

CHAPTER 26 CIVIL LITIGATION

In this Chapter, we discuss the process of civil litigation in Thailand. In general, civil procedure is governed by the Civil Procedure Code. However certain special courts such as the Labor Court, the Bankruptcy Court or the Intellectual Property and International Trade Court may have their own rules of procedure that apply only to that particular court.

The court system The court system for most civil claims is divided into three levels: a court of first instance, the Court of Appeals and the Supreme Court. In some cases, there is only one right of appeal from the court of first instance direct to the Supreme Court, bypassing the Court of Appeal. For example, appeals against judgments of the Labor Court, the Bankruptcy Court and the Family Court are generally made direct to the Supreme Court.

In Bangkok, many civil cases start in the Civil Court. However, there are several special courts, namely the Revenue Court, the Labor Court, the Juvenile and Family Court, the Constitutional Court, the Administrative Court, the Bankruptcy Court and the Intellectual Property and International Trade Court (“IPITC”). Criminal cases are heard in the Criminal Court. Petty cases are heard in a District Court. A case should be issued in the court that has jurisdiction.

In provinces outside Bangkok, both civil and criminal cases start in the Provincial Court. Some of the larger provinces have District Courts for petty cases. There are also Labor, Bankruptcy and other special courts established in some of the larger provinces in Thailand.

The courts of first instance, except for the District Courts, sit in tribunals of two or three judges, with two judges constituting a quorum. The Court of Appeal and the Supreme Court sit in tribunals of three judges.

Non-residents commencing a civil case Where a natural person or juristic person resident overseas wishes to commence a civil case in Thailand, the plaintiff must execute a power of attorney, duly notarized and authenticated by a Thai embassy or consulate, appointing a person in Thailand to prosecute the case. The attorney-in-fact would then normally appoint an attorney-at-law to actually issue the proceedings.

Language of proceedings All proceedings are conducted in Thai and documents not already in Thai must be translated into Thai before they may be adduced in evidence. This is except for proceedings in the Intellectual Property and International Trade Court, where the proceedings may be conducted in English with the leave of the Court.

Lawyers Only Thai qualified lawyers may represent the parties in court.

Court fees Where the case concerns property or money, a court fee equal to 2.5% of the claim, but not exceeding Baht 200,000, must be paid to the Court upon issuing the case. This sum may be wholly or partially included in any judgment favorable to the plaintiff. A litigant who appeals to the Court of Appeals or the Supreme Court must likewise pay a court fee equal to 2.5% of the claim but not exceeding Baht 200,000. Therefore, it is possible that in a case appealed to the Supreme Court, court fees equalling 7.5% of the claim have been paid.

Complaint A person initiating a civil action must file a complaint in writing with an appropriate court of first instance, clearly setting out the nature of his claim, the relief sought and the allegations upon which the claim is based.

Mediation Mediation is compulsory in the court of first instance in all civil, family and employment cases. If mediation results in a settlement, then the court may make an order by consent which can be generally enforced in the same way as a binding agreement.

Class actions With effect from December 2015, class action suits are permitted in the Thai civil courts. The following points are noteworthy:

- Class action suits are available only for the victims of wrongful acts and “claims of legal rights” (i.e. not breach of contract cases).
- The plaintiff has to satisfy the court that there is more than one claim arising from the same set of facts and based on the same law. The plaintiff must prove that proceeding with individual claims is “difficult and inconvenient.” There is a right of appeal against an adverse decision.
- If approved, the court will assess the court fees payable.
- A “class action officer” is appointed by the court to assist with processing the claims. Dealing with mediation, collection of evidence and other matters.
- Notification of commencement of a class action is to be advertised in a newspaper or other media.
- If the chosen plaintiff obtains judgment on his claim, then the decision is binding in fact on the other joint plaintiffs, and the court will proceed to assess damages in each case based on evidence of loss.

Provision is made for payment of the plaintiff’s legal costs.

Limitation period The complaint must be filed within the relevant limitation period. Limitation periods are set out in the Civil and Commercial Code or other specific legislation, and vary from one to ten years, depending on the nature of the claim.

Summons Upon acceptance of the complaint by the court, a summons to answer will be issued.

Within seven days from the entry of the complaint, the Plaintiff must request the court office to serve the summons on the person name as defendant. Failure to request service may result in the Plaintiff being deemed to have abandoned his complaint.

Answer Within 15 days of the service of the summons, the Defendant must file a written Answer with the Court, clearly setting out what parts of the Plaintiff's claims he admits and the parts that he denies.

If the Defendant fails to answer within the specified time limit, he is deemed to be in default of Answer. Within 15 days of such default, the Plaintiff must apply to the court for an order declaring such default. Such application is deemed to be an expression of the Plaintiff's intention to proceed with the case.

Counterclaim and Answer to Counterclaim When the Defendant files the Answer, he may also make a counterclaim relating to any matter of complaint that he has with the Plaintiff. If a Counterclaim is filed, the Plaintiff must file an Answer to the counterclaim within 15 days or within an extended period granted by the Court.

Settlement of Issues hearing After the submission of the Complaint, the Answer, the Counterclaim and the Answer to Counterclaim (if any), the court will fix a hearing date for the Settlement of Issues, and notify both parties not less than 30 days prior to the date of hearing.

At the Settlement of Issues hearing, the court will examine the pleadings and the accounts of the parties, and declare which issues are in dispute and which issues are not.

The Plaintiff or the Defendant may amend their claims, defences, allegations or contentions in their pleadings, provided they apply for permission to amend before the date of the Settlement of Issues hearing.

Disclosure of documents There are no procedural rules that enable a party to compel other parties to disclose relevant documents prior to trial. If a party believes that a person has documents in his possession that are relevant to the case, then he must apply to the Court for the issue of a subpoena against that person to produce such documents at the trial. If such documents are produced at trial, and time is necessary to consider their contents, then it is possible to apply for an adjournment on these grounds. Pre-action discovery is not possible either.

First hearing Once the Settlement of Issues hearing has been completed, the court will fix the first date for taking evidence. This will normally be fixed on one day, one month to six weeks later.

If on the first day of taking evidence either of the parties fails to appear, and has not applied for an adjournment, such party will be deemed to be in default of appearance. If both parties are in default of appearance, the case will be dismissed. In such case, the Plaintiff may still commence fresh proceedings. If the Plaintiff is in default of appearance, the case will be dismissed. However, if the Defendant notifies the court that he desires to proceed with the case, the trial will proceed in the absence of the Plaintiff. If the Defendant is in default of appearance, the trial will proceed in his absence.

Except in certain special courts such as the IPITC, the trial does not take place on consecutive days. At the end of the first hearing to take evidence, the case will be adjourned for four to six weeks for another day of taking evidence, and so on. It can therefore be seen that a trial which lasts for eight days, may take 12 months or so for the taking of evidence to be completed.

Evidence Oral evidence may be given by any person who has directly and personally seen or heard, or has knowledge of the facts relevant to the adjudication of the case. All court proceedings are required to be conducted in the Thai language, except in some special courts, such as the Intellectual Property and International Trade Court, where the court may permit the trial to be conducted in English. Documents made in a foreign language must be translated into Thai. Only original documents are admissible in evidence, except where:

1. all parties concerned agree that a copy of the document is correct;
2. the original cannot be produced through no wilful default by either party (here, a copy or oral evidence of the contents may be admitted);
3. the original document is in the possession of or under the control of a Thai government official and may be produced only with the prior permission from such official (here, it may be sufficient to produce a copy of or extract from the document certified by the appropriate official).

Consumer cases The special rules that apply to the conduct of consumer cases (as defined in the Consumer Cases Procedure Act (2008)) are discussed in Chapter 24 *Consumer Protection*.

Appeals

Petition for appeal Generally, any judgment rendered by the Court of first instance may be appealed against, by the party against whom the judgment is given, or by any party to the case who is not satisfied with the judgment. In the Civil Court, no appeal can be made in cases involving money or property where the amount in dispute is less than Baht 20,000.

An appeal must be lodged within one month from the date of judgment by filing a written Petition with the Court of first instance that issued the judgment. Usually the Appellant must deposit with the Court sufficient money (or adequate security) to cover the judgment debt, if he is the judgment debtor, and any future court costs.

Court of Appeals The Court of first instance will then transfer the case to the Appeals Court. The Court of Appeals will make its decision based solely upon the documents forwarded by the Court of first instance, the Petition of Appeal, and the Respondent's Answer to the Petition of Appeal. No new evidence may be submitted. Verbal argument is generally not permitted, except in certain circumstances. Proceedings in the Appeals Court are likely to take between one and two years.

Decision on appeal Once it has examined the case, the Court of Appeal may:

1. declare the lower court's judgment invalid and remit the case to the lower Court with an order to enter a judgment as specified by the Court of Appeal;
2. deliver judgement itself;
3. remit the case to the lower court for a new trial; or
4. uphold the judgment of the lower court.

Note that as set out above, in some cases, appeals from the court of first instance are made direct to the Supreme Court, and bypass the Court of Appeals.

Supreme Court Once judgment has been given by the Court of Appeals, or in cases where the right of appeal from the Court of first instance is made direct to the Supreme Court, either party may lodge an appeal to the Supreme Court.

Appeals from the Court of Appeals to the Supreme Court may be made only on an issue of law where the matter in dispute (in cases involving money or property) exceeds Baht 50,000. The Supreme Court will review the appeal. Its judgment will be based solely on the Petition for Appeal and other written documents forwarded by the lower court(s). No new evidence may be submitted. The judgment of the Supreme Court is final. Proceedings in the Supreme Court may last from 18 months to two years.

Enforcement of judgement Once a final judgment has been given, a decree of judgment will be issued. Generally, the Court will specify a period of one month from the time of service or acknowledgement of judgment, within which the judgment must be complied with.

Writ of execution When the period of time to comply with the judgment has elapsed and the judgment debtor has not paid the judgment debt or otherwise complied with the judgment, the judgment creditor may apply for a writ of execution. This will enable an executing officer to secure adequate money for payment of the judgment through seizure or attachment of property belonging to the judgment debtor. A writ of execution is valid for 10 years.

Court fees Court fees payable are set out in the Civil Procedure Code:

1. For issuing the complaint: 2.5% of the amount claimed, subject to a maximum fee of Baht 200,000.
2. For issuing a summons or writ: these fees are calculated at the rate set out in the Civil Procedure Code. They are relatively small.
3. Where the Plaintiff is outside the jurisdiction, the Defendant may apply for an order directing the Plaintiff to deposit security for costs and expenses with the Court. The amount to be deposited is at the court's discretion, but will usually not exceed 5% of the amount claimed.

Interlocutory orders If the Defendant intends to transfer, sell or dispose of the whole or part of his property, or remove it from the jurisdiction of the court, the Plaintiff may apply for an order restraining such acts. If the court grants the application, the applicant is required to deposit with the court such sum of money as the court thinks suitable as security for any loss that the other party may suffer or incur. The amount will depend on the amount of the claim.

Lawyers' fees The party against whom judgment is given will usually be ordered to pay the other party's lawyers' fees limited to the amounts specified in the Civil Procedure Code. The rates specified are minimal.

Executing officer's fees If a writ of execution is issued, the judgment creditor will have to pay the Executing Officer's fees relating to the seizure of property or assets. These fees will be between 1% - 5% of the property or assets seized, and will be higher if an auction of property is required.

Where the Complaint is withdrawn or dismissed without preventing the Plaintiff from issuing fresh proceedings, or where the case is discontinued by agreement or compromise, the court may in its discretion refund to the party concerned the whole or part of the court fee paid, at the time of issuing the proceedings.

Civil judgments of foreign courts Thailand has not entered into any treaties with any foreign countries for the reciprocal enforcement of civil judgments and therefore no foreign judgment may be directly enforced in Thailand. If a judgment has been given in a court outside Thailand, and it is desired to enforce it in

Thailand (for example, because the judgment debtor has assets in Thailand) then it will be necessary for the foreign judgment creditor to issue fresh proceedings in the courts of Thailand. The previous judgment will be admissible in evidence, subject to it being translated into Thai, but the Thai Court is entitled to give judgment based on the merits of the case. If judgment is finally given against the judgment creditor, then enforcement action can be taken, as discussed above.

The position is different in the case of foreign arbitration awards, which may in general be directly enforced in the Thai courts (see *Chapter 27 Arbitration*).

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