



Thai Court Litigation vs. Arbitration: Deciding the Right Dispute Resolution Option for Your Legal Contract

Business entities frequently find themselves at a crossroads when deciding on the ideal dispute resolution clause for their agreement. Should they opt for Thai court litigation or arbitration? What represents the most appropriate dispute resolution clause for their agreement? The following succinct comparison aims to provide clarity and assist in making that crucial decision:

Considerations	Venue for Proceedings	
	Thai Court	Arbitration Institution
Official Costs and Fees	<p>When the claim amount does not exceed THB 50 million, the court will impose a fee of 2%, but not exceeding THB 200,000.</p> <p>For claims exceeding THB 50 million, the plaintiff is required to pay a court fee of THB 200,000, along with an additional 0.1% on the excess amount. No upper ceiling has been established for the collection of the fee.</p>	<p>Fees differ by institution and typically include a filing fee, institution fee, arbitrator fee (per individual), and other expenses.</p> <p>For example:</p> <ol style="list-style-type: none"> 1. Thailand Arbitration Center (THAC) - Proceedings Conducted in English: <ol style="list-style-type: none"> i) Filing Fee: THB 50,000; ii) Institution Fee: Ranges from THB 50,000 to THB 1.6 million (depending on the amount of claims); iii) Arbitrator Fee (Per Arbitrator): from THB 150,000 to 50 million

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		<p>(depending on the amount of claims);</p> <p>iv) Expenses: Charged on an actual basis with an initial deposit of THB 50,000.</p> <p>2. Thai Arbitration Institute (TAI):</p> <p>i) Arbitrator Fee: Ranges from THB 6,000, with an additional fee of 2% to 0.02% (depending on the amount of claims and number of arbitrators);</p> <p>ii) Assistance Fee: Ranges from THB 5,000 to THB 240,000 (depending on the amount of claims); and</p> <p>iii) Expenses: Charged as specified in TAI's regulations with an initial deposit of THB 3,000.</p> <p>3. Singapore International Arbitration Centre (SIAC):</p> <p>i) Filing Fee: SGD 2,000 (for overseas parties);</p> <p>ii) Administration Fee: Ranges from SGD 3,800 to SGD 95,000 (depending on the amount of claims); and</p> <p>iii) Arbitrator Fee: Ranges from SGD 6,250 to SGD 2 million (depending on the amount of claims).</p> <p>Remarks</p> <p>When seeking a Thai Court order for enforcing an arbitral award, the party seeking such orders shall be responsible for a court fee at the rate of:</p> <p>i) For a domestic award:</p>	<p>About Us</p> <hr/> <p>Dispute Resolution, Litigation, and Arbitration Practice</p> <p>Recognised as Thailand's Law Firm of the Year by Benchmark Litigation Asia-Pacific Awards in 2022-2023, Kudun and Partners' dispute resolution, litigation and arbitration practice is an award-winning practice, representing a wide and diverse range of well-known Thai and international companies, government agencies, state-owned enterprises, professionals and high net worth individuals across a broad spectrum of contentious litigation and non-litigation matters.</p> <p>Our highly skilled team of business savvy litigation and dispute resolution lawyers are driven by an unwavering determination to achieve the best commercial and strategic outcomes for clients who are involved in business disputes and other contentious matters. Our experienced litigators regularly appear before all levels of the Thai Courts as well as in national and international arbitration proceedings.</p> <p>Our litigation lawyers, who are fluent in both Thai and English, are known for their responsiveness and no-nonsense approach to getting things done. We are particularly well known for our expertise in administrative, aviation, construction, telecommunication, antitrust and employment disputes. We actively pursue all avenues of dispute resolution available and work closely with our clients and with other key practice areas of the firm to ensure that disputes are</p>
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<p>Duration</p>	<p>Following the enforcement of the Act on Determining Timeframes for Judicial Proceedings B.E. 2565 (2022), the President of the Supreme Court issued the Judicial Regulation on the Timeframe for Court Cases B.E. 2566 (2023), which outlines the following summarized timelines for court proceedings:</p> <p>(1) Court of First Instance: The Court of First Instance is required to adhere to a strict timeline for its proceedings, ranging from six (6) months to one (1)</p>	<p>Arbitration generally aims for expedited proceedings. In some institutions, cases with smaller claims might be resolved by merely examining documentary evidence.</p> <p>However, post-award proceedings, such as seeking court orders for recognition, enforcement, or setting aside an arbitral award, can prolong the duration.</p>	

	<p>year from the date of accepting the complaint.</p> <p>(2) Court of Appeal: The timeline ranges from four (4) months to one (1) year from the day the Court of Appeal receives the case from the Court of First Instance.</p> <p>(3) Supreme Court: The Supreme Court is obligated to render judgment within one (1) year of receiving cases from the Court of First Instance.</p> <p>However, the aforementioned timeframe is not absolute. The court might extend the duration for deliberation and conclusion of the case due to various unforeseen circumstances that may arise during the proceedings.</p>		
Flexibility of Procedure	Parties must adhere to Thai legal proceedings, all of which are conducted only in Thai language.	Parties have the flexibility to determine and agree on various aspects of the arbitration proceedings, such as the seat of arbitration, procedural regulations, language, number of arbitrators, and the selection of arbitrators.	
Privacy	Unless ordered otherwise by a judge, court proceedings are public.	The arbitral proceeding is private and confidential.	
Enforcement	<p>There are three tiers of courts: First Instance, Appeal, and Supreme. If the parties are dissatisfied with the judgment rendered by the Court of First Instance, they can submit an appeal within one month from the date of pronouncement of the judgment.</p> <p>A judgment of the Court of Appeals may be considered</p>	<p>An arbitral award is final. If the losing party fails to comply with the arbitral award, the other party can pursue the recognition and enforcement of the arbitral award across 172 jurisdictions under the New York Convention.</p> <p>However, the losing party is also entitled to request</p>	

	<p>final unless permission for appeal to the Supreme Court is granted. The appeal to the Supreme Court is discretionary and requires permission from the Supreme Court. Parties dissatisfied with the Court of Appeal's judgment can seek permission by submitting a petition for permission along with an appeal (Dika) within one month from the date of the Court of Appeal's judgment pronouncement.</p> <p>Since an appeal process does not automatically suspend or halt the execution of a judgment, the winning party can enforce the judgment if the losing party does not comply with the judgment within the period stipulated by the court, unless there is an order to stay execution. However, judgments cannot be enforced outside Thai jurisdiction.</p>	<p>a court order for setting aside of the arbitral award (if applicable), and has a right to object to the enforcement of the arbitral award in the court stage.</p>	
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In conclusion, the choice between Thai court litigation and arbitration should fundamentally hinge on the nature of the agreement, the potential dispute, the nationality of the parties, and other relevant details, as each avenue offers distinct advantages and drawbacks. There is not a one-size-fits-all answer as to which option is superior. We hope that this succinct overview will assist you in making a decision tailored to your unique circumstances.

Should you require further information, please contact our Dispute Resolution, Litigation, and Arbitration Practice team members or alternatively, contact the authors of the article.