

Dispute resolution

At the outset of a new business venture or collaboration, the main focus of most managers is on effectively running and promoting the business. Few people anticipate disputes and, even when difficulties are encountered, litigation is usually the last resort.

In fact, many parties to a dispute try to avoid litigation altogether, fearing that involving the Thai courts will lead to a disruption of commercial relationships, incur unnecessary legal expenses and prolong the time for resolving the dispute.

Although some of these concerns are reasonable, litigation often presents the most effective manner of relief, particularly where one party maintains an intractable or unco-operative position. For parties contemplating litigation, it is comforting to know that the Thai court system is generally accessible, unbiased, and is a balanced mechanism for resolving commercial disputes. This article highlights some of the important procedural elements.

Retention of Counsel: Although both Thai and foreign parties are free to represent themselves in Thai commercial courts, it is advisable to retain experienced local counsel who are familiar with applicable Thai law and court procedures. In most circumstances, evidence and proceedings are conducted in Thai. A client should also identify appropriately experienced and cost effective counsel for the dispute in question.

Power of Attorney: For local clients, a signed Power of Attorney is required to authorise one or more attorneys to act on behalf of a particular party to a suit. For clients abroad, Powers of Attorney, when executed outside of Thailand, must also be notarised and then authenticated before a Thai consul in order to be considered valid by the Thai courts. The Power of Attorney must be signed by the individual client or the authorised signers for a company if the latter is involved.

Jurisdiction: Most standard contract and tort claims will be filed in one of two types of general jurisdiction courts. The district or *kwaeng* courts are authorised to handle civil disputes for amounts up to 300,000 baht. Larger claims are properly filed with the provincial or *changwad* courts, which have unlimited monetary jurisdiction. These courts are located countrywide and whether to file in Bangkok or in another area depends on the nature of the dispute and/or domicile of the parties.

There are also a number of specialised courts that may have jurisdiction to hear

a commercial dispute. The most common is the Central Intellectual Property and International Trade (IP&IT) Court. The IP&IT Court maintains jurisdiction to hear disputes involving international trade transactions and those involving the intellectual property rights of litigants.

The IP&IT judges' panel generally has extensive experience with such disputes and there is usually at least one judge with experience in the nature of the contested action. Further, it has more liberalised evidentiary procedures (such as testimony by affidavit and teleconference) and may even approve of the use of English-language documents if the parties agree.

Prescription Period: It is critically important to be aware of the time limitations for filing suit in Thailand, since lateness can result in loss of the right to file a claim. For example, claims for wrongful act (negligence) must be filed within one year. Prescription periods for breach of contract claims vary depending on the nature of the transaction and party classification, but two years is common.

Court Fees: With the exception of the small-claims *kwaeng* courts, Thai civil courts require a claimant to deposit a filing fee equal to 2.5% of the anticipated claim amount, but not exceeding 200,000 baht. Usually, the court will order the losing party to reimburse the prevailing party in the amount of this court fee. Upon petition, the court may also refund a pro rata portion of fees if the matter is withdrawn or otherwise settled early.

Offers of Compromise: Finally, it is important to note that in Thailand, there is no such thing as an "offer without prejudice". Anything that is put in writing can be used against the offering party. It is therefore advised that compromises, settlements, and offers to compromise or to settle should not be made without first consulting counsel.

While this is an admittedly brief summary of some procedural components of Thai litigation, we hope it provides a vital reference point, not only for those parties confronted with commercial disputes, but for all those contemplating commercial transactions in Thailand.

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