

## THAI COURT SYSTEM

### SYNOPSIS

All Thai courts function in the name of H.M. the King and owe their existence to the Constitution and implementing statutes. There are several different court systems in Thailand:

- Military Courts.
- Administrative Courts.
- Constitutional Courts.
- Courts of Justice.

Further information regarding the Military and Administrative Courts and the Constitutional Courts can be found under Law of the Land, the Thai Constitution 2007.

### COURTS OF JUSTICE

Thailand has no juries. Judges preside over the courts. Different numbers of judges and levels of specialized judicial expertise are required, depending on the level and type of court. There are three levels in this system: the lower court and two appellate levels.

#### Courts of First Instance

The Courts of First Instance are the lower courts, the first level in the court system where trials actually take place. There are three divisions of Courts of First Instance:

- **General Courts**

There are two different groupings of General Courts, one in Bangkok that exists as a result of the city's large population and role as the nation's capital, and one for the rest of Thailand. Bangkok's courts consist of Civil, Criminal, Provincial, and Municipal (Kwaeng) Courts. The rest of Thailand is divided up by jurisdiction, so that each province has its own Provincial and Municipal Courts.

The Civil and Criminal Courts in Bangkok hear cases falling under their respective subject areas. The only civil and criminal cases they do not try are those arising in northern Bangkok, as those matters are adjudicated by the Min Buri Provincial Court. The Municipal Court handles civil cases where the claim amount does not exceed THB 300,000, and criminal cases where the maximum possible imprisonment sentence for the offense is three years and/or the maximum possible fine for the offense does not exceed THB 60,000.

The Provincial Courts throughout the rest of Thailand hear cases that would in Bangkok be heard by the Civil, Criminal, or Provincial Court. The Municipal Courts operate in the same manner as those in Bangkok. In the General Courts, a quorum of two judges is necessary to hear a case, except in the Municipal Courts where only one judge is required.

- **Juvenile and Family Court**

The Juvenile and Family Court has jurisdiction in any criminal case involving children (aged 7 to 14) and youths (15 to 18) and any civil action under the Civil and Commercial Code involving proceedings concerning any minor (under 20). This court also governs family matters such as

divorce, maintenance, and custody, and any proceedings in which the court must pass judgment or issue orders affecting children or youths. Children below the age of 10 are not punishable under Thai law, and no imprisonment is imposed upon children under 15.

A trial in the Juvenile and Family Court is adjudicated by two professional judges and two lay judges, with the requirement that at least one of the lay judges must be female.

- **Specialized Courts**

All specialized courts are located in Bangkok. The Labor Court is the only one to have branches in other provinces. Appeals from these courts can go directly to the Supreme Court, bypassing the appellate level.

The court procedures in the specialized courts are somewhat different from those in regular trial courts. Before taking any evidence, the court may request a pre-trial conference, where all parties to appear will be asked to cooperate in setting up procedures for fixing the time, date, and methods of proceedings, and for possible mediation or arbitration. The objective of these and other procedures is to expedite case resolution. The court may further allow evidence to be introduced immediately in the interest of preserving the information contained therein and/or access to it.

- **Central Bankruptcy Court**

The Central Bankruptcy Court was established in 1999. Due to a recent amendment, current law now provides for two mechanisms concerning bankruptcy, liquidation, and reorganization. Both mechanisms can be initiated by the debtor or the creditor.

The Central Bankruptcy Court will, under certain circumstances, permit hearsay evidence and allow recorded and/or long-distance live testimony by submission of a deposition, or by hearing witnesses via video conference or computer record admission as evidence.

- **Central Intellectual Property and International Trade Court**

In 1997, the Central Intellectual Property and International Trade (IP&IT) Court was established as an additional Court of First Instance, to consider international trade and intellectual property disputes.

The IP&IT Court has jurisdiction over the following civil and criminal actions:

- Trademarks, copyrights, or patents (civil and criminal).
- Agreements on technology transfers or licensing (civil).
- International sale, exchange of goods or financial instruments, services, carriage, insurance, and other related legal actions (civil).
- Letters of credit issued in connection with the above civil actions, inward and outward remittance of funds, trust receipts, and provision of guarantees in connection therewith (civil).
- Ship arrests, dumping and subsidization of goods or services from abroad (civil).
- Disputes over layout designs of integrated circuits, scientific discoveries, trade names, geographical indicators, trade secrets, and plant varieties (civil and criminal).
- Offenses under Sections 271 to 275 of the Criminal Code (civil and criminal).

Career judges in the IP&IT Court are judicial officials with special training in intellectual property or international trade. The Court also has lay judges with specific expertise in particular areas of

intellectual property or international trade. An IP&IT Court trial is adjudicated by at least two career judges and one lay judge.

The litigation process in an IP&IT Court case is considerably shorter than it would be in the General Courts. Hearings are usually held without adjournment until judgment is rendered. This allows for a trial to be completed within 12 to 18 months, plus another two to five years if appealing to the Supreme Court. The pre-trial conference described above facilitates this process, as does the Court's inclusion of recorded testimony or live long-distance testimony in lieu of physical appearance where it deems appropriate.

Only in the IP&IT Court procedures are interlocutory injunctions or attachments possible before filing suit. In general civil cases, the plaintiff must prove almost beyond a reasonable doubt that the defendant is intending to abscond before such an order is issued.

#### **--Labor Court**

Labor Court trials are heard by a quorum of one career judge, one lay judge selected by employer federations, and one lay judge selected by labor federations. The Central Labor Court completes most of its cases within four to six months after the filing of the complaint and tolerates very few delays by the litigants.

#### **--Tax and Duty Court**

The Tax and Duty Court hears tax and customs duty disputes. They require a quorum of two judges, one lay and one career, to hear cases.

#### **Courts of Appeal**

It is possible to appeal on a point of fact or on a point of law. There are ten different Appeal Courts—one in Bangkok that hears appeals from the Civil and Criminal Courts, and nine Regional Courts of Appeal that hear appeals from the Provincial Courts. At least three judges are needed to form a quorum to hear an appeal.

#### **Dika (Supreme) Court**

The Dika (Supreme) Court is located in Bangkok. It receives appeals on questions of law and in some cases on questions of fact from the Courts of Appeal, as well as direct appeals from specialized courts. The Dika Court has about 80 to 90 justices, including the President (Chief Justice) and Vice Presidents. It operates with 11 divisions, each composed of three justices, the number necessary for a quorum. When hearing an exceptionally important case, the quorum is not less than half the number of judges sitting on the Court.

### **EXPECTATIONS IN TRIALS**

Traditionally foreigners, whether resident or nonresident, individual or corporate, are not discriminated against in Thai courts, and can expect a fair hearing by the judiciary. As in most countries, a plaintiff must have better than a 60-40 advantage to win against any government agency.

Basic universal rights and freedoms are generally observed and protected in Thai courts, but one does not have inalienable constitutional rights of the type Americans and some other nationalities are accustomed to.

In October 2002, all courts started to use the continuous hearing system (i.e., all hearings to be conducted continuously until the case is finished). Proceedings are conducted in the Thai language (with rare exceptions). Judges actively participate in the examination of witnesses with due regard to impartiality.

## TRIAL PROCEDURES

### Procedures before Trial

The following details the administrative process leading up to a trial in Thailand:

- Power of Attorney. Client signs Power of Attorney form authorizing lawyer to act on his/her behalf.
- Complaint. Aggrieved party (plaintiff) files a complaint stating the facts and allegations relating to the other party.
- Summons. If the Court accepts the claim, it will issue a summons. The plaintiff must arrange for the service of the summons and a copy of the complaint to the other party (defendant) within seven days after the complaint is filed. If the plaintiff fails to do this within such time period, the Court may consider the plaintiff to have abandoned his/her action.
- Answer. Within 15 days of receiving the summons and complaint, the defendant must reply with an answer, clearly admitting or denying the plaintiff's allegations in whole or in part, stating the basis of any denials and setting forth any counterclaims (counterclaims are only appropriate in civil cases). If the Court deems the counterclaims unrelated, the defendant will be ordered to bring a separate action. The plaintiff must then answer in turn any counterclaim within 15 days after he/she has been properly served with the defendant's answer. If there is reasonable cause, these times can be extended, but only with the Court's prior permission.

If it is necessary to post the summons on the defendant's dwelling or place of business, the law allows the passage of 15 days for service before the 15-day period begins.

- Amending Pleadings. In criminal cases, parties may amend their original pleadings (i.e., complaint or answer) at any time up until the entry of judgment. The times for amending pleadings in civil trials vary, depending on whether or not the judge has prescribed a settlement deadline. For both criminal and civil charges, no new claims or counterclaims may be added unless they are closely related enough to the original claims to justify being joined for trial and adjudication.
- List of Issues in Dispute. After the pleadings are filed, the parties may, by agreement or with the Court's help, establish a list of issues in dispute. The Court then fixes a date for the settlement of issues, a pre-trial conference specifying which issues must be and which need not be proved in the Court through introduction of evidence.
- Settlement of Issues. The Court asks each party whether or not he/she will agree with the other on all or some of the disputed issues, and then sets the trial date on the issues still in dispute.

### Pre-Trial Measures

Effective pre-trial discovery concepts and procedures are unknown in Thailand, as is declaratory relief. *Subpoenae duces tecum* (summons) are available to force an opposing party to produce documents.

Attachment of finances or property before judgment is rare and difficult to obtain. For an attachment order to be issued, the plaintiff must prove almost beyond a reasonable doubt that the defendant is about to abscond. In this age of instantaneous communications, electronic data, and document transfers around the globe, recalcitrant debtors can move assets out of reach within moments, and the courts remain unable to protect their creditors.

### Security

In civil cases when a plaintiff is a nonresident, the defendant is entitled to have a security posted (usually a bank guarantee, land title deed, or cash) to cover the defendant's costs and legal fees in the event the defendant wins the case. A security bond deposited by the plaintiff may be held until all appeals are exhausted by the defendant. In criminal cases, a defendant is also entitled to have security posted during the trial.

### Jurisdiction

In general, a court suit can be filed in Thailand if it is the country in which either of the parties is domiciled, the cause of action arises, the defendant has property, or the plaintiff has citizenship. Thailand also has *in rem* jurisdiction for maritime actions, which means that ships can be seized or arrested.

### Default of Answer and Appearance

Either party may be declared in default by the Court upon motion (called petition) by the other party for failure to answer or to appear within the prescribed time period.

If the defendant fails to answer, the plaintiff may apply for a default order. After it is served on the defendant, he/she may appear to explain his/her default. If the failure to answer was involuntary or otherwise justified, the Court will ordinarily grant the defendant a reasonable time to answer. 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 after expiration of the time period prescribed for the defendant to answer, the Court will strike the case from its docket.

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, in which case it will be adjudicated *ex parte*, as it is the same as if the defendant fails to appear. The fact that a party is in default will not affect the Court's decision, since that is made purely on the merits of the case.

### Procedures during Trial

- *List of Evidence.* Each party is required to submit the first list of evidence to the Court not less than seven days before the day of taking witness. The opposing party must receive copy of documentary evidence not less than seven days before the day of taking witness. The additional list of evidence could be submitted to the court within 15 days after the first day of taking witness. Either party can introduce new evidence after the deadline if he/she can show reasonable grounds for doing so.

- *Form of Evidence for Submission.* With broad exceptions, although original documents are required to be admissible, copies of documents can be submitted and admissible. Microfilm, photostat, and facsimile copies are not considered good evidence, although they may be admissible under limited circumstances. The parties must submit all original documents to the Court on the date of taking witness.

Foreign documents are admissible, but they must be originals or certified true copies, notarized and authenticated by a Thai Consulate or Embassy and translated into Thai.

- *Witnesses.* Witnesses are required to authenticate documentary evidence. Their 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.

Testimony from witnesses abroad can only be taken through the use of Letters Rogatory, a time-consuming effort, but the only effective procedure available.

- *Emergency Orders/Temporary Injunctions.* Emergency orders and temporary injunctions are theoretically possible at any time before judgment is entered, but they are rarely granted. The Court must be satisfied that the complaint is justifiable and that sufficient extenuating circumstances exist. The defendant may at any time petition the Court for the withdrawal of such an order or its enforcement, and the Court may require the plaintiff to deposit security as indemnification for wrongful orders.

- *Presentation of Final Arguments.* After all the evidence has been heard, both parties are entitled to present final oral and/or written arguments supporting their contentions, citing pertinent evidence and legal precedents.

- *Burden of Proof.* The burden of proof in civil trials will be assigned by the Court and is based upon the issues raised in the complaint and answer. In the date of settlement of issues, the Court will assign which parties have the burden of proof in any disputed issues. In criminal trials, the burden of proof rests on the prosecution, and is proved beyond a reasonable doubt.

- *Judgments.* Judgments are given in writing and are read in court. They review each party's presentation of the facts and statement of arguments, then render the Court's decision.

#### **Procedures after Trial—Remedies**

A Court of First Instance generally has the power to issue writs of execution to enforce its judgments and decide matters relating thereto. When a Court issues an execution order, it can also issue an order instructing the judgment debtor to:

- Pay the judgment.
- Deliver property.
- Perform a certain act. Compensation can be claimed for all damages arising from nonperformance and special circumstances which the defaulting party foresaw or ought to have foreseen.

An Execution of Default Judgment allows the debtor at least seven days to comply. If a new trial is pending, he/she may petition the Court for a stay of execution. In cases where execution is based on a default-in-appearance judgment, proceeds of the public auction of attached property may not be distributed until six months from the date of seizure of the debtor's property, unless the creditor satisfies the Court that the debtor had actual notice of the action.

- *Payment.* Judgments calling for payment can be rendered in foreign currencies if that is the currency specified in the pleadings, and such was the intent of the parties. Monetary awards carry a statutory rate of interest and are generally calculated either from the date of filing suit or from the date of judgment. Judgments may award costs and lawyers' fees not exceeding 5% of the amount in dispute for the Court of First Instance and not exceeding 3% of the judgment for the Appeals Court or the Supreme Court.

Interest cannot be charged on interest during the period when a money debt is in default. The parties to a loan may form agreements regarding how the interest on the loan should function during the court process.

Payment of debts expressed in foreign currency may be made in Thai currency according to the rate of exchange existing at the place and time of payment.

As in French law, there is no distinction between a clause for payment of liquidated damages and a penalty under Thai law. Even if the sum is fixed at a figure higher than any reasonable pre-estimate of the likely loss under Section 379 of the Civil and Commercial Code, the party in breach may be required to make payment in full, regardless of whether or not actual loss has occurred. However, if a forfeited penalty is disproportionately high, it may be reduced to a reasonable amount by the Court.

- *Property.* A debtor can be ordered to disclose his/her assets. If he/she does not comply, the creditor may apply for a writ of execution. Upon receiving the writ, an executing officer normally accompanies a creditor or an agent of the creditor to the property location, and either seizes them or leaves them in place under seal. Notice of attachment is then sent to the judgment debtor and a public auction is advertised. Both parties and any others concerned are notified. These procedures are more complex and time-consuming than the above simple explanation might imply, as identifying, tracing, and locating assets can be extremely difficult. Months can go by before a judgment is collected.

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

- *Performance.* The existence of an obligation may entitle the creditor to demand performance from the debtor. Performance must be tendered in the manner in which it is owed, and may be tendered by a third person to the creditor or his/her authorized representative. The creditor cannot be compelled to receive any performance other than that which he/she is entitled unless he/she accepts such substitute performance.

### Costs

To cover the initial court costs in civil cases (except consumer and labor cases), the Court requires, at the time of filing the original suit and each further appeal, a payment of 2% of the claim (with a maximum of THB 200,000) for claims under THB 50 million, and an additional 0.1% of the claim for claims exceeding THB 50 million. If the suit is successful, part of the initial cost is usually recoverable upon order of the Court. Where a suit is terminated by means of a settlement or arbitration, each party absorbs its own costs unless they have agreed otherwise.

Court costs, along with a portion of the attorney fees, service fees, and witness fees, may be awarded to the prevailing party by the Court.

Initiating court suits in Thailand for claims originating abroad with a claim less than THB 200,000 is not recommended because of the time and costs involved.

## **APPEALS**

All appeals to the Courts of Appeal and the Supreme Court must be filed within one month after the judgment being appealed was given. Filing an appeal does not in itself stay execution of a judgment or order of the Court of First Instance. A separate motion for a stay must be filed with or after the appeal.

## **ARBITRATION AND MEDIATION**

### **Arbitration Law and Usage**

Arbitration as an alternative to court trials is recognized in Thailand under the Arbitration Act B.E. 2545 (A.D. 2002), which repealed and replaced the 1987 Act. Thai arbitration law generally follows the UNCITRAL (United Nations Commission on International Trade Law) model act. Arbitration clauses are increasingly common in commercial contracts, particularly for international transactions and construction contracts.

### **Arbitration Agreements**

Parties may agree to submit existing or future civil disputes to arbitration. In order to be binding upon the parties, the agreement to arbitrate must be evidenced by a written document or mentioned in written correspondence between the parties. The parties are free to agree upon arbitrators and procedures, and in absence of agreed procedure, an arbitral tribunal may conduct arbitration proceedings in any manner it thinks fit for justice purposes. A court claim under a contract containing an arbitration clause may be struck out of court if a party to the contract raises the issue of arbitration. If neither party raises the issue, the case will be litigated.

### **Local Arbitration Institutes**

There are two main domestic Arbitration Institutes in Thailand: (1) the Thai Arbitration Institute of the Alternative Dispute Resolution Office, Office of the Judiciary; and (2) the Thai Commercial Arbitration Institute of the Board of Trade. Both are well respected and administered, supervised by a diverse advisory board, have standard arbitration rules, and maintain a list of qualified available arbitrators. Parties are also free to nominate qualified outside professionals. Parties may choose any language they prefer, but Thai and English are the ones used most frequently.

Under a 2000 regulation, foreign citizens may act as arbitrators, and foreign lawyers can act as legal advisors in local arbitration cases where the governing law is not Thai law, or where there is no need to apply for enforcement of the arbitral award in Thailand.

### **Foreign Arbitration Institutes**

In contracts designating foreign arbitration institutes, the ones most commonly utilized are the International Chamber of Commerce, Singapore, Hong Kong, and London institutes.

### **Enforcement of Arbitral Awards**

An arbitration award with which either party refuses to comply may be enforced only after a court judgment is obtained ordering enforcement. A petition for enforcement of an award must be filed with the Court within three years from the date when the award can be enforced. The Court may refuse enforcement of the award on limited grounds only, such as lack of capacity of one of the parties, lack of notice given to one of the parties, the arbitral award having been beyond the scope of the arbitration agreement, or the arbitral tribunal or arbitration procedure having been inconsistent with the arbitration agreement.

There is no distinction between enforcement of arbitration awards rendered in Thailand and those rendered in foreign countries, so long as an award rendered in a foreign country is governed by a treaty, convention, or international agreement to which Thailand is a party. Foreign arbitral awards rendered in member countries of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 and of the Geneva Protocol 1923 are recognized and enforced in Thailand, which is a member of both conventions. Arbitral awards are thus generally enforced whereas foreign judgments are not.

**Objection to Arbitral Awards**

Either party may petition the Thai court to revoke award but grounds for such petition are limited. Objection to revoke award must be filed with court within 90 days from date of award in order to be revoked.