Dispute Resolution

Contributing editor
Simon Bushell

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GETTING THE DEAL THROUGH

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Dispute Resolution 2016

Contributing editor
Simon Bushell
Latham & Watkins

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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Thawat Damsa-ard and Surapong Damrongtrakoolsak
Tilleke & Gibbins

Litigation

1 What is the structure of the civil court system?

Thailand has a three-tier court system:
- the courts of first instance;
- the Court of Appeals; and
- the Supreme (Dika) Court.

The courts of first instance comprise general civil courts and courts of special jurisdiction. The general civil courts are divided into district courts, which have jurisdiction to hear small claims with a maximum value of 300,000 baht, and provincial courts, which have jurisdiction to hear all claims above 300,000 baht. Unless the judgment has been declared final by statute, appeals from the general civil courts may be made to the Court of Appeals. The judgment of the Court of Appeals is final unless the Supreme Court allows an appeal of the judgment (to the Supreme Court).
The following are the courts of first instance of special jurisdiction:
- the Administrative Court;
- the Bankruptcy Court;
- the Labour Court;
- the Tax Court;
- the Intellectual Property and International Trade (IP&IT) Court; and
- the Juvenile and Family Court.

There are only two tiers of courts for the courts of special jurisdiction, with the exception of the Juvenile and Family Court, and appeals from the courts of special jurisdiction are heard by the Specialised Court of Appeals. The Supreme Administrative Court hears appeals from the Administrative Court.

Civil cases in the district courts are heard by a single professional judge. However, in the provincial courts, civil cases are heard by a panel of two professional judges. In addition, the courts of special jurisdiction also provide for a panel of professional judges, the number depending on each individual court.

A panel of at least three judges sits at the Appeal Court level and the Supreme Court level.

For administrative cases, a panel of three judges sits at the Administrative Court and five judges sit at the Supreme Administrative Court.

2 What is the role of the judge and the jury in civil proceedings?

Generally, the Thai system is adversarial, although the judges take a proactive role in case management and make all procedural decisions during the trial. Judges have discretion to ensure that the matter is adequately addressed by the parties and may also directly question witnesses during trial hearings to elicit facts necessary to adjudicate the dispute. Thai law does not provide for trial by jury.

3 What are the time limits for bringing civil claims?

Prescription (limitation) periods vary from one month to 10 years depending on the type of claim, as prescribed by the Civil and Commercial Code. The prescription period for claims for which no specific period is prescribed by law is 10 years. Claims for wrongful acts (tort) must be filed within one year from the date on which the wrongful act and the person bound to make compensation became known to the injured person (or within three years if the wrongful act claim is filed under the Consumer Case Procedure Act), but no later than 10 years from the date on which the wrongful act was committed. However, the prescription period may be longer than one year if the wrongful act is also a criminal offence. There are 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 has acknowledged the claim toward the creditor by written acknowledgement, part payment, payment of interest, giving security, or by any unequivocal act that implies the acknowledgment of the claim;
- the creditor enters an action for the establishment of the claim or for requiring performance;
- the creditor applies for receiving a debt to arbitration;
- the creditor submits the dispute to arbitration; and
- the creditor does any act which brings an effect equivalent to entering an action.

When prescription is interrupted, the period of time that has elapsed before the interruption does not count as part of the prescription period. A fresh period of prescription commences when the interruption ceases.

4 Are there any pre-action considerations the parties should take into account?

There are no formal pre-action steps required prior to commencing proceedings, but typically a plaintiff will send a demand letter prior to commencing a civil action. In some instances, the purpose of the demand letter is partly to prove the date of commencement of the prescription period.

There are also certain requirements relating to specific claims that must be met before a claim can be filed. For example:

Mortgage
The mortgagee must send a notice to the debtor or mortgagor requiring it to perform its obligation within a reasonable time period fixed in the notice, which is not less than 60 days from the day of receipt. 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.

Suretyship
As soon as the debtor defaults, the creditor shall send a letter of notification to the surety within 60 days from the date that the debtor is in default. The creditor shall not have the right to demand performance from the surety before the letter of notification reaches the surety. In the event that the creditor does not produce a letter of notification to the surety within the period of time specified, the surety shall be free from liability in regards to all interest and compensation, including associated expenses arising after the passage of the 60-day time period.

Claims against a company director by shareholders

Claims against the directors of a limited company for compensation for damages caused to the company by the directors may be filed by the company or, in case the company refuses to act, by any of the shareholders. The shareholders must notify the company prior to filing a claim against its directors.

5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Civil proceedings are commenced by filing a complaint in the prescribed form to the court and paying the court fee, the amount of which is based on the value of the claim. The complaint must contain the name of the court and the names of the parties, together with details of the facts and allegations forming the basis of the claim. However, the complaint may be pleaded generally and there is no need to give full particulars of the claim in the complaint, provided that all facts on which the plaintiff wishes to rely in later trial hearings are included. Finally, the complaint must be dated and include the names of those on whom the complaint is to be served.

If the court accepts the complaint, the court officer will serve the summons and a copy of the complaint to the defendant's address, which is provided by the plaintiff. The court will then commence the summons service within a week after the filing date, but the estimated time to complete such service is difficult to predict, because it depends upon several factors such as the correctness of the address, the jurisdictional competence of the court, the effectiveness of the service as it applies to overseas addresses, etc. In the case that the defendant's address is located overseas, the summons service will be initiated through diplomatic channels, and it will take at least six months to one year.

In 2015, the National Legislative Assembly passed a bill amending the Civil Procedure Code's provisions related to service of summons and complaints to overseas defendants. If there is no international agreement specifying otherwise, the court will arrange for a service of summons and a complaint to be sent to the defendant overseas by post, courier, or through a diplomatic channel. With this new law in effect, the service process is now more convenient and less time-consuming, as the litigants may elect to send the summons and complaint by post or courier.

6 What is the typical procedure and timetable for a civil claim?

After the complaint is filed and accepted by the court, the plaintiff must file a request to the court for a summons and pay a summons fee to have the summons and a copy of the complaint served on the defendant (see question 5). Depending on the means of service (personal, by posting, by mail or through diplomatic channels), the defendant has 15 to 30 days from the date of service to file its answer to the complaint and any counterclaim, although extensions of 15 to 30 days are typically permitted upon application to the court. 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).

Thereafter, the court schedules a hearing at which the issues in dispute are settled. The court encourages the parties to mediate the dispute, and one or more mediation hearings may be scheduled. The court will also schedule the trial hearings. The mediation hearings are likely to be scheduled within a few months of the settlement of issues hearing, but the trial hearings may be scheduled eight months to a year later. The average length of time from filing a complaint through to the lower court judgment is 12 to 18 months.

There is no formal disclosure or discovery procedure, and parties are required to file a list of witnesses and documents on which they will rely, together with copies of the documents, seven days before the commencement of the first trial hearing. It is possible to apply to the court for a subpoena of known documents from the other party or from third parties.

7 Can the parties control the procedure and the timetable?

The parties have no control over the procedure and timetable other than informing the court of dates to avoid when scheduling hearings. During the first hearing for settlement of issues, the court may schedule one or more mediation hearings and will also schedule the trial hearings. Parties can apply for extensions of time and request adjournments of hearings upon application to the court, which may be granted provided there is a reasonable explanation for the need for the extension or adjournment. In the past, applications for extensions of time and adjournments of hearings, or requests for additional mediation hearings, were frequently deployed as delaying tactics by defendants. The system has improved, and the court is less willing to entertain such requests, particularly with regard to trial hearings, and parties who are unprepared to present evidence at a scheduled hearing risk forfeiting that hearing.

8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no duty to preserve documents and other evidence pending trial. However, a party may make an ex parte emergency application to the court for documents or other evidence to be transferred to the court if there is a risk of damage to that party's case if the evidence cannot be adduced. There is no formal discovery procedure, and there is no obligation upon parties to share relevant documents that are unhelpful to their case. It is left to the parties to determine what evidence is required to be submitted to prove their case. There is, however, criminal liability for a person who possesses evidence essential for the trial and subsequently causes it to be destroyed, concealed or made useless.

9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Lawyer–client privilege is recognised. Any confidential document or fact that is entrusted or communicated by a party to a person in his or her 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.

10 Do parties exchange written evidence from witnesses and experts prior to trial?

Written witness statements may not be submitted unless agreed between the parties and the court considers it is reasonable for speed and convenience and in the interests of justice. An expert appointed by the court may give his or her opinion either orally or in writing, in accordance with the court's requirement. The court typically requests written testimony from experts.

11 How is evidence presented at trial? Do witnesses and experts give oral evidence?

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. If the parties have agreed to accept written witness statements instead of oral testimony and the court also agrees, the written witness statement may be accepted as evidence in chief. 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, some courts also have provisions allowing overseas witnesses to testify by witness statement or videoconferencing.

12 What interim remedies are available?

Interim remedies available include temporary attachment orders, restraining orders, and orders requiring government agencies to suspend or revoke certain property registrations. Temporary attachment orders may only be granted in respect of proceedings in the Thai jurisdiction. Search orders are not available for civil proceedings.

13 What substantive remedies are available?

The court can award monetary damages, and order specific performance and permanent injunctions prohibiting certain actions or conduct. While the courts are authorised by law to award punitive damages, they rarely do so. For cases filed under the Consumer Case Procedure Act, the court is explicitly empowered to award punitive damages. If the court finds that a business operator has deliberately taken advantage of or intentionally caused damage to consumers or has committed gross negligence, the court may award punitive damages in addition to the actual damages granted. In such an event, the court may order payment of up to two times the actual damages granted. If the actual damages granted by the court are less than 50,000 baht, then the court may order a penalty that does not exceed five times the real loss. Judgments provide for interest to run up to the date of payment and the rate of interest prescribed by law, unless the parties agree otherwise, is 7.5 per cent.

14 What means of enforcement are available?

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.

15 Are court hearings held in public? Are court documents available to the public?

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 to protect the injured person (juvenile or rape victim, etc), 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 order, every judgment is read in open court and publication of that judgment is lawful. Court documents such as pleadings, witness statements and court orders (except for the final Supreme Court judgment) are not available to the public.

16 Does the court have power to order costs?

The court has discretion in making awards of costs to the prevailing party. However, large legal fee awards are not common in Thailand, and it is more likely that only a small fraction of actual legal fees will be recoverable. The court calculates the amount of costs to be awarded based on a statutory schedule. The statutory level of fees serves as a minimum and maximum guideline for the courts in assigning lawyer remuneration in cases of need (in forma pauperis). The minimum and maximum guidelines for lawyers' fees depend on the amount of claim, much like court fees. In fixing the amount of lawyers' fees, the court must have due regard to how complicated or simple the case is, the time devoted and the amount of work done by the lawyer in conducting the case. The amount is usually nominal, and parties to litigation should not expect to recover a meaningful portion of their legal costs.

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

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

The Thai courts routinely grant orders for security or a deposit in relation to foreign plaintiffs.

17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

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.

Litigation is usually privately funded. Although there are no specific provisions preventing third-party funding or litigants sharing risk with a third party, the court may consider that a party that funds litigation or shares risk without having any interest in the litigation or with the intent to profit from the litigation is acting against public order, 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 his or her claim.

18 Is insurance available to cover all or part of a party's legal costs?

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.

19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The National Legislative Assembly has passed a bill amending the Civil Procedure Code to allow class action legal proceedings in Thailand. The bill was presented to His Majesty the King for royal endorsement and was thereafter published in the *Royal Gazette* on 8 April 2015 and became effective in December 2015. The amended provisions provide that a class of persons, consisting of persons who possess the same rights related to common issues of fact and law, may file an application to the court together with the complaint in order to apply for permission to proceed as a class. Plaintiffs are explicitly authorised to apply to proceed as a class for causes of action arising under tort, breach of contracts, and enforcing rights under other laws, such as laws regarding the environment, consumer protection, labour, securities and stock exchange, and trade competition. The court has the power to allow, define the scope or characteristics of, inquire into, and terminate a class action.

The court's judgment will be binding upon the litigants and the class members. In the event that the court issues a judgment in favour of the plaintiff, the plaintiff or the plaintiff's lawyer shall have the power to proceed with the execution of the judgment on behalf of the plaintiff and class members. Class members shall be entitled to file an application to obtain payment, but have no right to proceed with execution of the judgment.

The class action provision further provides that a plaintiff's attorneys may receive fees of an amount not exceeding 30 per cent of the damages awarded to the plaintiffs.

The litigants to a class action case are entitled to appeal the case to the Court of Appeals and the Supreme Court on questions of fact with no regard to the condition of the claim amount as in normal civil cases. Under the new amendments of the Civil Procedure Code, however, in order to appeal the Court of Appeals' judgment in a class action case, the appealing party will need to obtain permission from the Supreme Court.

20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

All judgments of the court of first instance can be appealed to the Court of Appeals, although questions of fact generally cannot be appealed unless the dispute exceeds 50,000 baht. Questions of fact cannot generally be appealed to the Supreme Court unless the dispute exceeds 200,000 baht.

Under the recent amendments to the Civil Procedure Code, litigants can appeal the Court of Appeals' judgment to the Supreme Court only after they submit a petition, together with the appeal, to the Supreme Court requesting permission to appeal the Court of Appeals' judgment. The petition must be submitted to the court of first instance within one month from when the Court of Appeals' judgment is announced. The petition will be considered by a panel of judges appointed by the president of the Supreme Court. The Supreme Court will allow the case to be appealed (to the Supreme Court) if the issue of the case is significant and deemed worthy of the Supreme Court's consideration, such as when the matter is of public interest, the given judgment of the Court of Appeals is contradictory to a precedent concerning the same issue, there is no precedent regarding the issue, or determination of the issue will benefit the development of the law's interpretation.

If the Supreme Court dismisses the petition, the Court of Appeals' judgment shall be deemed final from the day the judgment was announced.

Regarding appeals of the judgment of the specialised courts, such as the IP&IT Court, the Tax Court, the Labour Court, and the Bankruptcy Court, the National Legislative Assembly has passed an act establishing the Specialised Court of Appeals. All judgments of the specialised courts will only be appealed to the Specialised Court of Appeals. The Specialised Court of Appeals' judgment shall be deemed final.

For judgments of the Juvenile and Family Court, such judgments can be appealed to the Specialised Court of Appeals. The judgment of the Specialised Court of Appeals, however, can be further appealed to the Supreme Court, provided that the Supreme Court grants permission to do so.

21 What procedures exist for recognition and 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 will accept foreign judgments as 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 plaintiff must present all the key witnesses and testimony in the new trial.

22 Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

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 a year or more.

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 or video recording. This may be taken in any agreeable location and does not have to be in the courthouse.

Similarly, with regard to obtaining documentary evidence for use in foreign proceedings, on the basis of judicial comity, the Thai courts will assist in obtaining the documentary evidence required through the same diplomatic channels as for obtaining oral evidence.

Arbitration

23 Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration Act BE 2545 closely follows the UNCITRAL Model Law. While much of the Model Law is adopted verbatim, there are some distinct differences unique to Thailand. For example, while the Model Law allows arbitrators to take interim measures related to the subject of the dispute pending the outcome of the arbitration, the Arbitration Act requires a party seeking a temporary order to file a petition with the Thai court.

In addition, the Arbitration Act exempts arbitrators from liability in performing their duties, except where they intentionally or with gross negligence injure a party. There are also criminal provisions whereby an arbitrator can be fined, imprisoned for up to 10 years, or both, for demanding or accepting bribes. These provisions, the purpose of which is to ensure impartiality, are absent from the Model Law.

24 What are the formal requirements for an enforceable arbitration agreement?

To be binding, an arbitration agreement must:

- be in writing;
- be signed by the parties; and
- state unequivocally the parties' intent to submit all or certain disputes arising between them in connection with a defined legal relationship.

An arbitration agreement can take the form of an arbitration clause in a contract or a separate arbitration agreement. 'Separate arbitration agreements' can include an exchange between the parties by letter, facsimile, telegram, telex, data interchange with electronic signatures or other means that provide a record of the agreement.

Therefore, the arbitration agreement could be contained in general terms and conditions if they are signed by both parties or each party accepts, in writing, the general terms and conditions as forming part of the contract.

An agreement to arbitrate can also arise if the parties exchange statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. Therefore, this can cure any earlier failure to put the agreement to arbitrate in writing.

25 If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the parties are unable to agree on the number of arbitrators, a sole arbitrator shall be appointed. The default mechanism for the appointment of a sole arbitrator in the absence of agreement between the parties is for either party to apply to the court requesting it to appoint an arbitrator.

Arbitrators can be challenged on the grounds of partiality, lack of independence and lack of agreed-on qualifications, provided such grounds are justifiable. Prospective arbitrators must disclose any circumstances likely to give rise to justifiable doubts as to independence or impartiality. The standard to be applied closely follows that for challenging a judge in the Thai court, which can only be done in limited circumstances, and a specific relationship must be shown that proves the conflict of interests. A party cannot challenge an arbitrator whom they appointed, or, if they participated in the appointment, unless they could not have been aware of the grounds for challenge at the time of the appointment.

26 Does the domestic law contain substantive requirements for the procedure to be followed?

Most well-drafted arbitration clauses select the arbitration institute or rules that apply in the event of a dispute. If this is not the case, the parties can determine the procedural rules after the dispute arises, but that rarely happens because one of the parties usually wants to delay the proceedings and the outcome.

If the parties do not select a body of rules, the tribunal can conduct the proceedings in any manner it considers appropriate, but must observe the mandatory provisions of the Arbitration Act. In practice, if the parties do not select a body of rules, the tribunal is likely to look to an established set of rules as a model (such as the rules of the ICC or the Thai Arbitration Institute). In all cases, the tribunal must provide the parties with equal, fair and ample opportunity to present their cases, failing which the award may be unenforceable.

27 On what grounds can the court intervene during an arbitration?

A majority of the arbitral tribunal (or a party with the consent of a majority) can request a court to issue a subpoena or an order for submission of any documents or materials. If the court believes that this subpoena or court order could have been issued if the action was being conducted in the courts, then it will proceed in accordance with the application, applying all relevant provisions of the Civil Procedure Code. The court can also assist in the appointment or challenge of arbitrators.

In addition, any party can file an application to the court either before or during the arbitral proceedings requesting the court to make an order for provisional relief to protect its interests. If the court believes that this provisional relief would have been available if the action was being conducted in the courts, then it will grant the provisional relief. If the court orders provisional relief before the arbitral proceedings have begun, then the applicant must begin the arbitration within 30 days of the date of the order (or such other period that is specified by the court), failing which the court order automatically expires. The provisions governing provisional measures under the Civil Procedure Code apply. Such provisional measures include orders for security for costs, freezing orders, attachment of property and restraining injunctions.

The court's powers cannot be overridden by agreement.

28 Do arbitrators have powers to grant interim relief?

Unless the rules agreed on by the parties to apply to the arbitration give the arbitral tribunal the power to award interim remedies, such as to preserve assets or documents, such interim remedies are not available from the tribunal. A party seeking an interim remedy must apply to the court for such an order.

29 When and in what form must the award be delivered?

There is no statutory time limit within which an award must be issued. The award must be in writing and signed by the members of the arbitral tribunal, or a majority thereof. Reasons must be given for the failure of any member of the tribunal to sign the award. Unless otherwise agreed by the parties, the award must clearly state the reasons for the decisions and must not determine matters outside of the scope of the arbitration agreement or the relief sought by the parties, except for matters relating to costs and fees, or an award rendered in accordance with a settlement. The date and place of the arbitration must be stated in the award, and the award is deemed to be made at the place stated. A copy of the award must be sent to all parties.

30 On what grounds can an award be appealed to the court?

An arbitral award can be challenged in the courts by making an application to set aside the award. This must be submitted no later than 90 days

after receiving a copy of the award (or after a correction, interpretation or the making of an additional award). The court sets aside the award if the applicant proves any of the following:

- a party to the arbitration agreement was under some legal incapacity;
- the arbitration agreement is not binding under the governing law agreed to by the parties, or, in the absence of such agreement, the laws of Thailand;
- the applicant was not given proper advance notice of the appointment of the arbitral tribunal, or of the arbitral proceedings, or was otherwise unable to defend the case in the arbitral proceedings;
- the award deals with a dispute outside the scope of the arbitration agreement, or contains a decision on a matter outside the scope of the agreement. If the part of the award outside the scope of the agreement can be separated from the balance of the award, then the court will only set aside that part; or
- the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the arbitration agreement or, unless otherwise agreed by the parties, the Arbitration Act.

The court will also set aside an award if the award deals with a dispute not capable of settlement by arbitration under the law, or if the recognition or enforcement of the award would be contrary to public order or good morals.

There is one level of appeal from the lower court judgment to enforce or set aside the award straight to the Supreme Court. However, decisions of the lower court can only be appealed in the following circumstances:

- recognition or enforcement of the award is contrary to public order;
- the order or judgment is contrary to the laws concerning public order;
- the order or judgment is not in accordance with the arbitral award;
- one of the judges sitting in the case gave a dissenting opinion; or
- the order is an order concerning provisional protective measures under section 16 of the Arbitration Act.

31 What procedures exist for enforcement of foreign and domestic awards?

An arbitral award made in a foreign country will only be enforced by the Thai court if it is subject to an international convention, treaty or agreement to which Thailand is a party, and the award is only applicable to the extent that Thailand has acceded to be bound by such convention, treaty or agreement. Foreign arbitration awards given in countries that are signatories to the New York Convention or the Geneva Protocol are recognised and enforceable in Thailand.

Enforcement requires a separate set of proceedings. The party seeking enforcement must file a petition to the Civil Court within three years from the date the award first became enforceable, and submit the originals or certified copies of the arbitral award and arbitration agreement and certified Thai translations of each. The enforcement proceedings can take about 12 to 18 months to obtain the lower court judgment (which can be appealed directly to the Supreme Court or the Supreme Administrative Court).

When a party applies to the court to enforce an arbitration award, the court can refuse enforcement if the unsuccessful party proves any of the following:

- any of the grounds for the award to be set aside (see question 30);
- that the arbitral award has not yet become binding; or
- that the arbitral award has been set aside or suspended by a competent court or under the law of the country where it was issued.

32 Can a successful party recover its costs?

Unless otherwise agreed by the parties, the fees and expenses of the arbitral proceedings, and the arbitrators' compensation, but not the lawyers' fees and expenses, are paid according to the arbitral award.

Alternative dispute resolution

33 What types of ADR process are commonly used? Is a particular ADR process popular?

In addition to arbitration, the following types of ADR processes are available: court-annexed arbitration, court-supervised mediation, out-of-court mediation and negotiation. Of these, court-supervised mediation is most common (see question 34).

34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no requirement for parties to consider ADR prior to issuing proceedings. 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, an amendment to the Civil Procedure Code gave the court the power to reconcile the parties to bring about a compromise to the matter in dispute. Therefore, the court strongly encourages parties to mediate where possible.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

Tilleke & Gibbins

Thawat Damsa-ard **thawat.d@tilleke.com**
Surapong Damrongtrakoolsak **surapong.d@tilleke.com**

Supalai Grand Tower, 26th Floor
1011 Rama 3 Road, Chongnonsi, Yannawa
Bangkok 10120
Thailand

Tel: +66 2653 5555
Fax: +66 2653 5678
www.tilleke.com

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