

Civil Litigation

In general, civil procedure is governed by the Civil Procedure Code. However certain special courts such as the Labor Court or the Bankruptcy Court may have special rules of procedure that are unique to that particular court.

The Court system The court system for most civil claims is divided into three levels, that is a court of first instance, the Court of Appeal 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 and the Bankruptcy Court are generally made direct to the Supreme Court.

In Bangkok, most civil cases start in one of the Civil Courts. There are special courts for tax, labor, juvenile and family matters, the Constitutional Court, the Administrative Court, the Bankruptcy Court and the Intellectual Property and International Trade Court. Criminal cases are heard in the Criminal Court. Petty cases are heard in a District Court. In the provinces outside Bangkok, cases start in the Provincial Court. Some of the larger provinces have District Courts for petty cases.

Commencing a civil case from abroad To commence a civil case from abroad, the plaintiff must apply a power of attorney duly notarized and authenticated by a Thai Embassy or Consulate, appoint a person in Thailand to prosecute the matter. The attorney-in-fact would then normally appoint an attorney-at-law to actually issue the case.

Court fees Where the case involves a claim concerning property or money, court fees equal to 2.5% of the claim, but not exceeding Baht 200,000, must be paid. This sum may be wholly or partially included in any judgment favorable to the plaintiff. Persons who appeal to the Court of Appeals or the Supreme Court must likewise pay court fees 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 equaling 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 forth his claims, relief sought and allegations upon which the claims are based.

Limitation period Such complaint must be filed within the relevant limitation period. The limitation period varies 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 make a request to the appropriate officer for service of such summons on the person against whom the complaint was made. Failure to submit such request 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 When the Defendant files the Answer, he may, make any counterclaim relating to relevant matters in the complaint. 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 After the submission of the Complaint, the Answer 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 decide, through examination of the pleadings, and the accounts of the parties, which issues are in dispute and which issues are not.

The Plaintiff or the Defendant may amend their claims, defenses, allegations or contentions in their pleadings, provided they apply 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.

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 one month to six weeks later. If on the first day of taking evidence either one 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. The Plaintiff may still commence fresh proceedings. If the Plaintiffs 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 the absence of the Defendant.

During this phase of the trial, tactics are often used to delay the process of the case. After 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 of evidence, may take 12 months 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:

- . All parties concerned agree that a copy of the document is correct
- . The original cannot be produced through no willful default by either party (here, a copy or oral evidence of the contents may be admitted)
- . 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).

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 rendered, or by any party to the action who is not satisfied with the result. In the Civil Court, no appeal can be made in cases involving money or property where the amount in controversy 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 which issued the judgment. Usually, the Appellant must deposit sufficient money (or satisfactory security) to cover the judgment debt, if he is the judgment debtor, and any future court costs.

Court of Appeal The Court of first instance will then transfer the matter to the Appeal Court. The Court of Appeal 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 can be submitted. Verbal argument is generally not permitted, except with certain circumstance. A judgment by the Appeal Court is likely to take between one to two years.

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

- . 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.
- . Deliver the judgement itself.
- . Remit the case to the lower court for a new trial. . Uphold the judgment of the lower court.

Note that in some cases, appeals from the Court of first instance are made direct to the Supreme Court, and bypass the Court of Appeal.

Supreme Court Once judgment has been given by the Court of Appeal, 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 Appeal to the Supreme Court may be made only on an issue"of law where the matter in controversy, 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 decree 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 are as set out in the Civil Procedure Code:

For issuing the complaint:2.5% of the amount claimed, subject to a maximum fee of Baht 200,000.

. For issuing a summons or writ: these fees are calculated at the rate set out in the Civil Procedure Code. They are relatively small.

. Where the Plaintiff is outside the jurisdiction: In this case, the Defendant may apply for an order directing that the Plaintiff 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 to remove it from the jurisdiction of the court, the Plaintiff may apply for an order restraining such acts. If the court grants the said application, the applicant is required to deposit with the court such sum of money as the court thinks fit as security for any damage which the other party might suffer or incur. This amount may range from 2,000 Baht upwards, depending on the amount of the claim.

Lawyers' fees The party against whom judgement is rendered will have to pay to the other party lawyers fees in an amount specified in the Civil Procedure Code. The rates specified therein 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. Such fee will range from 1%-5% of the property or assets seized, and also depending on whether an auction of the 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 will, 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 judgements made by foreign courts Thailand has not entered into any treaties with any foreign countries for the reciprocal enforcement of civil judgments. 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 Defendant has assets in Thailand) then it will be necessary for the foreign judgment creditor to issue fresh proceedings in the Civil Court in Thailand. The previous judgment will be admissible in evidence, 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.