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& Gibbins

CIVIL  
LITIGATION  
IN THAILAND

# Civil Litigation in Thailand

Litigation is usually the last resort in resolving disputes. Most parties to a dispute try to avoid litigation altogether, fearing that seeking recourse with the courts or arbitration will lead to a disruption in commercial relationships, result in increased legal expenses, and generally lengthen the period in which the dispute remains unresolved. While some of these concerns may indeed be legitimate, sometimes litigation is the only means for a party to obtain relief. For parties contemplating such recourse, it is reassuring to know that the Thai court system is generally an accessible, unbiased, and balanced vehicle for the resolution of disputes.

*Civil Litigation in Thailand* aims to introduce some of the fundamentals of Thai civil court procedures and practices. While it is not an in-depth study, this brief guide covers the main issues concerning civil litigation in Thailand as either a plaintiff or a defendant.

## Overview of Litigation in Thailand

In deciding whether to litigate, parties need to consider factors such as the timing and expected duration of litigation, the costs, ability to enforce any judgment, and other circumstances.

**Courts in Thailand.** The Thai judiciary has a three-tier system, with the courts of first instance at the bottom, followed by the Courts of Appeal and the Supreme Court (a.k.a. Dika), which is the final appellate court. The courts of first instance consist of the Civil Courts, the Criminal Courts, and specialized courts. Thailand's specialized courts include the Administrative Courts, the Bankruptcy Court, the Labor Court, the Juvenile and Family Court, the Tax and Duty Court, and the Intellectual Property and International Trade Court (IP&IT Court). **Appendix A** illustrates the Thai court system in more detail.

Except for the specialized courts mentioned below, a complaint (plaint) may be generally presented to the court in whose judicial territory the defendant is domiciled or to the court in whose judicial territory the claim arose, regardless of the defendant's domicile. A complaint connected with immovable property must be presented to the court in whose judicial territory the property is situated, regardless of whether the defendant is domiciled in Thailand.

**Khwaeng and Changwat Courts.** There are two types of civil courts of first instance in Thailand, with general civil jurisdiction and different jurisdictional limits. The *khwaeng* (district) courts are authorized to handle civil disputes when the amount in controversy is up to THB 300,000 (approx. USD 8,000). The *changwat* (province) courts have unlimited jurisdiction and handle all matters above THB 300,000. Many district courts in the Greater Bangkok area have been elevated to provincial court status.

**Bankruptcy Court.** This court, which has jurisdiction over all provinces in the country, handles matters related to two bankruptcy-related legal mechanisms: rehabilitation and liquidation.

The first mechanism, rehabilitation, provides creditors with an enhanced opportunity to recover debts through litigation. The process begins with a creditor or debtor filing a petition for rehabilitation of the debtor's business. This provides a means by which a viable debtor business may continue operations, thereby increasing the likelihood of recovery for the creditor.

Liquidation, on the other hand, is a preferred option when the debtor's business is not viable or if the court refuses to grant a petition for rehabilitation.

Appeals of Bankruptcy Court judgments are made to the Court of Appeal for Specialized Cases.

**Intellectual Property & International Trade Court.** The IP&IT Court hears specialized disputes involving international trade transactions and those involving litigants' intellectual property rights. The panel of judges generally has extensive experience with international trade and intellectual property disputes, and there is usually at least one panel judge with experience in the nature of the contested action. Additionally, the IP&IT Court handles disputes related to arbitration that are within the IP&IT Court's jurisdiction.

Appeals of IP&IT Court judgments are made to the Court of Appeal for Specialized Cases.

**Juvenile and Family Courts.** These specialized courts adjudicate matters such as divorce, custody claims, and disputes involving minors. Two career judges and two associate judges, at least one of whom must be a woman, adjudicate claims before the court.

The Juvenile and Family Courts generally encourage negotiated settlement of disputes rather than fully contested proceedings. Appeals of Juvenile and Family Court judgments or orders are made to the Courts of Appeal.

**Labor Courts.** These specialized courts were set up to adjudicate employee-employer disputes, such as those involving employee claims of unfair treatment, wrongful termination, and failure to pay wages and compensation under Thai law. Claims may also be brought by employers against employees. The Labor Courts generally comprise a panel of judges with experience in labor disputes. The Labor Courts generally encourage settlement of disputes without a full trial on the merits of the allegations. Appeals of Labor Court judgments are made directly to the Court of Appeal for Specialized Cases.

**Administrative Courts.** The Administrative Courts adjudicate claims under administrative contracts as well as administrative disputes between the private sector and state agencies. The disputes often concern accusations of the abuse of power by state agencies and/or their employees. The Administrative Courts were created by the 1999 Act for the Establishment of and Procedures for Administrative Court, and there are two levels: the Administrative Court of First Instance and the Supreme Administrative Court.

**Length of Trials.** Unless settled by compromise, civil litigation typically lasts between 12 and 18 months, counting from initiation of an action until a judgment by the court of first instance. Cases in the Courts of Appeal usually take an additional 18–24 months, with a similar period for appeals to the Supreme Court.

**Offers of Compromise or Settlement.** In Thailand, there is no such thing as an "offer without prejudice." Anything put in writing can be used against the offering party. Therefore, compromises, settlements, and offers to compromise or settle should not be made before consulting with legal counsel. Similarly, parties at trial or anticipating litigation should be circumspect in all communications with the opposing party.

**Location of Assets.** Before initiating litigation, plaintiffs should investigate the nature and extent of the defendant's assets in Thailand and abroad. A monetary judgment is of limited value if the defendant has little or no recoverable assets. Therefore, any information a claimant has on the opposing party should be assessed at the beginning of the case or as soon as possible.

**Amount of Claims.** Because of the substantial time and cost involved, it may not be worthwhile to pursue a civil suit in Thailand for claims under THB 400,000 (approx. USD 10,700). In some circumstances, however, the Thai Revenue Code rules require Thailand-based taxpayers to institute legal proceedings for much smaller sums before they can be written off as bad debts.

**Language of Documents.** All documents submitted to a Thai court must be in the Thai language. Foreign documents must be the originals or certified copies, and certain documents also need to be notarized and then authenticated by a Thai consul. Tilleke & Gibbins has a dedicated team of certified translators and can prepare all necessary translations.

In IP&IT Court cases, it may be possible to use English-language documents as evidence if agreed to by the litigating parties. However, such documents may not be used as evidence for material issues in the case.

**Single and Multiple Claims.** No distinction is made by the courts between single and multiple claims because the amount of work involved and the court procedures are essentially the same for each individual claim. Form-style pleadings are not accepted in Thai courts.

**Court Costs.** A plaintiff must pay a court filing fee when submitting a case. This is usually 2% of the claim amount, but will not exceed THB 200,000 per action for claims of up to THB 50 million. There is an additional 0.1% calculated on the amount of the claim exceeding the THB 50 million threshold. If the suit is successful, a portion of these advanced court costs is usually recoverable.

For enforcement of local arbitration awards, the court filing fee is 0.5% of the claim amount, with a maximum of THB 50,000 per action for claims of up to THB 50 million. There is an additional 0.1% calculated on the amount of the claim exceeding THB 50 million.

For enforcement of foreign arbitration awards, the court filing fee is 1% of the claim amount, with a maximum of THB 100,000 per action for claims of up to THB 50 million. There is an additional 0.1% calculated on the amount of the claim exceeding THB 50 million.

Additionally, nonresident plaintiffs may also be required to deposit security with the court to insure against a potential award of court costs in favor of the defendant.

**Appeals.** In civil cases, appeals must be filed within one month after the judgment is read. For example, if a judgment is rendered on February 14, 2022, then an appellant has until March 14, 2022, to file the appeal.

At each level of appeal, the appealing party must also deposit additional court costs of 2% of the judgment amount, with a maximum of THB 200,000 for claims of up to THB 50 million, and an additional 0.1% calculated on the amount of the claim exceeding THB 50 million. The appealing party may also be required to post an additional guarantee with the court to ensure its ability to cover judgment should its appeal be unsuccessful.

The Court of Appeals and Supreme Court are not trial courts, and, as a general rule, no new evidence may be introduced after the trial in the lower court has been completed. In fact, appeals at all levels are resolved through written pleadings and supporting documentation only. Oral testimony or argument is not permitted. The only scheduled hearing is for the reading of the appellate or Supreme Court judgment.

**Power of Attorney.** Clients must sign a power of attorney (court proxy) form to authorize one or more attorneys to act on behalf of a particular party to a suit.

**Local Clients.** If the client is a juristic person (e.g., a company), a person authorized to bind a local company or the branch manager of a Thailand-based foreign company must sign.

Typically, the court must be provided with the original or a certified true copy of the power of attorney authorizing a representative to initiate lawsuits in Thailand.

**Overseas Clients.** Powers of attorney executed outside of Thailand must be notarized and then authenticated before a Thai consul in order to be considered valid by Thai courts.

**Conflicts of Law.** Thailand's Conflicts of Law Act B.E. 2481 (1938) (CLA) provides a common law approach to conflicts of law in Thailand's civil law system. The act provides a comprehensive solution to conflicts of law in a manner consistent with the structure of the Civil and Commercial Code. It also provides guidelines for courts in their application of foreign laws.

**Choice of Law/Forum.** Choice of law provisions and agreements are generally valid and binding under the Thai legal system unless they are contrary to Thai statutes or another expression of public policy. The CLA provides that the choice of which law applies to the essential elements or effects of a contract depends on the intention of the parties. If intent, either express or implied, cannot be ascertained, then the applicable law is either (1) the law common to the parties when they are of the same nationality, or (2) the law of the place where the contract was made. When the contract is made between persons at a distance, the place where the contract is deemed to have been made is the place where notice of acceptance reaches the offeror. If this place cannot be determined, then the law of the place of performance will govern.

In summary, parties to a contract who litigate a dispute arising under the terms of the contract must be aware that choice-of-law provisions in a contract that a properly executed will be enforced. In the absence of a choice of law in the contract, the parties should be aware that there might be uncertainty as to the governing law of the contract in light of the aforementioned criteria.

## Litigation Process and Procedures

**Plaint.** Litigation begins when an aggrieved party, the plaintiff, files a "plaint" (complaint), which pleads the facts and allegations constituting the basis of the claim. Although some facts must be included, most lawsuits in Thailand are pleaded in a generalized fashion and not with much particularity.

After the plaint is filed along with the deposit for court costs, the case proceeds as follows:

### *Summons and Service of Process*

After actions are filed in a written plaint and accepted by the court, the plaintiff must request and pay a fee within seven days to have a summons served on the defendant by a court officer, along with a copy of the plaint. After the request is made, the court officer then seeks to effect service on the defendant within a reasonable time or per court order.

If, without reasonable cause, the plaintiff fails to initiate service of the summons within the prescribed time period, the court may consider the plaintiff to have abandoned the action, in which case the court fees may be refunded partially at the court's discretion.

If a defendant is physically located and domiciled in a country other than Thailand, then service must be rendered through the Thai Ministry of Foreign Affairs, special international express post mail, or a service provider specializing in sending international parcels. This is a time-consuming process and in some cases may take up to a year or more to effect service through such diplomatic channels. Thailand has been a member of the Hague Service Convention since 2021.

### *Answers and Counterclaims*

Within 15 days of receiving proper service of the summons and complaint, the defendant must file an answer that clearly admits or denies the plaintiff's allegations, either in whole or in part. The answer must state the basis of any denials and set forth counterclaims, if any, that are related to the plaintiff's claims. If the counterclaims are deemed to be unrelated, the court will order the defendant to bring a separate action.

The plaintiff must, in turn, answer any counterclaim within 15 days after being properly served with the defendant's answer. If there is reasonable cause, then these timeframes may be extended if the court grants permission.

If the summons is posted to the defendant's registered address, the law allows 15 days for service to be deemed effected before the 15-day answer period begins. As a result, non-acceptance of service is common in order to gain 30 days to answer.

If a defendant who is not domiciled in Thailand has an agent in Thailand, the summons may be served on their agent in Thailand. Service is deemed effected 30 days from the date of service. If its agent does not accept service or service is made by posting, then the defendant could gain 60 days to answer.

**Pretrial Hearings.** After the pleadings have been filed, the parties, by agreement or with the court's help, must establish a list of issues in dispute, called a "settlement of issues." The court then fixes a date for a hearing on the settlement of issues (i.e., a pretrial conference) to specify which issues must be proven to the court through the introduction of evidence, and those issues which do not require proof. The burden of proof in a civil action is "preponderance of the evidence" and must be met by the complainant.

At the pretrial hearing, the court asks each party whether they have any objections to the initial issues in dispute or if they are willing to accept some or part of the issues. Each party has the right to

challenge the issues or evidence by verbal statement or by filing an application within seven days from the date fixed for settlement of issues. The court will then make a decision on the objection before the date for taking evidence. Before the date fixed for settlement of issues, each party can also challenge any documentary evidence that is not original or is suspected to be a forgery.

Following settlement of issues in dispute, the court sets trial dates for taking evidence on the issues that are still in dispute.

In civil cases, the parties may amend their original pleadings up to seven days before the date set for settlement of issues. If no such date is set, the parties may amend their original pleadings up to seven days before the trial date. No new claims or counterclaims may be added to the original case unless they are sufficiently related to the original claims to justify being joined for trial and adjudication.

**IP&IT Court Procedures.** The court may allow immediate introduction of evidence in the interest of preserving the information or access to it.

Unlike the civil courts, the IP&IT Court can also handle some ancillary criminal cases related to its areas of subject matter jurisdiction.

**Default Order.** Either party may be declared in default by the court (upon motion by the other party) for failure to answer, act, or appear within the prescribed time period.

If the defendant fails to answer, the plaintiff may apply for a default order, which is then served on the defendant. The defendant may appear to explain his default. If the failure to answer was involuntary or otherwise justified, the court will ordinarily grant the defendant additional time to answer. However, if the default was unjustified, the court will order the action to proceed without permitting the defendant to file an answer.

If the plaintiff fails to file for a default order within 15 days of the expiration of the time period prescribed for the defendant to answer, the court will strike the case from its docket, and court fees that have already been paid may be refunded partially at the court's discretion.

If both parties are in default of appearance, the action will be stricken from the court docket without prejudice to reinstating the suit. If the plaintiff fails to appear, the court will strike the action unless the defendant requests that the action proceed. If the defendant makes such a request, the court will proceed with the trial and adjudicate the case *ex parte*.

The court may not find in favor of one party solely on the grounds that the other party is in default. A case must be decided on the merits. As such, the court itself may raise any point of law and hear evidence in adjudicating the case. Moreover, a defaulting party is not excluded from the court altogether and may still cross-examine the opposing party's witnesses, although it is penalized by not being able to present its own evidence and witnesses.

**Relief from Default.** A party who has been declared in default of appearance and against whom a judgment has been entered may apply for a new trial, which may be granted at the discretion of the trial judge, unless:

- The action in which the default occurred was itself a new trial of a previous action in which the same party defaulted;
- The defaulting party appeals the judgment instead of applying for a new trial;
- An application for a new trial is prohibited by law; or
- The court has already ordered that the case be tried anew.

**Personal Jurisdiction.** In Thailand, personal jurisdiction over the defendant, in the form known in many Western jurisdictions, is not mandatory, though service of process on the defendant, whether actual or substituted, is required. In general, a suit can be filed in Thailand if: (1) either of the parties is domiciled in Thailand, (2) the cause of action accrued in Thailand, (3) the plaintiff has Thai nationality, or (4) the defendant has property in Thailand.

**Security.** In civil cases, when the plaintiff is a nonresident, the defendant may request a court order requiring the plaintiff to provide additional security for payment of the defendant's court costs and lawyers' fees. This demand for such a security is predicated upon preventing an overseas plaintiff's avoidance of payment of any court costs and legal fees of the defendant should the overseas plaintiff lose the lawsuit.

The court sets the amount of security to be deposited and the timeframe for the plaintiff's compliance in depositing the additional security. Typically, the additional security for court costs is approximately 2% of the total claim amount and for lawyers' fees is up to 5% of the total claim amount. The plaintiff may provide the additional security in cash, land titles/deeds, or bank guarantees.

A defendant may petition the court for additional security for court costs and legal fees in both the initial trial and in any subsequent appeals.

**Pretrial Procedures.** There are no pretrial discovery procedures (or declaratory relief) in Thailand. However, summonses are available to force an opposing party to produce known documents, though it is necessary to file a formal motion and show good cause. Discovery "fishing expeditions," which are legal in many jurisdictions, therefore do not occur in Thailand.

**Emergency Orders and Temporary Injunctions.** These are both theoretically possible at any time before judgment is entered. However, in practice, Thai courts will not grant this type of relief unless they feel the complaint is well grounded and there are sufficient extenuating circumstances.

Generally, the court will issue such an order only in emergency cases. The plaintiff may also have to put up a security deposit as indemnification for a wrongfully ordered injunction. Such orders are executed at once without having to be served on the defendant (*ex parte*) beforehand. The defendant, however, may petition the court at any time for withdrawal of the order or its enforcement.

Similarly, prejudgment attachment is rare and difficult to obtain. The plaintiff must prove almost beyond a reasonable doubt that the defendant is about to abscond or transfer or waste assets before an attachment order is likely to be issued.

**Pretrial Procedures in the IP&IT Court.** Cases pending before the IP&IT Court present an exception to the general prejudgment procedures. In this age of instantaneous communication, IP infringers can move goods and assets out of reach within hours, or perhaps even minutes, through various electronic



means of data transfer. Therefore, the IP&IT Court has procedures for pronouncing and enforcing interlocutory injunctions or orders to cease infringement. It can also issue preliminary orders to seize or attach documents and other materials that will be adduced as evidence at trial.

**Procedures during Trial.** To be admissible, evidence must relate to facts that are to be proven by a party to the case and that have been identified and described in the list of witnesses and evidence filed with the court. The list of witnesses and evidence must be filed at least seven days before the date fixed for taking evidence. Copies of the list must be left for the opposing party to collect from the court officer.

Documentary evidence must be filed with the court, and copies must be sent to the other parties at least seven days prior to the date fixed for the taking of evidence.

The parties may introduce new evidence after the deadline for filing the list of witnesses if the party can show reasonable grounds and if the new evidence has bearing on a material point at issue.

**Original (Best) Evidence.** Subject to limited exceptions, if another party objects to the originality or validity of a document, only the original of the document is admissible. Photocopies, emails, and other computer-generated copies are not considered best evidence, although the court may exercise its discretion to admit them into evidence under limited circumstances. However, these forms of evidence are regularly accepted by the IP&IT Court.

**Foreign Documents.** All foreign documents submitted to the court must be originals or certified true copies. Some must be notarized and then authenticated by a Thai Consulate or Embassy. Generally, everything must be translated into Thai.

**Live Witnesses.** Witnesses are required to authenticate documentary evidence. Testimony must be in Thai or translated into Thai. Translators are permitted under the Civil Procedure Code for persons who do not speak Thai, but must be provided by the party concerned.

Proceedings are conducted in Thai, with rare exception. The proceedings are adversarial in nature, but the mode of the trial is not inquisitorial. Judges actively participate in the examination of witnesses with due regard to impartiality and in the interest of justice. Testimony is recorded by judges in summary form, typed by a clerk from the judge's taped dictation, read back to the witnesses in open court, corrected, and then signed by witnesses and the attorneys for both parties, as well as the attending judges.

Thai courts allow parties to submit written witness statements (similar to affidavits and declarations in Western jurisdictions). The person giving the witness statement must attend the witness hearing to affirm the statement and to be cross-examined by the opposing party.

**IP&IT Court and Bankruptcy Court Trial Procedures.** These courts will, under certain circumstances, admit hearsay evidence and allow recorded or remote witness testimony by means of video conferencing. They may also allow the admission of computer records as evidence.

**Presentation of Final Arguments.** After all evidence is heard, parties usually ask the court for permission to submit a written closing statement after trial. The closing statement presents final

arguments supporting a party's contentions, citing pertinent evidence and legal precedents. The opposing party is also entitled to a rebuttal. Final oral arguments are permitted, but written closing statements are more common. No other oral arguments can be presented unless the court specifically allows it. Additional written arguments can be filed any time before a judgment is entered.

The trial is considered to be closed at the end of the evidentiary phase or when all parties have rested.

**Judgments.** Judgments are rendered in writing, recite the facts and arguments of the parties, and follow the decision of the trial court. Judgments are read in open court. The judgments of the lower courts are not reported.

Monetary awards carry a statutory rate of 5% simple interest calculated from the date of default, date of filing suit, or date of judgment, depending on the request of the plaintiff. If the interest rate is specified in a contract, then that rate will generally be awarded unless it is deemed unconscionable. However, in cases involving loan agreements, the interest rate cannot exceed 15% (except in the case of a financial institution whose maximum rate is set by the Bank of Thailand).

Judgments may include an award for costs and reasonable lawyers' fees at the court's discretion. Generally, a lawyers' fee award will not exceed 5% of the amount in dispute. Court awards of attorney fees tend to be much lower than those typically awarded in Western jurisdictions.

Monetary judgments may be rendered in a foreign currency if it is specified in the pleadings and such was the intent of the parties.

## Procedures after Trial

**Execution of Judgments.** A court of first instance generally has the power to issue writs of execution to enforce its judgments and decide related matters. When the court issues an execution order, it also issues an order instructing the judgment debtor to do one or more of the following:

- Pay the judgment;
- Deliver certain property; and
- Perform a certain act.

Judgment debtors may be ordered to disclose their assets. If they do not comply, the judgment creditor may apply *ex parte* for a writ of execution. Upon receiving the writ, an executing officer normally accompanies the creditor or their agent to the place of the debtor, and the officer will then attach the property. Generally, the attached property will either be removed to a safe warehouse or left in place under seal. A notice of attachment is then sent to the debtor, and a public auction is advertised. Both litigants and all other concerned parties are notified.

In practice, these procedures can be complex and time consuming. It is likely to be several months before a judgment is collected.

Identifying, tracing, and locating assets is sometimes difficult. Additionally, assets may be subject first to the claims of other preferred or secured creditors.

**Execution of Judgment against a Defaulting Party.** When executed, the debtor will be given at least seven days to comply with the default judgment. However, if a new trial is pending, the debtor may petition the court for an order staying execution. When execution is based on a default-in-appearance judgment, proceeds from the public auction of attached property may not be distributed until six months after seizure of the debtor's property, unless the creditor can show that the debtor had notice of the action.

**Appeals.** The intermediate Courts of Appeal and the Supreme Court are not trial courts. As a general rule, unless subject to a specific court order, no new evidence can be introduced after the trial in the lower court has been completed. While procedural codes do allow for oral argument before these appellate courts, in practice it virtually never occurs. Appeals by right must be filed within one month of judgment being entered in both civil and criminal cases, although extensions may be granted upon petition.

Filing an appeal does not in itself stay the execution of a judgment or order of a court of first instance; rather, a separate motion for stay must be filed with or after the appeal.

Some judgments and orders of the Courts of Appeal may be further appealed to the Supreme Court. Such appeals must be filed within one month of a judgment being entered by the court.

**Basis of Appeal.** The filing of an appeal with the Courts of Appeal and with the Supreme Court is generally based only on questions of law and facts that have been stated in the appeal and have arisen in the court of first instance. The Civil Procedure Code states that a judgment or order of the Courts of Appeal is final, giving the Supreme Court a choice as to whether a matter is significant enough for revision. Significant matters include decisions relating to public order, decisions made to develop legal interpretation, and appellate court contradictions of Supreme Court precedent.

**Remedies.** Compensation can be claimed for damages that usually arise from nonperformance, and for damages arising from special circumstances the defaulting party foresaw or should have foreseen. However, claims for monetary damages can result only in recovery of actual damages, such as provable loss of profits and out-of-pocket losses. There is no remedy in Thailand for "general damages" such as pain and suffering. Except for certain limited causes of action, "punitive" damages are not permitted, as would be the case in many Western jurisdictions.

Mortgagees are entitled to collect monies due only out of the mortgaged (i.e., secured) property, unless the security agreement provides otherwise. Other creditors (i.e., non-secured) are entitled to collect the debts due them out of the whole of the assets of the debtor. This includes any money or other property due the debtor from third parties, except mortgaged property.

The existence of an obligation may entitle the promisee to demand specific performance from the promisor; in other words, performance must be tendered in the actual manner agreed upon by the parties. Promisees cannot be compelled to accept any performance other than what is in the contract unless they consent to the substituted performance.

Payment of a monetary debt expressed in foreign currency may be made in Thai currency according to the current exchange rate at the time and place of payment.

**Interest.** Interest cannot be charged on interest when a monetary debt is in default. The parties to a loan agreement may agree that the interest due for one year or more is to be added to the principal, and that the whole shall bear interest. Such an agreement must be in writing, except for commercial calculation of compound interest in current accounts, as well as other similar commercial transactions.

Claims for damages in addition to principal payment are admissible, and interest can still be charged on the principal payment. As in the European continental legal system, there is no distinction drawn between a liquidated damages clause and a penalty under Thai law. Even if the sum is higher than any reasonable preloss estimate, the party in breach may be required to make payment in full regardless of whether actual loss has occurred. However, if a forfeited penalty is disproportionately high, the court may reduce the figure to a reasonable amount.

Thai law allows such a penalty as legally sanctioned intimidation to force the other party to perform its obligations. Proper use of the penalty stipulation under Thai law may prove a valuable precautionary measure to secure performance under a contract. However, misuse, such as disproportionately high penalties, could be subject to judicial reduction.

**Recognition and Enforcement of Foreign Judgments.** Foreign judgments cannot be enforced in Thai courts. Thailand is not a party to any treaty or convention on the recognition and enforcement of foreign judgments. As such, a creditor must bring a new lawsuit in the relevant Thai court in order to obtain satisfaction.

A foreign judgment may be recognized as proof of a claim adjudicated abroad, although a foreign judgment is insufficient to constitute grounds for attachment of a judgment debtor's assets within the jurisdiction, as in the case of *exequatur*. This means that a foreign judgment creditor must file a court case against a Thai debtor in Thailand and submit the foreign court's judgment as evidence. The Supreme Court has ruled that for a foreign judgment to be admitted as evidence, it must be a final, dispositive order. The test for finality is whether the foreign judgment is enforceable where it was rendered (i.e., the judgment is not subject to appeal and an appeal is not pending). The Supreme Court

has also ruled that a foreign default judgment cannot be considered final unless the procedural rules of the rendering forum provide that it cannot be revoked at any time.

## Arbitration and Alternative Dispute Resolution

Deciding whether to litigate or seek resolution of conflicts through alternative dispute resolution is commonly an anticipatory decision made by the parties to a contract, before a dispute exists, where the parties either specifically elect mediation or arbitration uniquely tailored to their needs or simply leave the matter of dispute resolution to the responsible court.

One of the most frequently cited benefits of arbitration is the parties' ability to select a panel of arbitrators with the proper expertise for understanding and resolving the dispute. This benefit applies in Thailand as well. However, the IP&IT Court, for example, offers a panel of judges with at least one lay judge with special expertise in the field underlying the dispute (for example, international finance or intellectual property). Their presence has helped bridge the expertise gap between litigation and arbitration in Thailand and is helping make outcomes of complex commercial litigation far more predictable.

Some key reasons for choosing arbitration over court litigation are flexibility and the ability to tailor how a party's dispute would be resolved by choosing the arbitration rules and institute, the venue, and the number of arbitrators. For example, the parties may choose local arbitration institutes over international arbitration institutes, such as the International Chamber of Commerce. The administrative costs and arbitrator fees are quite reasonable at local institutes and may help decrease the overall cost of dispute resolution in Thailand.

**Arbitration Institutes in Thailand.** There are three arbitration institutes in Thailand: the Thai Arbitration Institute (TAI) of the Office of the Judiciary, the Thai Commercial Arbitration Institute of the Board of Trade, and the Thailand Arbitration Center (THAC) under the Ministry of Justice. All are well respected and well administered, are supervised by a diverse advisory board, have standard arbitration rules, and maintain a list of available, qualified arbitrators. The parties are also free to nominate outside professionals as arbitrators. In commercial contracts that designate international arbitration institutes, the most commonly used in Thailand are the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre, and London institutes (i.e., London Court of International Arbitration and Chartered Institute of Arbitrators).

**Enforcement of Foreign Arbitral Awards.** In general, foreign arbitral awards are recognized in Thailand if they fall within the recognition of the treaties, conventions, and international agreements to which Thailand is a party, and only to the extent that Thailand is committed to being bound by them. Thailand is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Awards brought under the auspices of the former are easier to enforce than those brought under the latter. Foreign arbitral awards can be executed in Thailand without having to be relitigated.

In order to enforce the arbitral award, the award should be final (not interim or final interim) and should recite all pertinent facts. This includes the contract wherein the parties agreed to arbitrate, notices given, appearances of the parties, presentations made, and reasons for the award.

**Enforcement Mechanism.** The Arbitration Act B.E. 2545 dictates the enforcement mechanism for foreign arbitral awards in Thai courts:

- "Foreign arbitration" is defined as arbitration conducted wholly or mainly outside Thailand, with one of the parties not being a Thai national.
- A party seeking to execute a foreign arbitral award may file a request with a competent court within three years of the award becoming enforceable.
- Applicants for a judgment on a foreign arbitral award must produce (1) the original award or a certified copy, (2) the original arbitration agreement or a certified copy, and (3) Thai translations of the award and arbitration agreement certified by a sworn translator, an authorized officer, a diplomatic delegate, or a Thai consul.
- After receiving the request, the court will hold an inquiry and render a judgment without delay, provided that the party against whom the award is rendered has had an opportunity to challenge the request.

**Refusal of Recognition and Enforcement.** The court may still refuse to recognize and enforce an award that fulfills the statutory conditions for recognition under the Arbitration Act if it deems that:

- The party against whom the award was sought was legally incapacitated;
- The arbitration agreement is not binding under the law of the country agreed to by the parties (or failing any indication, under Thai law);
- The party against whom the award was sought was not given notice of the arbitration proceedings in time to present their case, or was not properly represented in the proceedings;
- The award does not deal with all the disputes submitted to arbitration or contains a decision on matters beyond the scope of the arbitration agreement;
- The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the parties' agreement or, if not agreed by the parties, in accordance with the Arbitration Act;
- The award has been annulled in the country in which it was rendered; or
- The enforcement of the award would be contrary to public order or good morals.

**Maritime Actions.** Ships that are under or are going to be under the relevant court's jurisdiction can be arrested under the Arrest of Ships Act B.E. 2534 (1991). A creditor domiciled in Thailand can ask the court to arrest any vessel owned or possessed by its debtor to sufficiently secure the performance of the obligation subject to the maritime claim as stated in the act. In addition, the vessel to be arrested must be in (or going to be in) the court's jurisdiction.

The requesting creditor can ask the court to arrest a vessel that the debtor possesses but does not own if the basis of the maritime claim arises from the vessel or a business in connection with the vessel and the debtor possessed the vessel both at the time the maritime claim was incurred and the time the request was filed with the court. After receiving the request, the court will conduct an ex-parte trial. If satisfied with the evidence presented by the requesting creditor, the court will issue an order to arrest the vessel. After paying a vessel arrest fee, the requesting creditor may then execute the order. The court order for arrest of a vessel is final.

## CLOSING COMMENTS

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We hope that *Civil Litigation in Thailand* has answered some basic questions related to litigation in Thailand and has increased your understanding and appreciation of the complexities and expenses of the court process—as either a plaintiff or a defendant.

If you have additional comments or questions, please let us know at [bangkok@tilleke.com](mailto:bangkok@tilleke.com).



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## Appendix A

### THE THAI COURT SYSTEM

#### SUPREME COURT

The Supreme (*Dika*) Court includes the president (chief justice) and 5 vice presidents, and it operates with 25 divisions, each composed of 3 justices, to hear individual trials.

#### COURTS OF APPEAL

The Courts of Appeal include the chief justices and 13 deputy chief justices, and are organized into the Court of Appeals and the Courts of Appeal for regions 1–9. All 10 of these appellate courts are located in Bangkok. Each division of the court is composed of 3 justices; at least 2 judges form a quorum to hear an appeal.

#### COURTS OF FIRST INSTANCE

##### Courts of First Instance in Greater Bangkok

- Bang Bon District Court
- Civil Court
- Criminal Court
- Don Maung District Court
- Dusit District Court
- Minburi Civil Court
- Minburi Criminal Court
- Nonthaburi District Court
- Nonthaburi Juvenile and Family Court
- Nonthaburi Provincial Court
- Northern Bangkok District Court
- Pathum Thani Provincial Court
- Pathum Thani Juvenile and Family Court
- Pathumwan District Court
- Phra Khanong Civil Court
- Phra Khanong Criminal Court
- Samut Prakan District Court
- Samut Prakan Juvenile and Family Court
- Samut Prakan Provincial Court
- Southern Bangkok Civil Court
- Southern Bangkok Criminal Court
- Southern Bangkok District Court
- Taling Chan Civil Court
- Taling Chan Criminal Court
- Thanyaburi Provincial Court
- Thonburi Civil Court
- Thonburi Criminal Court
- Thonburi District Court

Central Bankruptcy Court

Central Labor Court

Central Tax and Duty Court

Central Juvenile and Family Court

Intellectual Property and International Trade Court

##### Courts of First Instance in the Provinces

28 District Courts

106 Provincial Courts

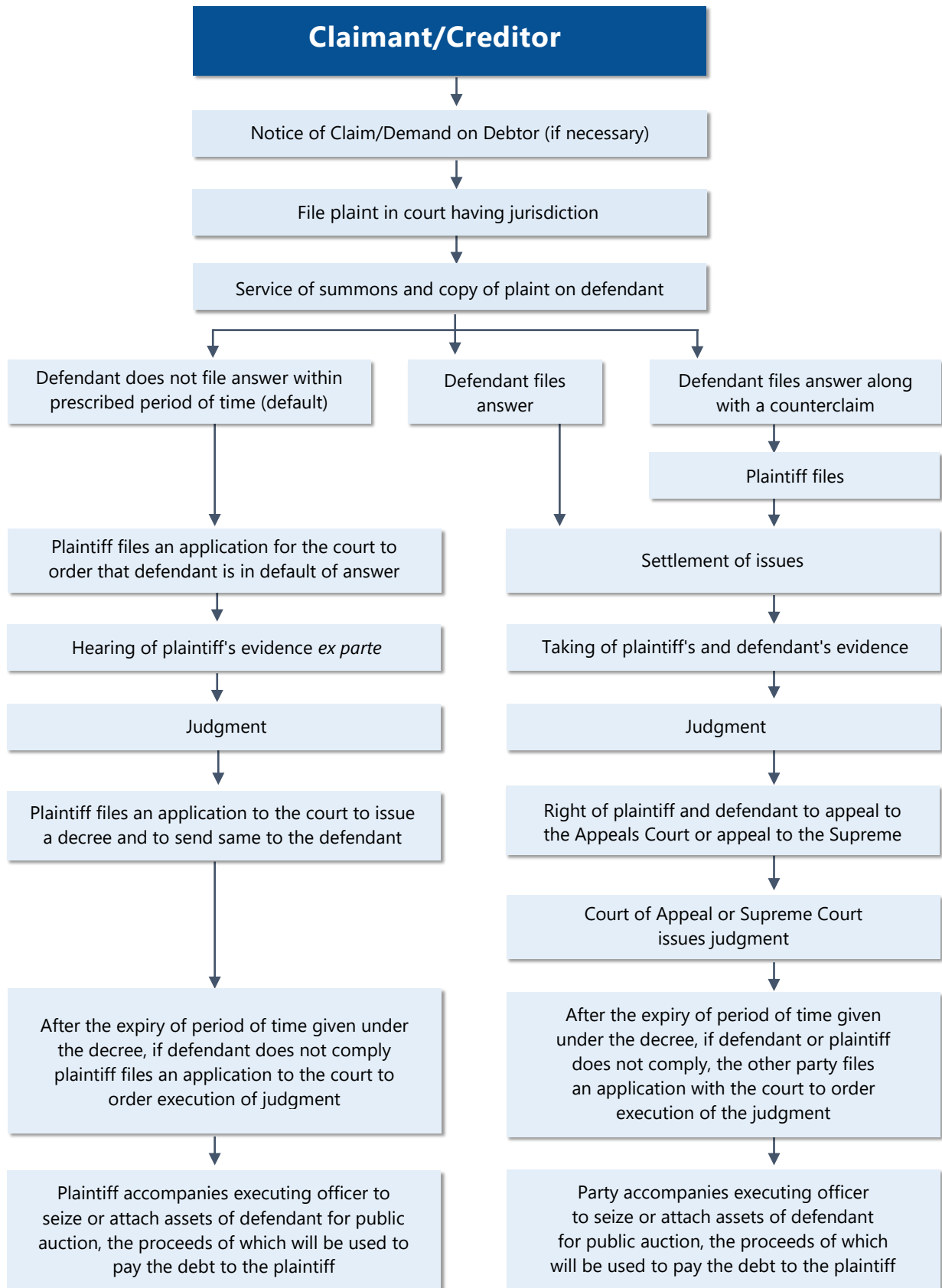
73 Provincial Juvenile and Family Courts

Individual trials of ordinary civil and criminal cases in all of these courts except District Courts, Juvenile and Family Courts, the Central Labor Court and the Central Tax and Duty Court, are heard by 2 judges without juries. District Courts have only 1 judge. A trial in the Juvenile and Family Court is adjudicated by 2 judges and 2 associate judges with the requirement that at least 1 of them must be female. The Central Labor Court trials are heard by 1 judge, 1 associate judge selected by employer federations and 1 associate judge selected by labor federations. The Central Tax and Duty Court has 2 judges which form a quorum to hear cases. A trial in the Intellectual Property and International Trade Court is adjudicated by at least 2 judges and 1 associate judge. Aside from the judges sitting on the courts of first instance throughout the country, 40 judges attached to the Ministry of Justice perform administrative duties and fill in when needed.

Source: Based on Prasobsook Boondech, "The Thai Judicial System," Organizing Committee of the Seventh LAWASIA Conference, Bangkok, 1981.

## Appendix B

### STRUCTURE OF A CIVIL ACTION



Source: Tilleke & Gibbins



