

# Legal Update

## Navigating Commercial Litigation in Thailand

Though Thailand's claim to fame may be its tourism industry, these past few years, the "Land of Smiles" has quietly become a strategic hub for investors targeting the Association of Southeast Asian Nations (ASEAN) region member states, supported by record investment inflows, future-ready national strategies and major infrastructure and regulatory developments. Where there are multiple business opportunities, inevitably there are disputes – and parties may often inevitably find themselves in a position where they may have to obtain relief through litigation. Beyond common concerns of disrupted commercial relationships, hefty legal fees and lengthy dispute resolution timelines, foreign litigants must also be prepared to navigate the Thai court system, which presents its own unique procedural and evidential challenges.

Despite this, parties may find reassurance in the knowledge that once proceedings commence, the Thai court system is generally an accessible, balanced vehicle for the resolution of disputes.

### 1. The Thai legal system: An overview

Thailand is a civil law jurisdiction, relying on comprehensive, codified statutes enacted in Thai, with the Thai text being authoritative, rather than on binding judicial precedents. The principal procedural statute is the *Civil Procedure Code*, B.E. 2477 (1934), as amended, while substantive private rights and obligations are principally governed by Thailand's Civil and Commercial Code, which encompasses a broad range of issues, including personal status, property rights, family law, inheritance, and contractual obligations. Specialised procedural regimes may apply in particular fields and displace or supplement the Civil Procedure Code, such as consumer, bankruptcy, labour, tax, intellectual property and international trade legislation.

Under the Civil Procedure Code, jurisdiction is generally determined by reference to the defendant's domicile, the place where the cause of action arose and certain statutory connecting factors. A defendant need not always be domiciled in Thailand: for example, a claim may be filed in the court where the cause of action arose, regardless of whether the defendant is domiciled in Thailand. In limited cases where the defendant has no domicile in Thailand and the cause of action did not arise in Thailand, a claim may also be brought by a

Thai national or Thai-domiciled plaintiff, including before the court where the defendant's enforceable property is located in Thailand.

Ordinary civil disputes between private parties are heard within the three-tier Court of Justice system:

1. the Courts of First Instance
2. the Court of Appeal
3. the Supreme Court

The Courts of First Instance include the Civil Courts, Provincial Courts and Khwaeng Courts, as well as other courts established by statute as Courts of First Instance. Specialised courts such as those dealing with tax, labour, bankruptcy and intellectual property and international trade matter exercise jurisdiction in accordance with their respective establishing legislation. In broad terms, the Khwaeng (district) Courts may hear civil claims where the amount in dispute does not exceed THB 300,000 (approx US\$8,000), while the Changwat (province) Courts generally hear civil and criminal matters not falling within the jurisdiction of another Court of Justice.

Appeals from the Courts of First Instance are generally heard by the relevant Court of Appeal, while appeals from specialised Courts are generally heard by the Court of Appeal for Specialised Cases. Judgements or orders of the Courts of Appeal are generally final, subject to permission to appeal to the Supreme Court (Dika). In civil cases, permission to appeal to the Supreme Court is granted only where the appeal raises an important issue that the Supreme Court considers appropriate to determine, such as an issue involving public interest or public order, inconsistency with Supreme Court precedent or another final court decision, an important legal issue on which there is no prior Supreme Court precedent, the development of legal interpretation, or other important issues prescribed by the sitting President of the Supreme Court.

## **A. Developing preference for alternative dispute resolution mechanisms**

Before initiating litigation proceedings, businesses in Thailand frequently attempt to resolve disputes through alternative dispute resolution mechanisms. Thai law and Thai courts generally encourage the amicable settlement of disputes, with parties remaining free to settle disputes contractually at any stage before a final judgement is rendered. Under the Civil Procedure Code, the court has power, at any stage of the proceedings, to encourage the parties to reach an agreement or compromise in respect of the matters in dispute. The court may also conduct mediation confidentially and appoint a conciliator to assist the parties.

In addition, Section 20 ter of the Civil Procedure Code provides a mechanism for court-assisted pre-filing mediation. Before a lawsuit is filed, a prospective party may apply to the

competent court for the appointment of a conciliator to mediate the dispute. If the court accepts the application and the other party agrees to participate, the court may summon the parties and appoint a conciliator to conduct the mediation. No court filing fee is payable for this process. If the parties reach a settlement, they may request the court to issue a consent judgement, subject to the court being satisfied that it is necessary and proper to do so.

Separately, the *Dispute Mediation Act*, B.E. 2562 (2019) provides a statutory framework for certain out-of-court mediation processes conducted by authorised agencies. Civil mediation under the Dispute Mediation Act is subject to specific statutory limits and exclusions. In particular, it is not available for disputes concerning personal status, family rights or ownership of immovable property. It is available for certain categories of civil disputes, including disputes concerning land other than ownership disputes, disputes among heirs relating to inherited property and other civil disputes where the amount in dispute does not exceed THB 5 million / US\$ 150,000, unless otherwise prescribed by royal decree.

## **B. Effecting and enforcing foreign judgements in Thailand**

Thailand is not currently a party to any bilateral or multilateral treaty providing for the reciprocal recognition and enforcement of foreign court judgements, has not acceded to the Hague 2019 Judgements Convention, and has no general statutory regime for direct registration or enforcement of foreign judgements. Thai courts do not directly enforce foreign court judgements as judgements. A successful party seeking relief in Thailand must generally commence fresh proceedings before a competent Thai court on the underlying claim, subject to the applicable Thai prescription period.

However, a foreign judgement may be submitted in Thai proceedings as documentary evidence and may carry persuasive weight, particularly where it is final and conclusive, was issued by a court of competent jurisdiction and is not contrary to Thai public order or good morals. Potential litigants should therefore consider carefully whether a foreign court judgement will be practically enforceable against assets in Thailand, and whether arbitration may offer a more effective cross-border enforcement route.

This position is materially different for foreign arbitral awards, as Thailand is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Pursuant to the *Thai Arbitration Act*, B.E. 2545 (2002), a foreign arbitral award falling within an applicable convention, treaty or international agreement to which Thailand is a party may be recognised and enforced by petition to the competent Thai court. The application must be filed within three years from the date the award became enforceable, and must include the original or a certified copy of the award, the original or certified copy of the arbitration agreement, and certified Thai translations of any documents not in Thai. Enforcement is not automatic, however, and may be refused on statutory grounds, including invalidity of the arbitration agreement, lack of proper notice, excess of jurisdiction, procedural irregularity, annulment or suspension of the award at the seat, non-arbitrability, or

inconsistency with Thai public order or good morals. For cross-border contracts involving Thai counterparties or Thai assets, this is one reason parties often consider arbitration clauses.

## 2. The anatomy of Thai court proceedings

### A. Court procedure and relevant fees

Commercial litigation before the Thai courts is governed by the procedural framework established by the Civil Procedure Code, and proceedings begin when the plaintiff files a plaint (or *kham fong*), which is a written pleading that states the parties, the cause of action, the relief sought and the amount of damages or value of the claim. All proceedings are conducted in Thai: the plaint must be drafted in the Thai language; any foreign-language documents must be accompanied by a certified Thai translation; and submissions before the court are generally also made in Thai, with few exceptions. The plaint must also be signed by the plaintiff counsel holding a valid power of attorney in the Thai form. Thus, the need for local Thai counsel cannot be overstated, and it is common for there to be cross-border coordination and instruction with foreign counsel when foreign litigants are involved.

Additionally, court fees are payable upon filing and amount to 2 percent of the amount claimed for monetary claims, capped at THB 200,000 / US\$ 6,000 for claims up to THB 50 million / US\$ 1.5 million at each court level. Where the monetary claim exceeds THB 50 million / US\$ 1.5 million an additional 0.1 percent is charged on the amount exceeding such. Certain non-monetary claims or applications, such as an application for the appointment of an estate administrator, are subject to a fixed filing fee of THB 200 per application.

Once the plaint is accepted by the relevant court, the court issues a summons and serves a copy of the plaint on the defendant, generally through court officers. Service is usually effected at the defendant's domicile or place of business, although the Civil Procedure Code permits alternative or substituted methods of service in prescribed circumstances, including special procedures for service on defendants outside Thailand. The defendant must file an answer within the period prescribed by law or specified by the court. A failure to file an answer may result in the defendant being deemed in default; however, a default judgement is not automatic, as the plaintiff must apply for judgement in default and the court may consider the plaintiff's evidence before rendering judgement.

It may be noted that although there is no formal pre-action protocol in Thai civil procedure equivalent to those in common-law jurisdictions, several substantive provisions of the Civil and Commercial Code require either a stipulated due date or a notice of demand before the debtor is placed in default and statutory interest begins to run. A demand letter is also important in practice, as it creates a documentary trail that strengthens later evidence, demonstrates good faith and facilitates settlement discussions or a possible request for pre-filing mediation.

## **B. Disclosure, document production and evidence**

Thai courts place a considerable emphasis on documented evidence – while witness testimonies are part and parcel of proceedings, written evidence often holds more weight, and comprehensive documentation is crucial to any litigant’s case. Original documents are preferred under Section 93 of the Civil Procedure Code, though certified copies are admissible if the original is unavailable, with the court giving such weight as it considers appropriate.

It should also be kept in mind that the Thai discovery procedure differs greatly from that of common law jurisdictions, for the lack of obligation of voluntary mutual disclosure, depositions, and party-driven interrogatories means that each party is responsible for gathering and producing the evidence supporting its case. Each party must file a list of witnesses and documents at least seven days before the date of the first taking of evidence, identifying the witnesses and/or experts to be called and the documents to be relied on. Late submissions require leave of court and are permitted only if it can be shown that the evidence could not have been identified earlier despite reasonable diligence.

## **C. Provisional and protective measures**

The general framework for provisional and protective measures appear in Sections 253 to 270 of the Civil Procedure Code, supplemented by parallel provisions in the specialised procedural acts. Applications for measures such as emergency orders and temporary injunctions may be applied for together with the plaint or any time before judgement is entered, and the plaintiff must demonstrate a *prima facie* meritorious case and a real, demonstrable risk of harm, asset dissipation, or prejudice to enforcement. The plaintiff may also have to provide security as indemnification for a wrongfully ordered injunction. In urgent cases, such orders may be granted on an emergency or *ex parte* basis without prior notice to the defendant. The defendant, however, may petition the court for withdrawal, variation or challenge the order or its enforcement.

## **D. Expected timelines**

Per the *Timeframe for Judicial Proceedings Act*, B.E. 2565 (2022) and the applicable Courts of Justice regulations and announcements on case-disposition timeframes, Thai judicial bodies, including the Courts of Justice, are required to publish indicative timeframes for completing procedural stages. These timeframes are intended to improve transparency, accountability and case-management predictability, but they do not override judicial discretion or the court’s case-management powers, nor do they guarantee that complex cases will be completed within the indicative period.

As a general guide, contested civil cases may take around one year at first instance, with additional time required for appeal and, where permission is granted, Supreme Court proceedings. Complex matters, particularly those involving multiple witnesses, expert

evidence, extensive filings or interlocutory applications, may require multiple hearings and extend the overall timeline.

### 3. Execution of judgements and asset recovery

Where the court has issued its judgement and corresponding execution order, it may also issue orders requiring judgement debtor to disclose their assets, pay the judgement, deliver specified property or perform certain acts. If the judgement debtor does not comply, the judgement creditor may apply for a writ of execution. Once the writ is issued, an execution officer may, together with the creditor, proceed to attach or seize the debtor's property, which may then be sold by way of public auction in accordance with the applicable execution procedures. In practice, the various execution procedures can be complex and time-consuming, and the entire process of collecting a judgement may take several months or longer.

The process of identifying, tracing and locating assets can be difficult, and practical recovery is often dependent on the quality of the asset investigation conducted before or during the proceedings. Thailand has no general public register of bank accounts, and self-help recovery is not permitted under law. Additionally, the assets traced may be subject to prior claims of other preferred or secured creditors, further limiting recovery even for successful judgements. Thus, asset tracing should be considered at an early stage of the dispute, as the risk of asset dissipation may increase over time and interim remedies, while available, are subject to statutory requirements and the court's discretion.

### 4. Conclusion

Overall, many strategic considerations for potential litigants remain generally applicable for Thailand. Parties should always use well-drafted dispute resolution clauses and consider arbitration clauses for cross-border deals, maintain proper records and bilingual contracts, seek local counsel early and properly evaluate counterparty assets before commencing proceedings.

### Further information

Should you have any questions on commercial litigation in Thailand, please get in touch with the team at PDLegal.

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