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ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THAILAND

In today's increasingly global business environment, parties drafting contracts are routinely presented with options on how they wish to resolve business disputes under contract. This choice usually includes arbitration of disputes, often in jurisdictions outside of Thailand. However, where asset recovery or enforcement is sought within Thailand under a foreign arbitral award, Thai laws and procedures govern parties' rights and obligations. This article provides a general overview of the enforcement of all arbitral awards in Thailand, with a focus on those originating abroad.

A final arbitral award is recognised as binding and enforceable in Thailand irrespective of the country in which it was made. However, such recognition for purposes of enforcement only extends to foreign arbitral awards issued in jurisdictions party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards or the 1923 Geneva Protocol, to which Thailand is a signatory.

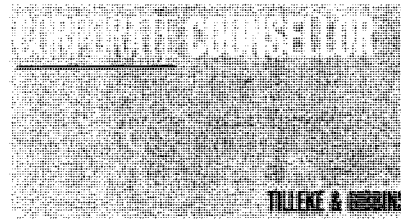
A party seeking enforcement must file a petition to the Thai court holding

jurisdiction no later than three years from the date the award first became enforceable. When filing the petition for enforcement, the party seeking enforcement must also submit the following documents:

- ◆ An original or certified copy of the arbitral award,
- ◆ An original or certified copy of the arbitration agreement, and
- ◆ A certified Thai translation of the award and arbitration agreement.

The procedure for enforcing arbitral awards follows normal Thai court practice. The party seeking enforcement must file a petition for enforcement of the award and the opposing party then files an objection to the petition. The hearings for presentation of witnesses and evidence to support the petition for enforcement and/or the objection are then scheduled and conducted.

Unlike in many other jurisdictions, the enforcement of arbitral awards by



the Thai court is not an administrative rubber stamp, but is in fact a full and separate court proceeding required under the Thai court system. However, arguments are typically limited to due process claims in considering and granting an order to enforce an arbitral award. The court will not re-examine facts or consider the merits of the case.

Under Thai law, a court may refuse enforcement of an award only if the objecting party can adequately prove one or more of the following:

- ◆ A party to the arbitration agreement lacked legal capacity,

- ◆ The arbitration agreement is not enforceable,
- ◆ A party was not given notice of the arbitration or was otherwise unable to defend itself,
- ◆ The award was beyond the scope of the arbitration agreement,
- ◆ The composition of the arbitration tribunal or proceedings was unlawful or inconsistent with the arbitration agreement,
- ◆ The award relates to a dispute that cannot legally be resolved by the arbitration, or
- ◆ Recognition or enforcement of the award is contrary to public order and good morals.

When considering whether to refuse enforcement of an award, the court will look at whether there has been some procedural irregularity, whether a principle of natural justice has been ignored, or whether the arbitration award is against public policy.

It is our experience that many parties use as many legal grounds as possible in objections. This tactic can effectively delay enforcement by forcing a party seeking enforcement to defend on multiple fronts. As a result, enforcement proceedings can take between 10 and 18 months through issuance of the court's judgement.

The decision of the court cannot be appealed, except in the following circumstances:

- ◆ Recognition or enforcement of the award is contrary to public order and good morals,
- ◆ The court order or judgement is contrary to public order,
- ◆ The judgement is not in accordance with the arbitral award,
- ◆ One of the judges hearing the case issued a dissenting opinion, or
- ◆ The court order under review concerns only provisional measures taken to protect a party's interest before or during

arbitration proceedings.

If filing an appeal using one or more of the above reasons, parties who are not satisfied with the enforcement order have the right to appeal either to the Supreme ("Dika") Court or to the Supreme Administrative Court, depending on the court rendering the underlying order. Appeals of enforcement decisions typically take one to two years, and the parties cannot contract to exclude the right of appeal.

There have also been cases in which a party has sought to delay enforcement by claiming that jurisdiction to enforce the judgement lay with a lower court other than that rendering the enforcement order. If such a dispute is forced by a delaying party, the Supreme Court president will have to adjudicate the jurisdictional issue, which can further delay enforcement.

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