

Thailand encourages mediation of certain disputes as an alternative to litigation

by

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Introduction: Many have commented on the delays and inefficiency that are encountered in civil litigation in Thailand. There are numerous changes that could be made to the Civil Procedure Code to make it more fit for the purpose of deciding disputes in a speedy and cost-effective way (from the perspective of litigants).

Mediation is one way in which dispute resolution can be speeded up. In Thailand, Compulsory mediation applies to family disputes and employment disputes.

Civil Procedure Code: In September 2020, amendments to the Civil Procedure Code came into effect, which should encourage the popularity of mediation in the future.

The Dispute Mediation Act: The CPC changes should be read together with the Dispute Mediation Act (2019) which partly came into force in May 2019. The sections not yet in force will come into force at the same time as the CPC changes. The provisions of the DMA may be summarized as follows:

- Mediators must be registered as such with the regulatory authority set up under the Act. Mediators must have attended approved training courses and have experience in fields which are beneficial to dispute mediation.
- Mediators have certain duties and powers. These include: determining guidelines for the mediation, assisting and making proposals to the parties to settle the dispute, to act impartially, to draft an agreement that reflects the terms agreed between the parties, to conduct the mediation honestly and without delay, to maintain confidentiality regarding the dispute, and to disclose any conflict of interest that might suggest partiality.
- A mediator may be removed and replaced in certain circumstances.
- Regulations may be issued concerning the remuneration of a mediator.
- The Act defines the types of dispute that are eligible for mediation. Some types of disputes cannot be mediated. In addition, a dispute where the amount in issue exceeds five million Baht (roughly US\$165,000) cannot be referred to mediation. This ceiling can be changed via future regulations.
- Mediation can only take place if the parties agree to mediation.

- It is prohibited to admit certain facts arising from mediation proceedings as evidence in a trial, an arbitration, or any other proceedings, except for enforcement in accordance with the settlement agreement.
- If the parties reach a settlement, the mediator must draft this in writing and all parties and the mediator must sign the agreement.
- Where a settlement made after mediation is not complied with, it may be enforced through court proceedings within three years from the date of the agreement.

Changes to the Civil Procedure Code:

Application to appoint a mediator: Prior to filing a case with the court, the plaintiff may apply to the court with jurisdiction over the case, for the appointment of a mediator to mediate the matters in dispute between the parties.

Consideration of the application: If the court deems it appropriate, the court will accept the application, and enquire into the willingness of both parties to participate in the mediation. If the defendant agrees with the mediation proposal, the court shall then summon all relevant parties to court for a hearing to consider the matter. The parties may attend the hearing with or without a lawyer.

If the court approves the application, it shall then appoint a mediator to conduct the mediation.

Agreement to compromise/settle the dispute: If parties are able to compromise or agree on terms of settlement, they shall propose such agreement or terms to the court. The court shall consider the proposed agreement and provided that it decides that such agreement reflects the intentions of both parties, is made with good faith, and is not contrary to the law, both parties shall then sign a written agreement with those terms.

On the date of such settlement or compromise, the parties may request the court to approve the terms of the agreement by presenting reasons for such necessity. If the court deems that it is necessary and appropriate to make a judgement, it shall make an order in accordance with the agreement or compromise.

Fees: There are no court fees involve in making such an application.

Appeal: An order issued under these provisions is final.

Failure of mediation and prescription: Where the court orders the appointment of a mediator but the mediation is unsuccessful, if it appears that the prescription period after submission of the case has already expired, or will expire within 60 days after the date of the mediation's conclusion, the prescription period shall be extended by a further 60 days after the mediation's conclusion.

Conclusion: Judicial statistics show that a very high percentage of disputes issued in court are settled by compromise before a full trial takes place. The Dispute Mediation Act and supporting changes to the Civil Procedure Code, should further increase the popularity of mediation, and provide a swifter and cheaper method of dispute resolution.

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