

INTERNATIONAL BEST PRACTICES SURVEY

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Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

THAILAND

Responses submitted by:

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Thailand is a civil law country.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

Both methods are used in Thailand. The mainstream law courts use the adversarial method whereas certain specialized courts such as the Central Labour Court, the Constitutional Court and the Administrative Court adopt the inquisitorial system.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Thai judges are career judges, selected and appointed by the Judicial Service Commission after having passed the bar exam and judiciary service exam. A candidate must be at least 25 years of age. There is no jury trial in Thailand.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

The Central Labour Court, the Constitutional Court, and the Administrative Court have their own procedures which are not much different from the Civil Procedure Code and Criminal Procedure Code which are used by over 90 % of the courts in Thailand.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration is a customary alternative to litigation. Contractual parties are not required to incorporate an arbitration clause in their contract. If an arbitration clause is adopted, however, one party may not bypass the arbitration proceeding and go directly to the court unless the counter party agrees.

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THAILAND

The rules popularly used in Thailand are the Thai Chamber of Commerce Commercial Arbitration Rules and the Arbitration Rules of the Thai Arbitration Institute (TAI Rules). TAI Rules are used more extensively than the Chamber of Commerce Rules. TAI Rules were modelled after UNCITRAL Rules.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No. Mediation is not mandatory. However, before the hearing, the courts customarily encourage the parties to mediate. Mediation would take place after the filing of a complaint.

8. What is the process for pre-hearing fact discovery (if any)?

(a) *Are there provisions for mandatory document disclosures?*

No, there are no provisions for mandatory document disclosure like those in the common law jurisdiction. Under the Thai procedural rules, each party shall submit a list of his witnesses and documentary evidence to the court and the other party at least 7 days before the hearing. All documents that the party intends to produce as evidence and are in his possession must accompany such list.

(b) *Is there provision for oral examinations of the parties or others?*

All oral examination must be taken in court during the hearing.

(c) *Are there limits on the length of oral examinations?*

Generally no. However, if the oral examination is obviously irrelevant or is used as dilatory tactics, the court may cut short such oral examination.

(d) *Are witness statements or summaries to be provided before the hearing?*

Yes. In civil (and commercial) matters, witness statements must be provided at least 7 days before the hearing. In criminal cases, the 7-day advance written statement applies only to the witness who comes to

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THAILAND

testify in Thai court from an overseas country.

9. What is the process for pre-hearing expert disclosure (if any)?

(a) *Are expert reports or written summaries required to be exchanged?*

No.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

No.

10. Are there other notable discovery rules?

No.

11. Is there a pre-hearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Yes, there is. A pre-trial conference is conducted by a judge on duty. It normally takes place 45-60 days after the filing of the complaint. If the case cannot be settled, the litigant parties would thereafter seek to fix the hearing dates with the court's clerk (the time keeper). The first hearing date can be 6 months or 1 year after such pre-trial conference, depending on the court's docket.

12. Can a pre-hearing motion for judgment be brought? If so, what is the threshold test for judgment?

Yes. The court may grant a motion for summary judgment only if a party raises a question of law which, if decided in that party's favour, would dismiss the entire case or on only part of it, i.e. a single issue within the case. However, this standard is difficult to meet and the court is reluctant to use it.

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- 13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

Generally no. However, to expedite the proceeding, one party may at any time during the hearing ask the other to accept the authenticity or truthfulness of certain factual information. If the other party agrees, the mutually accepted factual information need not be proven in court.

- 14. What is the standard for admissibility of expert evidence?**

No particular standard. All expert evidence can be challenged in court. Admissibility is determined on merits, i.e. integrity, impartiality, independence and proven accomplishment, etc.

- 15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

Yes. The court has the absolute discretion to appoint its own experts in art, science, craft, trade, practical skill or foreign law at any stage of the trial, if necessary.

- 16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Yes. Under Thai law, attorneys are allowed to keep information about their discussions with their clients secret from the court. Government officials are also permitted to keep official classified records and papers secret from the court. Additionally, the monarchy, monks, and diplomats are granted immunity from summonses to appear in a court as witnesses, if they do not want to and refuse to do it.

- 17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

N/A

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THAILAND

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The court.

19. Briefly describe the trial process?

(a) *Are there opening submissions, in what form and of what length?*

No.

(b) *What is the order of presentation of witnesses?*

Witnesses are arranged according to the burden of proof assigned to each party by the court. In most cases, the claimants/plaintiffs put their witnesses in the witness box first followed by the respondents' witnesses. There is no particular set of rules or guidelines regarding the sequential order of the witness examination. The order is generally arranged based on the availability of the witnesses.

(c) *Who conducts examination and in what order?*

The direct examination (examination-in-chief) is conducted first by the attorney of the party introducing the witness. In most cases, this direct examination is substituted by the written statement of the witness. With the written statement of witness in place, the hearing would begin with the cross examination of that witness by the opposing counsel, followed by re-direct examination by the attorney of the first party.

(d) *What is the process for closing submissions?*

After the taking of evidence is completed, each party may present his closing statement/argument in writing or orally.

20. Please identify any other notable trial procedures.

The trial is conducted in Thai language. No court reporter (stenographer) is employed. Witness' testimony is orally edited and dictated into a tape-recording machine by the presiding judge. The transcript of the testimony is printed out from the tape-recorder by the presiding judge at the end of each testimonial session for proof-reading and an acknowledgement by each witness. The witness may ask the presiding judge to make a correction to any part of the transcript on the spot for the reason that it does not correspond to what he has just testified. The printed transcript, with marked change, if any, is then endorsed (signed) by the witness, the presiding judge and the lawyers from both sides. The signed transcript then becomes the official record of the proceeding.

INTERNATIONAL BEST PRACTICES SURVEY

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21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

In general, the plaintiff bears the burden of proof of liability, causation and damages. In exceptional case where the defendant's liability is a "liability without fault" or "strict liability" under specific law or statute, the plaintiff needs to prove only damages (as in the case of the product liability law).

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Both compensatory damages and pre-judgment interest are recoverable. Punitive damages are recoverable only in an action brought under specific laws (i.e. product liability law, consumer protection law, law relating to the protection of trade secret and the law relating to discrimination against the disabled).

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

- In consumer protection cases, punitive damages up to 5 times the amount of actual damages may be awarded by the court;
- In the case of an infringement of a trade secret and in the product liability case, punitive damages awarded by the court may be twice as much as the actual damages;
- the case of a discriminatory treatment against the disabled, the punitive damages can be four times as much.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Under Thai law, an action or claim must be brought to court within the statutes of limitation prescribed in the Thai Civil and Commercial Code which vary from case to the other, depending on the subject matter or type of the claim. For instances, a tort action and most actions for breach of contract are subject to 1 year statute of limitation. A claim for interest in arrearage is subject to 5 years statute of limitation. A claim for salary and wages is subject to a 2-year statute of limitation. A recourse action against a guarantor must be brought within 10 years.

Defendants or respondents are required to respond (by filing statements of defence or answers) within 15 days after the receipt of a copy of the complaint from the court. This 15 – day deadline may be extended by the court upon request of the respondents and a show of good cause.

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- 25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

The pre-conditions for establishing jurisdiction over a foreign defendant are: (i) the defendant used to live in Thailand at any time within the period of 2 years before the filing of the complaint; or (ii) the defendant directly or indirectly carries on or used to carry on business in Thailand within the 2 year period before the filing of the complaint.

The court has no power to decline the jurisdiction based on defendant's request that there is a more convenient forum.

- 26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Yes. A third party, not being a litigant, may become a party in the litigation by way of interpleading, i.e., (i) he may on his own motion seek to become a party because of his legal interest in the outcome of the subject litigation; or (iii) he may be forced by the court to join the proceeding upon request of the existing litigant party because of a potential liability he may have to face by way of recourse or otherwise.

- 27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Yes. A court can order the losing party to pay the attorney fees and court costs of the prevailing side, but the attorney fees under the provisions of the Thai Civil Procedure Code are fairly nominal (around 10 - 20 % of the actual fee the clients pay to their lawyers).

- 28. Are contingency fees allowed?**

In theory, no. The existing code of ethics adopted by the Law Society of Thailand prohibits the collection of contingency fee by lawyers. However, in practice, it is a known fact that many law firms charge contingency fee.

- 29. Is third party funding of claims permitted? Under what circumstances?**

Yes, as long as the third party financier does not charge contingency fee against its customer.

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30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Class action is relatively new in Thailand. The law permitting class actions was enacted on April 8, 2015. It will become effective early December 2015. Class action proceedings may be adopted for tort and breach of contract actions, as well as actions for enforcement of rights or entitlements under specific laws, such as consumer protection law, environmental law, securities and securities exchange law, competition law, etc.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes, an association or foundation set up for the purposes of protecting consumer's rights may take legal actions against business enterprises for the benefit of the consumers.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

It takes about 2-3 years on average to obtain a judgment of the trial court after the filing of complaint.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

The right of the losing parties to appeal the judgment of the Courts of First Instance (the trial courts) is guaranteed by law, particularly an appeal on point of law. In a civil matter, an appeal against the judgment of the trial court to the Court of Appeal (an intermediary court) on point of fact is barred if the amount in dispute is Baht 50,000 (USD: 1,540-) or less. A final appeal against the judgment of the Court of Appeal to the Supreme Court on point of fact is also barred if the amount in dispute is Baht 200,000 or less. In a criminal case, if the trial court passes a not-guilty verdict and such verdict is affirmed by the Court of Appeal, the judgment of the Court of Appeal becomes final and further appeal to the Supreme Court is prohibited.

The judges in the Courts of Appeal review and adjudicate appeals from the trial courts. The Supreme Court's judges review and adjudicate appeals from the Courts of Appeal and from certain specialized courts (which are trial courts,) namely, the Intellectual Property and International Trade Court, the Labor Court and the Tax Court). Appellate review is traditionally limited to review and examination of briefs and files referred to the higher courts by the trial court or the Courts of Appeal, as the case may be.

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Although the Courts of Appeal or the Supreme Court have the power to hear cases (i.e. examine witnesses or hear oral argument) from the lower courts, historically they have not done so.

As mentioned earlier, the judges in Thailand are career judges. They advance along the judiciary echelon, from lower courts to higher courts in the three-tier court system. Advancement is mainly on the basis of their merits. There is no interference from other branches of the Government.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Electronic trials in trial courts are available in exceptional cases only due to limited equipment and human capital.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

Evidence can be adduced in any format, including digital media, graphic, computer animation, etc. The media is kept as part of the case files.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

There is no separation of legal profession in Thailand (as in the case of solicitor/barrister in the UK system). A licensed Thai lawyer can do both litigation work and non-litigation work. However, after several years of legal practice, they normally choose their specialties according to their personal like or dislike. In practice, therefore, there are lawyers who appear in courts regularly and lawyers who focus on non-litigation work.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Yes, contributory negligence is recognized in the Thai legal system. If an injury or damage is caused by contributory negligence of the disputed parties, the liability is distributed between them proportionately.

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- 38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?**

Thailand is not a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965. Therefore, delivering the summons and complaint outside of Thailand can be accomplished only through diplomatic channels, i.e., via the Ministries of Foreign Affairs of the country of origin and country of destination.

- 39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

No.

- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

There is no discovery procedure in Thailand. Neither is there a taking of a written deposition by counsels of the litigant parties.

- 41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

No.

- 42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Yes, judicial reform is gaining momentum. The Supreme Court has been overloaded with several thousands of cases appealed from the lower courts. Efforts are being made to curtail the rights to appeal. A proposal has been made by the legal reform committee and the drafters of the Thai constitution that the Thai Supreme Court adopt the US-style *writ of certiorari* to scrutinize the appeals.