

NEWSLETTER

No. 105 Edition January 2016

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1. New Appeal Process in All Civil Cases to Speed Up the Case

The National Legislative Assembly acting as Parliament under the Interim Constitution passes four Amendment Acts (the “Amendment Acts”) to amend laws establishing an intellectual property and international trade court, a tax court, a labor court and a bankruptcy court for a purpose of changing an appeal process for an intellectual property and international trade (civil) case, a tax (civil) case, a labor (civil) case, and a bankruptcy (civil) case in an effort to get rid of a bottleneck at the Supreme Court. Justice delay is in itself injustice. Up to this point, the Thai legal system allows a losing party in a civil case to exhaust an appeal option all the way to the Supreme Court. Consequently, there is a long lead time for an appeal waiting to be heard by the Supreme Court.

The change might be good news for a plaintiff or a claimant as it is likely to speed up the appeal process for those cases

Regular Civil Case

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Court	Existing Court System	New Court System
The Court of First Instance (Trial Court)	1. The court of first instance issues a judgment.	1. The court of first instance issues a judgment.
The Court of Appeals (or the Regional Court of Appeals) - Appellate	2. The judgment of the court of first instance is generally appealable to the Court of Appeals on both a question of facts and a question of law.	2. The judgment of the court of first instance is generally appealable to the Court of Appeals on both a question of facts and a question of law.
The Supreme Court – Court of Last Resort	3. The judgment of the Court of Appeals is generally appealable to the Supreme Court on both a question of facts and a question of law.	3. The judgment of the Court of Appeals is generally non-appealable to the Supreme Court. The Supreme Court will only hear the final appeal if the Supreme Court deems the matter of the final appeal is a crucial question deserving consideration of the Supreme Court.

Intellectual Property and International Trade Case, Tax Case, Labor Case and Bankruptcy Case (Civil Case)

Court	Existing Court System	New Court System
The Court of First Instance (Trial Court)	1. The court of first instance issues a judgment.	1. The court of first instance issues a judgment.
The Court of Appeals (or the Regional Court of Appeals) - Appellate	2. The procedure does not involve the Court of Appeals with a view of speeding up the procedure.	2. The judgment of the court of first instance is generally appealable to the Court of Appeals on both a question of facts and a question of law, except the labor case where the question of facts may not be appealed to the Court of Appeals.
The Supreme Court – Court of Last Resort	3. The judgment of the court of first instance is generally appealable to the Supreme Court on both a question of facts and a question of law, except the labor case where the question of facts may not be appealed to the Supreme Court.	3. The judgment of the Court of Appeals is generally non-appealable to the Supreme Court. The Supreme Court will only hear the final appeal if the Supreme Court deems the matter of the final appeal is a crucial question deserving consideration of the Supreme Court.

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Moving the appeal procedure from the Supreme Court to the Court of Appeals for an intellectual property and international trade (civil) case, a tax (civil) case, a labor (civil) case, and a bankruptcy (civil) case is likely to speed up the appeal process because while there is one Supreme Court in Bangkok, there are several Regional Courts of Appeals to hear appeals from trial courts in a particular region.

Making an appeal to the Court of Appeals is a matter of right of a losing party. But under the new system an appeal (final appeal) from this level is normally at the discretion of the Supreme Court. Under the recently amended Civil Procedure Code, the Supreme Court will only hear the final appeal if the matter under the final appeal is a crucial question deserves its consideration.

The following matters are the crucial matters:

- (i) a question related to the public or a public order;
- (ii) a case where the Court of Appeals issues a judgment or an order that construes a crucial question of law contrary to or inconsistent with a precedent laid down by a judgment or an order of the Supreme Court;
- (iii) a judgment or an order of the Court of Appeals addresses a crucial question of law that does not have any precedent in a judgment or an order of the Supreme Court;
- (iv) a judgment or an order of the Court of Appeals is contrary to or inconsistent with a judgment or an order of another court of last resort;
- (v) to develop the interpretation of law;
- (vi) any other crucial question in accordance with the instructions of the President of the Supreme Court.

This development is most likely to significantly reduce the lead time in civil litigation. There is a bottleneck at the Supreme Court since the existing system affords a losing party in for an intellectual property and international trade (civil) case, a tax (civil) case, a labor (civil) case, and a bankruptcy (civil) case the right to appeal any unfavorable judgment immediately to the Supreme Court. By limiting the access to the Supreme Court only to the cases with crucial matters, in many cases the judgment of the Court of Appeals will become final under the new system and a winning party can enforce a winning judgment more quickly than the existing system affords.

For more information, please contact our lawyers for consultation.

2. New Class Action Lawsuit Law

Under the existing system, there is no provision for a class action or a class action lawsuit under the Civil Procedure Code. The Act Amending the Civil Procedure Code (No. 26) (the "Act") introduces the class action into a Thai legal system. The class action or is sometimes called the class action lawsuit is a lawsuit under which many members of a class can join one plaintiff in filing multiple but similar claims against one defendant. In a class action, one attorney or one group of attorneys can represent one plaintiff and several members of a class at the same time in one case, saving both time and money. The class action not only makes litigation more efficient and affordable to underprivileged persons but also avoids any repetition on court proceeding, which ultimately leads to a shorter lead time in civil litigation. Furthermore, the class action eliminates inconsistent judgments of one court or different courts. Once the court certifies a class, members of the class may join in the lawsuit. There are certain features of the Act that are noteworthy.

1. Small Claim Now Becomes Economically Feasible for Filing

A previously small claim that does not economically warrant a use of attorney can now be filed together as claims of members of a class. Many in corporate Thailand will have to spend more money defending a class action or settling a class action because claimants of those small claims will join the class action.

2. Class Action Officer

The Act introduces a class action officer who will be appointed to help members of a class to verify and gather evidence.

3. Low Filing Fee

A plaintiff who initially files a lawsuit has to pay a 2% court fee of value of plaintiff's claim and puts down a deposit for out-of-pocket expenses. But the plaintiff does not have to pay the 2% court fee on value of claims of members in a class. Members of the class only have to pay a minimal filing fee of Baht 200 to receive a payment of judgment debt awarded by the court, when the case is eventually won.

4. Member's Opting Out of a Class

Members of the class will be presumed to be in a class action, unless any member opts out of the class.

5. Court's Power to Award the Attorney Fee Up to 30% of the Awarded Amount

Because a plaintiff and members of a class may not want to advance all the fee and expenses to initiate a class action, an attorney may have to advance those expenses for the plaintiff and members of the class. Once the plaintiff and members of the class win the case, the court may award the attorney fee up to 30% of the amount awarded to the plaintiff and members of the class.

There many potential scenarios that the court may certify a class, which can impose a lot of burdens on a defendant.

Possible Class Action Scenarios

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Issue	Plaintiff & Members of Class	Defendant
1. Defective Product	Consumers/Users of the Products	Product Manufacturer
2. Factory with Dangerous Emission	Local Residents	Factory Operator
3. Defective Home	Home Buyers	Home Developer

For more information, please contact our lawyers for consultation.

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