



Chapter 18

DISPUTE RESOLUTION



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Companies may become unwillingly entangled with disputes over the course of conducting business in Thailand. Dispute resolution mechanisms available in Thailand include litigation through the Thai judicial system and courts, and alternative dispute resolution (“ADR”) options.

This chapter provides an overview of the Thai judicial system in respect to civil or commercial disputes, and available dispute resolution mechanisms.

1. Overview of the Thai Judicial System

The Thai judicial system plays a significant role in dispute resolution in Thailand predominantly involving litigation through the Thai courts. Understanding the basis of the Thai legal system and having general knowledge of the Thai court system is important in determining whether potential or ongoing disputes would be better served in a Thai court, or through ADR. A summary of the Thai legal and court system is provided in this section.

A. The Legal System

The major laws covering civil litigation in Thailand are the Civil and Commercial Code (the “CCC”) and the Civil Procedure Code (the “CPC”). For each of the specialized courts, specific procedural laws are enacted and applied to each respective specialized court’s proceedings in addition to, or in replacement of the CPC. Precedents set by the Supreme Court’s judgments are not officially recognized in the same manner as those of common law countries. However, certain precedents are formally published and can be referenced as guidelines for the construction of the provisions of applicable law. A Thai court may apply a foreign country’s substantive law as a fact overriding relevant provisions of the CCC if it is agreed and presented by the parties and proven that such law is not contrary to the public order or Thai public morals. Foreign laws will be considered by the courts as a matter of fact.

Provisions of treaties or international conventions to which Thailand is a party are not legally enforceable in court actions until such treaties are enacted as legislation under the Constitution.

B. The Court System

Thailand has four types of courts, namely, the Constitutional Court, the Administrative Court, the Courts of Justice, and the Military Court. An overview of the Thai court system is outlined below.

(i) Inquisitorial System v. Adversarial System

An inquisitorial system is used in the Constitutional Court and the Administrative Court, in which the court is actively involved in investigating the facts of a case. This is distinct from an adversarial system used in the Courts of Justice and the Military Court, in which the role of the court is primarily that of an impartial referee between the plaintiff and the defendant.

(ii) Constitutional Court

The Constitutional Court is a national judiciary branch having jurisdiction over cases or matters concerning the Constitution of Thailand (e.g., constitutionality of legal provisions, draft legislation and other parliamentary acts, issues concerning authorities of the administrative body, as well as the appointment and removal of public officials and issues

regarding political parties).

(iii) Administrative Court

The Administrative Court is an independent judicial organization, separate from the Courts of Justice, having jurisdiction over cases or matters concerning grievances against government agencies or public officials. There are two levels of the Administrative Courts, namely: (i) the Administrative Court of the first instance comprising the Central Administrative Court and 14 other Regional Administrative Courts; and (ii) the Supreme Administrative Court.

(iv) Courts of Justice

The Courts of Justice make up most of the courts in Thailand, consisting of three tiers as follows: (i) Courts of first instance; (ii) Court of appeal; and (iii) Supreme Court.

a. Courts of First Instance or the Trial Courts

The courts of first instance comprise of 254 courts across the country, namely:

- Courts within Bangkok's territory that have jurisdiction over civil and criminal matters:
 - Civil Court;
 - Southern Bangkok Civil Court;
 - Thon Buri Civil Court;
 - Criminal Court;
 - Southern Bangkok Criminal Court;
 - Thon Buri Criminal Court; and
 - Central Criminal Court for Corruption and Misconduct Cases.
- Provincial courts: 114 locations with 76 provincial territorial jurisdictions over civil and criminal matters.
- Kwaeng (Municipal) courts: 34 locations with jurisdiction over civil matters of Baht 300,000 claimed amounts or less, and over criminal matters involving offences punishable with imprisonment not exceeding three years or a fine not exceeding Baht 60,000, or both.
- Specialized courts with jurisdiction over specialized matters:
 - Central Labor Court in Bangkok;
 - Regional Labor Courts in nine locations;
 - Central Intellectual Property and International Trade Court;
 - Central Bankruptcy Court;
 - Central Tax Court;
 - Central Juvenile and Family Court; and
 - Provincial Juvenile and Family Courts in 76 locations.
- Regional Criminal Court for Corruption and Misconduct Cases in nine locations.

The Thai court system does not allow a choice of jurisdiction by agreement, save for matters involving contractual relationships governed by the Multimodal Transport Act, B.E. 2548 (2005). The competent court having jurisdiction over certain disputes is set by the CPC, or other laws in the case of specialized courts. In general, civil matters with Baht 300,000 claimed amounts or less, fall within the jurisdiction of a Kwaeng (Municipal) court. Civil matters with over Baht 300,000 claimed amounts, fall within the jurisdiction of a provincial court, i.e., a court of first instance other than Kwaeng (Municipal) courts.

b. Courts of Appeal

The courts of appeal comprise of 11 courts, i.e., the Court of Appeal (located in Bangkok), nine Regional Courts of Appeal located across Thailand, and the Court of Appeal for Specialized Cases. Each court of appeal handles appeals against a judgment or order rendered or issued by the court of first instance within its territorial jurisdiction, except the specialized courts. Proceedings of courts of appeal involve only appellate review, i.e., a review of the record of evidence presented and accepted in the trial court and the laws that the lower court applied to a case. The court of appeal decides as to whether the lower court's decision was legally sound based on this appellate review. Appeals against a judgment or order rendered or issued by any one of the specialized courts must be submitted to and adjudicated by the Court of Appeal for Specialized Cases (which includes five divisions: (i) the Division of Intellectual Property and International Trade Cases; (ii) the Division of Tax Cases; (iii) the Division of Labor Cases; (iv) the Division of Bankruptcy Cases; and (v) the Division of Juvenile and Family Cases).

c. Supreme Court

The Supreme Court is the highest court empowered to adjudicate cases in which appeals are submitted against a judgment or order rendered or issued by a court of appeal. However, such appeals may be pursued only when permission is granted by the Supreme Court. An application for permission to appeal must be made in the form of a motion and submitted along with a statement of such appeal. The Supreme Court may consider granting permission to appeal when it appears that the issues raised in the intended appeal are significant and worthy of being adjudicated by the Supreme Court. There are 11 divisions within the Supreme Court, as follows:

- Division of Juvenile and Family Cases;
- Division of Labor Cases;
- Division of Tax Cases;
- Division of Intellectual Property and International Trade Cases;
- Division of Bankruptcy Cases;
- Criminal Division of Persons Holding Political Positions;
- Division of Commercial and Economic Cases;
- Division of Environmental Cases;
- Division of Consumer Cases;
- Division of Election Cases; and
- Division of (Internal) Administrative Cases.

(v) Military Courts

Military Courts have criminal jurisdiction over members of the Royal Thai Armed Forces, and in wartime or during the imposition of martial law they also have jurisdiction over civilians. Military Courts comprise three tiers, as follows: (i) Military Courts of the first instance, i.e., Military provincial courts, military prefecture courts, the Bangkok Military Court, and Military unit courts; (ii) the Military Court of second instance, i.e., the Military Court of Appeals; and (iii) the Military Court of last resort, i.e., the Supreme Military Court.

2. Dispute Resolution Mechanisms

To resolve commercial disputes or pursue civil claims, the parties may choose to pursue such a claim

through litigation in a Thai court, or through ADR. The three most common dispute resolution mechanisms used in Thailand are: (i) litigation; (ii) arbitration; and (iii) mediation.

A. Litigation

(i) Overview of Civil Litigation in Thailand

Civil litigation is a dispute resolution mechanism via a court system. For disputes arising out of international transactions, there may be two litigation options, i.e., in a Thai court or the court of a foreign country, depending on various factors. Those factors include, among others: (i) whether the relevant transaction's underlying agreement entails a specific court jurisdiction; or (ii) in which country the claimant seeks to enforce his rights. Presently, a judgment rendered by a court of a foreign country is not automatically enforceable in Thailand. At best, such foreign court judgment serves as persuasive evidence during litigation in a Thai court on the same claim.

(ii) The Civil Litigation Process

Regardless of how sound the grounds for a claim may be, the situation should be carefully assessed as to whether a dispute is worth litigating through the court. If the amount in dispute is disproportionately low compared to litigation costs, it would be better not to file a suit since litigation can be extremely expensive, time-consuming, full of the potential risk of losing the case, and stressful. Pre-litigation assessment can be helpful in gathering information on factors to be taken into consideration when making an informed decision as to whether and how to proceed with resolving a dispute. Such information includes the opposing party's financial status, pertinent facts supporting your legal position, available options in pursuing your claim, etc.

The following is an overview of major litigation steps.

a. Complaint/Statement of Claim

Litigation involving a dispute over a person's rights under the civil law is started with a filing of a complaint or statement of claim to the competent court, by the plaintiff. The statement of claim sets forth all the particulars of the plaintiff's claims, i.e., relevant facts, allegations, nature of such claims, claimed amount, or relief requested.

b. Court Fee for Filing of Complaint or Counterclaim

For a civil case, a court fee for filing a complaint or counterclaim concerning property or money, is payable at a rate of 2% of claimed amounts of Baht 50,000,000 or less with a maximum fee of Baht 200,000. For claimed amounts above the first Baht 50,000,000, additional fees are payable at a rate of 0.1% of the claimed amount above the first Baht 50,000,000.

c. Writ of Summons

After a complaint is filed with and accepted by a court, service of a copy of the complaint and a writ summoning an answer to the complaint will be made at the domicile of the named defendant or that of defendant's agent or representative in Thailand if there is no domicile in Thailand. The process of service of a pleading or any other document may

take a couple of weeks if the defendant's domicile is in the same jurisdiction as the adjudicating court, or longer if not in the same jurisdiction. Service will be deemed effective when made at the domicile of the named defendant or its agent/representative by a court bailiff or by registered mail. If service is made by posting of the summons or document at the domicile of the named defendant within the territory of Thailand, the service will take effect only after a period of 15 days (or any longer period fixed by the court) has elapsed. Service of pleadings or any other documents on a lawyer appointed by a party to conduct a case will be deemed a legal and effective service made on the party.

d. Statement of Defense and Counterclaim

After the service of a writ of summons is made effective, the named defendant is required to submit a statement of defense within 15 days. Unless an extension of time is granted by the court, failure to submit a statement of defense within the deadline may lead to a default judgment in favor of the plaintiff. The statement of defense entails the defendant's admission or denial of the plaintiff's allegations, in whole or in part, as well as reasons for such denial. The defendant may also include a counterclaim in his statement of defense, provided that such counterclaim relates only to matters stated in the plaintiff's complaint. If a counterclaim is not related to the matters raised in a plaintiff's statement of claim, a court may not accept the counterclaim. In this regard, the defendant will have to file a claim in a separate case.

e. Pre-trial Steps

Once a statement of claim is lodged, a date for a pre-trial conference will be set by the court. The conference is attended by a judge and the lawyers for the parties. The purpose of the pre-trial conference is to clarify relevant legal issues and other matters that may help in disposing of the action or settling the dispute. Mediation sessions may also be carried out at the pre-trial conference.

f. Determination of Issues for Trial

If the parties cannot reach an amicable settlement during the pre-trial steps, the Court will proceed with the case by scheduling a hearing to determine issues to consider during the trial. The court will determine the issues and set the burden of proof with respect to such issues. Subsequently, trial dates will be scheduled for the examination of evidence to be presented by each party according to their respective burden of proof. In practice, trial dates will take place around two to nine months after the determination of issues in dispute.

g. Examination of Evidence

A trial commences with the examination of evidence to be adduced by each party in support of his allegations or contentions. Generally, a party with the higher burden of proof, as determined during the pre-trial conference, is required to present his evidence before the other party presents his. At least seven days prior to the relevant trial date, the first list of evidence (comprising evidentiary documents, physical evidence, and witnesses) to be adduced by each party together with photocopies of evidentiary documents must be submitted to the court and made available to the opposing party. Presentation of the evidence is made to the court on the scheduled trial dates. A party's

lawyer conducts direct examination (examination-in-chief) of a witness. After the direct examination, the witness may be cross-examined by the opposing party's lawyer. Thereafter, the party's lawyer may re-examine the witness. Presently, most courts allow the parties to submit a written witness statement in lieu of the direct examination, at least seven days prior to the relevant trial date, or as specifically scheduled by the courts. Once the written statement of a witness is submitted, the witness will appear before the court for cross-examination and re-examination. Otherwise, the written statement so submitted may be inadmissible. However, at the court's discretion or the parties' mutual agreement, certain witness statements may be accepted without the witness appearing before the court or being cross-examined.

Generally, evidentiary documents will be presented along with and confirmed by a witness statement. In principle, only an original document is admissible as evidence in Thai court proceedings. However, in cases where the original document is lost due to circumstances beyond the control of the alleging party, the submission of a copy may be permitted by the court. An expert witness may be called to provide professional opinions about some aspects of the evidence. In rendering a judgment, the court will only consider evidence and testimony presented to and accepted by the court.

All proceedings carried out by a court relating to the trial and adjudication of civil cases must be conducted in the Thai language. In cases that evidentiary documents are in a foreign language, a Thai language translation thereof is required. If a witness cannot speak Thai, his testimony or statement must be given through a qualified and sworn interpreter. Note that the Central Intellectual Property and International Trade Court may admit documents in English without a Thai translation if the Court considers that it is not documentary evidence pertaining to the main issues in dispute of the case, and the parties reach an agreement that a translation of the document is not required either partially or entirely.

h. Closing Statement

After the parties have rested their cases (i.e., having completed the presentation of evidence), the parties may, at any time before a judgment is rendered, submit a written closing statement to convince the court to rely on the arguments and evidence presented by them in rendering a judgment. In the event of a request by a party to a litigation, an opportunity to give an oral closing statement or opinion may be allowed at the discretion of the court.

i. Judgment

There are no provisions regulating the period until a judgment is reached. A judgment by a court of first instance may take approximately one to four months from the date the court proceedings are completed, depending on complexity of the case. Except for special rules for cases involving small amounts, a judgment is usually drafted and orally pronounced in the court. Judgments are based on the relief sought by the plaintiff. Relief granted by a judgment may include specific performance, a permanent injunction on actions, and/or monetary damages. Under certain circumstances, violations of certain laws empower the court to award punitive damages. However, punitive damages are rarely awarded by Thai courts. At the discretion of the court, the losing party may be ordered to bear all court and attorney's fees. Attorney's fees are limited at 5% of the claimed amount in a court of first instance, and 3% of the claimed amount at the

appellate level. The court may also order that the winning party's expenses of the proceedings be reimbursed by the losing party in an amount the court thinks fit, but no more than 1% of the claimed amount.

j. Temporary Measures Prior to Judgment

A party involved in litigation may be eligible to request a court to order a temporary measure, such as, seizure or attachment of property; preventing the opposing party from doing something; directing a registrar to hold up completion; modification or cancellation of registration pertaining to the property in dispute; ordering the opposing party to deposit property or money in dispute, etc. A request for a temporary measure must be submitted along with the complaint or thereafter. However, for certain matters, i.e., claims under the consumer protection law, claims involving the arrest of ships, or disputes under an arbitration agreement, a party may request certain temporary measures prior to filing the complaint.

(iii) Appeal and Enforcement Procedures

a. Appellate Procedures

The deadline for an appeal is generally one month from the date of delivery of the first instance court's judgment. An appeal on factual issues for a case with the claimed amounts below Baht 50,000 is prohibited (unless permitted by the court). The Court of Appeal will render a judgment based on witness statements and evidence presented to and accepted by the first instance court only, without conducting any further examination of evidence.

b. Supreme Court Appeal Procedures

A judgment of the Court of Appeals is deemed final unless permission for further appeal to the Supreme Court is granted. Generally, the deadline for submission of a motion for such permission along with an appeal to the Supreme Court against the judgment of the Court of Appeals is one month from the date of pronouncement of the Court of Appeal's judgment. A motion for permission to appeal must entail factual or legal issues to be raised in the appeal and the reasons why those issues are significant and worthy of being adjudicated by the Supreme Court. The Supreme Court may consider granting permission to appeal when it is of the opinion that the issues raised in the intended appeal are significant and worthy of being adjudicated by the Supreme Court under any one of the following circumstances:

- where the issues involve public interest or public order;
- where the Court of Appeal's judgment or order includes a decision on significant issues of law that is conflicting or contradicts any precedent set by the Supreme Court's judgment or order;
- where the Court of Appeal's judgment or order includes a decision on significant issues of law that has not been a subject of any precedent set by the Supreme Court's judgment or order;
- where the Court of Appeal's judgment or order contradicts a final judgment or order of any other court;
- where development of legal construction is intended;

- where there is a substantial dissenting opinion in the Court of Appeal's judgment or order, and the Supreme Court is of an opinion that it should be reviewed;
- where the Court of Appeal's judgment or order includes a decision on significant issues of law that is inconsistent with international agreements which are binding on Thailand; or
- where the Court of Appeal's judgment or order are conflicting with a decision on significant issues of law, and the Supreme Court is of an opinion that it should be reviewed.

c. Legal Execution Procedures

The legal execution of judgments is performed through the Legal Execution Department. Legal executing officials may execute a judgment by attaching the judgment debtor's property and then selling it by public auction, or by other actions depending on the nature of the relief being sought and granted. Any appeal proceeding (either with the Court of Appeal or the Supreme Court) will not prejudice or serve as an automatic stay of execution of the lower court's judgment. Therefore, it is crucial for a judgment debtor to file, along with an appeal, a separate petition for a stay of execution of the judgment. In this regard, the petitioner may be required to make a deposit or provide collateral for such stay of execution, if granted, pending the higher court proceedings or judgment.

B. Arbitration

(i) *Overview of Arbitration in Thailand*

In 2002, Thailand enacted the Thai Arbitration Act, B.E. 2545 (2002) (the "**Arbitration Act**"). Most provisions of the Arbitration Act are based on UNCITRAL's Model Law, which is referred to as the applicable rules of arbitration in Thailand. Major Thai arbitration institutions include: (i) the Thai Arbitration Institute, (ii) the Office of the Arbitration Tribunal of the Board of Trade of Thailand, (iii) the Thailand Arbitration Center, and (iv) the Arbitration Institute of the Office of Insurance Commission (for insurance disputes). If the parties so agree, an arbitration process may take place outside of Thailand under other arbitration rules, such as those of the International Chamber of Commerce.

In general, a dispute may be settled by arbitration if all related parties have agreed to resolve their differences via arbitration, either by having an arbitration clause in a contract governing their relationship (in anticipation of future disputes) or by entering into an agreement to refer a dispute to arbitration (when a dispute is ongoing). Parties to a case that is pending litigation in a court of first instance may agree to submit the dispute to arbitration for a determination of some or all issues. Unlike mediation, as discussed below, a party cannot unilaterally withdraw from arbitration.

(ii) *Enforcement of Arbitral Award*

a. Recognition of Arbitral Award

Thailand is a contracting state of the New York Arbitration Convention or New York Convention. As such, an arbitral award rendered in a foreign country that is a contracting state of the New York Convention will be recognized for enforcement by Thai courts. The Arbitration Act provides that an arbitral award rendered in any country is binding on the parties concerned, and that enforcement can be sought in the courts. The Arbitration Act

not only gives ratification to treaties, conventions, and international agreements on the recognition and enforcement of foreign arbitral awards to which Thailand is already a party before the enactment of the Arbitration Act, but also to the same after the enactment of the Arbitration Act. As such, an arbitral award rendered in a foreign country that is not contracting state to the New York Convention can also be enforced in accordance with international treaties and agreements to which Thailand is a party.

b. Setting Aside or Renunciation of an Arbitral Award

A Thai court may set aside an arbitral award made in Thailand or refuse to enforce a final arbitral award made in other countries, if a party to such award can prove any of the following:

- that a party under the arbitration agreement was under some incapacity under the law applicable to that party;
- that the arbitration agreement is not binding under the laws of the country agreed to by the parties, or failing any indication thereon, under the laws of the country in which the arbitral award was made;
- that the affected party was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings, or was otherwise unable to defend the case in the arbitration proceedings;
- that the award deals with a disputed issue beyond the scope of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration clause. However, if the award on a matter beyond the scope thereof can be severed from a matter that is within the scope of the arbitration agreement, the court may revoke only the matter that is beyond the scope of the arbitration agreement or clause; or
- that composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, if not agreed otherwise by the parties, in accordance with the Arbitration Act.

Furthermore, an arbitral award made in Thailand may be set aside if it appears to the Thai court that the award deals with a dispute not capable of settlement by arbitration under the law, or that the recognition or enforcement of the award would be contrary to public policy.

c. Enforcement of Arbitral Award

Seeking enforcement of an arbitral award in Thailand is carried out by filing a motion with the competent Thai court within three years from the day that the award becomes enforceable. Documents required in such enforcement proceedings must be authenticated and translated into Thai language.

d. Appeal Against Arbitral Award Enforcement Order or Judgment

Any appeal against a court's order or judgment enforcing an arbitral award can only be submitted to the Supreme Court or the Supreme Administrative Court, as the case may be. Such appeal will be accepted only under the following circumstances:

- the recognition or enforcement of the arbitral award is contrary to Thai public order or good morals;

- the order or judgment is contrary to the laws governing public order;
- the order or judgment is inconsistent with the arbitral award;
- the judge who sat in the case has given a dissenting opinion; or
- the order is an order imposing interim measures to protect the interest of the party to an arbitration agreement before or during the arbitral proceedings.

e. Court Fee on Entry of a Motion for Enforcement or Cancellation of Arbitral Award Issued in Thailand

With respect to a motion for enforcement or cancellation of an arbitral award issued in Thailand, a court fee on entry of the motion concerning arbitral awards of Baht 50,000,000 or less is payable at a rate 0.5% of the award amount with a maximum fee of Baht 50,000. For an award amount beyond the first Baht 50,000,000, an additional fee is payable at a rate of 0.1% of the award amount beyond the first Baht 50,000,000.

f. Court Fee on Entry of a Motion for Enforcement or Cancellation of Arbitral Award Issued in Any Other Countries

With respect to a motion for enforcement or cancellation of an arbitral award issued in other countries, a court fee on entry of the motion concerning an arbitral award of Baht 50,000,000 or less, is payable at the rate of 1% of the award amount with a maximum fee of Baht 100,000. For the award amount beyond the first Baht 50,000,000, an additional fee is payable at the rate of 0.1% of the award amount beyond the first Baht 50,000,000.

C. Mediation

Under the CPC, a court may, at any stage of the trial, be empowered to order the parties to attempt to reconcile or to bring about an amicable agreement or compromise settlement of the matters in dispute. If a settlement agreement is reached between the parties, a judgment endorsing such settlement agreement may be drafted to ensure the enforceability of such agreement. In addition to court-supervised mediation, which is the most common form of mediation under the Thai court system, out-of-court mediation is also available. Out-of-court mediation will generally not be automatically recognized or be enforceable by Thai courts. When a party fails to comply with any of the obligations set forth in the out-of-court settlement agreement, the non-defaulting party must file a lawsuit with the competent court for a judgment to enforce the performance of obligations under such settlement agreement.

Unlike out-of-court mediation, a settlement agreement made pursuant to mediation proceedings conducted by a registered mediator in accordance with the Dispute Mediation Act, B.E. 2562 (2019) (the “**Dispute Mediation Act**”) is deemed final and enforceable. Once the mediation process leads to an amicable settlement between parties, a compromise agreement may be drafted and endorsed by a judgment from the court. Only certain civil and criminal disputes can be mediated under the Dispute Mediation Act. These include some specific criminal disputes, land disputes which are not ownership disputes, disputes between heirs in relation to an estate and commercial disputes of amounts of Baht 5,000,000 or less.

At the end of 2020, the CPC was amended making it possible for disputing parties to request court-supervised mediation without having to start a litigation process with the court. After the court receives a request made by a party’s motion, the court will seek the other party’s consent to commence mediation. Once the mediation process leads to an amicable settlement, a compromise agreement may be drafted and endorsed by a judgment. Such judgment is

enforceable in the same manner as a court judgment rendered through litigation. There are no court fees for such mediation process.

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