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Litigation 2025

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Thailand: Law and Practice

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Tilleke & Gibbins



THAILAND



Law and Practice

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1. General

1.1 General Characteristics of the Legal System

Thailand's legal system is a civil law system. For something to be enforceable as law, it must first be written or formally established in writing by the state. Primarily, the authority to enact laws lies with the legislative power. However, in certain cases, the government may enact laws by exercising powers granted by the constitution, such as issuing a Royal Decree (Emergency Decree).

Precedential cases of the Thai Supreme Court are influential on lower courts considering decisions to which those precedent cases would apply. However, unlike in common law jurisdictions, the precedents are not legally binding on the lower courts.

Court proceedings in Thailand are conducted through both written submissions and oral argument.

1.2 Court System

Under Thai law, there are four types of courts as follows.

- Courts of Justice – these courts have the authority to hear and adjudicate civil and criminal cases occurring within the country. Their primary role is to resolve disputes between parties. The Courts of Justice are divided into three levels:
 - (a) Courts of First Instance (which, as discussed in **3.3 Jurisdictional Requirements for a Defendant**, can be further subdivided into specialised courts);
 - (b) Courts of Appeal; and
 - (c) the Supreme Court.

- Administrative Courts – these courts handle cases involving administrative matters, separate from Courts of Justice. They use an inquisitorial system, allowing them to investigate facts beyond what is presented by the parties, due to the nature of cases often involving regulations or orders from administrative authorities.
- Constitutional Court – this court plays a critical role in reviewing the constitutionality of laws. It has the authority and duty to safeguard the Constitution and protect the rights and freedoms of the people. The rulings of the Constitutional Court are binding on all entities.
- Military Courts – these courts have the authority to adjudicate and impose penalties on military personnel who commit offences under military law or other criminal laws.

The length of time to get to trial after commencement of proceedings can vary a great deal and will depend on a number of factors, including the complexity of the case and the court's backlog. Having said that, parties can expect that a trial will begin within three to eight months of the commencement of the proceedings.

1.3 Court Filings and Proceedings

In Thai legal proceedings, trials are conducted publicly. Public trials serve as a mechanism to promote transparency in the judicial process and guarantee that defendants have equal rights to defend themselves in court. Thai law allows the court to also order a “closed trial” in certain cases, during which the public will not be permitted to attend or access information about the proceedings.

Court filings are generally not available to the public. Only the parties to a case can access court submissions.

1.4 Legal Representation in Court

To represent a client in court or work as a lawyer under Thai law, one must meet the following qualifications.

- Hold a bachelor's degree in law (LLB).
- Possess a licence to practice law from the Lawyers Council of Thailand.
- Be a Thai national.
- Be at least 20 years old on the date of submitting the registration and licensing application.
- Have good moral character.
- Not be currently serving a prison sentence by final judgment.
- Never have been sentenced to imprisonment by final judgment.
- Not be declared bankrupt by final judgment.
- Not suffer from certain contagious diseases.
- Not be physically disabled or mentally impaired in a way that renders one incapable of performing the duties of a lawyer.
- Not be a government official or local employee with a permanent salary and position, except for political office holders.

Foreigners cannot become lawyers under Thai law. Accordingly, they are unable to conduct cases in Thai courts.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Litigation funding by a third-party funder is generally not permitted in Thailand. This is because litigation funding would be considered contrary to “public order and good morals” (ie, public policy) under Thai law. This is especially the case when the funder is a lawyer who funds the case to seek benefits in return, as it would be considered that the lawyer encouraged or incited

the parties to enter into the dispute. This would make litigation funding, if made in the form of an agreement, void under Thai law.

An exception to the rule against litigation funding can be made in a case where the funder has a direct interest or involvement in the dispute. For example, if the litigation funding did not constitute seeking benefits from pursuing the litigation of others, but only represented the funder pursuing or protecting its own interest, such agreement would be legally enforceable and not contrary to public policy. But this is a separate concept from the types of third-party funders that are seen in other jurisdictions in which this is allowed.

2.2 Third-Party Funding: Lawsuits

As noted in 2.1 **Third-Party Litigation Funding**, litigation funding by a third-party funder is generally not permitted in Thailand, regardless of the type of lawsuit.

2.3 Third-Party Funding for Plaintiff and Defendant

As noted in 2.1 **Third-Party Litigation Funding**, litigation funding by a third-party funder is generally not permitted in Thailand.

2.4 Minimum and Maximum Amounts of Third-Party Funding

As discussed in 2.1 **Third-Party Litigation Funding**, litigation funding by a third-party funder is generally not permitted in Thailand.

2.5 Types of Costs Considered Under Third-Party Funding

See 2.1 **Third-Party Litigation Funding**.

2.6 Contingency Fees

Contingency fee arrangements are generally not permitted under Thai law. As discussed in 2.1

Third-Party Litigation Funding, this type of fee arrangement would be one deemed to encourage a lawyer to seek benefits from the dispute in which his or her client is involved. Accordingly, similar to an agreement regarding third-party funding, a contingency fee agreement would be considered void under Thai law.

2.7 Time Limit for Obtaining Third-Party Funding

As noted in 2.1 **Third-Party Litigation Funding**, litigation funding by a third-party funder is generally not permitted in Thailand.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

Thai law does not impose any requirements on the parties regarding pre-action conduct. As a practical matter, a potential plaintiff may send a pre-action demand letter to a potential defendant. However, there is no requirement for the potential defendant to respond to such a letter.

3.2 Statutes of Limitations

In Thailand, statutes of limitations (called “prescription periods” in Thai law) are governed by the Thai Civil and Commercial Code. The general limitation period for most civil suits is ten years from the date the right to sue arises, such as the date the opposing party breaches a contract. However, Thai law also provides specific prescription periods for certain types of claims. If there is no specific law on the specific limitation period of that case, the general ten-year prescription period will apply to the case.

Examples of specific prescription periods for certain types of claims are as follows.

- Tort/Wrongful Act – one year from the date the injured party becomes aware of the injury and the identity of the responsible party.
- Debt acknowledgment or acceptance letter – two years from the date of such letter or the debt guarantee, if a party or both parties make(s) a letter of debt acknowledgment.
- Cases for claiming interest in arrears; rental of property in arrears; reclaiming repayments in instalments; and reclaiming outstanding payments such as salary – five years from the date the right of claim was contested; ie, the date on which the breach occurs.

3.3 Jurisdictional Requirements for a Defendant

A civil lawsuit can be filed in Thailand if:

- either of the parties is domiciled (including having a place of business) in Thailand;
- the cause of action accrued in Thailand;
- the plaintiff has Thai nationality; or
- the defendant has property in Thailand, whether the property is located temporarily or permanently in Thailand.

General courts vs specialised courts – while the basic principles of jurisdiction mentioned above generally apply to all courts that have jurisdiction over a matter, certain specialised courts have jurisdiction over specific types of cases, which means they operate under different rules regarding what cases they can hear. The specialised courts in Thailand are as follows:

- Bankruptcy Court;
- Intellectual Property & International Trade Court;
- Juvenile and Family Courts;
- Labour Courts; and
- Administrative Courts.

3.4 Initial Complaint

A civil complaint must be prepared in a standardised court form. The complaint must clearly state the nature of the plaintiff's claims and the relief applied for, as well as the allegations on which such claims are based. A party is permitted to amend its complaint and documents attached to the complaint after filing them with the court. Amendments are made by filing a petition with the court at least seven days before the scheduled preliminary hearing or seven days before the first day of witness hearings. However, if the amendments contain issues related to public order (ie, public policy) or the purpose of the amendment is to correct minor errors, a party can file the amended complaint after the above-mentioned timelines.

3.5 Rules of Service

An adversary will be informed of a complaint by the court officer. According to the law, every complaint must be delivered by a court officer to the involved party or any third party. The plaintiff must pay the fee for the complaint's delivery upon filing it with the competent court. This ensures a fair and efficient legal process for all parties involved.

If service of the complaint cannot be made by the court officer (for example, if the adversary has changed addresses, or the court officer cannot find anyone at the address specified in the complaint), the court may order any of the following other methods of service:

- posting the complaint at a noticeable place at the domicile or operating office of the party or person to whom the pleading or document is directed;
- depositing the complaint with a local administrative official or a police official and posting a

notice of such deposit by the method stated above;

- advertising it; or
- any other means as the court sees fit.

Assuming that the case meets the jurisdictional requirements of the Thai courts as outlined in **3.3 Jurisdictional Requirements for a Defendant**, then a defendant residing outside of Thailand can be sued in a Thai proceeding. Unless the law of the jurisdiction in which the defendant resides provides for alternative means of service, the complaint would need to be served through diplomatic channels through the Thai Ministry of Foreign Affairs.

3.6 Failure to Respond

In a typical case, when a writ of summons and complaint has been served on the defendant, the defendant shall prepare and file an answer in writing with the court within 15 days. A defendant may also file a petition to request an extension of time to file the answer. Typically, the court would allow two or three extensions of the deadline to file the answer.

If the defendant does not file any answer to the court and does not otherwise become involved in the case by any means, the plaintiff shall file a request with the court within 15 days from the expiration of the period for the defendant to file an answer, for the court to render a judgment or order adjudicating in favour of the plaintiff by default.

3.7 Representative or Collective Actions

Thailand permits representative or collective actions in the form of class actions. Any claims under the Civil Procedure Code may be filed as class actions as long as certain specific conditions are satisfied. These provisions include the following.

- Commonality – the plaintiff has shown adequately clear common characteristics of the identifiable class of persons.
- Numerosity – such class of persons has a large number of members, which would cause difficulty and inconvenience in conducting ordinary proceedings.
- Superiority – class-action proceedings will be fairer and more efficient than ordinary proceedings.
- Typicality – the plaintiff has shown that the plaintiff is a qualified class member with claims typical of the class and that the lawyer nominated by the plaintiff is able to carry out the proceedings to adequately and fairly protect the rights of the class.

The Civil Procedure Code provides a partial list of the kinds of claims that can be filed as class actions. These include tort claims, claims arising from contract breaches, and claims pertaining to particular laws like consumer protection, labour, securities, trade competition, and environmental laws.

A motion to proceed with a case as a class action must be filed together with the underlying complaint with the competent court. The class-action motion must demonstrate that the dispute meets the level of the requirements listed above.

Any potential class member who wishes to file a separate lawsuit or does not wish to be bound by the judgment of the class action can opt out of the class. To do so, the individual must notify the court in writing of his or her intention to withdraw from class membership within the time period specified by the court.

A person who has opted out from being a member of a class cannot apply for opting back in to become a member and cannot interplead as a

joint plaintiff in the class action. However, such person has the right to pursue individual claims.

3.8 Requirements for Cost Estimate

There are no requirements to provide clients with cost estimates at the outset of potential litigation.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

It is possible for a party to make an interim application/motion before trial or substantive hearing of a claim. These would take the form of a petition for a temporary order or an injunction. Such applications are not limited to only case management issues. If the court determines that the petitioning party meets the applicable requirements, the party may also obtain interim remedies from the court.

4.2 Early Judgment Applications

Before trial or substantive hearing of a claim, a party can make an application raising a question of law which, if decided in favour of such party, would lead to the trial being discontinued or non-consideration of any significant issue of the case, or even if that significant issue was further considered, it would not make the case more apparent. In such case, the court has the power to consider the question of law and preliminarily render its decision on that question prior to further proceeding with trial. The application could be made at any time from the beginning of the case, but will typically be made before trial, as it would result in the early dismissal of the case.

4.3 Dispositive Motions

Dispositive motions that are commonly made before trial by a defendant include those arguing that the claim should be barred based on the

prescription period, that the complaint is unclear, or that the case should be dismissed based on the existence of an arbitration clause in the contract at issue.

4.4 Requirements for Interested Parties to Join a Lawsuit

An interested party not named as a plaintiff or defendant could join a lawsuit by filing an interpleader application either as a third party when it sees that it is necessary to do so to protect or enforce its own rights related to the matter, or as a co-plaintiff/defendant when it sees that it has a legal interest in the result of a case.

By request from the existing parties in the case, interested parties may also be called to join the case as co-defendants.

4.5 Applications for Security for Defendant's Costs

A defendant can apply for an order requiring the plaintiff or claimant to pay a sum of money as security for the defendant's costs. This is often sought when the plaintiff is a non-resident, with the goal of ensuring that the defendant can recover legal costs if the plaintiff loses the case and fails to pay. The security serves as protection against the potential risk of non-payment by an overseas plaintiff.

4.6 Costs of Interim Applications/Motions

A Thai court will not award costs for filing or responding to an interim motion. Each party will bear its own costs for these. However, the court may order the requesting party to place a monetary guarantee for any damages that might occur as a result from the interim order.

4.7 Application/Motion Timeframe

As mentioned in 4.1 **Interim Applications/Motions**, interim motions in Thailand will take the form of a petition for a temporary order or an injunction. A Thai court would typically take approximately two weeks to one month to consider an application for non-emergency interim relief, but this will depend on the circumstances of the case and on the court's schedule. If the court deems it necessary for due process purposes, it may also schedule a hearing to examine the matter further before issuing a decision.

In case of emergency, an emergency motion can also be filed together with a petition for temporary order or injunction. Examples of an emergency are when the defendant intends to remove or transfer the property in dispute, or when the defendant intends to repeat or continue the wrongful act or the breach of contract. The court would normally consider the emergency petition on the same date that the emergency petition and the injunction petition are filed.

5. Discovery

5.1 Discovery and Civil Cases

While discovery is available in civil cases, the mechanisms and procedures available to a party seeking discovery are limited in scope when compared to jurisdictions in which extensive discovery practice is common. The available mechanisms include both the production of documents and the taking of witness testimony. A party may present its own documentary evidence and witnesses during trial proceedings. It may also request that the court issue a subpoena to the opposing party to produce certain documents or witnesses at trial. If a subpoena for documentary evidence is requested, the scope

of such request must be narrow and identify the document(s) to be produced with specificity.

As the available mechanisms are limited in scope, there is very little opportunity for a party to abuse these mechanisms, as can occur in other jurisdictions. Accordingly, other than the specificity required for a subpoena for documents mentioned above, there are no specific mechanisms by which the scope and/or costs of the discovery process can be curbed.

5.2 Discovery and Third Parties

It is possible to obtain discovery of both documentary evidence and witness testimony from a third party. This will be done by asking the court to issue a subpoena for a specific document or documents or for a third party to appear at trial to testify.

5.3 Discovery in This Jurisdiction

The discovery process in Thailand is limited in scope. There is no formal pre-trial disclosure procedure. Parties are not required to produce lengthy initial disclosures or mandatory disclosures of the witnesses and documentary evidence on which they intend to rely during trial. Instead, under the Criminal Procedure Code, each party is required to submit a list of witnesses and documentary evidence at least seven days before the hearing at which the evidence will be taken. For supplementary lists of additional witnesses or evidence, each party is required to submit this list within 15 days from the hearing at which the evidence was presented.

5.4 Alternatives to Discovery Mechanisms

As described previously in **5. Discovery**, Thailand provides for certain discovery mechanisms, albeit of a more limited scope than that found in jurisdictions with extensive discovery practice.

5.5 Legal Privilege

Absent certain circumstances, licensed lawyers in Thailand are prohibited from disclosing confidential information about their clients. Additionally, under the Thai Penal Code, the disclosure of confidential information by a licensed lawyer or the lawyer's assistant or trainee can constitute a criminal offence under certain circumstances.

If an in-house lawyer is licensed in Thailand, then the concept of attorney-client confidentiality will also apply in the same way that it would apply to external lawyers.

5.6 Rules Disallowing Disclosure of a Document

A party on whom a subpoena for documents has been served can file a petition to dismiss the subpoena on certain grounds, including the following.

- The requested document is irrelevant or the request is too broad or too vague to enable the party to identify the document or determine whether it is in its possession.
- The request is overly burdensome.
- The requested document does not exist or is not in the party's possession
- Production of the requested document is prohibited by law.
- Production of the requested document could potentially cause damage to a third party.
- The requested document is confidential or privileged.

However, the decision of whether to enforce or dismiss the subpoena will be up to the discretion of the court.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Under Thai law, injunctive relief is available to a party facing urgent circumstances, such as in situations where if the plaintiff had to wait for a court hearing, it might be too late to provide effective protection, potentially causing damage to the plaintiff and making it difficult to enforce a judgment in their favour if they win the case.

A common example of this would be when a plaintiff requests the seizure or freezing of a respondent's assets to ensure that those assets are not disposed of by the respondent during ongoing court proceedings. In such a case, the plaintiff must demonstrate that the respondent is going to wilfully remove all or part of the property in dispute from the court's jurisdiction, or is going to sell or dispose of the property for the purpose of avoiding enforcement of any execution order which may be issued against the respondent.

Another example would be when a plaintiff requests that the court order a respondent to do something or to refrain from doing something. In such a case, the plaintiff must demonstrate that the respondent is going to repeat or continue committing the unlawful act or breach of contract and the plaintiff will continue suffering damages due to the respondent's act.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

If a situation requires immediate remedy, a party may seek urgent injunctive relief. This applies to situations in which the delay of injunctive relief would cause damage to the applicant, such as when the respondent is about to transfer or dispose of assets. If the assets are not seized promptly, the respondent may not have any remaining assets for the applicant to enforce the

judgment against. A request for urgent injunctive relief must be submitted alongside a request for ordinary injunctive relief, and the court will expedite its consideration.

In practice, when the applicant files a request for urgent injunctive relief, the court will conduct a hearing on the same day. The hearing may involve testimony from the applicant's witnesses or evidence summoned by the court, or it may rely solely on the applicant's statement.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

In considering a request for urgent injunctive relief, the court will conduct a hearing on an ex parte basis on the same day the applicant submits the emergency petition. The applicant is not required to notify or serve a copy of the petition for urgent injunctive relief to the respondent.

6.4 Liability for Damages for the Applicant

Issuing an injunctive relief order before the final judgment may cause damage to the respondent. In practice, before the court grants such temporary measures, it will often require the applicant to deposit money or provide security as compensation for any potential damages the respondent may suffer. If the respondent is forced to comply with the injunctive relief order and sustains damages as a result, the respondent may be entitled to compensation.

6.5 Respondent's Worldwide Assets and Injunctive Relief

The jurisdiction of Thai courts is limited to the Kingdom of Thailand. Further, Thai law does not specifically address the issue of whether a Thai court could issue injunctive relief against a respondent's assets located outside of Thailand. Accordingly, a Thai court would likely not agree

to include assets located outside of Thailand in a freezing order.

Additionally, there are no treaties or international agreements to which Thailand is a party that would allow for enforcement against a respondent's assets outside of Thailand. A judgment creditor would need to request or file a lawsuit in the court of the country in which the assets are located in order to obtain injunctive relief from that court, if available.

6.6 Third Parties and Injunctive Relief

A request for injunctive relief can also affect third parties. This applies in cases where there is an order for the seizure of assets directed at a third party who has an obligation to deliver or transfer assets to the respondent to refrain from doing so and instead to deliver or transfer the assets to an enforcement officer. However, the assets seized must belong to the respondent. If the court orders the seizure of assets owned by a third party, the rightful owner of the assets can file a request for the release of those assets.

6.7 Consequences of a Respondent's Non-compliance

If a request for injunctive relief is granted, and the applicant has requested that the court issue an order prohibiting the respondent from repeating or continuing a certain action, once the court's order is in effect, it directly binds the respondent. If the respondent fails to comply with or violates the order, the applicant can request that the court issue a warrant for the respondent's arrest and detention.

7. Trials and Hearings

7.1 Trial Proceedings

In Thailand, a trial or witness hearing is conducted in the Court of First Instance. The trial proceeding includes direct examination of witnesses (including experts) by the party presenting the case, followed by cross-examination by the opposing party, and redirect examination by the presenting party. Parties may be allowed to present written witness statements ahead of trial which will serve as the basis for direct examination testimony (and which may be supplemented orally during the testimony of that witness), but the cross-examination and redirect examination of a witness will be done orally during trial. Parties may also make oral arguments in support of or in opposition to certain petitions submitted to the court during trial proceedings. The parties may also present a closing statement, either orally or in writing, but this will typically be done in writing.

At the Appellate Court and Supreme Court levels, there are no witness examinations. These courts consider written submissions by the parties.

7.2 Case Management Hearings

For managing civil cases, the courts normally schedule the first hearing to discuss and manage administrative matters with the parties. The administrative matters include identifying the issues in dispute based on the written submissions by the parties, discussing the number of witnesses to be presented, and scheduling trial or witness hearing dates.

In Thailand, before more complex trials or witness hearings are conducted, a party can file an interim petition and an emergency petition requesting that the court hear those petitions on

an emergency basis. Those petitions must be filed with a complaint.

For shorter hearings, a court may schedule an administrative hearing to further discuss and consider the written submissions of the parties. At that hearing, the court may also hear oral arguments from the parties on the issue before it.

7.3 Jury Trials in Civil Cases

In Thailand, jury trials are not available in civil cases (or in criminal cases).

7.4 Rules That Govern Admission of Evidence

Thai law governing the admission of evidence at trial in civil cases is the Thai Civil Procedure Code. The primary rules governing the admission of evidence at trial are as follows.

- Evidence must relate to the facts to be proven by any party to the case.
- The party adducing evidence must submit a list of witnesses and evidence to be presented in the case within a period fixed by the law.

7.5 Expert Testimony

Expert testimony is permitted at trial. The parties can introduce expert testimony. The court by its own discretion can also seek expert testimony or guidance.

7.6 Extent to Which Hearings Are Open to the Public

Witness hearings must be conducted openly in a court with the presence of the parties. Exceptions are given in the following cases.

- For maintaining order in the court, if the court has expelled any party from the court due to

improper behaviour, the court may continue to conduct the hearings in the absence of such party.

- For the appropriateness or protection of the public interest, the court at its discretion can order that trial be conducted confidentially (ie, not open to the public).

Written records of hearings (in the form of summaries of witness testimony and memoranda of proceedings) are not available to the public. They are only available to the parties to the case.

7.7 Level of Intervention by a Judge

During a witness hearing or trial, the judge has the power to control the witness presentation. This could include, among other things, ordering a lawyer asking the witness to focus on the issues in dispute or rejecting testimony which is not related to the issues in dispute.

When considering a petition or motion that is of a general or relatively straightforward nature, the court will typically issue its judgment or decision at the hearing. Examples of such petitions would include a petition to submit an additional evidence list or a petition to amend a pleading or witness statement.

For petitions addressing more complex and/or potentially significant matters, the court may decide to issue its judgment at a later time. Examples of such petitions would include a petition to accept the late submission of a defendant's answer or a petition asking the court to dispose of a case due to the existence of an arbitration agreement between the parties.

7.8 General Timeframes for Proceedings

The timeframe for proceedings would depend on a case-by-case basis. Factors that may determine the case timeframe include complexity of

the case and the backlog and caseload of the court in which the case is filed.

For commercial disputes, a reasonable estimated timeframe for proceedings from commencement of a claim through trial can be 12 to 18 months, plus another one to three months for obtaining a lower court judgment. The length of the trial itself will depend on the number of witnesses that will testify at trial as well as the court's schedule of available dates for the hearings. Thai courts will use the number of witnesses as the basis for scheduling the number of days for witness hearings. The court will attempt to schedule these witness hearings on consecutive days, but this will depend on the court's schedule.

8. Settlement

8.1 Court Approval

In Thailand, court approval for settling a lawsuit is generally not required for most civil cases. The parties can negotiate and enter into either an in-court or an out-of-court settlement agreement. If the parties choose an in-court settlement agreement, the agreement must be approved by the court.

However, there are other specific circumstances where court approval is necessary.

Family Law Cases

In divorce proceedings or child custody cases, any settlement agreement regarding the division of property or child support must be approved by the court to ensure that it is fair and in the best interest of the children involved.

Bankruptcy Cases

In bankruptcy proceedings, settlements or compromises involving the distribution of assets or liabilities typically require court approval.

Class-Action Lawsuits

If a settlement is reached in a class-action lawsuit, it usually needs court approval to ensure that the interests of all class members are adequately represented and protected.

Certain Types of Claims

In some specific situations, such as when a minor is involved or in cases where a party is deemed to lack the legal capacity to settle (ie, someone under guardianship), court approval may be required to protect the interests of those parties.

When court approval is necessary, the parties typically submit their settlement agreement to the court, which then reviews it to ensure it complies with legal standards and protects the rights of all parties involved.

8.2 Settlement of Lawsuits and Confidentiality

In Thailand, the settlement of a lawsuit can remain confidential under certain conditions. Although there is no law stipulating this, in practice, certain circumstances may be applied as follows.

Confidentiality Clause

Parties can include a confidentiality clause in their settlement agreement, stipulating that the terms of the settlement and any related communications remain confidential. This is a common practice to protect sensitive information.

Court Records

Generally, court records in Thailand are not publicly available and can be accessed by only the parties to the case. If confidentiality is crucial, the parties may also request that the court seal certain documents or keep them confidential. It is up to the court's discretion whether to approve or reject such request.

8.3 Enforcement of Settlement Agreements

If a party does not fulfil its obligations under a settlement agreement, the aggrieved party can file a separate lawsuit for breach of the settlement agreement with the competent court. The plaintiff can use the court judgment to enforce against the adversary or judgment debtor. If the settlement involves monetary compensation, and the debtor does not pay, the creditor can initiate enforcement proceedings to seize the debtor's assets or obtain other remedies.

If the parties enter into an in-court settlement agreement, the court will issue a consent judgment. In case of breach, the aggrieved party can request that the court enforce the consent judgment without the need to file a separate lawsuit for enforcement.

8.4 Setting Aside Settlement Agreements

Thailand has no laws specifically addressing the setting aside of settlement agreements. However, if a settlement agreement is formed under certain conditions relating to fraud or other undue process, or if it is contrary to public policy, an aggrieved party has a right to file a claim to the court to set aside or revoke the agreement. The court will then review the case and determine whether the agreement should be set aside.

Some examples of potential legal bases to set aside a settlement agreement include the following.

Fraud or Misrepresentation

A creditor can apply to a court to rescind any juristic act or agreement committed by a debtor knowing that it will prejudice a creditor.

If the creditor can prove that it was induced to enter into the settlement due to fraudulent statements or misrepresentations made by the debtor, the agreement may be declared void by a court order or judgment.

Should this be the case, the law provides that rescission of a prejudicial act shall not affect the rights of a third party acquired in good faith before the initiation of an action for rescission.

Illegality

If the terms of a settlement violate the law or public policy, it may be deemed unenforceable and set aside by the court judgment.

Procedural Issues

If proper legal procedures were not followed during the formation of the settlement (eg, lack of proper documentation or not being made in the presence of legal representatives when required), an aggrieved party can file a suit to the court for the revocation of such agreement.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

In Thailand, a successful litigant may be awarded compensatory damages, which are intended to restore the injured party to the position it was in prior to the harm. At the full trial stage, remedies

may include monetary compensation, specific performance, or injunctions. These awards are contingent on the nature of the case and the evidence presented. Courts may also award legal costs to the prevailing party, depending on the circumstances and discretion of the court. The awarded legal costs are normally not substantial.

9.2 Rules Regarding Damages

Thai law primarily focuses on compensatory damages, with punitive damages not generally available, except in specific statutory contexts such as intellectual property infringement cases. There are no explicit statutory limits on the amount of damages awarded, but the court determines damages based on actual losses proven. The Civil and Commercial Code requires that damages be proximate and directly caused by a breach of contract or wrongful act.

9.3 Pre-judgment and Post-judgment Interest

In Thailand, a successful party may collect interest both before and after the judgment is issued. Pre-judgment interest accrues from the date the debt becomes due or the damage occurs. The current statutory rate is 5% per annum, unless otherwise agreed upon. Post-judgment interest accrues from the date of the judgment at the same statutory rate which is 5% per annum, until the judgment is fully satisfied. These interest rates may be adjusted by agreement of the parties or specific legislation.

9.4 Enforcement Mechanisms of a Domestic Judgment

Enforcement of a domestic judgment in Thailand is executed through the Legal Execution Department, which is a government authority. The available mechanisms include seizure and sale of the debtor's assets, attachment of wages

or bank accounts, and other forms of execution as authorised by the court.

9.5 Enforcement of a Judgment From a Foreign Country

Thailand does not recognise and enforce foreign judgments. The judgment creditor must initiate a new lawsuit in a competent Thai court, where the foreign judgment may serve as evidence. The Thai court will independently examine the case, including whether the foreign judgment complies with Thai public policy and procedural fairness. Only then may a Thai court issue a judgment that mirrors the foreign one, which can be enforced in Thailand. Enforcement of the Thai judgment (issued based on the foreign judgment) may still be required if the judgment debtor does not voluntarily comply.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Thailand's legal system generally provides three levels of appeal. Cases typically proceed from the Court of First Instance to the Court of Appeal, and ultimately to the Supreme Court (Dika Court) if permission to appeal is granted. In specialised cases, such as administrative or intellectual property disputes, the appellate routes may differ. For instance, administrative courts operate on a two-tier system, while intellectual property courts maintain a three-tier structure, applying general law by analogy as determined by the respective courts.

10.2 Rules Concerning Appeals of Judgments

An appeal to a higher court in Thailand is generally granted when there are significant questions of law or errors in the application of the law, or

in cases of factual errors that may have affected the outcome. Appeals must be filed within one month from the date of the judgment. Permission to appeal to the Supreme Court is granted only in cases involving significant legal questions or public interest.

10.3 Procedure for Taking an Appeal

To take an appeal in Thailand, a party must file an appeal with the court that issued the original judgment. This must be done within one month from the judgment date. A party may ask the court for extensions of this deadline, but this will be subject to the court's discretion. The appealing party must specify the grounds for the appeal, focusing on errors of law or fact. After filing, the case is reviewed by the appellate court, which normally involves written submissions.

10.4 Issues Considered by the Appeal Court at an Appeal

The appeal court in Thailand primarily reviews the legal issues and may also reconsider factual issues if deemed necessary. The appellate court generally does not re-hear the case but reviews the evidence and legal arguments already presented in the lower court. New issues or evidence are typically not allowed unless they pertain to public interest or were not available during the initial trial.

10.5 Court-Imposed Conditions on Granting an Appeal

The court in Thailand can impose conditions on granting an appeal, such as requiring the appellant to provide security for costs or to demonstrate that the appeal is not frivolous. These conditions ensure that the appeal process is not abused and that the opposing party is protected from unnecessary delays or costs.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing or considering an appeal, the appellate court in Thailand has several powers, including affirming, reversing, or modifying the lower court's judgment. The court may also remand the case back to the lower court for further proceedings if it finds that essential issues were not adequately addressed. In some cases, the appellate court may substitute its own judgment for that of the lower court.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

In Thailand, the general rule is that the losing party is responsible for paying the costs of litigation, which may include court fees, attorney's fees, and other related expenses. However, in practice, the amount of attorney's fees awarded by the court is nominal, and actual fees will usually far exceed the amount awarded. For this reason, parties should not expect the court to award their actual attorney's fees or anything beyond a nominal amount. The court has discretion to decide on this matter based on the specific circumstances of the case. Parties may challenge the amount of costs awarded by filing a petition with the court, requesting a review and adjustment.

11.2 Factors Considered When Awarding Costs

When awarding costs, Thai courts consider several factors, including the complexity of the case, the conduct of the parties during the litigation, and the proportionality of the costs incurred. The court may also take into account whether any party has acted in bad faith or unnecessarily prolonged the proceedings. The aim is to ensure

that the awarded costs are fair and reasonable, reflecting the actual expenses required for the litigation.

11.3 Interest Awarded on Costs

Under Thai law, interest on costs will not be awarded to the winning party. Instead, the court will order the losing party to pay court fees and attorney fees to the winning party. The attorney fees will vary depending on the type of case. In cases with a computable monetary claim, the court will order the losing party to pay attorney fees of no less than THB3,000 and no more than 5% of the claim value. In non-monetary claim cases, the attorney fees must be no less than THB3,000 and no more than THB30,000.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Thailand is a country in which compromise has traditionally been the preferred method of resolving disputes when possible. Thai people tend to avoid bringing a civil case to the court unless it is absolutely necessary.

12.2 ADR Within the Legal System

Negotiation or mediation in civil court proceedings is not mandatory. Nevertheless, the court always encourages the parties to discuss settlement. The court may conduct a mediation session. If the parties are able to settle, the court will issue a consent judgment in accordance with the settlement agreement. As it is a voluntary process, there are no sanctions or penalties for unreasonably refusing to participate in negotiation or mediation.

12.3 ADR Institutions

ADR institutions which have been promoting ADR, particularly mediation, are the Thailand Arbitration Center (THAC) and the Thai Arbitration Institute (TAI). In addition to providing arbitration services, THAC offers standalone mediation services (both online and in-person) with a panel of mediators from which parties can choose. TAI does not offer separate mediation services, but can accommodate the mediation process during ongoing arbitration proceedings.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The relevant laws regarding the conduct of arbitrations and the recognition or enforcement of arbitral awards in Thailand are the Arbitration Act B.E. 2545 (2002) and certain provisions of the Civil Procedure Code (Sections 210–222) that specifically address arbitration proceedings.

13.2 Subject Matters Not Referred to Arbitration

Disputes related to criminal matters, family law, labour issues, and certain intellectual property cases cannot be resolved through arbitration, as doing so would conflict with public policy.

13.3 Circumstances to Challenge an Arbitral Award

Parties can challenge an arbitral award, either domestic or foreign, on the following grounds:

- the party against whom the award was sought was legally incapacitated;
- the arbitration agreement is not binding under the law of the country agreed to by the parties (or, failing any indication, under Thai law);

- the party against whom the award was sought was not given notice of the arbitration proceedings in time to present its case, or was not properly represented in the proceedings;
- the award does not deal with all the disputes submitted to arbitration or contains a decision on matters beyond the scope of the arbitration agreement;
- the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the parties' agreement or, if not agreed by the parties, in accordance with the Arbitration Act;
- the award has been annulled in the country in which it was rendered; or
- the enforcement of the award would be contrary to public policy (referred to as "public order or good morals" in the Arbitration Act).

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Both domestic and foreign arbitral awards have the same enforcement procedure, as follows.

- A party seeking to enforce an arbitral award may file a request with a competent court within three years of the award becoming enforceable.
- Applicants for an enforcement of an arbitral award must produce:
 - (a) the original award or a certified copy;
 - (b) the original arbitration agreement or a certified copy; and
 - (c) Thai translations of the award and arbitration agreement certified by a sworn translator, an authorised officer, a diplomatic delegate, or a Thai consul.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

While there are periodic amendments to portions of the Civil Procedure Code that affect the way civil cases are handled by the courts, there are currently no proposals for significant dispute resolution reform on the horizon.

14.2 Growth Areas

There is no single area of growth for commercial disputes in Thailand. However, the authors anticipate an increase in construction-related disputes. To stimulate the economy after the COVID-19 pandemic, the Thai government has promoted various infrastructure projects in different sectors. With increased investment and activity on these projects, comes increased potential for commercial disputes, particularly those related to construction. As the agreements for these projects will typically include an arbitration clause, the authors anticipate that this will lead to an increase in the number of commercial disputes arising out of these projects being submitted to arbitral tribunals, both in Thailand and elsewhere.

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