

Dispute Resolution Provisions in Thailand Contracts

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Foreign investors that enter into Thailand-related investment transactions should consider using Thai courts as their venue for resolving disputes. While cross-border agreements commonly name jurisdictions such as New York, England, Singapore, or Hong Kong as the litigation setting, this approach is impractical for Thailand transactions. Foreign judgments are not enforceable in the Kingdom, so a plaintiff would have to initiate a new lawsuit in Thailand to pursue a defendant's Thai assets or otherwise enforce a contract.

Foreign judgments can be used as evidence in Thailand—but that is it. Courts place varying degrees of weight on the foreign judgment's evidentiary value. If the foreign judgment was based on a procedural issue and not the underlying merits of the case, the value would be low. The value of foreign judgments obtained by default is negligible. Ultimately, the evidentiary weight of the judgment is arbitrary and determined at the discretion of the Thai court.

Thailand has a special court to handle cross-border cases. The Intellectual Property and International Trade Court (IP&IT Court) began hearing cases in 1997 in response to the growing number of disputes involving foreign parties. The IP&IT Court has jurisdiction over disputes involving international commercial agreements and international trade (including anti-dumping actions), among others. The IP&IT Court is based in Bangkok, but its jurisdiction extends to all of Thailand.

Although foreign judgments are not enforceable in Thailand, Thai courts are empowered to apply foreign law to a contract. This is made possible by Thailand's Conflict of Laws Act. In practice, however, applying foreign law can be challenging. First, the court will only apply the foreign law if it does not conflict with the "public order and good morals" of Thailand, which is interpreted broadly. Second, the foreign law must be proved to the "satisfaction" of the court. If it is not, the court will apply Thai law.

Further, foreign experts must testify in court on the foreign law. This is often impractical for the litigants. And even if the court agrees to apply the foreign law, a judge's understanding of the law may be much different from the parties' interpretation, leading to unpredictable results. For these reasons, it is usually more practical to use Thai law as the contract's governing law.

Importantly, foreign arbitral awards are enforceable in Thailand, as Thailand is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (otherwise known as the New York Convention). This makes foreign arbitration a more viable option for Thailand contracts than foreign court proceedings. With this in mind, a new action must still be brought in Thailand to enforce the foreign arbitral award.

To enforce the award, a claimant must ask the IP&IT Court (which has jurisdiction over foreign arbitral enforcement cases) to first recognize the foreign award. If the court recognizes the validity of the foreign award, it will allow the award to be enforced. The court only looks at procedural and due process matters related to the foreign arbitral proceeding, and not the underlying merits. If the court concludes that the respondent had a fair opportunity to present a case, it will generally recognize the foreign award.

Parties to cross-border contracts typically choose their dispute resolution venue based on convenience, familiarity, and experience with international litigation. However, the necessity to re-litigate a case in Thailand often renders choosing another jurisdiction impractical. A foreign locale can be useful for dispute adjudication in the limited circumstance that a Thailand-based party has assets outside of Thailand. But if this is not the case, Thailand is the most practical choice. And with the growing number of international cases being heard at the IP&IT Court, foreign litigants can expect a fair and impartial hearing.