

Changes in Thailand's appeal system for civil cases

Published: 19/02/2016 at 01:18 AM

Newspaper section: [Business](#)

There are three tiers of courts in Thailand — the courts of first instance (Civil Court, District Court, Provincial Court and other specialised courts), appeal courts and the Supreme Court (Dika Court or Sam-Dika). Thai law traditionally has allowed parties to appeal any court of first instance decision to the appeal courts and subsequently the latter's decision to the Supreme Court. The Supreme Court's judgement (referred to as the Dika) is final.

Appeals may be made on points of fact or law. To appeal a finding of fact at the appeal court, the value of the dispute must be at least 50,000 baht. The figure for the Supreme Court is 200,000 baht. There is no monetary threshold for an appeal on a point of law.

This type of appeal system is known as a rights-based system, which means the law recognises the right of the parties to have their cases heard by the Supreme Court. The laws protect the rights of all parties, which on the face of it is a positive feature of Thailand's court system.

As Thailand's economy has become more developed, however, there have been more disputes, court cases and appeals, resulting in a very heavy caseload for the sole Supreme Court. Consequently, obtaining a final judgement can now take more than five years. The delays now involved in getting a case through all three court stages may be said to be hindering access to justice rather than enabling it.

This is clearly stated in the Act amending the Civil Procedure Code (No. 27) of 2015, which took effect last Nov 5. The preamble states: "[T]he provisions of the Civil Procedure Code on the Dika fail to adequately and efficiently screen the cases which have no merit for the consideration of the Supreme Court, causing delay to the consideration and adjudication of the Supreme Court which affects confidence and trust in the judicial system."

To address these difficulties, the Act changes the appeal system from a rights-based system to a permission-based one by adding Section 244/1 to the Civil Procedure Code, which states: "[A] judgement or order of the Appeal Court shall be final."

The new law gives the Supreme Court the power to grant permission to file a Dika if it deems the question to be a significant matter worthy of a decision.

The threshold therefore changes from the value of the dispute to the opinion of the Supreme Court.

Section 249 sets out "significant matters" as follows:

1. matters related to the public interest or public order;
2. when an appeal court determines a significant question of law in a manner of discrepancy or contrary to a Supreme Court precedent;
3. when an appeal court determines a significant question of law in its judgement or order without any Supreme Court precedent;
4. when the judgement or order of an appeal court is contrary to the final judgement or order of other courts;
5. for the purpose of developing legal interpretation; and
6. other significant questions according to the Regulation of the President of the Supreme Court.

Two significant questions are considered in Point 6. First, whether there is a dissenting opinion in an appeal court's decision; and second, whether an appeal court's decision is contradictory to any international agreement that Thailand is committed to.

To request permission to file a Dika, the parties must petition to the Supreme Court within one month from the reading of an appeal court's order under Section 247. Significantly, the petitioner must submit the petition together with the Dika and pay the court fees for the Dika at the same time. In other words, parties and their legal counsel must prepare both the petition and the full Dika appeal from the outset and serve copies of these documents on the opposing parties, who may then file an objection to the petition.

While it is too soon to judge whether the new rules will have a significant effect on the Supreme Court's workload, the development is generally recognised as a positive one for the Thai legal system. Using a monetary threshold is an outdated method and not effective at ensuring the right cases are heard by the Supreme Court.

Although describing an appeal court's decision as final is not entirely accurate — as the parties still have a pseudo-Dika by submitting a petition requesting the Supreme Court's permission and filing an objection to this petition — it is hoped the Supreme Court will carefully select only those cases that present points of law meriting its consideration.

Therefore, the Supreme Court's appeal process will become more streamlined, bringing greater clarity to the legal system, swifter access to justice and greater certainty for parties doing business in Thailand. This can only be a good thing for the development of Thailand's economy.