Dispute Resolution
Around the World

Thailand
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1. Legal System

The Thai legal system is a civil law system. Many of its fundamental legal principles (in areas such as contracts, property, wrongful acts, i.e. tort law, hire of property, hire-purchase, suretyship, mortgage, pledge, warehousing, agency, bills of exchange and partnerships) have their origins in the codified systems of continental Europe (particularly France and Germany), as well as common law countries (including English law) and traditional Thai law.

Thailand does not recognise the common law principle of binding judicial precedent. However, certain persuasive decisions of the Supreme Court are published in the Supreme Court Law Reports.

The principal law of Thailand is the Constitution. This is supplemented by Acts of the Thai Legislature; Royal Decrees; Emergency Decrees; Ministerial Regulations; Ministerial Notifications; other governmental notifications and local government regulations. The major Codes are the Civil and Commercial; Penal; Civil Procedure; Criminal Procedure; Revenue and Land Code.

In accordance with principles set-out in the Act on Conflict of Laws, foreign law may serve as the law governing the case. It must, however, be proved to the satisfaction of the Court that the foreign law is not contrary to public order or good morals; otherwise the Court will apply Thai law.

The Thai system of jurisprudence is dualistic. The fact that Thailand has entered into a treaty or convention with a foreign country does not automatically give the provisions of such treaty or convention the force of law within Thailand. Treaties are not law within Thailand until they are made law by legislative enactment, such as an Act, Royal Decree or Ministerial Regulation.
2. Courts

Court of First Instance (Sarn Chanton)

Courts of First Instance consist of District Courts (Sarn Kwaeng) and Provincial Courts (Sarn Chaengwat). District Courts possess jurisdiction over small claims for amounts not exceeding Baht 300,000 and petty criminal offences carrying penalties of imprisonment not exceeding three years and fines not exceeding Baht 60,000, or both. Provisional Courts enjoy original jurisdiction over civil disputes involving more than Baht 300,000. Courts of First Instance sit in all provinces. Four Courts of First Instance sit in Bangkok: namely, the Civil Court; the Thon Buri Civil Court; the Southern Bangkok Civil Court and the Min Buri Court. There are no jury trials in the Thai legal system.

Court of Appeal (Sarn Uthorn)

The Court of Appeal hears appeals from the Courts of First Instance having jurisdiction over Bangkok Metropolis and its suburbs. There are nine Regional Appeal Courts which hear appeals from the Courts of First Instance having jurisdiction over other provinces. The Appeal Courts have original appellate jurisdiction for all cases, except those which arise in the Labour Court, Tax Court, Intellectual Property and International Trade Court, and in some instances, the Central Bankruptcy Court. Normally three judges constitute a quorum sufficient to consider the appeal presented. For interlocutory orders, such as those directing further proceedings at trial, only one judge is necessary to form a quorum. However, for cases of extraordinary importance the Appeal Court may sit in full session.

The Supreme Court (Sarn Dika)

The Supreme Court, sitting in Bangkok, is the highest Court in Thailand. Normally three Supreme Court judges constitute a quorum sufficient to consider the appeal presented. However, for cases of extraordinary importance the Supreme Court may sit in full session to
consider the appeal. As with the Court of Appeal, interlocutory orders may be presided upon by only one judge. The Supreme Court has original appellate jurisdiction for appeals from the Central Labour Court, the Central Tax Court, the Central Intellectual Property and International Trade Court and Bankruptcy Court. Otherwise an appeal must first be heard by the Court of Appeal.

Although decisions of the Supreme Court do not strictly have the role of mandatory precedent, they command great respect and can be expected to guide the decisions of the lower Courts.

Special Courts

Central Tax Court

The Central Tax Court hears tax cases of a civil nature. The Central Tax Court sits only in Bangkok, although legislative provisions permit expansion to other provinces. Appeals from Central Tax Court decisions are made directly to the Supreme Court.

Central Labour Court

The Central Labour Court hears cases arising out of labour relations and employer/employee relationships. The Central Labour Court has jurisdiction over Bangkok Metropolis and all other provinces. The Central Labour Court sits in Bangkok and its judges also preside over the cases filed with other provincial Courts. Appeals from decisions of the Central Labour Court are made directly to the Supreme Court.

Central Bankruptcy Court

The Bankruptcy Act of 1940 governs bankruptcy proceedings. The Act has undergone several major amendments since its original enactment. In 1998 a major amendment was passed which radically altered bankruptcy law and procedures. In addition to this amendment, the “Act on Establishing Bankruptcy Courts and Bankruptcy Case Procedures” was passed in 1999. Because of the complicated and time-consuming nature of bankruptcy cases, a special Bankruptcy Court was established. The first, the Central Bankruptcy Court, was
established in 1997 in Bangkok. The Act was recently amended with regard to the process of discharge of the bankrupt from bankruptcy, and in order to allow the use of electronic communications in filing claims with the official receiver in order to facilitate the bankruptcy and reorganization processes. The Rules governing the Central Bankruptcy Court provide that certain appeals are appealed directly to the Supreme Court, whereas others proceed through the normal appellate process.

Central Intellectual Property and International Trade Court

Thailand promulgated the Intellectual Property Court Establishment and International Trade and Intellectual Property Procedure Act in October, 1996. The Central Intellectual Property and Intellectual Trade Court (“Central IP&IT Court”), located in Bangkok, was established on 1 December 1997. As in the case of bankruptcy, a special judicial body was considered necessary to deal with the highly complicated and time-consuming issues in intellectual property and international trade law. It was thought necessary to have judges appointed with specialised expertise in these matters. The Central IP&IT Court is structured to help facilitate Thai interests in resolving international trade disputes, promoting technology transfer and rendering judgment in cases where intellectual property rights are alleged to have been violated. In addition, this Court has jurisdiction over civil and criminal cases relating to various international transactions. The Central IP&IT Court has special procedures beyond those set out in the Thai civil and criminal procedure codes. Appeals from the Central Intellectual Property and International Trade Court are made to the Supreme Court.

The Administrative Court

The recently-established Administrative Court enables persons and corporations to seek relief for grievances caused by acts of the government and its agencies. The judges who sit on the Administrative Courts specialise in administrative law and are expected to address cases efficiently and effectively. Decisions issued
by the Administrative Court of First Instance may be appealed to the Supreme Administrative Court.

3. Legal Profession

The Thai legal profession does not divide lawyers into different groupings as is the practice in some jurisdictions, where lawyers are designated as solicitors and barristers. Lawyers in Thailand act as both solicitors by preparing litigation and evidence for trial and as barristers responsible for filing suits, pleadings and petitions. Therefore, Thai lawyers have to prepare the case; file complaints and motions; gather and adduce relevant evidence and undertake all necessary legal steps until the conclusion of the case.

To receive a law license and practice in all areas of law in Thailand, Thai citizens possessing a law degree from and accredited university must pass a technical examination administered by the Law Society of Thailand and must serve a six month legal apprenticeship with a qualified law office.

4. Procedure for Claims

Jurisdiction

Thai Courts have wide jurisdiction to hear cases for which the cause of action arose in the territorial jurisdiction of the Court; or for which the defendant has a domicile in the territorial jurisdiction of the Court, or where the plaintiff is a Thai national or domiciled in Thailand. As a result, foreign plaintiffs who are not Thai nationals and who are not domiciled in Thailand are able to bring a case to the Thai Court. A limitation on the jurisdiction of the Thai Court contained in an agreement will be deemed to be contrary to public order and good morals and so will be unenforceable in Thailand.

Power of Attorney

In order to authorise an attorney to represent a party in a Thai Court, a party must execute a Deed of Appointment duly authorising the
attorney. The plaintiff may also give its lawyer or any other person a power of attorney to act on his or her behalf. A power of attorney authorising a Thai lawyer to act on behalf of a party in a litigation proceeding is an essential document. If the plaintiff is a foreign person or corporation, this document must be notarised by a notary public and authenticated by a Royal Thai Embassy or Consulate. Without a proper power of attorney the Plaintiff or the Answer may be rejected and the party may not be able to present its case.

If a party is a legal entity or juristic person (e.g. a corporation or company) the company must submit documents proving incorporation. Further, the power of attorney must be executed by a person whose identity appears on an officially filed document, or whose identity and authority is confirmed by someone whose identity appears on an officially filed document.

**Plaint and Prescription Periods**

A civil action commences with the filing of a document called the Plaint (the Statement of Claim) which sets forth the applicable facts and legal theories upon which the plaintiff intends to rely, and the relief applied for. The Court will then examine the Plaint, and the Plaint will be accepted by the Court if there are no objections to its composition.

In Thai legal proceedings, particular attention must be given to periods of time. If a Plaint is not filed within the applicable period of time, all rights to claim will be lost. As such time bars vary, it is essential to observe the applicable periods of prescription.

**Service of the Plaint**

Regulations have been issued regarding the service of plaintiffs or other pleadings, empowering a court officer to serve plaintiffs or other pleadings through registered or express mail with return slip. The Plaint and other pleadings may also be served by an officer of the Court on the defendant by personal delivery to the defendant or by
leaving or posting it at the defendant’s business premises or dwelling place with a person over the age of twenty years. If the recipient refuses to accept the plaint or other pleadings without lawful cause, the court officer may request a competent administrative or police official to accompany him to act as a witness to the service of the Plaint. If the Plaint cannot be served through any of the above procedures, upon the order of the Court it may be posted by advertisement in a local newspaper, or in such other manner as the Court deems fit.

Answer to the Plaint

Any Answer to the Plaint (admitting or denying the allegations of fact and law set out in it) must be filed within fifteen days of personal service, or within thirty days if service was undertaken by posting.

Counterclaims

At the time of answering the Plaint the defendant may bring a counterclaim against the plaintiff. This must have a reasonable connection with the original Plaint.

Settlement of Issues Conference

Approximately two months after the Plaint is answered, a “Settlement of Issues Conference” may be held where the Court meets with both parties and determines matters significant in the litigation. The Court will issue a formal order specifying the issues to be considered in promulgating a decision. The Court will also issue an order delineating which party will carry the burden of proving each issue and which will first introduce witnesses and evidence at the trial. The Court will also schedule hearing dates for the presentation of the cases of both parties in the said conference.

In some cases, the Court may review the Plaint and Answer and immediately schedule a date for the trial to begin, bypassing the Settlement of Issues Conference. The Settlement of Issues Conference will be dispensed with in certain circumstances, such as if the Court
deems that the issues in dispute are not complex, or if the defendant is in default in filing an Answer to the Plaint.

Discovery

There is only limited provision for discovery under Thai law. Each party is obliged to disclose documents and witnesses that might be introduced during the course of the trial by submitting a list of evidence to the Court and providing a copy of documentary evidence in its possession to the other party. This must be done at least seven days before the taking of evidence.

Inspection

The Court is empowered to order the inspection of property that cannot be brought into Court, upon such conditions as the Court deems fit. The Court may appoint experts who may be authorised to perform out-of-Court inspections.

Duration of Court Proceedings

In past years, the length of a trial in Thailand was difficult to predict. However, the President of the Supreme Court has implemented a continuous trial method to facilitate trial proceedings. In this regard, at the Settlement of Issues Conference, the Court, based on the availability of judges and the parties, will endeavour to set consecutive hearing dates for the presentation of both parties’ cases in order to create a continuous trial. Customarily, one or two witnesses will be presented each day of the trial. As a general practice, in a reasonably straightforward case, judgment will be issued within two months of the last date of hearings.

Costs and Security for Cost

For an amount claimed not exceeding Baht 50 million, a filing fee equal to 2.5% of the amount of the relief sought, up to a maximum of Baht 200,000, must be paid when a Plaint is filed. That amount claimed which exceeds Baht 50 million will be subject to an
additional court charge of 0.1%. If the Plaintiff is to enforce an arbitration award not exceeding Baht 50 million, the filing fee is 1% of the award up to a maximum of Baht 80,000. That amount claimed which exceeds Baht 50 million will be subject to an additional court charge of 0.1%.

Where the plaintiff is not under the jurisdiction of the Court, or where there is good reason to believe that the plaintiff will evade the payment of cost and expenses if he or she loses the case, the Court may, following an application by the defendant, issue an order directing the plaintiff to deposit money as security for the payment of costs and expenses for which the plaintiff will be liable if he or she loses the case. This rule is also applicable at the appellate stages.

**Trial Procedures**

The trial will commence at least one month after the Settlement of Issues Conference. All testimony must be given in Thai, or through a qualified interpreter. At trial the party who is required to introduce his or her witnesses and evidence gives all of his or her witnesses and evidence, and then rests. The other party then does the same. Cross-examination and re-examination are permitted.

The testimony of witnesses is not recorded directly. Instead, the presiding judge or judges record their notes by dictation during the testimony, which is then transcribed and printed in transcript form. After all testimony has been given the parties are provided the opportunity to review the transcript, agree to its contents and sign the document. If there is any disagreement, witnesses or counsel may argue for a correction.

At the conclusion of the presentation of witnesses and evidence, the parties are entitled to present written closing arguments to the Court. Unless the Court feels that the interests of justice require further trial, the Court will then proceed to issue judgment.
Documentary evidence is extremely important in Thai trials. Generally, documents presented should be originals, although reasonable exceptions exist. Documents in languages other than Thai must be translated into Thai before they will be accepted as evidence.

Foreign witnesses are welcome to testify before Thai Courts. Qualified translators must be used.

Since an attorney is appointed by a power of attorney to represent a party, the attorney is permitted to not only represent the party but also to provide testimony on behalf of the party. Such testimony often deals with background issues (for example, the existence of a company; its sales; its products; its trademarks; its reputation, etc). In normal circumstances, the testimony of the attorney regarding details of the transaction in dispute is not accepted by the Court if he or she does not have any personal involvement or knowledge of the matters.

Either party may use expert witnesses if that person has expert knowledge in art, science, work of skill, trade or practical work, or in foreign law, and whose opinion may be of value in settling points in issue. The Court has the power in its discretion to appoint experts at any stage of the trial. Court appointed experts may give their opinion either orally or in writing.

Only Thai nationals with a lawyer’s license may appear or participate as an attorney in any Thai Court proceeding. A foreign lawyer may present testimony as an expert witness on foreign law.

5. Remedies

Interlocutory (interim) Orders

During the course of a trial the Court can issue such orders as are required by justice and permitted by law. At times these orders are upon the application of a party, although the Court in many instances has inherent power to issue orders on its own initiative.
Order for Security for Costs

A plaintiff may be required to deposit security for the costs and expenses of the case if the party is not domiciled or does not maintain a business in the jurisdiction, or if there is strong reason to believe the plaintiff will, if losing the case, evade the payment of costs and expenses.

Order to Produce Documents, Permit Inspection, Appoint an Expert

The Court may order a party to produce documents, preserve documents, permit inspection of things which cannot be brought to Court, take testimony at places outside of the Court room, hear witnesses out of order, appoint experts, etc.

Order for Seizure or Attachment of Defendant’s Property as a Temporary Protection

A party may file an ex parte (that is, without notice to the other party) application for the seizure or attachment before judgment of the whole or part of the defendant’s property if it appears that the defendant intends to remove the property in dispute or transfer, sell or dispose of such property to obstruct the execution of any decree. In practice, however, it is not easy to obtain such an order.

Order for Temporary Injunction

A party may file an ex parte application requesting the Court to issue a temporary injunction restraining the defendant from repeating or continuing any wrongful act or breach of contract, or an order stopping or preventing the waste, damage, transfer, sale, removal or disposal of any property in dispute until the case is final or until the Court orders otherwise. Again, in practice, orders for temporary injunctions are not easily obtained.
Judgment Upon Motion

The Thai Civil Procedure Code provides that the Court may issue a decision which will dispose of the whole case, or any issue in the case on a question of law, upon the application of any party. However, the Courts are conservative in their use of this provision.

Judgments

At the conclusion of the case the Court will issue a judgment setting forth the particulars of the case and a brief statement of the grounds for the decision. The judgment does not usually include detailed discussion of legal principles and theory.

Interest, Attorney Fees and Costs

As part of the judgment the Court may award interest and costs against the party losing the case. Unless the Court specifies otherwise costs will include witness fees; lawyer’s fees; fees for service of documents and all other costs or fees payable by law. As a practical matter the amount of attorney fees allowed is low, although the Court is authorised under the provisions of the Civil Procedure Code to award up to a maximum of 5% of the amount in dispute as lawyer’s fees.

6. Appeals

There are two appellate Courts in Thailand: the Court of Appeal and the Supreme Court. Judgments by a Court of First Instance may, on sufficient grounds, be appealed to the Court of Appeal, provided that where the appeal is on a question of fact, the claim must exceed Baht 50,000. Even though new evidence is not normally heard, an appeal may take one to three years to be finalised. There is a final appeal to the Supreme Court, provided that where the appeal is on a question of fact, the issue on appeal exceeds Baht 200,000. There is no limit on appeals based on questions of law. With the exception of administrative cases which are appealed directly to the Supreme Administrative Court, as well as labour cases, tax cases, intellectual
property and international trade cases, and reorganization case appeals, which go directly to the Supreme Court, appeals are first made to the Court of Appeal.

Effect of Appeal

Filing an appeal does not act as a stay of execution of a lower Court judgment, unless there is a Court order to the contrary. Any appellate judgment or order has effect only on the parties involved in the appeal, except when such judgment necessitates inclusion of other parties or an interpleader or where it concerns the status or capacity of a person, the enforcement of the dissolution of a legal entity, bankruptcy orders or the issuance of a judgment determining the right or ownership of property in favour of any party.

7. Enforcement of Judgments

Writ of Execution

A judgment may be executed at any time within ten years of its issuance. To enforce a judgment the judgment creditor may file an ex parte application with the Court asking for execution. Upon the required showing, a Court may order execution by seizure and sale by auction of the judgment debtor’s property and assets, and by attachment of the judgment debtor’s rights of claim against third parties.

Examination of the Judgment Debtor and Other Persons

The judgment creditor may file an ex parte application asking the Court to hold an inquiry and to summon the judgment debtor or any other person who is believed to be in a position to give useful information as to the whereabouts of the judgment debtor’s assets.

Execution Against Assets Overseas

Thailand does not have agreements with other countries regarding reciprocal enforcement of judgments. Therefore, it would be necessary
to commence new proceedings in the debtor’s country to enforce a judgment.

8. Recognition and Enforcement of Foreign Judgments

Thai law does not specifically provide for the direct enforcement or recognition of a foreign judgment in Thailand. Moreover, Thailand is not a party to any treaty or agreement by which a foreign Court judgment may be entitled to recognition and enforcement in Thailand. Consequently, a new trial based on the merits must be initiated in Thailand. However, foreign judgments and documentary evidence generated during a foreign litigation procedure, including settlement negotiations, may be admissible as evidence in Thailand.

9. Arbitration Law

As from 1934 arbitration has been used as both an in -Court and out-of-Court procedure. In-Court arbitration, which is infrequently utilised in Thailand, refers to an arbitration which is conducted while a case is pending consideration by a Court of First Instance. The parties may agree to submit all or any issues in dispute to one or more arbitrators for settlement. In-Court arbitration is explicitly provided for in the Thai Civil Procedure Code.

The more commonly utilised modern out-of-Court arbitration in Thailand is based on the Arbitration Act of 2002, a comprehensive legislative enactment which addresses not only the enforcement of arbitration awards but also the procedural aspects of arbitration within the Thai legal system. The Arbitration Act of 2002 was drafted to be congruent with the standards of the UNCITRAL Model law for Arbitration, with minor variations.

The Arbitration Act of 2002 governs both domestic and international commercial arbitration under the same rules and also contains provisions for the recognition and enforcement of arbitration awards under the Geneva Convention on the Execution of Foreign Awards.
1927 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. The Arbitration Act of 2002 recognises the existence of binding arbitration agreements in written agreements irrespective of whether an arbitrator or a set of arbitration rules have been designated. The Thai Arbitration Act of 2002 empowers parties to agree to refer disputes arising out of non-contractual issues. It is also clear under the Act, that an arbitration agreement between governmental agencies and private parties, regardless of whether the agreement is an administrative contract, may be resolved by means of arbitration. Moreover, under the Thai Arbitration Act of 2002, an arbitrator may be held civilly liable for damages caused due to the arbitrator’s willful acts or gross negligence.

Although Thailand is a party to bilateral investment treaties with various Asian, European, and North and South American nations, Thailand has not ratified the Convention on the Settlement of Investment Disputes (ICSID). Thailand has, however, enacted the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA).

10. Role of Courts in Arbitration

The Thai Civil Procedure Code provides for in-Court arbitration. The Thai Arbitration Act of 2002 provides for out-of-Court arbitration. In the case of both in-Court or out-of-Court arbitration, the Thai Court will refuse to hear a complaint if the parties have an agreement to submit disputes to arbitration. If a complaint is brought to the Court, a party to the arbitration agreement may file evidence of the arbitration agreement, and request that the case be dismissed. If the Court finds that there is an arbitration agreement it will dismiss the Court case. If the parties submit the case to arbitration, the arbitrator’s decision will be final and the Court only offers limited recourse by way of appeal.

The Court has the power to intervene in particular circumstances in both in-Court and out-of-Court arbitration. The Court may entertain a
challenge to a duly appointed arbitrator in certain limited circumstances.

An arbitration decision may be submitted to the Thai Court for enforcement where a party refuses to comply. In the absence of a decision in the award stipulating the fees and expenses incidental to the arbitration proceedings and the remuneration of the arbitrators or umpire, such fees and expenses may be fixed by the Court upon petition by any party or the arbitral tribunal. Alternatively, the organisation under which the arbitration has been conducted, may determine the fees, expenses and remuneration for the arbitral proceedings. In either case, it appears that the Court reserves the right to determine attorney’s fees and expenses.

The Thai Court will allow an application to enforce a foreign arbitral award. As Thailand is a party to the Geneva Convention 1927 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, arbitral awards conducted wholly or mainly outside Thailand and involving any party which is not a Thai national may be enforced by the Thai Court pursuant to those Conventions.

With regard to in-Court arbitration, the parties may agree to submit all or any issues in dispute to one or more arbitrators for settlement. The Thai Civil Procedure Code provides rules for selection of arbitrators, fees, granting an award and filing the award with the Court for purposes of execution. In addition, the Court may be called upon to facilitate the arbitration by undertaking certain proceedings within its power, including summoning a witness, administering an oath or ordering the production of a document.

With regard to out-of-Court arbitration, the Court’s role is less involved. A party is, however, empowered to make an application to the Court for a ruling on a question of the arbitral tribunal’s jurisdiction within thirty days of the tribunal having ruled on the issue itself pursuant to the request of a party. An arbitrator, the tribunal or any party with the consent of a majority of the tribunal may file a
petition with a competent local Court requesting the summons of a witness or to order the delivery of any documents or objects. In addition, the parties to an arbitration proceeding may also apply to a competent Court for an interim measure of protection of their interests before or during the arbitral proceedings. Whilst the question of whether a Thai Court is empowered to grant ancillary or interim relief in respect of an arbitration proceeding outside the Kingdom of Thailand has not been definitively addressed under the Arbitration Act 2002, it is unlikely that such power exists.

11. Institutional and Ad Hoc Arbitration

Out-of-Court arbitration services are offered in Thailand by the Office of the Judiciary, by the Thai Chamber of Commerce, and under other institutional arbitration rules, such as the International Chamber of Commerce Rules.

The parties to a dispute may choose to proceed under various available local arbitration schemes. Arbitration services are offered by the Alternative Dispute Resolution Office under the Office of the Judiciary using its corresponding Arbitration Rules, as well as the Office of the Arbitration Tribunal established by the Board of Trade of Thailand using the Thai Commercial Arbitration Rules.

Other jurisdictions also have arbitration schemes which parties in Thailand may contract to use. This is particularly common with joint ventures where a third country is selected as the place of arbitration. International arbitration rules may be used, such as the Arbitration Rules of the International Chamber of Commerce and the ad hoc UNCITRAL Arbitration Rules.

The Arbitration Act 2002 and the Civil Procedure Code generally govern out-of-Court arbitration held in Thailand, as well as recognition and enforcement of foreign arbitration awards. These rules set out basic principles regarding the arbitration agreement, the arbitrators and umpire; the award and enforcement of the award, fees, expenses and remuneration, and recognition and enforcement of
foreign arbitral awards. The Arbitration Act 2002 stipulates that an arbitration agreement is only binding on the parties where there is proof in writing of such agreement, except where the provisions of the agreement are contained in an exchange of letters, facsimiles, telegrams, telex, exchange of information with electronic signature, or other means of communication between the parties which provide a record of the agreement, or where the arbitration agreement is alleged in the Statement of Claim or Statement of Defence and the other party fails to object. The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties and if no specific law is stipulated the arbitral tribunal shall apply Thai law to the dispute.

12. Enforcement of Arbitration Awards

In the case of in-Court arbitration, after rendering an award an arbitrator or arbitration tribunal is required to file the award with the Court regardless of the parties’ intentions to comply with its decision. If the Court is satisfied with the legality of the award, it will render a judgment in accordance with the award. In the event one party fails to comply with the judgment, the other party can petition the Court to execute the judgment by issuing a writ of execution, in accordance with the Civil Procedure Code of Thailand.

In the case of an out-of-Court arbitration award, once the award is rendered by a majority of the members of the arbitral tribunal, the arbitrator’s task is complete and the arbitrator is not in a position to submit the award to Court requesting confirmation of its contents. Unless otherwise agreed by the parties, a party may make a request to the arbitral tribunal to correct an error in an award, clarify a specific point in the award or make an additional award, within thirty days of receipt of the award. In addition, a party may apply to the competent Court to set aside the award within ninety days of receipt of the copy of the award and the Court may set aside the award based on several defined grounds. In the event a party refuses to comply with an out-of-Court arbitration award, the party seeking enforcement of the award is
required to file a request with the competent Court within three years from the date on which the award was sent to the disputing parties. In the event one of the parties to the arbitration is a Thai government agency, the Thai Administrative Court is the competent Court for purposes of enforcement. Enforcement of an out-of-Court arbitration award, unlike an in-Court arbitration award, is governed by the Arbitration Act 2002. Upon receipt of the request, the Court will hold an inquiry and give judgment without delay, provided that the party against whom the award was rendered had an opportunity to challenge the request. The awards must not fall within any of the grounds for refusal of enforcement.

**Enforcement of Foreign Arbitral Awards**

The enforcement of a foreign arbitral award under the Thai Arbitration Act 2002 is identical to that utilised for the enforcement of domestic arbitration awards. However, to enforce a foreign arbitral award under the Geneva Convention 1927 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, the award must also satisfy the requirements of those Conventions.

**13. Power to Appeal or Challenge the Award or Order**

An appeal against the order or judgment of a Court to enforce an arbitration award can only be made if:

(a) the recognition or enforcement of the award would be contrary to public policy or good morals;

(b) the order or judgment is contrary to the provisions of law governing public policy or good morals;

(c) the order or judgment is not in accordance with the arbitral award;

(d) the judge who held the inquiry of the case has given a dissenting opinion; or
(e) it is an order concerning interim measures for the protection of interests of the party under the Act.

**14. Mediation or Conciliation**

Mediation takes both an in-Court form and out-of-Court form. The Civil Procedure Code of Thailand empowers the Court to order mediation in cases which are the subject of a civil dispute when the Court deems it appropriate, or by the request of the parties. Court annexed mediation is a confidential, informal, non-adversarial procedure designed to bring the parties to an amicable settlement of disputes. Court-annexed mediation is confidential and may also be used at the appellate level; in Juvenile Court and Family Court mediation; in the Central Labour Court and in the Central IP&IT Court.

In addition to traditional in-Court conciliation, the large number of cases regarding financial disputes which have become the subject of Court proceedings in Thailand prompted the creation of the Mediation Center in the Alternative Dispute Resolution Office under the Office of the Judiciary. This reconciliation system empowers the Mediation Center to carry out reconciliation of financial disputes which are the subject of Court proceedings if the debtor has submitted an offer for debt restructuring or for performance of the debt to the Court which is trying the case and that Court, with the consent of the parties, has instructed the Mediation Center to attempt reconciliation. The reconciliation process is voluntary, confidential and may include third parties with the consent of the original parties to the dispute.

With regard to out-of-Court mediation, the Alternative Dispute Resolution Office of the Office of the Judiciary provides mediation rules under which parties may elect to attempt to settle their dispute.
Baker & McKenzie Bangkok – Dispute Resolution Practice

The Thailand practice has over 90 lawyers, with a full-service practice concentrated both domestically and internationally in the areas of corporate; tax; litigation; corporate compliance; administrative law; insurance disputes; bilateral investment treaty disputes; banking and finance; securities; major projects; investment; shipping; maritime; joint venture; government contracts; construction; trademark, patent and copyright; mining; oil and gas, and environmental law. Clients engaging in dispute resolution include many multinationals doing business in Thailand and a significant number of Thai enterprises and organisations.

The Thai office dispute resolution practice group comprises a former President of the Supreme Court judge with over thirty years of courtroom experience, an American consultant, eight partners and a team of experienced litigators. Backing up the litigation team are attorneys who concentrate in anti-counterfeiting and intellectual property abuses; banking and finance; maritime practice; construction; real estate and corporate law.

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