

Enforcement of Foreign Judgments

Fundamental Principles [Thailand]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Thailand is not a member of either bilateral or multilateral treaties/conventions and hence is not bound to enforce foreign arbitral award. As such, a creditor must bring suit *de novo* in a competent Thai court in order to obtain satisfaction.

The remainder of this guide will therefore focus on the enforcement of foreign arbitration awards, as this is the only type of *foreign judgment* that is enforceable in Thailand. Thai Courts recognize the enforcement of foreign arbitral awards where the award is derived from an accepted country. Countries that are signatories of the New York Convention on The Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the Geneva Convention for the Execution of Foreign Arbitral Awards, 1927 are countries that may render arbitral awards that are binding on Thai arbitral proceedings.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The body of law that regulates foreign arbitral awards is the Thai Arbitration Act. Specifically, sections 41-45 deal with the recognition and enforcement of foreign arbitral awards.

C. Special Rules:

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Thailand does not enforce foreign arbitral awards from countries that are not mutual signatories with Thailand to international conventions for the enforcement of foreign arbitral awards. Foreign arbitral awards, which are the only enforceable foreign awards recognized by the Thai courts, are subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the Geneva Protocol on Arbitration Clauses 1923 (Geneva Protocol). These are the two conventions to which Thailand is a signatory. Any foreign arbitral awards outside of the scope of these two conventions will not be enforceable in Thai Arbitral proceedings.

2. **Does Thailand have a special procedure to enforce court judgments coming to it from European Union member states?**

Answer: No.

D. Average Duration of Enforcement Procedure

1. **What is the average length of time for this kind of procedure?**

Answer: The length of time required for the enforcement of foreign arbitral awards is typically one year. In this period the Court examines the application and proceeds to determine whether it should be applied. However, in practice, the opposing party often files a motion denying enforcement of said foreign arbitral award. This can have the effect of delaying the enforcement process. Where appeals are filed, then the delay could extend the enforcement process to approximately three years before the Court gives final judgment for the enforcement of an arbitral award.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

- A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

Answer: Yes. As noted, only foreign arbitral awards from a recognized signatory to an international convention are enforceable in Thailand. For otherwise qualified requests for enforcement of foreign arbitral awards, a Thai Court does nonetheless possess the ability to deny the enforcement of foreign arbitral awards when there is adequate justification.

Sufficient grounds for doing so, as detailed in Section 43 include: that the award was not legally binding or has been annulled in the country that issued it, the party against whom the award was sought was not properly represented whether by reasons of legal incapacity or insufficient notice or the award does not pertain to all the differences in the present dispute or contains decisions beyond the scope of the arbitration agreement. The composition of the arbitral tribunal or proceeding that is not in accordance with the agreement could also render the award not legally binding. An award contrary to the law applicable to the dispute or derived from an unlawful act may also be denied enforcement.

B. Costs and expenses

1. **What kind of cost and expenses can a claimant expect in this enforcement procedure?**

Answer: Upon judgment, the arbitral tribunal will issue a filing fee for the use of a foreign arbitral award. The fee depends on the disputed amounts.

For disputes concerning amounts not exceeding 50 million Baht, 1% of the amount applied for the Court's enforcement is charged. However, this amount must not exceed 100,000 Baht. For amounts over 50 million Baht, a fee of 0.1% of the amount applied for the Court's enforcement will be incurred.

In addition, there are various arbitration fees and expenses such as witness, attorney and service fees. The amount is in accordance with the amount stipulated in the arbitral award, unless otherwise agreed by the parties (not including legal fees and expense). If the fees and expenses are not stipulated in the award, any party or the tribunal may request a court ruling on fees, expenses and commission of the arbitrator.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: Foreign arbitral awards are subject to a prescription period of one year from the day the arbitral award was rendered. Lapsing outside of this time will render the foreign arbitral award invalid.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes, a foreign arbitral award must be final and definitive before it can be applied in Thailand. An award that is subject to proceedings or pending appeal is invalid.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

Answer: Per Section 44, to be recognizable and enforceable, a foreign arbitral award must satisfy the initial threshold as a final and conclusive judgment. Moreover, it must not go against public policy or the good morals of Thailand. It must also pertain to all the relevant facts of the present case.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: Yes, Court fees accompany the application for enforcement of foreign arbitral awards, the amounts of which are outlined above.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: As mentioned above, for a foreign Court judgment to be enforced, Thailand must be a signatory and proactive member of the convention. Furthermore, the foreign arbitral award must fulfil certain requirements and adhere to the nature of Thai law.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer: Arbitral enforcement actions must be filed in the court with jurisdiction to hear the underlying substantive claim, had it been filed in Thailand. This means that, depending on the nature of the claim, an enforcement proceeding could be properly filed in one of many courts of original jurisdiction.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: An enforcement application, also known as a petition, must contain pertinent information regarding the case at hand. It is similar to the filing of an underlying complaint. Basic information such as the facts and parties of the dispute, award requested to be enforced, relevant countries and reasons for arbitration are included in this document.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: An application for the enforcement of a foreign arbitral award must be accompanied by an array of evidence and supporting documents as required by Section 42. First and foremost, there must be an original copy of the award. In addition, an original copy of the arbitration agreement must

be attached and all documents must be translated into Thai, with the translation certified by an authorised official.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: The process of enforcement is initiated by the filing of an application with the Competent Court. The application must be accompanied by three necessary documents above. The Court must then, without delay, promptly examine and inspect the application to ensure that it fulfils all necessary requirements for its enforcement. The Court shall then render judgment on the award's enforceability provided the opposing party has requested an opportunity to challenge the application.

E. Opposition of the Defendant

1. Can a defendant oppose this enforcement application?

Answer: Yes. If the defendant can furnish proof that indicates that the arbitral award should not be enforced, the Court will not recognize the foreign arbitral award.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: The reasons that a defendant may rely on to challenge the enforcement of foreign arbitral awards are listed in Section 43 of the Thai Arbitration Act. The defendant can produce proof that the party in the arbitration agreement was under some legal incapacity to oppose the Thai Court's enforcement process. Alternatively, they can demonstrate that the arbitration agreement is not binding under relevant laws or that proper advance notice of arbitral proceedings was not given to the losing party. If the foreign arbitral award does not deal with a dispute falling within the scope of the arbitration agreement or contains decisions beyond the scope of the arbitration agreement, the foreign arbitral award may, at times, be rendered invalid. Additionally, if the composition of the arbitral tribunal or proceedings was not in compliance with the parties' agreement or laws of the country, the award may not be recognized. Lastly, if the arbitral award is not yet binding or has been set aside/suspended, the Thai Court will have to reconsider their decision.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer: Under the Thai Arbitration Act, it is only possible to appeal foreign court decisions if certain circumstances exist. The appeal must be filed within 90 days of the date of the award. Most prominently, if the award is contrary to public order or the good morals of the people or public order, it may be appealed. Secondly, if the order or judgment is not in accordance with the arbitral award, an appeal may be permitted. If an arbitrator dissented in award, then enforcement of the foreign arbitral award may be appealed. Lastly, if the order for enforcement of the award concerns provisional measures under Section 16 of the Thai Arbitration Act, there is a chance that it may be appealed. It should also be noted that any appeals must be directed to the Supreme Court or Supreme Administrative Court.

2. Can this appeal suspend the enforcement?

Answer: A pending appeal will not suspend the enforcement of a foreign arbitral award. However, an opposing party may file an application seeking to stay the enforcement of said foreign arbitral award pending a determination of enforceability on appeal.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: There is no specific mention in the Thai Arbitration Act concerning recovery of costs when applying for enforcement of a foreign arbitral award. However, Section 46 of the Thai Arbitration Act does state that any fees and expenses pertaining to arbitral proceedings shall be included in the final award by the arbitral tribunal. Alternatively, a party may file a motion to the competent court requesting allocation of costs, as permitted under the Thai Civil and Commercial Code.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: The Thai arbitration system does not set any specific boundaries on the range of assets that may be subject to enforcement. In practice, the arbitral award often pertains to monetary assets to ensure compensation to the winning party. Alternatively, the Court may make special orders that

relate to the return or adjustment of property to fit the justified claim of the plaintiff. Therefore, the Court does not set particular limits on what type of assets may be concerned due to its naturally narrow view of assets when enforcing awards.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: It should be noted that Thailand is a civil law system and, as such, enforcement proceedings before the competent courts are before a panel of judges. There is no jury system. Another point of relevance is that it is quite common for parties to defend vigorously applications for enforcement, typically due process challenges, such as claims that they did not have a proper opportunity to defend the underlying arbitral claim. While these arguments may often lack substantial merit, there is generally a desire to delay ultimate enforcement to delay payment under the award and or to encourage a resolution via settlement.

Thailand

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