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Newsletter

UPDATE ON THAI CIVIL PROCEDURE CODE : MEDIATION AND SETTLEMENT PRIOR TO FILING SUIT

Introduction

Civil litigation in Thailand is known for being a time consuming and frustrating process. As a result, a focus of governmental authorities has been on developing alternative dispute resolution (“ADR”) processes much to the relief of business operators. The focus for the development of a robust ADR system has been in developing regulations related to arbitration proceedings in line with international standards. On September 8, 2020, the Thai authorities published amendments to the Thai Civil Procedure Code (the “Amendments”) in the Government Gazette which add court supervised pre-filing mediation options to the ADR choices available in Thailand.

The purpose of the Amendments is to expedite the dispute resolution process, and provide business operators and individuals with an attractive, cheaper and binding alternative to private mediation procedures, old court supervised mediation, arbitration or traditional civil suits. The Amendments will become effective on 7 November 2020 and can be read in full in the Act Amending the Civil Procedure Code (No. 32) B.E. 2563 (2020).

This briefing will discuss the key aspects of the Amendments that are relevant to business operators in Thailand.

Procedural changes in the Amendment

Court supervised mediation is not a new concept in Thailand. The key changes contained in the Amendment include an important procedural change. Under the old Civil Procedure Code, court supervised, or court ordered mediation was an option. However, the option of court supervised mediation could only occur after a complaint was filed with the court. In addition, this option was offered during the pretrial stages of the civil litigation, which may be months after the complaint and defenses are filed.

The Amendments allows potential litigants to a dispute to motion for pre-filing court supervised mediation to the relevant court without filing an official complaint. The court has discretion in accepting the motion, and both parties must show their willingness to engage in mediation. If the motion is accepted, and both parties to a dispute agree to mediate, the court will appoint a mediator.

If a settlement is reached through this process, the parties to the dispute then must propose the settlement to the court for its examination, approval and enter into a written agreement detailing the settlement terms. If the settlement terms are approved, the parties can request that the court issue a judgment in accordance with the settlement terms. The parties must demonstrate a ‘necessity’ for a judgement, and it is at the court’s discretion as to whether such judgement will be issued.

Benefits to pre-filing mediation under the Amendments

Cost/Fees

In what will most likely be a very welcome aspect of the Amendments, there are no court fees for pre-filing mediations. Legal fees (if any) and other expenses may also be reduced.

Timing

The option of pre-filing mediation is expected to be much faster than court supervised mediation which was available prior to the Amendments. As there is no need to initiate a lawsuit, mediation under the Amendment can be started once the court approves the motion requesting court supervised mediation. This avoids what can be a very time-consuming process of initiating a lawsuit (i.e. filing a complaint, defense, notices, motions etc.).

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Enforcement of judgements

Once the parties to a dispute settle through the new court supervised, pre-filing mediation system, the settlement may be endorsed via a court judgement. Court judgements, under the Amendments are final and binding, which means that the terms can be enforced by a party to the settlement through the legal execution process.

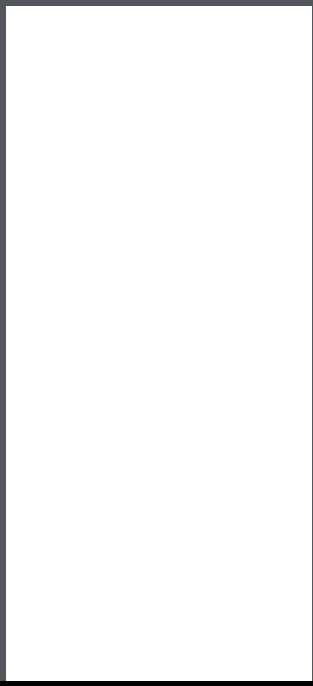
Maintenance of amicable business relationships

Although not included in the Amendments, an unintended benefit of the new mediation option may be the preservation of amicable business relationships. Civil litigation is often contentious, and there are aspects of the process that will inevitably require disclosure of information that can have a lasting impact on business relationships between the parties to a dispute. The ability to enter into a less contentious process with the aim to amicably settle a dispute can potentially preserve these business relationships.

Conclusion

The Amendment is another step in developing a robust, trusted and convenient ADR system in Thailand. The new mediation process is expected to save time, money and resources that would otherwise be needed in lengthy traditional civil litigation. In addition, the Amendment allows for immediate enforcement of a settlement through a court issued judgement.

If you would like to discuss any of the legal implications of the matters discussed above, please contact the authors listed in the right-hand column.



This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.