved in a much earlier stage. The drafter needs to support the policy maker to develop ideas on a sound policy and to make informed decisions, to point out the boundaries in which drafting takes place, to research all the necessary information, to discuss upcoming difficulties and highlight the likely impact of policy options. In this respect, the legislative drafting process is similar to building a house. Before actually building a house a lot of background information is needed, for example: What is the foundation, the environment, how much may the house cost? What are reasons for building a house? What is other relevant information such as size of the house, number of rooms?

The purpose of separating the policy development process from the legal drafting process is to facilitate an informed policy decision by providing the Council for Legal and Judicial Reform with additional information, analysis, and policy options.

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\(^9\) Draft Circular on “Instructions on Procedures and Rules for Drafting Laws and Legal Instruments”, 2008

\(^10\) The Planning Documents prepared by the General Secretariat, Council of Legal and Judicial Reform follow a 10 Step Process, see also Draft Legal and Judicial Reform Implementation Indicator Monitoring Matrix, 2009
Introducing an adopted version of RIA in the Policy Development Process: RIA as a generic method can be applied in different stages of the policy development and legal drafting process. The concept note proposes to integrate RIA in the Policy Development Process, in particular the Policy Preparation Process. The proposal to integrate RIA in the Policy Development Process is based on the understanding that the Strategy of Legal and Judicial Reform and the Plan of Action reflect an incremental process of (i) policy planning, (ii) policy preparation, and (iii) policy decision-making.

- **Policy Planning Process:** in the planning process, strategic objectives, and activities to reach these objectives were developed. For example activity 2.1.1 states to draft, adopt, and implement an Administrative Code. In 2005 it was still unclear what an Administrative Code is and why it is needed. Therefore, one intervention under Activity 2.1.1 requires a more detailed policy preparation.

- **Policy Preparation Process:** Intervention 1 states to “establish a technical working group to discuss Administrative Law and how to introduce it into the Cambodian Legal System”. From this clause it can be inferred that a more detailed policy preparation is required. This step is essential as the Council for Legal and Judicial Reform (and ultimately Parliament) needs to understand the
  - Policy, its rationale, reasons, etc.
  - Intended impact
  - Reasons why the law will have this impact
  - Costs of the law
  - Required changes in the administration, etc.

The proposed RIA methodology will be adopted to facilitate this process and produce an explanatory note to be submitted together with a Working Program to the Council of Legal and Judicial Reform for decision-making.

- **Decision Making Process:** the Council for Legal and Judicial Reform decides on Working Programs to achieve all objectives of strategy of the legal and judicial reform, but can also decide on new visions of policy, strategies, and programs of Legal and Judicial Reform. One of the functions of the General Secretariat is to submit new or elaborated working program to the CLJR. The proposed working program will include Explanatory Note summarizing the results from the Regulatory Impact Assessment. The Explanatory Note will help the Council to assess other policy options and their comparative (dis) advantage.

The adoption of a Working Program is a political decision that belongs to the Council for Legal and Judicial Reform. The Council decides on the Policy to be taken, on work program, including the next steps with regards to legal drafting. The results of this process will be summarized in a Policy Paper.

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11 Id. at p.40

12 Work Program is synonymously referred to as policy proposal

13 The organization and the functioning of the General Secretariat of the Council for Legal and Judicial Reform is specified by Sub-decree No. 52 dated April 06, 2009.

14 It should be pointed out that Explanatory Note does not dictate the contents of its final decision. It may however provide a recommendation
Figure 2: Understanding of Policy Development and Legal Drafting Process

Responsibilities within the policy preparation and legal drafting process: legal drafting is a complex task, involving a number of institutions. The following section points out the roles and responsibilities of immediate institutions involved in the policy development and legal drafting process.

The General Secretariat of the Council of Legal and Judicial Reform (GS-CLJR) does not implement, but coordinates the implementation of the reform process. Implementing agencies are respective line ministries, which are, in principle, responsible to prepare the policy and the legal draft. However, the GS-CLJR can initiate activities if there is no direct responsibility of one specific line ministry. This is the case for cross-sectoral issues such as the Administrative Law. In this case the General Secretariat is responsible for preparing the policy proposal as well as preparing the first legal draft.

Considerations going beyond the scope of work: The concept note limits its scope to support a draft law within Government (see also Attachment 01). This means that other steps in the legislative process are not included. However, it is the understanding the proposed legislation should reflect good politics. The legal draft must be acceptable to those in power and able to pass the legislature easily. That may mean avoiding issues that would raise political questions, stir up rival ministries, or force referral to multiple parliamentary committees.

2. What is the Policy Issue? Clarification of Terminology

What is the policy issue and its intended scope? To answer this question the terminology should be clear. This Chapter highlights the need for clarifying and interpreting fundamental legal terms prior to the legal drafting process. The Concept Note proposes to clarify the terms and to establish a glossary with legal terms, their translation and working definitions.

15 The GTZ Baseline Survey on Legal Units and Law Drafting Capacity of Ministries/Institutions, 2009, p.2, highlights three models of legal drafting depending which department is initiating the draft. Laws are either drafted by Technical Departments, Legal Departments or Ad Hoc Working Groups,
Unclear policy issue: the Plan of Action implementing the Legal Judicial Reform Strategy sets out

“Drafting, adoption, and implementation of the Administrative Code and Procedural (sic) Code, including rules for court appeal”

as one activity to modernize the legal framework. However, neither the Strategy nor the Plan, nor Legal Lexica\(^\text{16}\) define the terms. To add to the confusion, the terminology is used inconsistently both in the Strategy as well as in Plan of Action.

**Administrative Code?** In 2003, when the Strategy was drafted, it was unclear what Administrative Code and Procedural Code means for the Cambodian context. The concept of an Administrative Code was, to that point, new in Cambodia. Other countries do not provide a clear answer either. France has (only) an in-official compilation of administrative statutes\(^\text{17}\), the *Code Administrative*. Other counties, for example Germany, codified general-binding elements of Administrative Law such as administrative principles and administrative proceedings in an *Administrative Procedures Code (Verwaltungsverfahrensgesetz)*. While, others, for example Denmark, enacted administrative principles in the *The Danish Public Administration Act*. These three examples show that the codification of administrative statues, principles, and proceedings is country specific and cannot be generalized. What does Administrative Code mean, what elements it should contain, and whether an Administrative Code (in that sense) is the right legal instrument for Cambodia will be further reviewed and is subject matter of this concept note.

**Working Definitions:** The following definitions are meant to establish a common understanding for the work underpinning this mandate. This common ground is necessary for defining the scope of work and to communicate the approach. The working definitions do not claim to be final and acknowledge different meanings according to the legal background.

- **Administrative Law:** considered part of Public Law. It concerns the application and procedure of law, which is implemented by public authorities. Sometimes defined negatively: Administrative Law is not Constitutional Law, State Organization Law, Law on Administrative Courts.

- **Administrative Code:** used in a wider sense as a set of rules, principles, or laws governing Administrative Law. Used in a more narrow sense as the legal codification of general aspects governing Administrative Law such as principles or proceedings. This definition does not include laws governing the structural or territorial organization of the administration as well as laws governing the management of the administration itself such as the civil service.

- **Administrative Procedures (Procedural) Code\(^\text{18}\):** can have two meanings\(^\text{19}\): either (i) law governing administrative proceedings of administrative agencies, or (ii) law governing

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\(^{16}\) Official lexica publishing and translating legal terms did not include the terms in question, see Royal Committee in Charge of Adoption of Legal Terms., Lexicon of Legal and Administrative Terms, English-Francais-Khmer, from A-C, 2008


\(^{18}\) The other term in use is either Administrative Procedural Code or Administrative Procedures Code are used synonymously in the Strategy as well as in the Plan
proceedings in an administrative court. To avoid misunderstandings the terms will be used in relation to its specific meaning, i.e.:

- **Administrative Litigation Procedures**\(^{20}\) referring to rules governing administrative court (tribunal) procedures\(^{21}\); and
- **Administrative Procedures** referring to rules governing administrative proceedings of administrative agencies\(^{22}\).

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\(^{19}\) **Interpretation:** Within the system of the Plan of Action and the grammatical context it is more understood as “rules governing administrative litigation procedures. Interviews in the General Secretariat of Council of Legal Judicial Reform confirmed that Administrative Procedures is in fact understood as rules governing Administrative Court proceedings. This understanding was based on the following arguments: The systematic structure of activities in the Strategy and the Plan of Action indicates that Administrative Code and Administrative Procedures Code share the same dichotomy as Criminal Code and Criminal Procedures Act and Civil Code and Civil Procedures Act. All three Acts and respective Procedure Act are grouped together and form systematic unity (see 2.1.1, 2.1.2, 2.1.3 in the Plan of Action). As the Civil Procedures Act sets out rules how a Civil court will process a civil case, it can be assumed that the understanding, of an Administrative Procedures Act was to set out rules how an Administrative Court is processing an administrative case. Another argument is the grammatical interpretation of the term “(…) Procedural Code, including rules for court appeal”. “Including” seems to indicate that rules of appeal are an integral part of administrative court proceedings. Experts from Civil Law countries will understand Administrative Procedure Code more as “administrative procedures governing the processes between administration and citizen”. This understanding was obviously the basis for the formal request for the integrated expert.

\(^{20}\) This mandate does not include the process drafting administrative litigation procedures (unless otherwise agreed).

\(^{21}\) Rules how an Administrative Court will process and decide an administrative case, i.e., handling a conflict between citizen and administration

\(^{22}\) Rules how the Administration will process a case in relation to a citizen. It explains what a citizen has to do in order defend himself against an administrative action or what a citizen has to do in order to obtain a government service
Administrative procedures in the latter sense can have the following characteristics:

- Hierarchical relationship between authority (agency, bureaucracy) and citizen;
- Provide a service or a license, for example citizen applies for a license; or governments intervenes, i.e., restricting citizen’s rights in public interest, for example appropriation of property;
- Contain an administrative decision either through an Administrative Act, public law contract; plans, or regulations;
- Standardize processes and procedures, for example application Process: (i) application procedures (formats/documentation requirements), (ii) decision making procedures (duty to decide, time frame), (iii) decision taking (reasoning, cost), outcome: application granted or denied; related processes complaint procedure; enforcement procedures; remedy procedures.

Preparation of a glossary and definition of terminology relevant for the drafting of an Administrative Code: the Konrad Adenauer Foundation (KAF) supported the preparation of a Trilingual Lexicon of Legal and Administration Terms. Based on KAF’s first draft the Royal Committee in Charge of Adoption of Legal Terms revised and published two volumes (from A-C; to D-I). The Concept Note proposes to build on this work and identify administrative law terminology relevant for the preparation of an Administrative Code. In addition, it is proposed to not only translate the terms but to provide preliminary working definitions. During the process it is intended to discuss the working definitions with stakeholders and adopt them to the Cambodian context.

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23 Council for Legal and Judicial Reform supported by JIKA, Development Partner Activities in the Legal and Judicial Reform Sector, 2009, p. 26
3. Institutionalization Working Group

Why institutionalization is important: Never draft alone! The preparation of a policy as well as drafting legislation involves too many technical, stylistic, and substantive questions for one person alone and it involves continuous involvement, sometimes over years. The concept paper recommends a Core Working Group under GD-CLJR complemented by an Ad Hoc Working Group.

Proposed Working Group structure and representatives: GS-CLJR has the mandate to develop the policy underpinning the Administrative Code as well as to draft respective legal instruments (see also Chapter 01). Therefore, the Working Group should be established from the beginning under the GS-CLJR, ideally under a Board structure with a clear mandate and authority. In addition secretarial work is required for the organization of workshops and other administrative staff (Secretariat). The Core Group should comprise of 2-3 people who secure legal capacity particularly in the field of Administrative Law and Legal Drafting.

The Core Working Group should be complemented by an Ad Hoc Team comprising of representative from concerned ministries in particular those Ministries, which are concerned with the implementation of sector laws as well as those ministries, which are concerned with the supervision of implementation such as the Ministry of Home Affairs. The team should also involve administrative law experts and civil society institutions concerned with the topic. In addition official with specific economic expertise, for example from ECOSOCC, can be involved of providing expertise assessing costs and benefits of a policy proposal.

Principles of operation: The Working Group needs access to political, legal, operational, and technical, information, and communication expertise. Targets, responsibilities and necessary resources need to be clearly defined in strategic plan. Necessary resources in terms of budgets (for information collection, public consultation, experts etc) as well as other input in terms of office equipment, meeting rooms and permanent supporting staff/secretariat need to be clearly defined. The distribution of responsibilities should be conducted before the Working Groups starts operation.

Figure 3: Proposed WG Structure
**Sustainability and implementation:** Legal drafting is not a one-off task. Even when a law is drafted and adopted it needs to be implemented. Implementation requires dissemination, training, preparing guidelines, formats, textbooks, commentaries. It also requires an ongoing review process on reform. To ensure long-term sustainability the implementation process needs to be institutionalized either under the proposed WG structure or an independent research institute.

**Preview of the next chapter:** Think about consequences of your actions
4. What is RIA and how can it be applied in the preparation of an Administrative/Procedural Code?

The Concept Paper proposes RIA as one key instrument in the policy preparation process. This and the next chapter explain what RIA is and how it can be applied.

Why RIA should be introduced in the legal drafting process? Regulations are an essential part of the tool kit of policy instruments government can use to achieve its objective. However, poor quality regulations reduces the ability of Government to reach its objectives, strains Governments budget, increases compliance costs for society, leads to uncertainty with regards to obligations, creates opportunity for corruption, and creates unnecessary complexity. To avoid the pitfalls of a poor quality regulation, this concept paper strives not for less but better regulations.

What is RIA? Regulatory Impact Assessment provides a systematic and transparent approach to prepare better regulations and, as a result, improves Government effectiveness and efficiency. RIA has two key characteristics: (i) prepare better regulation and (ii) systematic and transparent approach.

- **Prepare better regulations:** In terms of content RIA allows the user to check whether regulations are in line with legal quality criteria. Every country might define the criteria for regulatory quality differently. There is however an international standard, which may provide guidance. The quality criteria are set out in the checklist developed and recommended by OECD in 1995. The OECD checklist rephrases legal quality standards in questions, which – if properly answered - achieves the goal of a better regulation.

- **Systematic and transparent approach:** How can a legal drafter achieve quality as outlined in the OECD recommendations? Is there a systematic way? Over the past decade governments as well as international/supranational organizations developed a systematic step-by-step approach, which usually includes (i) problem analysis, (ii) identification of the policy objective (iii) development of a number of options achieving the objective, (iv) impact assessment of each option, (v) a comparison of each option and the selection of one option, (vi) plan for implementation, and (vii) stakeholder participation. The process strongly depends on stakeholder consultation to provide better information underpinning the analysis and to increases the overall acceptance.

![Figure 4: Overview RIA Process](image)

RIA is nowadays applied as standard in

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24 The OECD (Organization for economic co-operation and development) brings together the governments of 30 member countries to support sustainable economic growth, boost employment, raise living standards, maintain fiscal stability, assist other countries' economic development. Cambodia is not a member of the OECD but maintains relations with OECD in various fields.

25 OECD Check-list for better regulatory quality includes the following questions: Is the objective of a regulation correctly defined? Is government action justified? Is regulation the best form of government action? Is there a legal basis for regulation? What is the appropriate level (or levels) of government for this action? Do the benefits of regulation justify the costs? Is the distribution of effects across society transparent? Is the regulation clear, consistent, comprehensible and accessible to users? Have all interested parties had the opportunity to present their views? How will compliance be achieved?

26 The process we be explained in more detail in the next chapter.
all OECD countries, but also in many other countries such as Korea, Singapore the former Soviet
countries as well as a number of developing countries such as Vietnam and Indonesia. In Cambodia
RIA is not yet institutionalized but well known. The General Department of Industry (GDI) promotes
the Government’s objective of improving the effectiveness and efficiency of regulation and applies
RIA to review economic regulation. The ADB newly funded Regulatory Impact Assessment
Subproject is to support ECCSOCC in its mandate to conduct regulatory impact assessments within
governments.

What can RIA help to achieve? Cambodia has established and is in the process of establishing legal
frameworks for almost every aspect of the social, economic, and political life. Laws are often being
drafted on the merit of output. However, there are limits to the amount and types of regulations
absorbed within society and enforced effectively by Governments. Making and enforcing laws place
large demands on government administration. This is generally true, but even more so, for the
preparation of an Administrative Code. Therefore, every proposed law should pass a rigorous test,
whether it is most effective and efficient choice. An effective regulation is a regulation, which
achieves the policy objective that led it to be made. Efficient regulation achieves this at the lowest
total costs for government as well as for society. RIA can determine, for example, whether the
proposed Administrative Act, is effective and efficient to achieve the overall objective. If not, it would
recommend a better alternative or leave things as they are.

How can RIA be applied in the preparation of an Administrative Code? The purpose of RIA
underpinning this proposal is primarily to improve the policy preparation process that shapes the
final regulation (see also Chapter 1). In a sense RIA will help to answer the very fundamental
question, is it really necessary to draft an Administrative Code?

5. Drafting the Legal Instrument

Law drafters need to know and understand what they are hoping to achieve when they write
legislation. The purpose of writing the legal instrument is to effectively translate the key policy
decision into legal text (see also the last two steps in Figure 01, Overview Legal Drafting Process). This
requires technical understanding but also good style. Drafters should write laws that are free from
ambiguity, that capture policy accurately, and that are reasonably simple to understand, apply, and
eventually amend.

Legal drafting depends very much on the policy and the legal product. As both are not yet developed
the Concept Note can only highlight key issues to be considered in the legal drafting process. Key
implementation issues are:

guidelines and case studies for example a RIA report on regulation for conducting Industry Risk Assessment
and Management System; and a Preliminary Regulatory Impact Assessment on Factory License Regulation:

28 Contact Person: Dr. Vong Sam Ang (Secretary General of Ecosocc

29 RIA comes in all sizes and shades, not only to prepare new statutory legislation or other types of
regulations, but also to review existing regulations. Therefore it is important not just to copy/paste, but to
adopt the method to the context. This requires defining the scope and the purpose of the analysis.
- Refer to established processes, practice, and forms,
- Institutionalize legal drafting processes,
- Build on previous analytical steps and key policy decisions,
- If necessary, re-apply RIA in the legal drafting process,
- Make good style your priority, and
- Plan for Learning and Innovation.

The work plan in Chapter 06 proposes activities to draft legislation reflecting the established drafting process in Cambodia and the following implementation issues:

- **Refer to established processes, practice and forms.** One prerequisite is to follow form. Legal drafting must follow the conventions that the legislature or government demands of laws, regulations, or rules. That means, for example, using the proper enacting clauses, numbering systems, and so forth. There is an established practice in Cambodia on how to structure different legal instruments.  

- **Institutionalize legal drafting processes:** the importance of institutionalizing the legal drafting process has been pointed out above (see Chapter 03). Concepts Notes builds on continuity in the legal drafting process. The WG, which was established for policy development, continues the integrated approach involving relevant institutions.

- **Build on previous analytical steps and key policy decisions:** the purpose of writing the legal product is to effectively translate the key policy decision into legal text. The scope of the legal product, the overall objective, underlying problems has been already identified in the previous steps. They are the basis for defining legal terms as well as developing the legal product and its instruments.

- **Refer back to RIA, whenever necessary:** RIA is not a one off task. It is an ongoing process, which should be repeated whenever a more detailed analysis for a decision in the legal drafting process is required, for example on a concept or one specific paragraph.

- **Make good style your priority:** Laws are drafted to change human behavior. The ultimate goal is to achieve the policy objective. But, a law cannot introduce, for example, the “Rule of Law”. It can only regulate human behavior, i.e. the behavior of government officials. Therefore, a successful law is one that reaches its goal of changing a certain behavior to reach the ultimate policy goal. This is important to keep in mind when drafting laws. The more specific people are addressed and the more understandable and clear the language of the law is, the more likely that it will have the intended effect. Therefore drafters should write laws that the law is understood by all government officials and by as many citizens possible. To be understood the legal draft must be free from ambiguity, must capture the policy accurately, must be reasonably simple to understand, apply, and eventually to amend.

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30 The structure of law and regulations including cover page, structure of text, chapters such as technical provisions, transitional provisions, penalties, concluding provisions; articles, design of font etc., is established by practice and reflected in the Circular on Procedures and Rules of Drafting Law and Legal Instruments, is considered to be established practice. A good overview of this practice can be found in Annexes to the Handbook on Law Drafting and Legislations, Conrad Adenauer Foundation, 2003, p-98-107
The law should be written in "Plain Language" to the greatest extent possible. In addition the drafter must fully understand the legal subject area from both the technical and policy points of view. Lawmakers must be very cautious in handling drafts that are essentially Khmer translations from foreign legislation. Legislative drafting based on translations is very difficult and prone to misinterpretation and other errors. As pointed out in Chapter 02 it is required to clarify the terms, definitions and their Khmer translation prior to drafting the law.

- **Plan for Learning and Innovation**: to draft and implement a law is an ongoing process. As this assignment is limited to two years it is essential to ensure that know-how and knowledge is transferred to the next phase. The work plan proposes therefore to summarize experience and develop handbooks for further reference.

### 6. Tentative Work Plan

The overall objective is to support the GS-CLJR in the process to prepare an Administrative Code. The tentative work plan ([Attachment 03: Detailed Work plan](#)) reflects the issues proposed in the concept note. Those key implementation issues are:

- Separate the Policy Development Process from the Legal Drafting Process,
- Introduce RIA in the Policy Development Phase and, if necessary, in the legal drafting process.

The process is intended to be primarily led by GS-CLJR supported by the CIM expert. In addition, third party support is required to finance activities.

The plan proposes three phases, which reflects in parts the fundamental understanding of the legal drafting process. The three phases are: Inception/Research Phase, Policy Development Phase, and Legal Drafting Phase. Each phase has specific objectives and assigns outcomes.

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31 The Plain Language Movement is an effort to eliminate unnecessarily complex language from academia, government, law, and business. In the U.S, the Plain Writing Act of 2010, signed into law on October 13, 2010, requires federal agencies to use plain language in every covered document that the agency issues or substantially revises, and to train its employees in plain language.
The objectives set out in the work-plan are:

- to review the existing situation, which includes a survey on administrative principles,
- to develop a policy underpinning an Administrative Code,
- to advocate the policy to key decision makers for adoption,
- to draft the legal instrument as proposed in the policy, and
- to support the handover process through learning and innovation.

Table 1: Tentative Work Plan (Objectives and Outputs)

<table>
<thead>
<tr>
<th>Phases</th>
<th>Inception/Research Phase</th>
<th>Policy Development Phase</th>
<th>Legal Drafting Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>January 11 – April 11</td>
<td>May 11 – October 11</td>
<td>October 11 – January 12</td>
</tr>
<tr>
<td>Objective</td>
<td>Existing situation on administrative principles and laws reviewed</td>
<td>Policy prepared</td>
<td>Policy advocated</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Legal Draft prepared, advocated and revised</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Learning and Innovation</td>
</tr>
<tr>
<td>Outputs</td>
<td>Workshops Concept, workplan</td>
<td>Workshops WG operative Training in RIA/ Policy Paper (including Explanatory Note)</td>
<td>Presentations Meetings</td>
</tr>
<tr>
<td></td>
<td>Report on administrative principles</td>
<td></td>
<td>Workshops Training Legal Drafting/ Administrative Law</td>
</tr>
<tr>
<td></td>
<td>Glossary of relevant terms</td>
<td></td>
<td>1sr Draft</td>
</tr>
<tr>
<td></td>
<td>Donor support</td>
<td></td>
<td>Final Report, Training Modules</td>
</tr>
</tbody>
</table>

Activities: With these broad objectives in mind, the work plan proposes a set of activities further laid down in the detailed work plan. Further activities can be added to this list as the process unfolds.

7. Donor Support

The resources to implement activities in the work plan are limited. The CIM expert supports the process full-time. In addition, GS-CLJR staff can be assigned to specific activities supporting the Working Group and the Secretariat. Organizations supporting the Council for Legal Reform and other interested donors can contribute to the following activities:

- **Glossary Administrative Law Terms**: the need to identify, translate key legal terms and provide working definitions has been pointed out in Chapter 02. The work plan proposes activities to start a series of workshops with linguists and administrative law experts to increase the acceptance among stakeholders involved in the legal drafting process and to multiply effects beyond project work. It is intended to engage development partners in this effort and support workshops and the publications of material.

- **Legal Dialogues**: the work plan proposes activities to further facilitate workshops, which bring together academia, government, and civil society to discuss aspects of administrative law principles and comparative aspects of administrative procedures, and other relevant topics for the preparation of an administrative law policy. The SG-CLJR would organize,

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32 Attachment 04: Overview Organizations supporting the GS-CLJR and other Relevant Donor Programs
support, and coordinate these legal dialogues and help to integrate the results in the policy development and legal drafting process. It is intended to promote legal dialogues and engage development partners in these activities.

- **RIA workshops**: the CIM expert has previous experience in designing and implementing RIA workshops. However depending on the subject matter specific support is required. It is intended to cooperate with ADB-CRESR project and other donors for specific RIA training and support.

- **Legal Drafting Workshops**: legal drafting workshops aim to increase the general legal drafting capacity and will introduce specific aspects such as “plain language”. The GS-CLJR (CIM Expert) is currently in discussion with the USAID funded MSME project to adopt and conduct a basic legal drafting workshop for the Working Group. It is intended to seek further support as activities progress.

- **Stakeholder Workshops**: the RIA process depends on the feedback from stakeholder workshops. The work-plan proposes to conduct a number of stakeholder workshops throughout the RIA cycle. The SG-CLJR would organize, support, and coordinate these stakeholder-feedback workshops and help to integrate the results in the policy development and legal drafting process. It is intended to engage development partners to support the financing of stakeholder workshops.

- **Lectures**: the work plan considers activities to invite administrative law professors from other countries to conduct lectures for the Working Group on specific Administrative Law aspects. It is intended to engage development partner in the support of these activities.

- **Study Tour**: the work plan considers activities to organize and conduct a study for WG members. The study tour would include countries with Administrative Codes ranging from no-codification, in part codification, and full codification. The study tour could include Asian as well as European countries. It is intended to engage development partners in financing.

One entry point for support is the Technical Working Group for Legal and Judicial Reform (LJR-TG). The LJR-TW proposed, for example, a structure and process including the elaboration of a project document, formal approval, establishment of a working group etc. Support opportunities will be identified in a more detailed acquisition strategy (see also work-plan).

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33 Annex 1: Process for the finalization of the three remaining laws to the judiciary, prepared by the GS-CLJR, 2010
Interrelated Activities in the Plan for Action
Targeting a New Comprehensive
Administrative Law System

Plan for Action (2005)

2.1.1 Drafting, adoption of the Administrative Code and **Procedural Code**, including rules for court appeal

5.4.5 Measures to establish Administrative Tribunal

Other inter-related activities:
2.4.1 (access to information); 3.2.3 (identification of laws protecting human rights), 5.1.1 (laws pertaining judiciary); 5.2.1 (establishment of legal provisions on court decisions and appeal); 5.2.5 (legal provisions on conflict of interest); 5.4.5 (Administrative Tribunal); 7.1.1 (Passing organic law on the administrative and judicial institutions); 1.3.1 (Administrative Procedural Court including rules of appeal)) (inc.4.3.1 (Establishment of a.o. Procedural Code); 2.1.4 (Orga of Court)
Attachment 02: Process to prepare a Draft Law within Government

Legislative Process: There are several institutions involved in the legislative process. Their role is further defined in the Constitution including (i) initiate legislation, (ii) adopt legislation, (iii) review legislation and (iv) promulgate legislation. The following process reflects the 10 Steps currently used within in the Council of Legal and Judicial Reform to prepare a Draft Law within Government.

A. Initiate Legislation: process to prepare a Draft Law within Government:

1. Initiative
   - Lead agency establishes Working Group
2. Drafting
   - Responsible Line Ministry prepares Policy and First Draft
3. Review and Coordination with relevant stakeholders
   - Stakeholder review Policy and First Draft and provide feedback
   - Line Ministry revises First Draft
4. Review by Council of Jurists and ECOSOCC
   - Minister submits Ministerial Draft to Council of Jurist and ECCOSOCC
   - Council of Jurist and ECCOSOCC review draft in terms of legal and social/economic impact and include remarks for revision
5. Review by the Inter-Ministerial Meeting
   - Council of Jurist/ECOSOCC submit Ministerial Draft to Inter-Ministerial Meeting
   - Inter-Ministerial Meeting reviews and proposes amendments.
   - Line Ministry discusses proposed amendments and revises draft
     i. In case of conflict a coordination commission needs to be established, which resolves the conflict
6. Approval by Council of Ministers
   - Ministry distributes revised Draft to Council of Ministers (according to Circular on Procedures and Rules of the Meeting of the Council of Ministers)
   - Office sends commented draft to the Prime Minister
   - Prime Minister decides when the draft will be considered in the cabinet session
   - Council of Ministers review and decide to launch into the parliamentary process
   - Prime Minister approves draft and submits it to National Assembly

B. Adopt Legislation

7. Approval: National Assembly approves law

C. Review Legislation

8. Review: Senate and Constitutional Council review law

D. Promulgation of Legislation

9. Promulgation and publication: King signs law; published in Royal Gazette

E. Enforcement of Legislation

10. Enforcement
Attachment 03: The Seven RIA Steps in Action

The objective of this Chapter is to provide a concrete example for the application of RIA. It should be pointed out that the process is hypothetical and is not pre-justify any particular solution or result.

Figure 5: The Seven Steps in Action

**STEP 1: PROBLEM ANALYSIS**

If the underlying problems remain vague, it is difficult to set out a policy objective and determine the best policy instrument. The first question to ask is: What are the real problems we are trying to address? To answer this question you have to identify the broad topic and narrow it down, identify the underlying problems in relation to the policy issue by analysing the gap between existing situation and an ideal situation.

- **Identify broad topic (policy issue) and narrow it down:** the problem should be defined in relation to the policy issue. The first question therefore is: What is the policy issue and its intended scope. The policy issue set out in the Plan of Action is unclear and needs to be further interpreted (see also the discussion on scope and terminology in Chapter 02). Subject to further clarification the policy issue at stake is to establish a comprehensive administrative law system. The specific issue deals with the decision making process of an administrative body in relation to citizen.

- **What are the underlying problems in relation to the administrative decision-making process?** Some problems are easier to identify than others. In the case of administrative procedure in public law enforcement the problem identification is relatively easy, when

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34 Problems should not be defined as a lack of something. For example, the problem is that there is no Administrative Act? This could bias the definition of the objective and ultimately the choice of instruments. In addition, it addresses only a symptom and not the root cause of a problem. What should be avoided, as well, are infinite arguments. For example, the underlying problem for an Administrative Code is, that there is no Administrative Code. This circular argument confuses “means” and “end” and besides being illogical, avoids getting to the core of problems.

35 There is one common mistake when applying RIA, i.e., to confuse the “means” and the “ends”. Drafting an Administrative Code is not an “end “in itself, but a “mean” to achieve a policy objective addressing real life problems.
there is no established set of principles in law enforcement or when citizens have no recognized rights such as the right to be informed, the right to be notified, the right for a reasonable time limit etc.

But, even in sometimes-obvious cases, a more detailed and differentiated problem analysis is recommended.

- **Gap Analysis**: One tool to identify and analyze problems in more detail is the Gap-Analysis. The gap analysis
  - Compares the existing situation in relation to the policy issue and its negative effects on society
  - with an ideal situation.

The gap, consequently, is the difference between how things will be and how we would like them to be.

- **What is the existing situation?** To understand the existing situation we have to analyse the situation in relation to the policy issue, i.e. administrative decision-making process? By asking for example: How are laws enforced in Cambodia? Do citizens have rights in administrative processes? Are those rights defined? Is the bureaucracy bound by due process principles? Are those principles set out in laws, regulations, and court precedents? Sometimes, if the past still influences the presence, it helps to look back: How were laws enforced under the Khmer Rouge?

- **What is the effect of the current situation?** The next step is to ask, what is the negative effect of this situation? What are the consequences, that there are no clear rules for administrative behaviour such as due process principles? What are the costs for society, for the economy, for government? It is recommended to assess the cost and the benefits of the current situation (status quo) at this point, as “doing nothing”, will be one option under Step 3. If quantification at this point is not possible, the costs should be qualified.

- **What is the ideal situation?** If the current situation and the negative effect on society has been defined and is based on facts and not assumptions, an ideal situation for the Government should be pointed out. An ideal situation could be found, for example, in the constitution and/or in other countries. An ideal situation could refer to the European Union, which set out, for example, due process principles

**Summarize problems:** there are different types of hypothetical problems in relation to the decision making process of administrative bodies. Based on the previous research the decision making process could be not transparent, unfair, and uncertain, characterized by abuse of state power/human rights violation, or by regulatory failures such as the discrepancy between fundamental goals set out in the constitution and the current situation.

- **Unrestricted administrative authority—lessons from the past:** government, and thus the administration, has the sole authority to enforce laws ultimately using physical force. Unrestricted authority can lead to misuse and ultimately to human rights violation. Cambodian history demonstrated how the Khmer Rouge misused state authority leading to

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36 Another tool, which is used if the root-causes of a problem are unclear, is the Problem Tree

37 Due process is the idea that legal proceedings must be fair
horrendous human rights violations. The misuse of state power in the past led to the universal understanding that administrative authority should be restricted and that government proceedings are bound to law.

- **Decision making process can be unfair, uncertain, and not transparent**: When discretionary powers are given to an administrative body, it may be difficult for citizens to find out whether or not these bodies act properly, i.e., operate fair, transparent, and according to the law. This can be case if citizens do not have specific procedural rights such as the right to be informed, the right for reasonable time limits in the decision making process, the right to obtain reasons for decision.

- **Discrepancy between fundamental goals in the constitution and the current situation**: the Cambodian Constitution guarantees human rights and the respect of law. This indicates that law binds administration and that human rights should be considered in law enforcement.

**Root Causes**: the problem analysis may require not only to look at the effects, but also to look at the root causes. It is important to identify root-causes as these will need to be addressed by the proposed policy instruments. A useful tool to assist the root cause analysis is the Problem Tree (see also table below).
Table 2: Problem tree with hypothetical causes and effects

<table>
<thead>
<tr>
<th>Effects</th>
<th>Genocide</th>
<th>Less development</th>
<th>Poor Governance</th>
<th>Less economic development</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Killings</td>
<td>Corruption</td>
<td>Illegal Administra tive Actions</td>
<td>Shadow Economy/ Low FDI</td>
<td>Political pressure</td>
<td>Less social harmony</td>
<td></td>
</tr>
<tr>
<td>Human Right violation</td>
<td>Misuse of state power</td>
<td>Violation of law and general principles</td>
<td>Less Formalization/Investment</td>
<td>Delays in reform process</td>
<td>Disfranchising of citizen</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Problems</th>
<th>Unrestricted State Authority</th>
<th>Decision making process can be unfair, uncertain, and not transparent</th>
<th>Discrepancy between constitutional requirements and existing legal framework</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Causes</td>
<td>Authoritarian rule</td>
<td>Limited checks and balances</td>
<td>Administration is above the law</td>
<td>No codification /legal framework</td>
<td>Other priorities</td>
</tr>
<tr>
<td>History/Asian Values</td>
<td>No criminal prosecution /collusion within governm.</td>
<td>Unclear policy</td>
<td>Lack of policy development skills</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Laws issued for personal gain</td>
<td>Limited Capacity</td>
<td>Low salary</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**STEP 2:** Define objective(s) in relation to the identified problems. This step requires a positive formulation of the problem.

**Table 3: Examples for Objective Formulation**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Problem Areas</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision making process of an administrative body in relation to citizen</td>
<td>Unrestricted Administrative Authority</td>
<td>Restrain activities of administrative bodies (Rule of Law)</td>
</tr>
<tr>
<td></td>
<td>Decision making process is unfair, uncertain, and not transparent</td>
<td>Establish set of principles and rights requiring fairness, certainty, and transparency</td>
</tr>
<tr>
<td></td>
<td>Discrepancy between fundamental goals in the constitution and current situation</td>
<td>Operationalize Rule of Law in the context of administrative law as set out in the Constitution</td>
</tr>
</tbody>
</table>

The overall policy objective, which could summarize the a.m. findings, could be:

“Policy to make the decision making process of an administrative body more transparent, certain, fairer and bound by law”

The objective should focus on the desired final outcome rather than on the means of achieving it. Definitions such as the objective is to draft an Administrative Code should be avoided.

**STEP 3: Identify policy options.** What are the different options for solving the problem? Is Government action actually needed or are there other ways to solve the problem? If regulation is needed, what are the different options? RIA opens the view to identify alternative options for problem solving.

**Identify the full range of feasible options:** this should include, where relevant, both regulatory and non-regulatory options.

**Figure 6: Regulatory Alternatives**
Non-regulatory options, for example, include awareness campaigns in the bureaucracy, seeking to influence the behaviour of government officials.

Self-regulation options can be used, where a supervisory body can control its members, for example a ministry regulates and supervises government officials. This can be a set of mandatory standards to be applied in administrative proceedings.

Government can also use co-regulatory options, which combines elements of self-regulations and government regulation. For example, Government enacts a regulation, which sets out administrative principles, which are binding for every Government agency, but leaves it up to each agency how to implement these principles. This option requires a separate auditing agency, which checks whether government agencies comply with the principles set out in the regulation.

Finally, government can directly influence behavior or establish standardized processes through direct regulation. For example, mandatory standards or principles can be introduced to control the outcome that is to be achieved. In contrast prescriptive-based standards specify the technical detail around how the outcome is to be achieved. An Administrative Code can combine both elements. First, a binding set of principles sets out specific standards such as Legality, proportionality, and due process. Second, specific forms and procedures set out how an administrative act has to be issued, defining every procedure from the application to the final decision.

One option, always to be considered, is “Doing nothing”, i.e. leaving things as they are (see also, Problem Analysis on assessing the outcome of the current suit.

Screen options: Prior to go through a lengthy impact analysis of each option it is recommended to screen options in relation to their feasibility. Feasibility criteria can be:

- **Legality**: if one option obviously contradicts with higher-ranking law, it should not be further considered.
- **Effectiveness**: if one option is not expected to achieve the policy objective, it should not further considered.
- **Efficiency**: if there is obviously a milder or cheaper way of achieving the overall objective, the option in question should not be further considered.

Table 4: Examples for fast-screening potential options
<table>
<thead>
<tr>
<th>Option</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-Government solution</td>
<td>Not efficient</td>
</tr>
<tr>
<td>Government self regulation</td>
<td>Not effective</td>
</tr>
<tr>
<td>Only government should have rights. Citizens should only have obligations</td>
<td>Not legal, conflict with Constitution</td>
</tr>
</tbody>
</table>
**STEP 4 Assess Impact of Each Option.** Each option has trade-offs in terms of costs and benefits. What are the cost and benefits of a regulatory solution compared to non-regulatory solutions? Do the benefits of one solution justify the costs? RIA identifies the option with the best cost-benefit-ratio. The advantages and disadvantages of the regulatory options identified in Step 3 need to be assessed and weighted. Besides the problem analysis the cost-benefit analysis is one of the key methodological steps in RIA. The objective of this analysis is to help determine whether benefits from the various options justify the costs. The depth of analysis should be sufficient to come to an informed decision but also be realistic with regards to the expertise, resources and information available to the WG responsible conduction the RIA. It is therefore important not to get lost in the woods.

**A word of caution:** The way how to assess costs benefits often becomes subject of disputes. Many different methodologies can be applied, but none is entirely satisfactory. Methodological problems are compounded by limitations in the data needed to estimate monetary values of regulatory impacts. In addition, estimated benefits may be biased upwards, because those proposing a policy can be over-optimistic in evaluating reform benefits. The major benefits from RIA derive from adopting a process of structured thinking and consultation. The two major analytical trends in RIA seen today are (i) a move toward more integrated methods of assessment, converging to a method called here soft benefit-cost analysis, and (ii) partial forms of assessment, particularly assessment of administrative burdens on businesses through standard administrative cost models. Adequate attention should be given to getting the processes right and ensuring that analytical resources are focused on the key issues. Limited analytical resources should not be diverted to unnecessarily complex methodology.

**Keep it simple:** The purpose of an impact assessment in the policy development process is to provide the decision makers with a brief overview of the cost associated with each option and point out the benefits. For an initial assessment it is sufficient to make a rough qualitative estimation on the cost and benefits of each option suggested. Depending on the needs, a more detailed quantitative analysis may be added with the help and support of from ECOSOCC.

**Steps:**
- Identify the groups, which are directly affected by the proposed option
- Identify full range of impacts (including economic, fiscal, compliance, social environmental, and cultural)
- Analyze benefits of each impact
  - List all potential benefits for each of the identified groups
  - Quantify the magnitude of the benefits for each group in categories: 4 for high benefit; 2 for medium benefit; 0 no change;
- Analyze cost of each impact
  - List all potential cost for each of the identified groups
  - Quantify the costs for each group in categories: 4 for high cost, 2 for medium cost; 0 no change
- Summarize costs and benefits by adding a number for each category of cost and benefit
- Assess risks (from a society point of view)
- Assess implementation costs
Table 5: Example for analyzing the advantages and disadvantages of one option

**Option 01: Doing Nothing**

<table>
<thead>
<tr>
<th>Group</th>
<th>Impact (Benefit)</th>
<th>Magnitude</th>
<th>Impact (Cost)</th>
<th>Magnitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>Less cost for drafting/implementing law</td>
<td>4</td>
<td>Less economic development</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>No restriction in powers</td>
<td>4</td>
<td>Corruption</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Opportunity for Rent seeking</td>
<td>4</td>
<td>Social Unrest</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Loss of power</td>
<td>4</td>
</tr>
<tr>
<td>Society</td>
<td>Legal uncertainty</td>
<td>4</td>
<td>Higher Cost (time/money)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Less income</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Summary</th>
<th>Benefit</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12</td>
<td>28</td>
</tr>
</tbody>
</table>

**Risk Assessment**: assign likelihoods (low, medium, or high probability) that the identified impact will occur (from the society point of view). For example from the society point of view “corruption” and “legal uncertainty” could be highly probable risk, if nothing is done.

**Implementation (Compliance) Assessment**: choices around implementation and enforcement of a regulation can have a major influence on the effectiveness of an option. The extent to which compliance is likely to take place should be assessed as a likelihood/risk of an impact occurring. As “Doing Nothing” doesn’t have any impact on enforcement, an assessment is not required. For other options it is important to consider some practical implementation issues. These include: what agencies will administer the proposed option? What information regulated parties will require in order to comply with the proposed option? What is transitional arrangement; what will be the enforcement strategy? How will enforcement be funded?

**Summary**: The results of the impact assessment, the risk assessment, and implementation assessment should be summarized. For example, the Doing Nothing option has

- Negative (very low) benefit/cost ratio (-16), and
- High risk from the society point of view.
**Step 5 How do options compare?** Once the relevant impacts have been analyzed, the next step is to compare them.

Make a comparison among all options is using the results from the analysis:
- What option provides the best benefit/cost balance?
- What option shows the lowest risk from society point of view?
- What option shows the best benefits in terms of implementation/compliance?

An assessment of the options is never a purely scientific act; political issues have to be taken into account.

The RIA team should elaborate a summary report with initial recommendations (explanatory note) based on the findings. The recommendations shall provide a short summary of the findings, including:
- Rationale for regulatory change
- Issues identified related to underlying problems
- Summary of the options
- Summary of cost benefit
- Ranking of options

The explanatory note should not be more than 2 pages, as the Council for Legal and Judicial Reform will hardly read the full RIA statement report.

**Step 06: Monitoring, Evaluation, Review**

Policymakers need systems to verify whether implementation is on track and to what extent the policy is achieving its set objective. Within the RIA framework core indicators for the main policy objective should be defined and the system how to monitor them.

**Step 07: Stakeholder Participation**

Public consultation is included as mandatory step in the RIA process. Public consultation is important in order to include know-how, experience and opinion of all stakeholders. Though public participation, RIA improves acceptability of policy. Active stakeholder participation brings clear benefits to the RIA process by:
- Increasing transparency and accountability of the Working Group;
- Identifying problems; its issues and causes;
- Enriching alternative solutions and sort out options, which are not supported;
- Giving access to relevant information to improve the cost-benefit analysis; and
- Building a constituency to support policy change

Every consultation needs to be designed specifically. The review team needs to determine the appropriate level of consultation for the particular stage in the RIA process. Not every consultation meeting needs to have the same group of participants. Accordingly, the structure as well as the process of the consultation process differs.

Documentation of information gained from public consultation is an important step in order to justify recommendations or findings in the RIA statement. Make sure that a person is assigned as note taker and review the notes immediately after the meeting. Keep the documentation on the public consultation together with the RIA statement documents in case of upcoming questions. Workshop participants appreciate if they get a copy of the notes after the workshop. This gives them the confirmation that their input is relevant and increases the chances for participation in following meetings. In addition, the participants have the chance to bring in corrections if the notes should show misunderstandings.

Checklist for conducting public consultations
• Identify the internal and external stakeholders, based on the stakeholder mapping and the objectives of the public consultation. Make sure that you invite the right representatives for groups of stakeholders;

• Define the expected outcome of the consultation clearly. Formulate precise and specific questions. The more specific the questions are formulated, the more information you will get out of the meeting and the more interesting the meeting becomes for the stakeholders;

• Make a precise planning of the process, including a realistic time planning. Consultation meetings should not last more than two to three hours. Keep in mind that most stakeholders are busy with their own businesses. Define a moderator (maybe external) and make sure that the moderator is well informed about the expected outcome;

• Get the necessary approvals for the meeting, including the budget, from your superior;

• Prepare a run-down schedule together with the moderator; Think about necessary handouts and plan sufficient time for the preparation of the handouts;

• Select a venue for the meeting, which is easy reachable for the majority of the stakeholders. Make sure that the venue has the necessary infrastructure (white board, sound system, screen etc.).

• Fix a date and check with some planned key participants their availability. Make sure that the participants are informed at least one week in advance; explain in the invitation the purpose of the meeting and the expected outcome;

• Define the persons in charge for note taking during the meeting. Make sure that they are aware of the expected outcome; Prepare the necessary tools for note keeping, depending on the expected outcome;

• Confirm participation of invited stakeholders by phone at least two days before the event.

• Be at least 15 minutes before the scheduled time at the venue in order to check infrastructure and other preparations;

• Make sure in the meeting that all stakeholders understand the objective and expected outcome;

• Give sufficient room for the feedback of the stakeholders, but make sure that the moderator keeps the discussion focused and in line with the planned schedule;

• Make sure that the moderator gives the opportunity to speak to all participants;

• Review the documentation of the consultation with the note taker
### Attachment 04: Detailed Work Plan

<table>
<thead>
<tr>
<th>Preliminary Workplan: Support the Legal Drafting Process Leading to an Administrative Code</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Inception Phase</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Activities to Establish Working Relationship and Ongoing Support</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Prepare concept and workplan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Obtain overview of institution, stakeholders, legal frameworks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Develop strategy for Donor Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Coordinate with development partners to obtain technical and financial sup.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milestones</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concept/Workplan discussed and agreed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement on Outputs (Zielvereinbarung)</td>
<td></td>
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<tr>
<td><strong>Activities to Understand Existing Situation on Administrative Law in Cambodia</strong></td>
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<tr>
<td>1 Collect laws and regulations on administrative proceedings</td>
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<tr>
<td>2 Establish International comparative perspective (best practice models)</td>
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<tr>
<td>3 Clarify and define terminology relevant for Administrative Law</td>
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<td>4 Prepare discuss concept and workplan</td>
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<td>Milestones</td>
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<tr>
<td>1 Glossary on Legal Terms</td>
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<td>2 workshops organized</td>
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<td>1 Concept and workplan</td>
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<td><strong>Activities to Develop Policy</strong></td>
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<tr>
<td>1 Establish Working Group</td>
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<tr>
<td>2 Familiarize WG with RIA and train WD</td>
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<td>3 Identify underlying problems (Gap analysis)</td>
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<tr>
<td>4 Develop and assess policy options (Impact Assessment) with stakeholders</td>
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<td>5 Select policy option with the highest benefit for Cambodia</td>
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<td>6 Draft policy proposal</td>
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<td>7 Advocate Policy Proposal</td>
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<td>Milestones</td>
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<td>1 WG operative</td>
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<td>6 Trainings in RIA</td>
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<td>1 Policy Proposal</td>
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<td><strong>Activities to Draft Legislation</strong></td>
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<tr>
<td>1 Train WG in legal drafting</td>
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<tr>
<td>2 Prepare First Draft</td>
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<td>3 Organize stakeholder feedback workshop on First Draft</td>
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<td>4 Revise and submit Draft to Council of Jurists and ECSOCC</td>
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<td>5 Revise and submit Draft to other involved institutions</td>
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<td>Milestones</td>
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<td>4 Training Workshops</td>
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<td>1 Stakeholder Feedback Workshops</td>
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<td>1 Draft Law</td>
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<td>1 revised Draft Law</td>
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<td><strong>Activities for Learning and Innovation</strong></td>
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<tr>
<td>1 Prepare Lessons Learnt</td>
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<td>2 Prepare models, guidelines, handbooks</td>
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<td>1 Evaluate support measures</td>
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<td>Milestones</td>
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<td>1 Final Report</td>
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<tr>
<td>1 Training Module on RIA, 1 Training Module on Legal Drafting</td>
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Attachment 05: Overview Organizations supporting the GS-CLJR

In the past number of bilateral and multi-lateral donors as well foreign non-state cooperation agencies have been supporting the priority actions in the LJ process. Currently the following organizations are supporting the Council for Legal and Judicial Reform:

- GIZ-Administrative Reform and Decentralization Program. This program supports the review of administrative principles/legal units.
- CIM. This German development aid instrument funds an integrated expert to support the preparation of an Administrative Code.
- The Danish Institute For Human Rights: supports the Implementation of Legal and Judicial Reform in Cambodia including a number of activities in supporting the GS to prepare policies (e.g. legal aid), to apply for the POC scheme and to draft input to GS-CLJR’s strategic plan, action plan and work plan.
- DANIDA is in the process to fund a POC scheme/ Model Court.
- AusAid-Cambodia Criminal Justice Assistance Project. This project supports among others Indicator Monitoring System, the planning guide for justice sector institutions, and an compendium for judicial services.

Other donor programs, which could complement the proposed activities:

- USAID-MSME Project. The MSME offered to provide training in legal drafting.
- ADB-CREST Project. The Regulatory Impact Assessment Subproject will support ECOSOCC in establishing a RIA Office and provide RIA training.

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38 Id. JIKA, Development Partner Activities in the Legal and Judicial Reform Sector

39 Matrix, Follow UP on JMI Status and other issues, Technical Working Group Meeting on Legal and Judicial Reform, updated in January 2011
Working Definitions

(Draft)

Law (Khmer: ច្បាប់) written/unwritten rules governing the behaviour of people (people in government, in society, in a community, in the administration etc.)

1. Meaning in the Cambodian context: same or different?

Act/Statute Law/Ordinance (Khmer: ច្បាប់/ច្បាប់លក្ខណៈ/ក្ក្ឹត្យ): a regulation enacted by the legislative branch of Government. In contrast to judge-made case law or law made by the executive branch of government, for example sub-decrees.

1. Meaning in the Cambodian context: same or different?

Public Law (Khmer: ន្ីត្ិ/ច្បាប់សាធារណៈ): The body of law dealing with the relation between private individuals and the government, and with the structure and operation of the government itself. Public Law includes public sector law such as Mining Law, Investment Law etc. Public law in relation to citizens is characterized by a hierarchical relationship - as opposed to Private Law.

1. Meaning in the Cambodian context: same or different?

Private Law (Khmer: ន្ីត្ិ/ច្បាប់ឯក្ជន្): Body of law dealing with private persons and their property and relationships. Derived from equal relationship among citizens, e.g. contract law. Government can act in the form of Private Law. In this case the relationship is not hierarchical but equal.

1. Meaning in Cambodian the context: same or different?

Administrative Law (Khmer: ន្ីត្ិ/ច្បាប់រដ្ឋបាល): is considered part of Public Law and deals with the application and procedure of law enforced by governmental agencies. A key feature of the continental system of administrative law lies in the independent scrutiny/control of the public administration providing judicial protection against unlawful or damaging decisions. In France, and later on in most countries, the court systems developed a set of principles to be followed in administrative decision-making – most of them rested on judge-made case law. In due course, the majority of European countries

40 Working Definitions underpinning the concept paper and the legal drafting process are set in Italic. They form the basis for the common understanding and discussion. However, other meanings can be added throughout the process to complement the understanding


42 Id Black’s Law Dictionary

codified administrative decision-making procedures including administrative principles. The codification of these principles and processes is considered to be an important part of the Administrative Law.

Additionally, there are numerous special administrative laws dealing with specific sector topics such as building regulation, investment regulation, health regulations, fishing regulations, etc. Often lacking a comprehensive definition it is sometimes defined negatively, for example, Administrative Law is not Constitutional Law, State Organization Law, Law on Administrative Courts.

Other meanings:

1. Meaning in Cambodian context: same or different?

2. Common Law context: the common law context is different than the civil law context. Administrative Law is divided into three parts; (i) the statues endowing agencies with powers and establishing rules of substantive law relating to those powers, (ii) the body of agency made law, consisting of administrative rules, regulations, reports or opinions containing findings of facts and orders, and (iii) the legal principles governing the acts of public agents when those acts conflict with private rights.

Code (Khmer: ក្ក្ម): a set of rules, principles, or laws. As a set of Laws it can be legally binding. A code can also be legally non-binding, e.g., code of ethics such as the European Code of Good Administrative Behaviour. Statutory Law are often gathered into compilation called “Code”, large set of laws, for example the Code Administrative in France.

Other meanings:

1. Meaning in Cambodian context: same or different?

Administrative Code (Khmer: ម្នាក់ក្រាម): is used in a wider and narrow sense: in a wider sense as a set of rules, principles, or laws governing Administrative Law; in a narrow sense as the legal codification of specific aspects governing Administrative Law such as administrative principles or administrative decision making procedure.

Other meanings:

2. A separate Law stipulating general aspects governing Administrative Law such as administrative principles, procedures, liability, complaints etc.

Examples

- Public Administration Act, Denmark: Sets out general principles for the administrative decision making process such as disqualification or access to information.
- Administrative Procedures Act, Germany: Sets out general principles for the administrative decision making process and defines administrative proceedings. The

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44 For discussion of definitions see H. Maurer, Allgemeines Verwaltungsrecht, 17th edition,, 2009, pp.1-6,

45 Id. Black’s Law Dictionary

46 The Danish Public Administration Act, Act No. 571, of 19 December 1985

47 Administrative Procedures Act, VwVfG, enacted 2003 last revised 2009
Administrative Court Act\textsuperscript{48} stipulates administrative appeal mechanisms as well as administrative litigation processes.

3. Meaning in Cambodian context:

**Administrative Procedures (Procedural) Code** \textsuperscript{49} (Khmer: ក្ក្មន្ីត្ិវិធីរដ្ឋបាល): a method that furthers a legal process either in court or in the administration itself. Procedures can include filing and processing applications, serving documents, setting hearings, or conducting trials. To avoid misunderstandings the terms will used be in relation to its specific meaning, i.e.:

- **Administrative Litigation Procedures** (Khmer: ក្ក្មន្ីត្ិវិធីបណត ឹងរដ្ឋបាល): a law establishing rules governing administrative court (tribunal) procedures; also referred to as Administrative Court Act;
- **Administrative Procedures** (Khmer: ក្ក្មន្ីត្ិវិធីរដ្ឋបាល): a law establishing rules governing administrative proceedings of administrative agencies\textsuperscript{50}.

Other meanings:

1. Meaning in Cambodian context: law governing proceedings in an administrative court.
2. Common Law background. A federal statue establishing the rules and regulations for applications, claims, hearings, and appeals involving government agencies\textsuperscript{51}.

**Administrative Principles** (Khmer: គោលការណ៏រដ្ឋបាល): binding standards in the decision making of government agencies.

Other meanings:

1. Meaning in Cambodian context:

**Administrative Decision/Administrative Act** (Khmer: ច្បាប់រដ្ឋបាល/គេច្បក្តីេគក្មច្បរដ្ឋបាល): legally binding administrative decision at the end of decision-making process.

**Administrative Decision Making Procedure** (Khmer: ន្ីត្ិវិធីគធវើគេច្បក្តីេគក្មច្បរដ្ឋបាល): standardized process governed by due process principles such as fairness, openness, timeliness etc.

**Legality** (Khmer: ន្ីត្ាន្ុក្ូលភាព): the administration shall act according to law and apply the rules and procedures laid down in the laws and the constitution. This includes that decisions have a basis in law and that their content complies with the law.

\textsuperscript{48} Administrative Court Act, VwGO, enacted 1991, last revised 2009

\textsuperscript{49} The other term in use is either Administrative Procedural Code or Administrative Procedures Code are used synonymously in the Strategy as well as in the Plan

\textsuperscript{50} Rules how the Administration will process a case in relation to a citizen. It explains what a citizen has to do in order defend himself against an administrative action or what a citizen has to do in order to obtain a government service

\textsuperscript{51} Nolo’s Plain English Law Dictionary, 2009