



# **DISPUTE RESOLUTION IN THAILAND: LITIGATION**

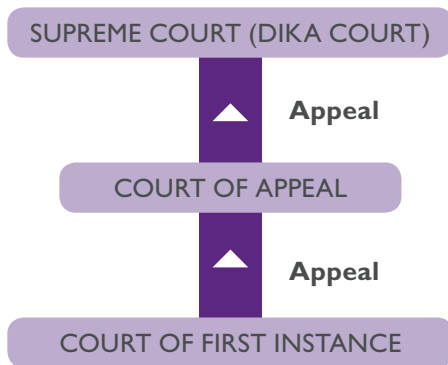


## INTRODUCTION

Thailand has its own civil justice system, which differs significantly from that in common law jurisdictions, both in terms of process and terminology. The Civil Procedure Code determines how the litigation process in Thailand works.

### 01. THE CIVIL COURT SYSTEM

Thailand has a three – tier Court system that comprises the Courts of Justice in Thailand: the Court of First Instance; the Court of Appeal; and the Supreme Court (referred to as the Dika Court). These Courts are classified by their respective methods of hearing cases.



#### A) COURT OF FIRST INSTANCE

The Court of First Instance is an umbrella term for the trial Courts that conduct the original trials and render the first decision. The Courts of First Instance are the lowest level of the three tier system and comprise of: the Courts of Bangkok, the Courts in the provinces, the Juvenile and Family Courts and the Specialist Courts.

##### Bangkok Courts

As a large province, Bangkok has a number of Courts of First Instance identifiable by their specific subject matter and area of jurisdiction. The Bangkok Courts consist of: the Bangkok Civil Court, the Bangkok South Civil Court, the Thon Buri Civil Court, the Criminal Court, the Bangkok South Criminal Court, the Thon Buri Criminal Court, the Min Buri Provincial Court, the Pra Kanong Court, the Taling Chan Court and 6 Municipal Courts.

##### Provincial Courts

In rural areas, the Provincial Court has jurisdiction over all matters, subject to a few exceptions. There are provincial Courts throughout Thailand's provinces. These Courts deal with similar value claims and follow the same procedure as the Bangkok Civil Courts.

##### Municipal Courts

The Municipal Courts (or 'Kwaeng Courts') in Thailand deal with civil cases worth less than THB 300,000 (approximately USD 9,000). They have a separate claims procedure and generally the process is faster than in the Provincial Courts and the Bangkok Courts. There are 20 Municipal Courts in Thailand.

##### Juvenile and Family Courts

Consist of the Central Juvenile and Family Court, 9 Juvenile and Family Courts in Bangkok and 24 Juvenile and Family sections in Provincial Courts.

##### Specialist Courts

The Specialist Courts of First Instance include: The Central Intellectual Property and International Trade Court; the Central Labour Court; the Central Tax Court; and the Central Bankruptcy Court.

#### B) COURT OF APPEAL

A party may appeal a Court of First Instance decision to the second tier of the system, the Court of Appeal. In order to do so, an applicant must satisfy the following conditions:

- the claim has a value of THB 50,000 or more (unless the Court of First Instance has indicated that there should be a right of appeal regardless); and
- no new evidence or arguments can be submitted at the appeal stage, unless the matter concerns public order.

A panel of at least three judges sit at the Court of Appeal level. There are no hearings at appeal stage. The appeal is considered on the documents and written submissions only.

A defendant who wishes to appeal a judgement may be required to put up security for the appellate Court fee, and apply for a stay of execution to prevent the Court of First Instance judgment being enforced against them prior to the appeal.





## C) SUPREME COURT (DIKA COURT)

A party may appeal a Court of Appeal decision to the final tier of the system, the Supreme Court. In order to do so, an applicant must submit a petition to be considered by a panel of judges appointed by the President of the Supreme Court.

The Supreme Court will allow the case to be appealed partly if they are satisfied that the appeal raises a significant question for the Court to consider, including if:

- (i) the question is one involving public interest or public order; or
- (ii) the question should be answered in order to improve the interpretation of the law.

Parties must apply for leave to appeal from the Supreme Court within one month from the date of the Court of Appeal's decision, regardless of the value of the case. As with the Court of Appeal, there are no hearings, and a judgment is reached on the documents and written submissions only.

The decision of the Supreme Court is final. If the Supreme Court dismisses the petition, the Court of Appeal's judgment shall be deemed final from the day the judgment was announced.

## 02. DISTINCT COURT SYSTEMS

In addition to the Courts of Justice, there are three further distinct Court systems: the Administrative Court, the Military Court and the Constitutional Court.

### Administrative Court

The Administrative Court hears disputes against a private individual or entity against a Government entity or disputes between a government entity against another government entity.

The Administrative Court system is made up of two tiers: the Administrative Courts of first instance and the Supreme Administrative Court. A panel of three judges sits at the Administrative Court and five judges sits at the Supreme Administrative Court.

### Constitutional Court

First set up in 1997, the Constitutional Court of Thailand was created solely to settle matters pertaining to the constitution and to determine whether a particular law, rule or regulation is constitutional or not.

### Military Court

The Military Court originally determined all cases concerning military affairs. However, the Court has taken on a larger role under the incumbent military government and has dealt with cases where actions have affected the order of the State or national security.

### Determining Jurisdiction

If there is a dispute concerning which Court has jurisdiction over a case, a party can submit a challenge to jurisdiction, to which a party can reply.

When determining whether the Civil or Administrative Courts have jurisdiction, a party applies to the Court that is currently reviewing the case and the Court that it believes should have jurisdiction. Both Courts then prepare opinions on jurisdiction. If the opinions match up, their decision is binding. If they do not, jurisdiction will then be decided by a committee consisting of the chief judges of the Supreme Court, Supreme Administrative Court, Military Court and 4 independent judicial experts.

## 03. THE JUDICIARY

Judges in Thailand can train to be judges soon after successfully completing their law degrees, passing the Thai Bar exam, and the judges' entrance exam. Therefore judges tend to be younger than in other countries. The following prerequisites are required to qualify as a judge:

- minimum age of 25 years;
- must have worked for a minimum of 2 years in a government office; or
- must have worked as a lawyer for a minimum of 2 years and have experience of a minimum of 20 cases.

## 04. COURT FEES AND COSTS

### Court Fee

A fee must be paid into Court by the Claimant when filing the claim. The fee is calculated as a percentage of the claim value: 2% of the first THB 50 million, up to a maximum of THB 200,000, and 0.1% on any amount above that figure.



## Recovery of Costs

The Court has discretion in making awards of costs to the prevailing party, and in principle Court fees are recoverable from the defendant in the event of a successful claim. However, the legal fees recoverable by the successful party are only nominal. In fixing the amount of lawyers' fees, the Court must have due regard to the complexity of the case and the time spent and amount of work done by the lawyer in handling the matter.

The maximum amount that can be recovered for legal fees is generally not more than THB 500,000. It is often much less than this, in the region of THB 100,000 or below. Parties to a litigation should not expect to recover a meaningful portion of their legal costs.

The defendant can apply to the Court for an order requiring the plaintiff to deposit money or security with the Court for costs and expenses if either:

- the plaintiff is not domiciled or does not have a business office situated in Thailand and does not have assets in Thailand; or
- there is a strong reason to believe the plaintiff will evade payment of costs and expenses, if it is unsuccessful.

## 05. PRE – ACTION CONDUCT

There are no formal pre – action steps required to commence proceedings, but typically the Claimant will send a demand letter prior to commencing a civil action (see Civil Court Procedure below).

## 06. CIVIL COURT PROCEDURE



## Notification Letter

Before commencing proceedings the Claimant should send to the Defendant a formal demand letter. Whilst not always a mandatory requirement, it is accepted practice. The demand letter is ordinarily a short notification to the Defendant that identifies the breach or action that has given rise to the claim, the total quantum claimed and a reservation of rights to commence legal proceedings should the claimed amount not be paid within a set number of days following the receipt of the demand letter.

## Instructing Legal Counsel

A court will require a Power of Attorney, which usually takes the form of a 'Deed of Appointment', to admit legal counsel on the case. The authorisation is usually filed along with the Statement of Claim/Complaint and the Statement of Defence.

## Complaint

The Claimant's lawyer files a Complaint, as often known in other jurisdictions as a Statement of Claim, in the prescribed form to the Court.

The Complaint must contain the name of the Court and the names of the parties, together with details of the facts and allegations forming the basis of the claim. It does not need to contain all details and full particulars of the claim, provided there is enough information for the Defendant to be able to respond to the claim and that all facts on which the Claimant wishes to rely on in later trial hearings are included.

There is no need for a full breakdown of the quantum of the claim, however the total sum claimed must be included. If there is any ambiguity in the Complaint, the Defendant will often submit a challenge and request the Court to dismiss the case due to the ambiguity. In some instances, the Claimant may choose to apply to amend its claim. If not, the Court would often determine such an application in its court judgment.

## Service of Process

If the Court accepts the Complaint, a Court officer, rather than the Claimant, will serve the Court summons and a copy of the Complaint to the Defendant.



The estimated time to complete such service varies and is dependent on the following factors: correct addresses being provided and the jurisdictional competence of the Court. This is usually completed within 2 – 3 months of the filing of the claim.

In cases where the defendant is located overseas, the summons service will be initiated through diplomatic channels, and will usually take 6 – 12 months.

### **Statement of Defence**

The Defendant may accept service of the proceedings by signing the Court Summons. In such circumstances they have 15 days within which to submit a Defence and/or Counterclaim.

In the event that the Defendant does not sign the Court Summons, it is usually posted to the address of the Defendant, upon which the Defendant has 30 days to submit a Defence and/or Counterclaim. This is the most common method of service for Defendants.

The Defendant may apply for extensions generally, of 30 days each, within which to file a Defence. The Court will usually grant 2 – 3 such extensions, but any further extensions may likely require more evidence to gain the Court's approval. If the Defendant files a Counterclaim in time, a Court officer will serve the Counterclaim upon the Claimant, who then has between 15 – 30 days, depending on the method of service, within which to file an Answer (extensions are often available).

### **Defence**

Neither the Court nor the Defendant, will serve the Defence on the Claimant, and therefore it is the duty of the Claimant's lawyers to check with the Court as to whether a Defence has been filed, and to request their copy. Generally, a Case Management Hearing date is set on the date the Defence is filed, which would be notified to the parties.

### **Case Management Hearing**

A Case Management Hearing is set to take place approximately 60 Days after the Defence is filed to determine the issues in the case. This is commonly attended by the parties' lawyers.

### **Mediation**

At the Case Management Hearing, the judge will ask if the parties wish to mediate the dispute. Mediation is not compulsory. The Court however encourages the parties to participate in mediation, and one or more mediation hearings may be scheduled.

The mediation hearings are likely to be scheduled within a few months of the settlement of issues hearing. In the event that the parties do not wish to mediate, or if mediation fails, the Court will schedule trial hearing dates, which are usually 8 – 12 months later.

### **Preparation of Witness Evidence**

Written witness statements may not be submitted unless agreed between the parties and the Court considers it is reasonable for speed and convenience and in the interests of justice. An expert appointed by the Court may give his or her opinion either orally or in writing. The Court typically requests written testimony from experts. However, the expert must still appear before the Court during the hearing for cross – examination.

Witnesses of fact must give oral testimony and face cross – examination, especially in contentious cases. Should the parties and the Court agree, then in a narrow set of circumstances written witness statements, without oral testimony, can be submitted, for example, when the case concerns the appointment of an administrator of an estate or one of the parties to the proceeding is absent. However, even in such cases, the Court ordinarily requests that the witness to appear before the Court to confirm the facts stated in the written witness statement.

### **Exchange of Witness Evidence**

It is normal practice, although not compulsory, that the parties agree to prepare and exchange written witness statements in advance of the hearing. This is commonly exchanged 7 days before. Exchanging and filing witness statements in advance of the hearing saves time at the hearing, as the written statements eliminate the need to hear the full statement orally. Note that all documents which are adduced into the Court must be in Thai. Non-Thai documents will need to be translated before submission.





## Hearing

The time between the initial hearing, which determines the issues in dispute, and the date of the final hearing can vary from 4 months to 18 months, depending on the Court's schedule.

The trial hearing consists of the presentation of witness evidence and cross examination of witnesses only. The parties' lawyers do not make oral submissions.

## Closing Statements

A closing statement is a party's final opportunity to file detailed written submissions with the Court, after all witness evidence has been presented. Closing statements are not mandatory, and a judgment will still be handed down in the event that a party does not file a closing statement. Closing statements are filed by each party within 15 – 30 days of the last hearing date.

## Judgment

The Court issues a judgement, usually within 1 to 2 months of the end of the trial, or the deadline for the submission of closing statements. The first instance court process from filing the initial claim to judgment generally takes 12 to 18 months.

## Discovery or Disclosure Processes

There is no discovery or disclosure under Thai law. However, if one of the parties is aware of a specific document that the opposing party has in its possession that is relevant to the proceedings, it can apply for and obtain a subpoena from the Court for that specific document.

## 07. CAN PARTIES CONTROL THE PROCEDURE AND TIMETABLE?

The parties have minimal control over the procedure and timetable other than informing the Court of dates to avoid when scheduling hearings.

Parties can apply for extensions of time and request adjournments of hearings upon application to the Court, which may be granted provided there is a reasonable explanation for the need for the extension or adjournment. In the past, applications for extensions of time and adjournments of hearings, or requests for

additional mediation hearings, were frequently deployed as delaying tactics by Defendants. However, nowadays, the Court is less willing to entertain such requests, particularly with regard to trial hearings.

## 08. INTERIM REMEDIES

Interim orders may be granted by the Court. These orders include: temporary attachment orders, restraining orders, possessory orders and orders requiring government agencies to suspend or revoke certain orders. Search orders are not available for civil proceedings.

A party may also file for emergency relief, which is considered on an ex – parte basis. If accepted, the court will consider and determine the application on the day. The Thai courts impose a high threshold to obtain an emergency injunction. An applicant will need to prove the following:

- (i) There has to be an imminent threat of serious harm;
- (ii) The success of challenging the merits of the claim, against which the emergency application is being sought;
- (iii) That the Respondent has no or limited assets in Thailand against which the Applicant may seek to eventually enforce a judgment once the case is concluded.

## 09. SUBSTANTIVE REMEDIES

The Court can award monetary damages, and order specific performance and permanent injunctions prohibiting certain actions or conduct. While the Courts are permitted by law to award punitive damages in certain instances, they rarely do so.

Judgments provide for interest to run up to the date of payment and the rate of interest prescribed by law, unless the parties agree otherwise, is simple, as opposed to compound, interest at 7.5 per cent per annum.



## 10. ENFORCEMENT

To enforce a domestic judgment, the successful party must file an application with the Court to appoint an execution officer (Bailiff), who, if the debtor fails to pay, serves the order and attaches the judgment against the debtor's assets and liquidates them in the market or at auction, depending on the type of asset.

### Foreign Judgment

Thailand does not recognise foreign judicial judgments and a new case must be initiated in Thailand. However, foreign judgments can be used as persuasive evidence before a Thai court.

## 11. CONSUMER PROTECTION

The Consumer Protection Act (1979), Amendment No. 3 (2013) prescribes the rights of consumers to take action against businesses.

### Court fee

Court fees are exempted for legal proceedings instituted under this Act.

### Expedited Court Process

Ordinarily, a case takes one to two years to go through the civil court system. However, cases brought under the Consumer Protection Act have to be heard within 30 days unless the parties mutually agree to postpone the date of the hearing. In practice, however, it is not always possible for these cases to be heard within 30 days and the courts will often delay the hearings for various reasons, including the judge's docket being full; one or more of the parties being unable to present a witness in time for the hearing; etc.

## Appeals

Decisions may be appealed to the Court of Appeal, which is ordinarily the final authority for the determination of appeals. To appeal a decision to the Supreme Court, the applicant must first obtain permission from the Supreme Court to file its appeal.

## 12. CLASS ACTIONS

As of 8 December 2015, all Courts, except the Municipal Courts, have jurisdiction to hear and determine Class Action lawsuits.

In order to be certified as a Class, the Court must be convinced that the Class members carry common rights, facts and base their legal claims on common ground (despite their varying "injuries"). The Court then considers whether the Class Action should be heard. During this phase, if Class members decide that the Class Action remedy does not best suit their needs, they have a period of forty – five days to withdraw from the Class.

The Court proceeds to appoint a "class action officer" ("bailiff") who assists the Court by attempting mediation, collecting and verifying evidence, meeting with witnesses and taking statements before and during the trial. From a procedural standpoint, the trial portion of Class Actions is similar to ordinary civil actions with the same processes of mediation, submission of evidence, hearing of witnesses and the delivery of a judgment.

Upon rendering a judgment, the Plaintiff may only appeal as a group; there are no individual appeal rights. Such appeal can be made to the Court of Appeal and Supreme Court. In order to appeal a decision to the Supreme Court, the applicant must first obtain permission from the Supreme Court to file its appeal.



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