

Civil Litigation in Thailand: PART 1 – Thai courts

Thailand’s legal framework is based on the continental European “civil law” tradition. Although there are some statutory provisions that have their origin in common law systems both the substantive and procedural law of Thailand is modeled on the civil law system. In the context of litigation this means that contentious legal disputes are generally resolved in the courts by the direct application of statutory law and not, as is often the case in common-law jurisdictions, by application of “case law”. Further, as a civil law jurisdiction, there are no jury trials in Thailand. Cases are decided instead by panels of judges—the specific number will depend on the remedy sought and on which court the case appears before.

The Thai courts are arranged in a three-tiered hierarchy: trial courts; appellate courts; and a supreme court. However, jurisdiction generally depends on the subject matter of the case. For example: civil, criminal, bankruptcy, labor, and administrative matters each appear before different courts of first instance and some legislation allows for direct appeal from the trial court level to the relevant supreme court. There is also a separate supreme court for constitutional matters. Grounds for appeal of court rulings are allowed for mistakes of law and quite often for mistakes of fact as well. The lower Thai courts are not required to follow higher court rulings but such rulings are of significant persuasive influence upon such lower courts and it would be quite rare for a lower court to rule contrary to an explicit supreme court holding.

It should also be noted that, unfortunately, there is a significant backlog of cases before Thai courts. It often requires several months, even a year or more, to obtain an initial trial date. Completing the initial trial level can take significantly longer. There are several reasons for this, including: the nature of Thailand as a still developing rule of law jurisdiction; the fact that trials are scheduled such that they may not be completed in one or more consecutive days and the remaining days may not be scheduled for many weeks or even months later; and procedural rules are often not

strictly adhered to by the courts themselves—which means it is quite common for some parties to use such to their advantage and create delays. A typical civil case, if appealed, can take several years to be fully and finally resolved; five to ten years is common, but some cases have taken well over a decade to complete.

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