

Mediation in Thailand

Warathorn Wongsawangsi

Managing Partner, Thailand, Herbert Smith Freehills LLP, is regarded as one of the market's leading and talented advocate with almost 20 years of experience in Thailand and Asia. His expertise spans across a spectrum of industries, including aviation, energy (oil and gas and renewable), hotels and real estate, insurance, as well as telecommunications and media technology. He has worked extensively with clients throughout the entire dispute resolution processes including litigation, domestic and international arbitration (TAI, THAC, ICC, SIAC and HKIAC) and mediation. Aside from being an experienced litigator, Warathorn is also an arbitrator appointed by SIAC, THAC and TAI. Outside of legal practice, he is also a Facilitator of various programmes offered by the Thai Institute of Directors, a Guest lecturer at several Thai law schools, and a Board member of a listed company.

Abstract: As mediation has been gaining popularity in recent years, this paper outlines the general perception and requirements of mediation, including international mediation, in Thailand. Considering the supportive measures stipulated in the laws of Thailand and the high likelihood of Thailand's accession to and ratification of the Singapore Convention on Mediation, although there are certain procedural complications in the horizon, mediation is likely to have a glittering future in the legal landscape of Thailand.

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I The Understanding of "Mediation" in Thailand

In line with the general understanding of mediation, mediation in Thailand refers to a conflict management process that relies on an impartial and independent individual who has the consent of the conflicting parties to utilise his/her expertise in conflict management and to facilitate the resolution of the dispute as a mediator.

Alternative dispute resolution in Thailand is mainly driven by the Court of Justice, rather than private organisations or parties. Nonetheless, Thailand has been supporting a mediation-friendly environment without the involvement of the court in the recent years, resulting in mediation being categorised into court-annexed mediations and out-of-court mediations.

A Court-Annexed Mediation

The Civil Procedure Code of Thailand B.E. 2477 (1934) (as amended) (“**Civil Procedure Code**”) has recognised the importance of mediation, particularly institutionalised mediation. The Civil Procedure Code encourages mediation as an alternative dispute resolution method as prescribed in Sections 19, 20, 20 *bis* and 20 *ter*. The court has the power to order the parties to appear in court if it sees that such appearance may bring about an agreement or a settlement. No matter how far the proceedings have been conducted, the court has the power to mediate to enable the parties to reach an agreement and to settle their dispute. Other legislation supporting court-annexed mediation include the Consumer Protection Act B.E. 2522 (1979) (as amended) which promotes mediation relating to the violation of consumers’ rights before the filing of complaint to the court.

In-court civil mediation can be proceeded either prior to or after the filing of the complaint to the court. Prior to 8 November 2020, Thailand’s familiarity with mediation was limited to a mediation occurring after the filing of complaint to the court as the Civil Procedure Code only supported in-court civil mediation session during the course of the court proceedings.

Since 8 November 2020, court-supervised pre-litigation mediation has been implemented to promote mediation as an alternative means for civil dispute resolution prior to a lawsuit.¹ In this scenario, both parties can request the court to appoint a mediator and if they reach an agreement, the parties may request the

¹ For ease of reference, Section 20 *ter* of the Civil Procedure Code which concerns mediation prior to the filing of a case with the court is excerpted ahead: “Prior to filing a case with the court, the prospective party may file a petition to a court that has jurisdiction of such case in order to request the court to appoint a mediator to mediate matters between the two parties. Such petition shall include the names and addresses of the parties involved, including the details of the dispute. If the court deems it appropriate, the court will then accept the petition and proceed to inquire about the willingness of both parties to attend the mediation. If the counterparty agrees with the mediation, the court shall then have the power to summon all relevant parties to court, to which the parties may decide to come with or without a lawyer. The court shall proceed to appoint a mediator to further the mediation process through the application of Section 20 *bis*. If parties are able to compromise or agree on certain terms, the parties shall propose such agreements, terms or conditions to the court. Once the court has considered the proposed agreement and decides that such agreement abides by the intent of both parties, is made with good faith, and is not contrary to the law, both parties shall then be made to sign a written agreement.

On the day of the settlement or the compromise agreement under paragraph one, the parties may request the court to adjudicate the terms of the agreement by presenting the reasons for necessity. If the court deems that it is necessary and appropriate to make a judgement at that moment, the court shall make an adjudication in accordance with the said agreement or compromise agreement by applying the provisions of Section 138 *mutatis mutandis*.

There are no court fees for the request and implementation of this section.

The court orders issued under the provisions of this section is final.

Where the court orders the appointment of a mediator but such 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 to 60 days after the mediation’s conclusion.”

court to render a judgment based on the agreed terms so that the civil disputes can be settled without the need for litigation. This saves the parties time and resources and also results in benefits to the economy and society as a whole.

The pertinent provisions of the Civil Procedure Code should be read together with the Regulation of the President of the Supreme Court on Mediation B.E. 2554 (2011) (“**Supreme Court’s President Regulation**”). Under the Supreme Court’s President Regulation, the Court Mediation Center will be established if necessary to conduct court-annexed mediation properly and efficiently, and to promote and support alternative dispute resolution measures particularly in the form of mediation.

The Court Mediation Center has the following powers and authority:

- (1) to manage the mediation as assigned or ordered by the person in charge of judicial affairs or the panel of judges;
- (2) to promote and disseminate alternative dispute resolution measures particularly in the form of mediation;
- (3) to prepare a directory and documents in mediation case files;
- (4) to provide and collect data and statistics regarding mediations of the court, and to evaluate the court mediation performance;
- (5) to prepare the mediation lists and coordinate with mediators;
- (6) to collect the performance report of mediators;
- (7) to coordinate with other authorities relating to alternative dispute resolution; and
- (8) to proceed any action as assigned by the person in charge of judicial affairs.

B Out-of-Court Mediation

Supplementary to court-annexed mediation as stipulated in the Civil Procedure Code, the Dispute Mediation Act B.E. 2562 (2019) (“**Dispute Mediation Act**”) prescribes provisions in respect of out-of-court mediation. The Dispute Mediation Act defines “mediator” as a person registered and appointed to perform duties in the mediation. In other words, mediators must be registered with and appointed by the pertinent regulatory authority.

Requirements and Standing of Mediators

A person registered as a mediator must satisfy the following criteria:

a) Qualifications

A mediator must be a person:

- (1) having successfully completed the dispute mediation training under the programme accredited by the Commission on National Development of Justice Administration under the law on national development of justice administration; and
- (2) possessing experience in areas beneficial to the dispute mediation.

b) Prohibitions

A mediator must not be a person:

- (1) having been sentenced to imprisonment by a final judgment, except for an offence committed through negligence or a petty offence;
- (2) that is incompetent, a quasi-incompetent person or a person of unsound mind or mental infirmity; and
- (3) having had the status of a mediator revoked under the Dispute Mediation Act, where a period of five years has not yet elapsed up to the date of submission of the application for a certificate of registration as a mediator.

c) Duties and Powers of a Mediator

A mediator has the following duties and powers:

- (1) to lay down directions for the holding of mediation;
- (2) to assist, facilitate and make suggestions to parties with respect to ways for ending disputes;
- (3) to conduct mediation on the basis of impartiality; and
- (4) to prepare a settlement agreement in accordance with the results of the mediation.

d) Mediator's Protection

In the case where a mediator carries out an act in discharge of his or her duties in good faith, the mediator will be afforded protection and will not be liable both in civil matters and in criminal matters.

e) Ethical Standards

Additionally, a mediator must carry out the duties by maintaining the following ethical standards:

- (1) performing duties on the basis of impartiality, independence, justice and non-discrimination;
- (2) attending the mediation on every occasion and, in the case of inability to attend the mediation, give prior notification of reasons and necessity to the agency conducting the mediation;
- (3) performing duties expeditiously without causing unreasonable delay in the mediation;
- (4) upholding integrity and honesty and refraining from demanding or taking property or any other benefit from parties or other persons involved in the dispute;
- (5) performing the mediation duties politely;
- (6) keeping matters relating to the mediation confidential;
- (7) refraining from adjudicating the dispute or forcing any party to sign a settlement agreement; or
- (8) other cases prescribed by the Minister of Justice in the Ministerial Regulation.

A mediator must also disclose to the parties facts that are likely to give rise to justifiable doubts as to the mediator's impartiality and independence in the performance of duties as a mediator.

Disputes Eligible for Mediation

Under the Dispute Mediation Act, disputes eligible to mediation are the following.

a) Civil Disputes

- (1) disputes concerning land other than disputes relating to ownership;
- (2) disputes between heirs which concern property to be obtained by way of succession;
- (3) other disputes as prescribed in the Royal Decree; or
- (4) disputes other than those in (1), (2) and (3), of which the amount of claim does not exceed THB 5 million (approximately USD 145,000) or which do not exceed the amount as prescribed in the Royal Decree.

Note that mediation of civil disputes under the Dispute Mediation Act is not permissible if it relates to a right in respect of a person, family or ownership of immovable property.

b) Criminal Disputes

- (1) compoundable offences; or
- (2) petty offences under Sections 390, 391, 392, 393, 394, 395 and 397 of the Penal Code of Thailand and other petty offences not affecting the public as prescribed in the Royal Decree.

Note that criminal cases falling under the jurisdiction of the Juvenile and Family Courts under the law and procedures relating to juvenile and family courts are barred from mediation under the Dispute Mediation Act.

Results of Mediation

a) Successful Mediation

If the parties reach an agreement after mediation, the mediator will prepare a memorandum of mediation or ensure the preparation of a settlement agreement in writing which will be signed by the parties and the mediator.

b) Unsuccessful Mediation

In the case where the mediation terminates without achieving a settlement, if it appears that the statutory limitation period has expired during the mediation or is due to expire within 60 days as from the date on which the mediation concludes, the statutory limitation period will be extended for another 60 days as from such date.

Enforcement of Settlement Agreement

If the provisions of the settlement agreement resulting from mediation are not complied with, the parties can enforce such settlement agreement via court proceedings within three years from the date of the agreement. The court will issue an order for the enforcement of a settlement agreement unless it is apparent to the court, or the party against whom the agreement is intended to be enforced proves, that:

- (1) a party has deficiency with regard to the capacity to conclude the settlement agreement;

- (2) a ground of the dispute or the settlement agreement is, in essence, expressly prohibited by law, impossible or contrary to public order or good morals;
- (3) the settlement agreement has been procured by fraud, coercion, threat or other unlawful act; or
- (4) there exists an incident regarding the appointment of the mediator which materially affects the preparation of the memorandum of agreement.

Other than under the Dispute Mediation Act, out-of-court mediation is available at numerous organisations under relevant regulations with different legal requirements, depending on the nature of the case, including the Rights and Liberties Protection Department, Lawyers Council of Thailand, Insurance Mediation Center, Legal Execution Department, and Thailand Arbitration Center, among others.

II The Popularity of Mediation in Thailand as a Dispute Resolution Process and the Obstacles to Parties Adopting Mediation as a Means to Resolve Their Disputes

The concept of mediation in Thailand has been instilled in the Civil and Procedure Code since 1934. Since then, the popularity of mediation as an alternative dispute resolution has been continuously growing resulting from its efficiency in bringing about satisfactory outcomes, its reflection of the intentions of the parties, as well as its ability to preserve the relationship of the parties. From the procedural aspect, mediation can also be utilised to alleviate the judicial backlogs caused by protracted court actions. It is worth highlighting that the institutionalised mediation and out-of-court mediation, which allow either party to request for mediation prior to the filing of complaint to the court, assist the relevant parties to put off and potentially avoid altogether, the immediate costs of court proceedings (such as fees in relation to drafting of complaint) and lengthy court procedures.

In comparison to litigation, mediation is considered significantly cheaper and quicker. When the parties are the ones to arrive at a final solution in a non-confrontational and confidential environment with the help from an impartial and independent mediator, there is a high chance that a positive result for all relevant parties can be achieved, and possibly even resulting in a win-win situation. Also, the settlement agreement resulting from the mediation is legally binding. In other words, a reliable enforcement mechanism can be immediately activated if the party with the obligation decides not to comply with the provisions in the settlement agreement. As matters discussed during mediation are on a without prejudice basis, any admissions or statements made by the parties in the course

of mediation, proposals made by the mediator or documents prepared solely for the purpose of mediation, cannot be used in subsequent judicial proceedings, arbitral proceedings or any other proceeding.

However, certain obstacles remain in the adoption of mediation as a means to resolve disputes. The relevant parties can opt for mediation only when all parties agree on adopting mediation as a means of dispute resolution. Furthermore, there are concerns around the expertise of the mediator, such as the fear that the mediator's lack of knowledge in a specific area of law might potentially lead to an inefficient solution. Also, mediation requires both parties to genuinely commit to resolving the issues in good faith or otherwise it will result in a systemic distrust and a failed mediation. This is because either party can withdraw from the proceeding whenever they no longer see that mediation is likely to lead to a resolution of the dispute.

Based on the statistics of pre-litigation mediation of the Court of Justice for the year 2021, there were a total of 1,852 cases (1,784 civil cases and 68 criminal cases) of mediation in the courts, of which 995 cases were successfully resolve, 142 cases were unsuccessful, 478 cases were disposed, and 237 cases were to be proceeded in the subsequent year. In other words, 995 out of 1,137 cases eligible for and which proceeded with mediation in 2021 were successfully settled via mediation prior to the complaint being filed with the court, which reflects a success rate of approximately 88%.

As for mediation after the filing of complaint to the court in 2021, statistics of the Court of Justice show there were a total of 182,639 cases (176,291 civil cases and 6,348 criminal cases) of mediation in the courts, of which 163,239 cases were successful resolved, 8,481 cases were unsuccessful, 7,291 cases were disposed, and 3,628 cases were to be proceeded in the subsequent year. In other words, 163,239 out of 172,350 cases eligible for and which proceeded with mediation in 2021 were successfully settled via mediation in the course of the court proceedings, reflecting a success rate of 95%.

Other organizations have also put in place their own mediation platforms and reported their mediation statistics. For instance, the Rights and Liberties' Protection Department reports 88.6% of the disputes referred to mediation under its management in 2021 was successfully settled, reducing the 667 cases from being filed with the relevant courts (650 civil cases and 17 criminal cases). This means a reduction in public expenditure of THB 82,457,700 and a reduction of government costs by THB 1,250,894. Moreover, the number of people submitting applications for mediation has skyrocketed from the previous year. While there were 864 applications filed in 2020, there were 2,382 applications filed in 2021, evidencing an increase of 175.69% from the previous year.

The Thailand Arbitration Center's 2021 Annual Report states that there were 18 mediation cases under its management in 2021, 10 out of 18 cases were successfully resolved utilizing Thailand Arbitration Center Rules on Mediation B.E. 2559 (2014) (as amended). Note that this requires the parties to have in place a mediation clause agreeing that the disputes will be settle by conciliation in accordance with the Rules of the Thailand Arbitration Center and under the management of Thailand Arbitration Center.

Considering the roaring success substantiated by the precedents and the support from measures such as those stipulated in the Civil Procedure Code and Dispute Mediation Act, the perception towards mediation remains positive and promising. Mediation is therefore likely to have a glittering future in the legal landscape of Thailand.

III The Prevalence of International Mediation in Thailand

The absence of a central organisation to collect data specifically in relation to international mediation in Thailand makes it quite onerous to identify the exact number of international mediation cases in Thailand in the past years. One of the possible institutions that have settled international mediation in Thailand that comes to mind is the Thailand Arbitration Center.

Based on sources within the Thailand Arbitration Center, the statistics of international mediation in Thailand heard by the Thailand Arbitration Center from 2019 to 2022 are as follows.

Year	Number of All Mediation Cases	Number of International Mediation Cases
2022	8	3
2021	8	3
2020	7	2
2019	2	1
Total	25	9

In all of the 9 international mediation cases settled, the parties to the mediation were mixed. Some of the disputes were between Thai nationals and foreigners, while some involved only foreigners.

Mediation's popularity has grown by leaps and bounds in the past few years. This extends to the number of cases of international mediation in Thailand which has gradually increased in recent years. Although it may not be as prevalent as international arbitration, the steady encouragement of international mediation in Thailand through the possibility of Thailand's accession and ratification of the

Singapore Convention on Mediation could potentially encourage international mediation to thrive in Thailand in the upcoming years.

IV Foreseeable Developments in Mediation in the Near Future within Thailand

In recent years, Thailand has actively pushed for the use of mediation by, among other things, passing legislation specifically governing mediation, namely the Dispute Mediation Act. It has established frameworks to provide more certainty regarding mediation procedures. Furthermore, the constant legal developments in Thailand to promote mediation such as the implementation of pre-litigation mediation and online mediation promoted by the Court of Justice, and mediation services offered to the parties by non-court institutions (such as the Thailand Arbitration Center), show the positive outlook on the future of mediation within Thailand.

The attitude towards mediation has been quite positive. A number of organisations, both in the public and private sectors, have been encouraging parties to refer their disputes to mediation as a means of neutral dispute resolution mechanism led by an effectively skilled mediator. Many institutions, such as the Thai Chamber of Commerce, are in the process of establishing a mediation center for mediations to be carried out by specialised professionals who have the understanding in both the commercial aspect as well as the dispute resolution aspect in relation to a case. A continuous increase of cases referred to mediation can be anticipated as it has proven to be an efficient means, both time and cost-wise, of dispute resolution.

Thailand has not yet acceded to nor ratified the Singapore Convention on Mediation. In order to enhance the enforcement of international settlement agreements resulting from international mediation on cross-border commercial disputes, it is necessary for Thailand to accede to and ratify the Singapore Convention on Mediation. Given the prospect of increased disputes involving international elements, the seemingly unstoppable rise in popularity of international mediation should incentivise the relevant authorities of Thailand to take steps forward for Thailand's accession to and ratification of the Singapore Convention on Mediation. Currently, the requisite draft legislation is still being processed. Although it will take some time for the draft bill to be finalized by all the relevant authorities, we can expect it to happen going forward. Thailand will eventually adhere to the same international standard regarding enforceability of international settlement agreements resulting from mediation.

There had been discussion within the relevant authorities even before the Singapore Convention on Mediation came into effect that Thailand would be one of the founding signatories to the Convention. Nonetheless, this did not materialize as the accession and ratification of the Convention in Thailand would require the translation of the Convention's provisions into domestic law to create a binding effect of the obligations under such an international convention within the Thai legal system. It is expected that the draft legislation will tend to mirror the provisions of the Singapore Convention on Mediation, with some adjustments and reservations to be made in order for it to run parallel with the Civil and Commercial Code as well as other relevant legislation and regulations. The level of receptivity in general should be high, with some issues still under further discussion. These include the scope of jurisdiction, elements of international status, and the extent of the Convention's application to settlement agreements to which a governmental agency is a party.²

The hurdles to Thailand's accession and ratification of the Singapore Convention on Mediation remain the same as they were years ago. The procedural complication of the accession and ratification of an international convention, in particular the implementation of the obligations of such a convention through local laws entails the cooperation and execution of several relevant authorities. Hence, a delay in the enactment of such laws by reason of the very protracted process, is inevitable.

Overall, we can expect that the Bill governing the enforcement of international settlement agreements resulting from mediation to be implemented in Thailand will reflect a high level of receptivity to the Singapore Convention on Mediation. This is an issue we will be closely monitoring in future developments.

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² This is based on the unofficial discussion as of 7 March 2023 with the competent officer of the Ministry of Justice on a no-name basis.

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