

# Thailand

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## TYPES OF DISPUTE RESOLUTION

### 1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction to settle large commercial disputes, identifying any recent trends.

The primary method of dispute resolution in Thailand is civil litigation, although arbitration and mediation have made substantial headway in recent years. Influenced by the increasing importance of international investment, the Parliament has established a number of specialised courts, including the:

- Intellectual Property and International Trade (IP&IT) Court (see Question 3).
- Bankruptcy Court.
- Labour Court.
- Tax Court.
- Administrative Court.

The courts have introduced streamlined procedures to speed up the litigation process, and bring more certainty to the outcome. For example, instead of scheduling one hearing every two or three months, most courts now schedule consecutive (or nearly consecutive) hearings, therefore compressing many trials into one or two months, and minimising the chance that judges will be rotated out of a case before its conclusion. Many courts also permit overseas witnesses to give evidence by witness statement and/or video conferencing, and have adopted other similar time- and cost-saving measures.

Arbitration has also emerged as a preferred dispute resolution mechanism, especially in such technical industries as engineering, construction, software design and so on. Thailand's original Arbitration Act dates back to 1987, and was replaced in 2002 with an improved Arbitration Act B.E. 2545, based heavily on the UNCITRAL Model Law on International Commercial Arbitration 1985 (Model Arbitration Law). The Thai Commercial Arbitration Institute of the Ministry of Justice, established in 1968, and the Thai Arbitration Institute of the Board of Trade, established in 1990, administer an increasing caseload of domestic arbitrations, and provide a cost-effective alternative to more familiar institutes such as the:

- International Chamber of Commerce (ICC).

- Singapore International Arbitration Centre (SIAC).
- Hong Kong International Arbitration Centre (HKIAC).

Finally, the courts have a long tradition of beginning most trials with one or more hearings intended to encourage settlement through court-supervised mediation.

## COURT LITIGATION - GENERAL

### 2. What limitation periods apply to bringing a claim? Please briefly set out any different rules for particular areas of law relevant to large commercial disputes, for example contract, tort and land disputes.

Generally, the prescription period (statute of limitations) for most commercial disputes runs for either two or five years from the first date that the claim could have been enforced. However, there are many prescription periods in Thailand, running anywhere from 30 days to 20 years depending on the precise nature of the dispute. There are even different prescription periods for different types of contract. As prescription can be a difficult and imprecise area of the law in Thailand, those who believe they may have a claim against a defendant in Thailand are advised to retain counsel sooner rather than later, even if only for the limited purpose of evaluating this issue.

The prescription period cannot be extended or reduced by agreement, but it may be interrupted if the debtor acknowledges the claim in writing, or by some other unequivocal act acknowledging the claim.

### 3. Please give a brief overview of the structure of the court where large commercial disputes are usually brought. Are certain types of dispute allocated to particular divisions of this court (for example, intellectual property, competition or maritime disputes)?

Traditionally, most large commercial disputes were filed in the Civil Court. In 1996, the Parliament established the IP&IT Court, which has jurisdiction over many commercial disputes involving an international transaction or other foreign element specified in the enabling legislation.

Each panel on the IP&IT Court consists of two career judges, together with one lay judge with special expertise in the field of the dispute (for example, banking, intellectual property, software

design and so on). As a result, the parties to highly complex or technical disputes tend to spend less time and resources educating the panel, and the outcomes tend to be more predictable.

In addition, IP&IT Court proceedings tend to be quicker than Civil Court proceedings, because IP&IT Court judgments are subject to one appeal directly to the Supreme (*Dika*) Court, whereas Civil Court judgments can be appealed to both the Appeals Court and the Supreme Court (*see Question 18*). (Each level of appeal can add one or two years to the proceedings.)

The answers to the following questions relate to procedures that apply in both the IP&IT Court and the Civil Court.

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**4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought?**

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Lawyers that meet the following requirements have rights of audience to conduct cases in Thai courts:

- They are registered as lawyers.
- They hold valid licences issued by the Lawyers Council of Thailand.
- They are not disbarred.

A Thai lawyer's licence is only issued to a Thai national and therefore foreign lawyers do not have rights of audience in Thai courts.

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**FEES AND FUNDING**

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**5. What legal fee structures can be used? For example, hourly rates, task-based billing, and conditional or contingency fees? Are fees fixed by law?**

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Most litigation is handled on an hourly basis. Occasionally, law firms work on a fixed-fee or capped-fee basis, or a combination of these. If the fees are fixed or capped, the firm will expect to renegotiate them in certain circumstances, for example:

- Excessive delay tactics by the opposing party.
- Facts coming to light which were unknown to the firm at the time it agreed to the initial fee arrangement.

The enforceability of contingency fee arrangements is an open issue in Thailand, as the Supreme Court has issued some decisions enforcing such arrangements, and other decisions voiding such arrangements as unethical under the circumstances.

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**6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?**

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**Funding**

Litigation is usually privately funded. Although there are no specific provisions preventing third-party funding, the court may consider

that a party that funds litigation without having any interest in the litigation or with intent to profit from the litigation is acting against public policy and will not allow it. However, there is nothing to prevent a friend or family member from funding litigation on behalf of a party who otherwise could not afford to litigate their claim.

**Insurance**

Insurance cover for litigation costs is not widely available in Thailand. However, such cover is generally available offshore and may include the costs of litigation conducted in the Thai jurisdiction.

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**COURT PROCEEDINGS**

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**7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?**

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Most court proceedings are open to the public. However, on the petition of a party, the court can close all or part of the proceedings, or prohibit their disclosure, if it is of the view that doing so "is proper, or to safeguard the public interest". In practice, this rarely occurs, but there have been situations where, for example, the court closed hearings to protect the identity of a particular witness or to protect evidence and testimony that may constitute a trade secret. Despite such an order, every judgment is read in open court and publication of that judgment is lawful.

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**8. Does the court impose any rules on the parties in relation to pre-action conduct? If so, are there penalties for failing to comply?**

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There are no formal procedural rules relating to pre-action conduct. However, it is common for a claimant to issue a demand letter before filing a complaint to the court. There are also certain requirements relating to specific claims that must be met before a claim can be filed:

- **Mortgage.** The mortgagee must send a notice to the debtor requiring him to perform its obligation within a reasonable time period fixed in the notice. A claim can only be filed after the expiry of this time period.
- **Rescission of contract.** A party must give notice to the other party to a contract to perform its obligation within a reasonable time period fixed in the notice before the contract can be rescinded, unless the contract already provides for performance at a fixed time or within a fixed period.
- **Hire of property.** A hirer must notify the lessor to make good any defects before the hire contract can be terminated. A letter must notify the hirer to comply with the terms of the contract or to take care of the property before the contract may be terminated. A claim may only be brought after the notification and subsequent termination.
- **Suretyship.** A surety is not liable for the costs of an action to be paid by the debtor to the creditor if the action was entered into before demanding performance from him.

9. Please briefly set out the main stages of typical court proceedings, including the time limits (if any) for each stage, any penalties for non-compliance and the role of the courts in progressing the case. In particular:

- How a claim is started.
- How the defendant is given notice of the claim.
- Subsequent stages.

#### Starting proceedings

Proceedings in all courts are started by the claimant filing a complaint and paying the court filing fee.

#### Notice to the defendant

A court officer serves a summons and a copy of the complaint on the opposing party.

#### Subsequent stages

As there is no pre-trial discovery or applications, the trial process is fairly straightforward. It begins when the claimant files a complaint, and proceeds quickly from that stage. Depending on the means of service (personal, by posting or by mail), the defendant has 15 to 30 days from the date of service to file its answer to the complaint. Frequently, the court grants one or two 15-day extensions. If the defendant files a counterclaim in time, a court officer serves it on the claimant, and the claimant also has 15 to 30 days to file an answer (extensions are often available).

If the defendant fails to submit an answer by the final deadline, the court, on the claimant's application, deems that the defendant is in default. The trial proceeds with evidentiary hearings at which the claimant is required to prove its case. The defendant can cross-examine the claimant's witnesses and challenge the claimant's evidence, but cannot submit its own evidence or present its own witnesses. This principle also applies if the claimant fails to file an answer to a counterclaim in time.

If the defendant submits an answer in time, the court consults the parties to schedule:

- One or more mediation hearings.
- Hearings for each party to present its evidence and witnesses.

In the past, hearings were frequently postponed and rescheduled at the request of one of the parties, often without strong reason. The system has improved greatly, and the courts have become much less willing to entertain requests of that sort (*see Question 1*). A party that is unprepared to present evidence at a scheduled hearing now risks forfeiting that hearing.

## INTERIM REMEDIES

10. Are interim remedies (such as injunctions) commonly available before a full trial? If so, on what grounds? For example:

- Summary judgment or for the claim to be struck out before a full trial.
- Security for costs.
- Interim attachment orders (or equivalent) to preserve assets pending judgment or a final order.
- Other interim remedies.

#### Summary judgment or claim struck out

The court can rule on an issue without conducting hearings and dispose of the entire case or the material issue if a party raises a question of law which, if decided in that party's favour, would dispense with further trial of the case, or a material issue in the case.

#### Security for costs

The defendant can apply to the court for an order requiring the claimant to deposit money or security with the court for costs and expenses, if either:

- The claimant both:
  - is not domiciled or does not have a business office situated in Thailand;
  - does not have assets in Thailand.
- There is a strong reason to believe the claimant will evade payment of costs and expenses if it is unsuccessful.

The Thai court routinely grants orders for security or a deposit in relation to foreign claimants.

#### Interim attachment orders

Temporary attachment orders are available pending a final judgment on the merits. The court orders an attachment if it is satisfied that the defendant intends to frustrate the claimant's recovery by either:

- Transferring either:
  - the property in dispute;
  - its other property.
- Removing such property from the court's jurisdiction.

The court must also be satisfied that the claimant has a good chance of succeeding in the underlying dispute.

**Other interim remedies**

Other temporary measures including restraining orders, orders requiring government agencies to suspend or revoke certain property registrations, and provisional arrest warrants, are also available pending a final judgment on the merits. The court will:

- Issue a restraining order if it is satisfied that:
  - the defendant intends to repeat or continue the disputed conduct or breach of contract, causing additional injury to the claimant;
  - the property in dispute or the defendant's other property is likely to be wasted or transferred; or
  - the defendant intends to transfer either the property in dispute or its other property, or remove it from the court's jurisdiction, in order to frustrate the claimant's recovery.
- Order a government agency to suspend or revoke property registrations if the court is satisfied that the defendant is likely to proceed with registration and therefore cause injury to the claimant.
- Issue a provisional arrest warrant if the court is satisfied that:
  - the defendant is hiding to evade service of process;
  - the defendant has concealed or is likely to conceal its property, or documents that are likely to be used as evidence against it; or
  - it appears from the defendant's conduct that it is ready or likely to leave the court's jurisdiction.

In all circumstances, the court must also be satisfied that the claimant has a good chance of succeeding in the underlying dispute. The interim relief specified above can be obtained on an emergency basis or an ordinary basis. Applications for ordinary relief are considered through a normal hearing process where both parties present witnesses and supporting evidence. Typically, these hearings are conducted two or three months after the application is filed, with the decision issued shortly afterwards.

**11. For the interim remedies stated in Question 10:**

- Can they be obtained without prior notice to the defendant in urgent cases?
- Are they available on the same day as the application in urgent cases?

Applications for emergency relief can be made without notice, and are usually considered on the same or the following day. The applicant's burden of proof for an emergency application is greater than that for an ordinary application, as the court requires very strong evidence that an irreparable injury to the claimant is imminent.

**12. In relation to interim attachment orders (or equivalent):**

- Do the main proceedings have to be in the same jurisdiction?
- Does attachment create any preferential right or lien in favour of the claimant over the seized assets?
- Is the claimant liable for damages suffered as a result of the attachment?
- Does the claimant have to provide security?

An application for an interim attachment order can only be filed in relation to proceedings in the Thai jurisdiction. The application can be filed with the complaint, or any time before judgment.

The court's interim order for attachment does not create any preferential right or lien in favour of the claimant over the seized assets, and is subject to a judgment creditor's rights to enforcement. In the case of a judgment creditor applying for execution of the judgment, the interim attachment order is revoked.

If the claimant is ultimately unsuccessful in the proceedings, or the attachment otherwise is found to be unjustified, it is liable for payment of the executing officer's fees in the sum of 1% of the value of the property attached. If the defendant suffers damages as a result of the attachment, the defendant must bring separate proceedings to recover such damages from the claimant. The claimant may be required to provide security before the order for attachment is granted, at the discretion of the court. The amount required as security does not normally reflect the value of the property attached and is usually a minimal sum.

**FINAL REMEDIES****13. What remedies are available at the full trial stage?**

The court can award monetary damages, and order specific performance and permanent injunctions prohibiting certain actions or conduct going forward. While the courts are authorised by law to award punitive damages, they rarely do so, and punitive damages are a current issue for legislation in Thailand.

**EVIDENCE****14. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?**

Civil procedure does not provide for much court-supervised pre-trial discovery. Although the Civil Procedure Code authorises the court to subpoena documents on a party's application, the courts do not support fishing expeditions, so a request for documents must be specific. This means that parties usually only apply for documents they have already seen and know to exist (for example, a specific agreement or piece of correspondence), or documents they know must exist as a routine business requirement (for example, bank statements). Applications of this manner are

granted routinely, but general applications for all documents related to a matter will be dismissed.

Orders compelling disclosure usually include a deadline, which the court frequently extends to accommodate the practical burden of compliance. When the evidentiary hearings begin, the parties must deliver their witness lists and documentary evidence to the court and the opposing party no later than seven days before the first evidentiary hearing. The courts typically admit additional submissions, as long as the initial set of materials is submitted within this deadline.

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**15. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:**

- Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?
  - If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?
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**Privileged documents**

Lawyer-client privilege is recognised. Any confidential document or the fact that is entrusted or communicated by a party to a person in his capacity as a lawyer is privileged. This privilege extends to outside counsel, as well as in-house lawyers and their internal clients. The court can summon a party to give an explanation to decide if the refusal to disclose the document is well-grounded or not.

**Other non-disclosure situations**

The party can refuse to produce evidence until permission has been obtained from the competent official or person concerned in relation to official documents either:

- Relating to affairs of the state which are both:
  - by their nature to be temporarily or permanently kept secret;
  - in the possession of a person by virtue of their capacity as an official.
- Containing an invention or design or other work protected by law.

The court can summon the competent official or person concerned for the purpose of determining whether the refusal to disclose the document is well grounded or not. In addition, Buddhist priests and novices can also decline to give evidence or answer any questions in court.

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**16. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?**

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Witnesses of fact must give oral testimony and can only read a written statement if the court gives permission or the witness is

an expert witness. A party can cross-examine the witnesses of the opposing party. After each witness has given testimony, the court prepares a memorandum of the testimony (which is a summary rather than verbatim), which is read out to the witness who then signs the memorandum. However, many courts also have provisions allowing overseas witnesses to testify by witness statement or video conferencing.

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**17. In relation to third party experts:**

- How are they appointed (for example, are they appointed by the court or by the parties)?
  - Do they represent the interests of one party or provide independent advice to the court?
  - Is there a right to cross-examine (or reply to) expert evidence?
  - Who pays the experts' fees?
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**Appointment procedure**

The court can, at its discretion, call an expert if it considers this necessary, or on a party's application. The court can invite the parties to designate the expert by mutual agreement, provided that no person can be compelled to serve as an expert unless he has agreed and has been entered into the court's register of experts. In addition, any party to a dispute can present as a witness any person with expertise in a particular art, science, trade, foreign law, and so on, whose opinion may be of value in settling the issues in dispute, regardless of whether that person is engaged in that particular occupation.

**Role of experts**

Experts appointed by the court are meant to provide independent advice, and can be challenged by the parties. Expert witnesses selected and presented by one party to the dispute usually represent the interests of that party.

**Right of reply**

Both court-appointed experts, and experts appearing on behalf of one of the parties, can be challenged through direct and cross-examination by the parties, like any other witness. If a court-appointed expert provides his opinion in writing, a party can apply to the court for an opportunity to examine the expert in a hearing.

**Fees**

Court-appointed experts are entitled to fees and expenses payable by the court in accordance with applicable ministerial regulations. The fees of an expert instructed by a party to the dispute are paid by that party.

**APPEALS****18. In relation to appeals of first instance judgments in large commercial disputes:**

- To which courts can appeals be made?
- What are the grounds for appeal?
- Please briefly outline the typical procedure and timetable?

All Civil Court judgments can be appealed to the Appeals Court, although questions of fact generally cannot be appealed unless the dispute involves at least THB50,000 (about US\$1,476). IP&IT Court judgments, judgments of the Tax, Bankruptcy, Labour and Administrative Courts, and Appeals Court decisions can only be appealed to the Supreme Court. Questions of fact cannot generally be appealed to the Supreme Court, unless the dispute involves at least THB200,000 (about US\$5,906).

Appeals must be filed within one month from the date the judgment was issued (extensions are sometimes possible). Answers to appeals must be filed within 15 days from the date of service. Most appeals are decided without a hearing, on the appeal submissions themselves, together with the documents contained in the lower court file. Additional documentary evidence or testimony is rarely allowed or presented during the appellate process. For each stage of appeal, the appeal may take one to two years to be determined.

**COSTS****19. To what extent, if any, is the unsuccessful party liable to pay the successful party's costs?**

Frequently, the unsuccessful party is ordered to pay a portion of the successful party's legal fees, but the amount is usually nominal and calculated by the court under an outdated statutory schedule. Those contemplating litigation in Thailand should not assume that they will recover a meaningful portion of their legal costs.

**20. Is interest awarded on costs? If so, how is it calculated?**

No interest is awarded on costs.

**ENFORCEMENT****21. What are the procedures to enforce a local judgment in the local courts?**

The procedure for enforcing a domestic judgment is to file an application with the court to appoint an execution officer, who then assembles and attaches the judgment debtor's assets, and liquidates

them in the market or at auction, depending on the type of asset. The judgment creditor itself is responsible for locating the debtor's assets, which can be difficult because the courts are reluctant to exercise their authority to compel asset disclosure from the debtor. It is often advisable to conduct an asset investigation before commencing litigation.

**CROSS-BORDER LITIGATION****22. Do local courts respect the choice of law in a contract (that is, if the parties agree that the law of a foreign jurisdiction will govern the contract)? If so, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?**

The courts will enforce the substantive law of another jurisdiction in accordance with a governing law provision if this "is not contrary to the public order or good morals" of Thailand. Examples of matters that cannot be governed by a foreign law include certain issues relating to the following:

- Prescription (that is, limitation periods (see Question 2)).
- Domestic tax.
- Real estate.
- Employment (labour).
- Competition.
- Domestic corporate law.
- Consumer protection.

In all circumstances, the courts apply Thai procedural law, regardless of any contractual provision to the contrary.

**23. Do local courts respect the choice of jurisdiction in a contract (that is, if the parties agree that claims will be brought in the courts of a foreign jurisdiction)? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?**

Choice of jurisdiction clauses are not valid or enforceable in Thailand. The Thai courts have jurisdiction over civil actions whenever one or more of the following applies:

- The claimant or defendant is domiciled in Thailand.
- Part or all of a disputed transaction occurred in Thailand.
- The cause of action arose in Thailand.
- The dispute involves an interest in real estate located in Thailand.
- The defendant has assets in Thailand.

**24. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, how is service effected in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?**

Thailand is not a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965. However, there are a number of methods of serving foreign process in the Thai jurisdiction. If the court in the foreign jurisdiction allows service by independent law firms or process servers, then service can be effected personally by a Thai attorney acting as agent.

If the court in the foreign jurisdiction requires that service comply with the rules regarding service in the Thai jurisdiction, the usual way to effect service is through diplomatic channels. This is because Thailand does not have a statute governing service of foreign process on persons or entities in Thailand, and in Thai claims service is effected by a court officer acting on a court order.

The procedure for service through diplomatic channels requires the foreign court to issue a formal letter to the Thai courts, requesting them to serve process on the individual or entity. That request is transmitted by the foreign court to the Thai Court through the Ministry of Foreign Affairs in the country in which proceedings are issued, the Thai Ministry of Foreign Affairs, and then the Thai Office of the Judiciary.

The Office of the Judiciary then arranges service (personal and by posting) with the appropriate court, and transmits confirmation to the foreign court through the same diplomatic channels. Unfortunately, service through diplomatic channels can take some time (eight to 12 months is a reasonable estimate). In addition, co-operation is at the discretion of the Thai courts, but a foreign court's request usually expresses a willingness to return the favour, and the Thai courts usually agree to assist.

**25. Can evidence be taken from a witness in your jurisdiction for use in proceedings in another jurisdiction? If so, is your jurisdiction party to an international convention on this issue?**

Thailand is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970. However, on the basis of judicial comity, the Thai courts summon witnesses to attend to answer questions submitted through the Letters Rogatory procedure (that is, written requests made by a judge to the judge in another state to take testimony of a witness in that state in connection with the case pending trial with the former court), which is also transmitted from the foreign court to the Thai court through diplomatic channels and can take up to a year.

The judge questions the witness and takes a summary of the evidence. It is recommended to engage local Thai lawyers to attend the hearing to assist the court and ensure that evasive answers are addressed. Local lawyers may also request that the judge ask supplementary questions. It may be possible for the testimony to be videotaped if the Rogatory Letter and accompanying foreign court order requests it. A witness who consents to give testimony can do so by deposition, which is taken by audio and/or video recording. This may be taken in any agreeable location and does not have to be in the courthouse.

**26. What procedures are available to enforce:**

- A local judgment in other jurisdictions?
- A foreign judgment in the local courts?

#### Enforcement of local judgments abroad

Thailand is not a party to any conventions on enforcing foreign judgments and there are few foreign jurisdictions that will enforce a Thai judgment.

#### Enforcement of foreign judgments

Thailand is not a party to any conventions on enforcing foreign judgments. The Thai courts do not enforce foreign judgments, but accept foreign judgments in evidence in a new trial. If the foreign judgment is a default judgment, its evidentiary value in the new trial is minimal. Even if the foreign judgment is based on the merits, the claimant must present all the key witnesses and testimony in the new trial.

It is not uncommon for foreign claimants to prefer litigation in their home court, even when they anticipate enforcing the judgment in Thailand. Unless the defendant has assets outside Thailand, that is almost always unwise. It increases the costs, creates prescription risks (see *Question 2*), and rarely produces a judgment on the merits in the foreign jurisdiction, since most Thai debtors will accept a default judgment in that situation in the knowledge that it is unenforceable.

### ALTERNATIVE DISPUTE RESOLUTION

**27. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Please briefly outline the procedures that are typically followed, and any rules that apply.**

The following types of ADR are available, in addition to arbitration:

- **Court-annexed arbitration.** Most arbitration proceedings in Thailand are conducted independently of any court proceedings. However, Thai civil procedure permits the arbitration of certain issues in conjunction with court proceedings if the parties agree. For example, there may be court cases in which the court appoints an independent arbitrator to rule on specific technical issues. The arbitrator's decision is incorporated into the court's final decision, without the court releasing jurisdiction over the dispute. In commercial litigation, it has been possible to employ this method with positive results.
- **Court-supervised mediation.** Thai culture encourages the parties to a dispute to resolve their differences through negotiation. In 1996, the President of the Supreme Court issued practice suggestions encouraging all Civil Court judges to start court-supervised mediations whenever the presiding judge believes there is a reasonable chance of amicable settlement among the parties. In 1999, the Civil

Procedure Code was amended to expressly authorise the courts to conduct closed-door mediations in the presence of any or all parties, with or without their lawyers. In addition, the court is authorised to appoint independent parties to assist in the mediation.

- **Out-of-court mediation or negotiation.** Mediation has developed more slowly than arbitration in Thailand and there are no specifically qualified external mediators and no rules relating to out of court mediation. Occasionally attorneys act as mediators if the parties agree to attempt mediation before starting proceedings, and if the mediation is successful, the parties enter into a settlement agreement. Informal negotiation is also common, but the concept of without prejudice correspondence or discussions is not recognised in Thailand, and any such correspondence or discussions are admissible as evidence in later proceedings.

**28. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?**

See Question 27.

**29. Is ADR confidential?**

Court-based mediation or arbitration is confidential and there the court makes no judgment or findings. Any agreement is recorded in a settlement agreement, which is then approved by the court. Out-of-court mediation or negotiation is not confidential.

**30. How is evidence given in ADR? Can documents or admissions made or produced in (or for the purposes of) the ADR later be protected from disclosure by privilege?**

In court-based mediation, evidence is given informally. It is common for a party to simply show documentary evidence to the other party without providing a copy, and therefore that party is not able to produce it as evidence in the proceedings. There are no specific rules stating that documents or admissions in court-based ADR are privileged, but as ADR is confidential, the court may be reluctant to grant a request for specific disclosure of a document which only came to the party's attention during the ADR.

**31. How are costs dealt with in ADR?**

The parties bear their own costs in relation to court-based mediation.

**32. Is ADR used more in certain industries? If so, please give examples.**

The construction industry is perhaps the principal user of ADR with many disputes passing through mediation and/or dispute resolution boards before concluding in arbitration. In addition, the Insurance Department of the Ministry of Commerce maintains a mediation board for resolving insurance disputes between consumers and their insurers. The General Insurance Association and the Thai Life Assurance Association provide arbitration services for disputes between insurers.

**33. Please give brief details of the main bodies that offer ADR services in your jurisdiction.**

The court encourages ADR, and specific bodies within the construction and insurance industry offer mediation services (see Question 32).

**REFORM**

**34. Please summarise any proposals for dispute resolution reform and state whether they are likely to come into force and if so, when.**

Dispute resolution in Thailand has undergone considerable change over the past ten years. Commercial court cases that used to take 12 years or longer through to final judgment now take as little as three or four years. With a host of specialised courts now deciding disputes according to their subject matter, and with consecutive hearings and other procedures coming into place to streamline the dispute resolution process, the system and its participants are well into the process of transformation (see Question 1). There are no new initiatives at this point.

In addition, the courts are becoming more comfortable with arbitration, and are less likely to intervene, and more likely to enforce arbitral awards without examining the merits of the underlying dispute.

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