

"Do You Know" Series



# Extra-contractual Liabilities under Thai Law

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In this collection, the Asian Business Law Institute ("ABLI") briefly discusses issues concerning extra-contractual liabilities in select civil, common and hybrid jurisdictions. Earlier collections have examined indemnity and liquidated damages clauses, contractual breach and remedy, interpretation of contracts, administrative and tax requirements of contracts, choice-of-law and choice-of-forum clauses in commercial contracts, as well as party identification and execution of contracts in those same jurisdictions.

The short article below provides a brief overview of key matters concerning extra-contractual liabilities under Thai law and practice.

## **Contract negotiations**

Other than the duty to act in good faith under Section 5 of the Civil and Commercial Code, Thai law does not impose any obligations on parties when they negotiate a commercial contract. There is also no legal requirement on minimum information disclosure during contractual negotiations under Thai law.

Generally, Thai law does not accord specific legal effect to statements, acts or omissions made by a party in negotiating a contract. However, such statements, acts or omissions may be used as evidence in support of claims of wrongdoing, misrepresentation, fraud, defamation or similar claims outside of a contract. They may also be used as evidence to prove the intent of parties and the meaning of contract terms in situations where there is no other clear evidence of such intent or meaning. Use of such statements, acts or omissions are, however, subject to the discretion of the court and the rules of best evidence.

## **No-reliance clause**

There are not any specific laws governing "no reliance" clauses in Thailand. However, a party can argue on the facts that there should be no reliance or that there is more compelling evidence of the existence of a contractual obligation. This is done on a case-by-case basis, and is not based upon any specific statute. The burden would be on the party advancing such arguments to show to a court that evidentiary significance is cleared.

It is thus not necessary to include a "no reliance" clause in a Thai law-governed contract. Nor would a "no reliance" clause likely to be enforceable under Thai law.

## **Entire agreement clause**

In Thailand, there are not any specific laws governing "entire agreement" clauses. However, such clauses are common in commercial contracts and are recognised as valid under Thai law as long as they are freely negotiated by parties to a contract.

The fact that an “entire agreement” clause is contained in a commercial contract is certainly helpful in showing that the parties to the contract have intended the contract to reflect the terms of agreement and not any prior discussions. However, it is still possible to argue and seek to prove that actions of a party to the contract support claims that the contract does not reflect current obligations. This will be a matter of proof on the facts.

## Concurrent liability

While it is generally true that liability under contract law will not extend to liability under other laws in Thailand, it is possible in some cases for a party to be liable under both contract law and another area of the law.

For example, where there is a breach that is both a breach of the underlying contract and a violation of a criminal provision of law, concurrent liability may arise. There may also be situations where a breach constitutes both a breach of contract and a civil tort.

For example, the Thai Supreme Court has ruled that in a building lease contract, a lessee is obligated to return the building to the owner and a failure to do so constitutes a breach of the building lease contract. In addition, the act of the lessee failing to return the premises to the owner by remaining on the premises constitutes a separate action under tort law.

Another example of concurrent civil liability which exists and is recognised by the Thai Supreme Court is where consumers have the right and expectation of protections under consumer protection law, such as expectation of the quality of goods and services, etc. Any failure to so provide under a sale or service contract can give rise to contractual liability, as well as liabilities under consumer protection law.

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The expert is contributor to ABLI's latest project that aims at harmonising contractual clauses in Asia, covering 12 key contracting jurisdictions that include Australia, China, England, India, Indonesia, Japan, Malaysia, New York State, the Philippines, Singapore, Thailand and Vietnam.

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