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Alternative Dispute Resolution in Thailand

Central Intellectual Property and International Trade Court Thailand

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Chapter One: Overview of the Research on the Alternative Dispute Resolution in Thailand

This research is an undertaking by the Central Intellectual Property and International Trade Court in conjunction with the Institute of Developing Economies (JETRO-IDE) of Japan. Members of the working party for the research comprise of five judges from various courts of justice in Thailand, one Senior Public Prosecutor, six field researchers and two legal officers acting as secretariat and liaisons. Each member is assigned to write and lead a research on his/her expertise. A few meetings are conducted to interview players in each compartment of the legal profession. Field research in the form of questionnaires is conducted. All members are responsible for the final draft. *Justice Prasobsook Boondech,* Ex Chief Justice of the Central Intellectual Property and International Trade Court, now Senior Justice of the Supreme Court, has acted as the honorary advisor to the research program.

The present research will focus on legal and empirical analysis of ADR in Thailand. Three major areas are focused: consumer protection, labour disputes and environmental disputes. Dispute resolution in these areas need delicate, good understanding and almost tailor-made procedure effectively to redress the problems arisen. Most consumer protection regimes in the world are in the form of small claim court or tribunal whereby participation of the consumers themselves is encouraged but legal representation discouraged. Conciliation is somewhat seen as having better rate of success in that mode. It is almost like a DIY (Do it Yourself) dispute resolution. Labour disputes is Thailand is resolved through a panel of tri-partie judges: a career judge, a judge from the employers' associations and a judge from the employee's associations. The rate of success in conciliation in the Labour Courts of Thailand is phenomenal and exceeds the success in other courts of justice. Environmental Disputes on the other hand are quite new here. Dispute Resolution in environmental matters is at present rested in the traditional court system and procedure. However, the brighter side is that, Thailand has now more and more legal scholars in the field of environmental law. We only need them to switch their emphasis more on dispute resolution matters. This is exactly what this research is trying to achieve.

This research is classified into six chapters:

Chapter One: Overview of the Research on the Alternative Dispute Resolution in Thailand

Chapter Two: Alternative Dispute Resolution (ADR) Out of Court Dispute Resolution Mechanism

Chapter Three: Field Research on Alternative Dispute Resolution in Thailand

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Chapter Five: Dispute Resolution Process in Labour Matters

Chapter Six: Dispute Resolution Process in Environmental Problems

We hope that this research will be able to make some contribution to the growing application of alternative dispute resolution in Thailand. However, three areas of concentration: consumer, environmental and labour protections are singled out for special treatment.

The opinions expressed in this research are those of the authors and do not necessarily represent or reflect the policy of the organizations attached by the authors.

Chapter Two: Alternative Dispute Resolution (ADR) Out Of Court Dispute Resolution Mechanism

1. Introduction

The past few years have been interesting years for Asia. We Asian people have certainly lived through interesting times. To cite a celebrated Chinese saying, "*we are living in an interesting time",* is perhaps appropriate. In 1997 Thailand and many countries in Asia witnessed the transition of their economy from phenomenal success and double-digit or near double-digit growth of the past few earlier years to near collapse verging on the state of bankruptcy in many important financial and business sectors. Lawyers, like any other profession, bear the burden of bringing Asia out of this predicament. This is a time for re-thinking, re-planning and re-structuring our legal as well as our social, economic and political infrastructure.

Under the new Constitution promulgated in 1997, substantial changes have been made in Thai political, social and legal environments. A Constitutional Court has been established. The system of administrative courts has also been established. In the field of criminal justice system, a human right oriented approach is preferred to the traditional strict appliance of 'law and order' approach. In the field of civil justice system, case management by the judge and alternative dispute resolution (ADR) are encouraged.

ADR in its official form has been a recent development in Thailand. The longest and most successful arbitration center is the Arbitration Office, Ministry of Justice (Now called the Thai Arbitration Institute).[1] In the first year of its establishment in 1990, there was only one arbitration case concerning a construction dispute. In 1999, there were a hundred cases involving disputes over constructions and breach of contracts filed at the Arbitration Institute. At the outset of the establishment of the Arbitration Office, it was hoped that arbitration would reduce the workload of court in civil cases. After ten years in operation and the caseload of approximately a hundred per year, it is hardly likely that arbitration would reduce any substantial number of cases going to court.[2] Other arbitration institutes are simply in their embryonic stage. The existence of which are signs of development and for prestigious reason.

ADR is a new terminology of an old concept. Non aggressive, non-confrontational approach to dispute settlement has been the teachings and practice of eastern philosophers since time immemorial. It is only recently since the method of ADR has been the subject of critical and scientific analysis. Ironically it is the academics in the West who bring ADR, with its famous *'win-win solution'* trademark to world attention. Society, commerce and trade all over the world are the beneficiaries of alternative dispute resolution. In Thailand as well as everywhere in the world, ADR represents a refreshing approach to litigation. It represents a new challenge to the legal profession. This paper proposes to examine some of the lessons we have learned from introducing or perhaps more accurately, reintroducing court-annexed ADR into dispute resolution mechanism in Thailand.

2. Alternative Dispute Resolution (ADR): How out-of-court systems are used as Dispute Resolution Mechanism

In the past few years, Thailand has been passing through the development in many areas especially in the venue of economic expansion. It was evident that international transactions among Thailand and other countries were significantly improving under the norm of globalization. Efficient

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[1] Since the new Constitution (1997) and the introduction of separation of the Judiciary from the Ministry of Justice in accordance with the Constitution, the Arbitration Office of the Ministry of Justice has become the Thai Arbitration Institute, Alternative Dispute Resolution Office, Office of the Judiciary.

[2] The present figure stands at approximately 850,000 cases per annum. In 2000 there were 840,939 cases filed in the courts of first instance throughout the Kingdom. See www.judiciary.go.th for more detail.

communication and the revolution in the age of information technology bring about international activities beyond frontier. When transactions and investments increase, disputes sometimes reflect the numbers of those activities. However, in 1999, the transition of the economy run from phenomenal success growth to near collapse verging on the state of bankruptcy in many financial and business sectors. Many disputes, consequently, tipped up with the amount of the unexpectation. The conventional way of solving those disputes was to bring the cases into the justice mechanisms. Caseloads of the courts from the effect of financial and business disputes became the deterrence to appropriate timeframe in each case proceeding, causing the delay and cost to the parties concerns. In some simple cases where a defendant fails to answer to the plaint, the procedure could be prolonged with the consumption of time not less than 8 months. Where general cases processed under both side arguments could run more than 5 or 6 years to the end. And in some particular sophisticated lawsuits with following appeals to the high court, the timeframe could be expected at 8 to 10 years. That consumption of time does not include extra hours of execution of the cases where the losing parties refuse to perform according to the judgments. The effects of the economic crisis to the wheel of the dispute resolution by the court of justice, consequently, was put into the first priority problem for public and private sectors to find the appropriate way out. The public sectors, in particular, under the responsibility of the Court of Justice and Ministry of Justice have been trying to tackle this problem by way of improving the case management with more efficient and avoid unnecessary process. New technology is brought to facilitate more efficient and expeditious proceeding. Increasing personnel is the other option. However, those approaches could not effectively stall the backlog of cases and new lawsuits to the courts. Therefore, the other mechanism of dispute resolutions was considered seriously; the mechanism to urge the parties to settle the dispute out-of-court system. The Ministry of Justice and the Court of Justice then empower the existing relevant office providing effective alternative dispute resolution before bringing the lawsuit to the court or even after the lawsuit has been initiated. Whereas other public and private organizations initiated their own mechanism to settle down the disputes for their clients before the lawsuit will be started.

3. Overview of Alternative Dispute Resolution: Types and Functions.

It is normal that people in society come into any conflicts. The disputes may concern ideas or interests within a family, village, district, province or nation even international. Those disputes could be small or severe impacting an individual, society or country. Therefore, every society lay down the rule to control the behavior of people toward any conflicts under merits, customs and laws. However, the law is considered as an essential function to impose social behavior because the law provides right and wrong as well as any sanction toward disobedience and furthermore the law creates mechanism to any disputes arising among people.

Disputes could be mainly identified into 2 different types:

- Civil dispute
- Criminal dispute

Civil dispute means any dispute concerning relationship between individuals. The conflict focuses on the argument of damages to individual's right or interest. To consider whether an individual is entitled to his or her right or interest is to follow the contents of the Civil and Commercial Code of Thai Law. Types of civil disputes are as follows:

- Juristic act and contract. Concerning breach of an agreement parties have entered and causing damages to other.
- Tort. This type of dispute arising from any wrongdoing of the law by an individual regardless of intention or negligence and violate legitimate right of others either to life, health, freedom, property or any other rights.
- Property. Dispute arises from conflict of proprietary.
- Family. Relation of individuals in family could be in conflict such as engagement, marry, divorce or legitimate child.
- Heritage. Conflict on the right to inherit

Criminal dispute means any wrongdoing to criminal law considering as the impact to peaceful of the society and there are the provisions forbidding those wrongdoing and criminal sanctions are imposed. In Thai Criminal Code, the law provides 5 types of criminal sanction as follows:

- Capital punishment
- Imprisonment

- Detention
- Fine
- Forfeiture

The dispute which can be subject to out-of-court settlement is categorized into 2 types:

- All civil dispute. Civil matter concerns right and duty of individual according to the Civil Law. Each individual is entitled to manage dispute by his or her capacity. Therefore, the right to settle any dispute is in the full consideration of those individuals.
- Criminal dispute where the law allows compromise. Even though criminal wrongdoing is considered as the dispute of the state but the law provides open consideration of some types of crime which somehow causes damages to some particular individuals for those to compromise among wrongdoers and victims. When the compromise reach the agreement, that criminal action will be terminated. Therefore, with this type of criminal dispute, parties to the dispute can settle the case out-of-court.

Out-of-Court settlement systems can be mainly separated into two types:

- Arbitration
- Conciliation

Arbitration

It is the fact that most of contracts relation to commercial activities or investment in Thailand, either between private parties or between the Thai Government, or its constituent subdivisions and State Enterprises and private parties, contain arbitration clauses. From the perspective of the Thai Government the acceptance of arbitration clause may be in part due to the need of foreign capital and technology for development projects and to promotion of investment climate in Thailand. Thailand is a Contracting State to the 1923 Geneva Protocol on Arbitration Clauses, the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It is also a signatory to the 1965 Washington Convention on the Settlement of Investment Disputes between States and National of Other States but has not rectified this convention yet.

Not until 1987 when Thailand enacted the Arbitration Act B.E. 2530 (1987), arbitration has been viewed as a functional tool of international dispute resolution and leading scholars, legislators, as well as the judiciary and the Ministry of Justice has since then envisioned Bangkok as an important arbitration center in Indo-China Region. This perception has brought about the establishment of the Arbitration Office in the Ministry of Justice of Thailand in 1990. The Arbitration Office has been successfully gained support and acceptance form both the Government and private sectors. It has also done very well on the holding of conferences, publication and distribution of legal literature and information in this field including training programs. This Office is now the Thai Arbitration Institute (TAI) under the responsibility of the Court of Justice. Most of government contracts today contain standard arbitration clauses recommended by the Office of the Attorney-General which are annexed to the Regulation of the Office of the Prime Minister on Government Procurement. Although arbitration is receptive to Thai Government, it is still in the process of its development under the plan to privatize TAI to become independent non-profit institution where there is the proposal of amending the Arbitration Act to develop its nature up to the UNCITRAL Model Law on Arbitration. One expects that when these two plans are implemented, Bangkok will become more attractive for international dispute resolution in this region.

Nevertheless, not only the TAI provided by the Court of Justice, many private institutions also establish the arbitration regulation and their own mechanisms toward the local dispute resolutions. In particular dispute, the accident dispute for example, there is the arbitration agreement among insurance companies to settle cases involved the accidence. In the dispute on the financial matters, there is a mechanism of the Security Exchange Committee of Thailand providing parties a choice of dispute settlement by arbitration regulation of the office.

Conciliation

It is very interesting to witness the development of conciliation or mediation in Thailand. Thai society, if one would pay close attention, is the society of courtesy or someone may call "the paternalistic society". And conciliation has been one of the manifestations of such paternalism. Traditionally, it was the King in Medieval times who was the fountain of Justice. An ancient inscription can be found illustrating his role in relation to Justice as stated: "He who is troubled may ring the door-bell of the palace and the King shall come out to decide the case himself." Inevitably, the King must have at times played a mediatory role in settling disputes between his people. Encroachment of extraterritorial elements in the form of treaties with foreign power in the nineteenth century, such as the Bowring Treaty of 1855 with Britain, whereby foreigners were exempt from Thai jurisdiction, heralded the decline of the King's role in the administration of Justice. This was finalised with the abolition of absolute monarchy in 1932. At local level, another element of paternalism has always been evident. Village elders, monks and other leading local figures were and still are important catalysts in the judicial process; if a dispute arises, it is to these persons that disputants turn rather than to the formal court system. This is particularly the case in rural settings. However, it should be observed that importation of laws and a court structure influenced by the colonial masters of the nineteenth century created a legal process that was alien to traditional society. Formally, dispute settlement came to be seen as the prerogative of a superimposed bureaucratic structure, while in reality, a great number of disputes were and still are resolved with the assistance of third parties at the local level who are not part and parcel of such structure. However, the development of the law does not ignore this phenomenon whereby the law provide alternative authority for bureaucracy to bring the dispute to an end with amicable process besides the formal rules. One will notice that in all level of authority of justice there is mechanism of conciliation provided on the way from a head of a village through a court where the Civil Procedure Code alternatively empowers a judge to conciliate the dispute.

4. Current Situation Regarding the Use of ADR

To investigate the situation of ADR in Thailand, one has to survey through various institutions providing the settlement of the dispute. We can categories types of institutions which provide ADR mechanism for parties as public and private sectors within detail as the following.

4.1 Public Alternative Dispute Resolution Mechanism

A. The Interior Ministry

According to Local Administration Act of B.E. 2457 (1914) the law provides that it is the duty of the administration officer to facilitate justice to people. The Interior Ministry Regulation pertaining to the conciliation of the village committee of B.E. 2530 (1987) which is enacted by Section 5 of Local Administration Act of B.E. 2457 and Section 5 of Voluntary Self Development and Protection of the Village Administration Act of B.E. 2522 (1979) empower the duty of the village committee in distance area act as the conciliator to settle any dispute arising among members in the village. The mechanism, therefore, provides the settlement in 2 particular ways:

- Civil dispute settlement under the authority of the district head officer

According to Local Administration Act of B.E. 2457 (1914), the law gives the opportunity for the people to discuss with the Chief District Officer in any official matter and the people should be provided proper assistance from the office. From this provision of the law, the Chief District Office will have the authority to settle any civil dispute. And consequently the Interior Ministry enacted the Interior Ministry Regulation pertaining to civil dispute settlement under the authority of the Chief District Officer of B.E. 2528 (1975) and gave guideline of civil settlement to the district office.

- Conciliation of the village committee

According to the Interior Ministry Regulation pertaining to conciliation of the village committee of B.E. 2530 (1987), the law provides the guidance to the committee to act as the conciliator to the civil and some particular criminal dispute settlement among the people in the village. This conciliation work of

the committee was created by the project of dispute settlement by way of conciliation in the level of village, supported by the Attorney-General Office and Administration Department.

B. The Ministry of Justice

Before separation among the Ministry of Justice and the Courts, the office of judicial Affairs under the umbrella of the Ministry of Justice provided the dispute settlement out-of-court through the Arbitration office. This office set up the arbitration mechanism of procedure to support the Arbitration Act of B.E. 2530 (1987). The office enacted the regulation and its proceeding for parties who were seeking for the remedy with the arbitration cause in their contracts. However, the Ministry tried to privatize the office to be managed as a private institute with independent from the government agency. The matter was approved by the cabinet in principle and suggested to establish the stereo type of foundation for the Arbitration office. Presently, the foundation is found to improve and develop arbitration tasks. The main proposes of the tasks are to promote and assist the Arbitration Office as the venue for dispute resolution in civil dispute within the country and international. Besides the arbitration, the office also provided the center for conciliation or mediation. Any dispute cases either before or after court filing could be summit to the center for conciliation. The center would provide an expert conciliator or mediator to handle the dispute, which was sent voluntarily by the parties seeking amicably settlement. In 1997, the Ministry also works out on regional centers for dispute resolution and promotion of conciliation project in nine regions of the country. The cabinet approved this project in July the same year and advised the Ministry to cooperate with the Interior Ministry, the Attorney-General Office and the Law Society of Thailand and regulate the overall mission of each department with apparent budgeting. In November, the executive committee was selected to direct the project of regional centers which had been running till the Ministry of Justice was separate for the Court. The responsibility, consequently, has been assigned to the Court of Justice to improve this project. However, the Ministry is in the process to set up its own arbitration center after the old office was assigned to the Court of Justice and this project is underway of organizing.

C. The Court of Justice

The Court of Justice, after separation from the Ministry of Justice, has been developing more active role toward the alternative dispute resolution. The Arbitration Office which was used to be under the Ministry of Justice responsibility is moved to be under umbrella of the Court of Justice. It is interesting to observe some detail of this office which is now changed its name to “the Alternative Dispute Resolution Office” which still provides two main out-of-court dispute settlement; arbitration and conciliation. The office separates the methods of dispute resolution and assigns two inferior offices namely the Arbitration institute and the Conciliation Center to provide each mechanism of dispute settlement for concerned parties. Meanwhile, in Court system, the law also provides two dispute resolutions besides judgement during the course of trial. According to the Civil and Commercial Code, the law empowers the parties to access to the Court-Annexed Arbitration and Mediation. Section 210-220 of the Code states the proceeding and regulation toward arbitration in Court. Where Section 19-20 provide way of settlement in court by mediation. It is interesting to go through the detail of 2 different channels of dispute resolution provided by the Court of Justice.

The Alternative Dispute Resolution office

This Office was set up after the separation between the Ministry of Justice and the Court of Justice was completed. In fact, the function of the Office is relatively the same as the Arbitration Office under the Ministry of Justice where it is the transferring process under the agreement of the two departments. Works and cases of the Arbitration Office were delegated to continue under this new ADR Office. In the meantime, the works and cases of the conciliation were forwarded to the Office as well. Upon reorganization of the out-of-court dispute settlement office under the Court of Justice, it is interesting to survey some background and check some statistic of the office and center of arbitration and conciliation.

<u>The Arbitration Institute</u>

This Institute is called the Thai Arbitration Institute (TAI). Since Bangkok has developed to be one of the major business metropolises in Asia, a further concentration on this economic location is certain. The town owes its immense upswing to its very own dynamic and individual charm. Since 1990 Bangkok could confirm its substantial role also as seat of and international arbitration institute, the

Thai Arbitration Institute (TAI), and has therefore been accepted for its on the place solution of disputes among businessmen all around the world. TAI has decided as a fundamental principle, that litigation parties should be absolutely free in choosing their individual proceeding. Nevertheless it provides all necessary tools if demanded so and gives there fore the possibility of ultimate relief in order to optimally support the settlement itself. To include the possibility of a TAI arbitration in the contract is the valuable basis to business success. The parties of TAI arbitration have the choice between TAI Arbitration Rules, which are based mainly on the UNCITRAL Model Law and used successfully since 1987, the UNCITRAL rules or any other proceeding rules, while all kinds of combination are conceivable. It is not the uniform regimentation that shall be initial point of the settlement but an individual problem orientated choice of rules, considering the specific case. Target aim is always the complete and to all sides satisfying solution, but never the self-purpose of the proceeding. Language of the proceeding is Thai or English. Following rule 3 of the TAI Arbitration Rules[3], each arbitration shall be proceeded by an attempt of alternative dispute resolution in the hands of the parties, as there are mediation or conciliation. Target aim again is to influence as little as possible the autonomy of the parties' will, to allow a friendly settlement of the conflict at the very earliest point of time. When deciding on the arbitrators and their number the parties have limited freedom to choose. Hereby they can hold back of the extensive list of arbitrators, provided by TAI, that holds highly accepted and experienced experts of different fields, as lawyers specialized in different topics, engineers, university lectures or businessmen. Often it will be especially profitable to the parties, to use this excellent selection of neutral arbitrators. TAI provides the following facilities free of charge, such as: three spacious conference rooms, one smaller hi-fi video and audio equipped meeting room, office equipped with state of the art communication systems, internet and fax connection, powerful computers and copying machines and an experienced team of competent officers. Only the consume of materials, catering and costs for telecommunication will have to be charged. There is no administrative fee to be charged from the parties. Only the individual fee of the arbitrator, that is chosen by the parties are to be paid. Arbitrators, listed on the TAI list, are at clients disposal for a fee commencing at about 40,000 bath up for the entire proceeding. About the enforcement, Thailand has been a member country of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award since 1959, today joined by more than hundred countries worldwide. Hereby the enforcement of foreign arbitral awards through the Thai courts is as well guaranteed as the enforcement of TAI decisions through the courts of the treaty members. The submission to the treaty as instrument of enforcement on the one hand and the make use of internationally respected applied proceeding rules on the other hand are the basic conditions for the success of TAI arbitration. Some statistic of cases brought to the office from 1990 to 2001 as follow: (the information up to December 20, 2001)

Year	Number of Cases	Dispute Amount (Baht)
1990	1	12,465,991
1991	7	55,109,041
1992	10	1,056,136,304
1993	10	1,067,151,723
1994	13	6,479,387,210
1995	17	204,210,799
1996	20	1,200,511,319
1997	48	2,783,744,858
1998	80	11,314,793,665
1999	109	6,900,515,945
2000	64	38,450,196,870

[3] Detail of the Rules is provided in Appendix.

2001	43	11,893,101,982

According to the statistic, the office has the number of settlement process and timing as follow:

Year	Cases pending from the year before	New cases	Number of awards	Cases in proceeding
1990	-	1	-	1
1991	1	7	3	5
1992	5	10	7	8
1993	8	10	12	6
1994	6	13	7	12
1995	12	17	13	16
1996	16	20	22	14
1997	14	48	18	44
1998	44	80	46	78
1999	78	109	85	102
2000	102	64	75	91
2001	91	43	39	-

The Mediation Center

Besides TAI, the Alternative Dispute Resolution Office set up the venue of conciliation as well. The Mediation Center, thereby, was set up to response to this type of settlement. The Center practices conciliation or mediation process according to the Conciliation Rules[4] which was published in 1990 whereas this Rule was used by the Arbitration Office under the Ministry of Justice at the time. Last year, the Center was assigned to be responsible to handle the financial disputes which mainly are sent by courts according to the new regulation of the Court of Justice. The regulation will be mentioned in detail in topic of alternative dispute resolution in courts. Upon starting to operate last year, the Center recorded the statistic to the dispute settlement among the financial problems which were forwarded to be mediated in 2001 as follow:

Month	Cases pending from last month	New cases	Number of settlement	Cases forwarded to next month
June 2001	-	19	-	8
July 2001	8	65	9	49
August 2001	49	303	5	300
September 2001	298	271	14	525

[4] For details, *see* the text of the Regulation in Appendix.

Within the number of cases sent to the Center on the above diagram, 569 cases came from district courts and there were 525 cases in the process of sending with total value of all cases is 25 million bath. 2 cases came from provincial courts with total value of 50 million bath.

Courts of Justice

Under the Thai Civil Procedure Code, the law provides provisions empowering a judge to bring about a settlement of a case among parties by way of conciliation. In addition, the law, as well, provides procedures to help in supplementing the regular court trial by way of arbitration. Nevertheless, these two mechanisms of dispute resolution incorporated in the procedural law enable judges to alternatively initiate solution to disputes of cases in their hands over adjudication. It is, therefore, interesting to look into the development of these mechanisms toward case resolution by judges in courts in the wake of the effort to solve the problem of caseload in court and the trial delay.

Court-Annexed Conciliation

According the Civil Procedure Code, the law provides mechanism of settlement by way of conciliation before the hearing should be started. It is the authority of the presiding judge who can make an order of appearance of the parties of dispute in the court when there can be an agreement or compromise after negotiation in the courtroom. And the judge has power to reconcile the parties to bring about an agreement or compromise

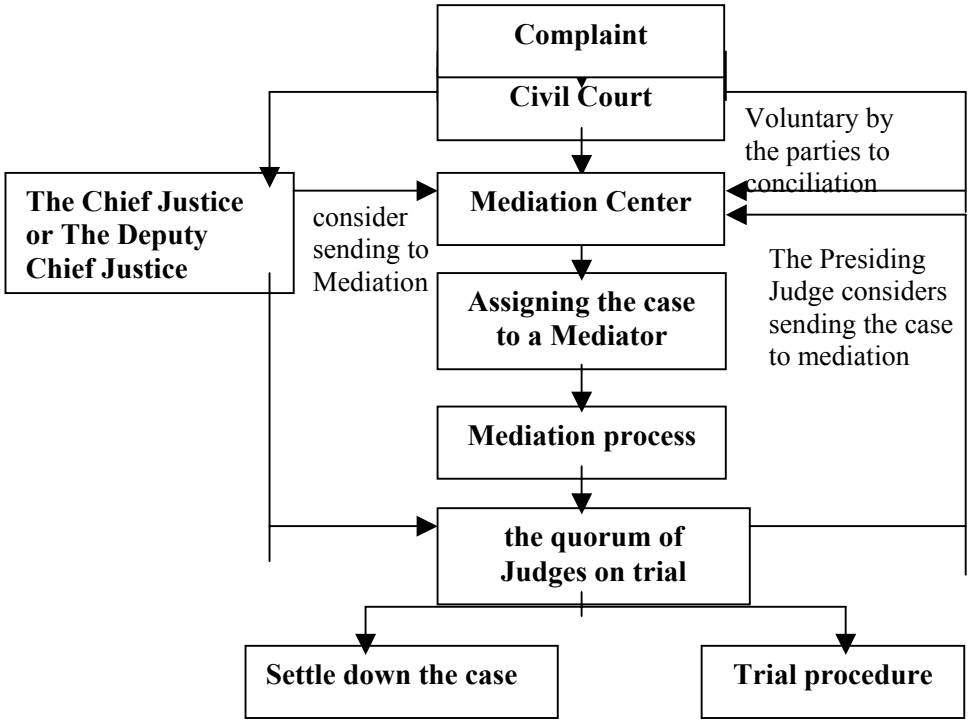
Section 19 of the Civil Procedure Code states that *"the Court shall have power to order all or any of the parties to appear in Court in person as it may think fit, even when such party or parties are represented by lawyers. If the Court is of opinion that the personal appearance of the parties may bring about an agreement or a compromise as provided by the following Section; it shall order them so to appear."*

Section 20 states that "*No matter on what stage of trial, the Court have power of trying to justify parties to agree or compromise on the matters of dispute."*

With these provisions of law or the so-called "Court-annexed conciliation", judges are acquainted with conciliation in the bench. However, to bring the parties of dispute to an agreement is something more than words of request from the judge. It needs a lot of explanation and strategy to have the parties understand the good point of conciliation and try to work out with any satisfying options to settle down the dispute. Some judges feel reluctant to step more deeply into the matter of dispute, afraid of loosing impartial status.[5] Therefore, for number of years, conciliation in the courtroom provided not outstanding numbers. However, the problem of caseload, trial delay, together with in adequacy of number of judges to cope with the volume of cases coming into courts have drawn considerable attention to the Thai judicial circle 8 years ago. There was the seminar in order to accumulate concept and way to make solution in the problems. The Court of Justice, consequently, picked up the conciliation as one of its policy to manage cases in the court. It started in Civil Court, the biggest court of first instance in the country. The Chief Justice of the court at the time foresaw the importance and implication of conciliation toward the disputes. He with his colleagues, after serious brain stroming, established the project of conciliation by recruiting judges who were well experience in conciliation to work with the cases where parties agreed to reconcile. Those judges were not a presiding judge or a judge in the quorum of the case where he or she was assigned to mediate. This strategy apparently solved the problem of impartiality where many judges were afraid of because the judge who acted as mediator had no authority to adjudicate that case. Then the process of conciliation could be proceeded more deeply and efficiently. Number of cases, which could be settled, increased

[5] This is the same concept that a conciliator should not be allowed to became an arbitrator in settling the same dispute. Associate Professor Pijaisakdi Horayangkura of Chulalongkorn University, Faculty of Law mentioned in his paper on "Cultural Aspects of Conciliation and Arbitration: Should There Still be a "Center" that this concept is due to the fact that it is not possible to retract one's mind to become a clean slate again and for fear of giving out to much, which may affect the final result, i.e. the arbitral award, a disputing party may give so little information to the conciliator that practically the conciliator shall fail in his mission.

dramatically. In this project, the Chief Justice under his capacity of court management pronounced the regulation of conciliation or mediation called "Civil Court Regulation on Mediation for Leading to Dispute Settlement B.E. 2537 (1994)" as a guideline for parties and related personals to appropriately follow whereas he issued a Civil Court order concerning the establishment of a new division responsible for functioning specifically on mediation process. One year later, the results of this project showed significant improvement of case settlement and satisfaction to case management. Many courts in the country considered taking steps upon this conciliation method to handle with their cases in the dockets. It is interesting to look at the system of the Civil Court on conciliation to understand its procedure.



It is interesting to understand some concept and principle of this Civil Court Regulation. This regulation has the objective to bring about process of mediation applied in the Civil Court to facilitating more settlement which will result to the reduction of the volume of cases outstanding in the court under the more rapid disposition of cases from the court with efficiency and effectiveness. Mediator is the judge working in the Civil Court, whom the Chief Justice of the Civil Court will be appointing to act as mediator. In proceeding to mediate on any case, a specific prior authorization will be obtained from the Chief Justice or his Deputy. The selection of the cases to mediate is made by the judge who adjudicates that case, the Chief Justice or his deputy.[6] The selection by the judge can be made after the day of the settlement of issues by sending the case back to the Deputy Chief Justice of the Civil Court to decide whether or not to forward for mediation. In case of no settlement of issues, no later than 2 days before the first day of hearing, the case will be sent back to the responsible Deputy Chief Justice. But in case of certain witness examinations have been done, the judge, if it deems appropriate, might send the case back, no later that 2 days before the next hearing, to the responsible Deputy chief Justice to select. In addition, the Chief Justice or the Deputy has the power to forward any cases for mediation if it deems appropriate.[7] Although, the Regulation does not provide certain

[6] Rule 3.

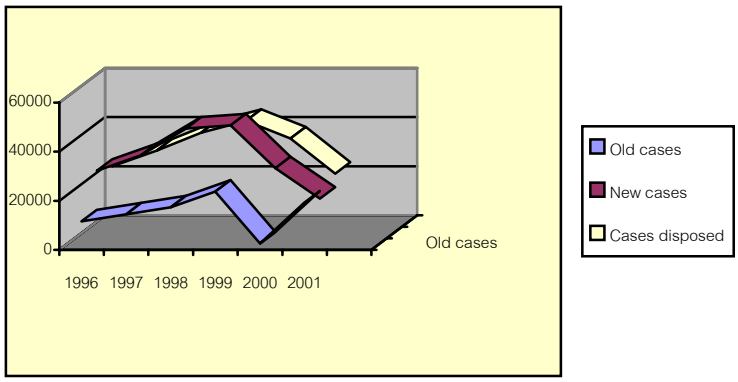
[7] Rules 6-9.

specific types of cases which would be compelled to mediate, it does provide the guidelines for consideration of type of cases appropriate for mediation, i.e. tort, breach of contract, case where the commercial bank is plaintiff, or case where the parties have some prior relationships.[8] The Regulation provides for the mediator the responsibility to proceed the case without delay, as may be deemed appropriate and justice to the parties. In addition, it empowers the mediator to order the parties to appear in court or any other place as the parties would have the access together.[9] In case of unsuccessful mediation, the mediator will note down a memorandum and send the case back to the responsible judge to proceed further with the trial procedure requirements. In this case, the parties are prohibited to use the facts exposed in the mediation proceeding as evidence in the litigation unless the parties agree otherwise on the issues of dispute and such agreement is not contrary to the law. Conversely, if the mediation is successful, the mediator will prepare the compromisory agreement, write down the facts as to the mediation proceeding in a memorandum, and then send the case back to the responsible judge to give judgement in accordance therewith.[10]

Number of cases brought to mediation process of the Civil Court

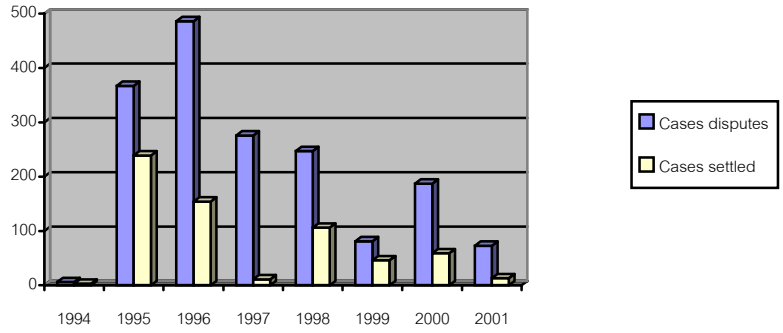
Year	Number of cases	Settlement	Not settled
1994	6	3	2
1995	367	239	128
1996	487	154	205
1997	276	113	198
1998	247	106	143
1999	81	46	83
2000	187	59	82
2001	73	13	57

Number of cases in the Civil Court



[8] Rule 10.
[9] Rule 12.
[10] Rule 14 and 15.

Number of cases in mediation of the Civil Court



Two years after starting up the project of mediation in the Civil Court, the President of the Supreme Court issued the Practice Guidance on court-annexed conciliation and arbitration which was considered as direction for judges when they were dealing with these issues of their cases. This Guidance provided the presiding judge should initiate the conciliation process when there was a reasonable chance of amicable settlement. In case of any issue in dispute involving technical point of fact and there is no conciliation on this point, the judge, with the approval of the parties, may appoint an arbitrator to rule on the matter given. Moreover, the Guidance provided some procedure for the judge to use while mediating the dispute such as providing special room for conciliation to create appropriate atmosphere. Formal dress of the judge and lawyers can be ignored because that could bring the picture of trial influential to amicable negotiation. When the dispute is settled, the judge could provide refund of the court fee to the parties, encouraging them to settle the case.

Practice Guidance on Court-Annexed Conciliation and Arbitration

Similar to the English practice where the Lord Chancellor may issue *Practice Directions*, the President of the Supreme Court in Thailand may issue *Practice Guidance* for judges in order to achieve uniformity and fair dispense of justice. Influenced by the much publicized use of ADR in the United States[11], in 1996, the President of the Supreme Court issued the Practice Guidance on court-annexed conciliation and arbitration.[12] The Practice Guidance may be summarized as follows:

(a) In cases where the presiding judge is of the opinion that there is a reasonable chance of amicable settlement between the parties, the court shall initiate the conciliation process.

(b) In cases where the conciliation fails and the issue in dispute involves technical point of fact where the assistance of a neutral or an expert may be helpful in the speedy resolution of the case, the court, with the approval of the parties may appoint an arbitrator to rule on the matter given. The award thus rendered by the arbitrator, if approved by the court, shall be incorporated in the final judgment.

[11] Chief Judge Clifford Wallace formerly of the US Court of Appeals for the Ninth Circuit was a major stimulant in Thailand for this influence.

[12] *Practice Guidance Concerning Conciliation dated 7 March B.E. 2539 (1996).* The Practice Guidance was issued by virtue of Section 1 of the Statute of the Court of Justice (then in force) whereby the President of the Supreme Court was empowered, in the capacity as head of the Judiciary to lay down 'directions' for judges. In practice these 'directions' are invariably termed 'Practice Guidance'.

(c) In cases where the conciliation fails and the presiding judge considers that it might not be appropriate for him or her to continue sitting in the case, he or she may withdraw from the case except where it is contrary to the intention of both parties.

(d) Each court may designate a special room for conciliation purposes. The atmosphere shall be informal. The judge and the lawyers shall not put on their gowns.

(e) Where a speedy settlement is achieved, the court may consider returning the court fees to the parties. At present the court fees stand at 2.5% of the amount in dispute but not exceeding 200,000 baht (approximately US$ 5,300) payable at the filing of the Claim. This is designed as an incentive for settlement in certain cases.

Conciliation is now practised by courts of justice throughout the country with encouraging figures of success. Even cases at the appellate level may be settled by conciliation. It is widely used in the Civil Courts in Bangkok, in the civil jurisdiction of provincial courts throughout the country, in the juvenile and family courts for cases concerning family law, in the Central Labour Court for cases of labour disputes and in the Central Intellectual Property and International Trade Court for cases of intellectual property and international trade disputes.

Role of the Judge: Inquisitorial V. Adversary

Although the Thai legal system may be classified as belonging to the civil law tradition whereby the German *Bürgerliches Gesetzbuch* (BGB), the French *Code Napoléon* and the Japanese Civil Code played a dominant part in the formation of its Civil and Commercial Code. The English common law had a significant influence on the Thai Commercial law in particular on Book III of the Civil and Commercial Code entitling Specific Contracts. On the procedural side, with the influence of the English Inns of Court and legal educational institutions where Thai judges of earlier times were exposed to, Thai procedural law may be described as adversary. This predicament may raise some jurisprudential problem.

There are two conflicting views as to the role of a civil court. The traditional English view is that the court should play a passive role and leave the conduct of the case to the parties; the court should act as an umpire to see that the parties play the game of litigation according to its rules and to give an answer at the end to the question 'who's won?' The continental view is that once the parties have invoked the jurisdiction of the court it is its duty to investigate the fact and the law and give a decision according to its view of the justice in the case with regard to any public interest that may involved.

The question to ask is if a judge on the bench attempt to lead a negotiation towards settlement of the dispute, would he in any way be compromising or be seen as compromising his role as a passive neutral?

The truth is judges in Thailand have little or no difficulties on the problem raised. The reason may be based on the fact that on the true analysis, the Thai legal system is a blend between the civil and common law family. Thai judges are familiar with conciliation. The Civil Procedure Code, since its promulgation in 1935, prescribes in Section 20 that the Court shall have the power, at any stage of the proceedings, to attempt compromise or conciliation between the parties on the issue in dispute.

The Thai courts, when conducting a conciliation process, will depart from their traditional passive role of a judge in the adversary system, to the role of a more active judge in the inquisitorial system. However, when the judge feels uneasy or inappropriate for him or her to continue sitting in the case, he or she shall withdraw. Otherwise the judge may be challenged on the ground of bias. However, the instance is very rare. The status of a judge, being in a position of respect, may actually assist the process of conciliation. In a case in the remote part of Thailand, the plaintiffs and the defendants are brothers and sisters involving in a bitter dispute on the matter of an inheritance where the father died intestate. After some lengthy session of arguments and allegations, the presiding judge, who acted as the conciliator, asked the parties in earnest. "Do you folks still offer merits to your father?" Both parties answered in an empathic "Yes". It is common indigenous belief that when one's elder dies, the living relatives shall offer merits to the dead for him to get on to a better life after death. The judge said in a loud voice. "Then don't bother to do any more merits. Your father cannot go anywhere. Actually, he is

crying and suffering at the moment because you lot are fighting over his assets. He cannot rest in peace because of you." The dosage of "shock therapy" did catch the attention of the parties and led to amicable settlement. This is hardly the role of a judge in an adversary system. But the important thing is that it works.

In the process of conciliation, it is always helpful for the conciliator to refrain from making a statement or opinion. It is always more prudent to form a question than to make a statement. For examples, You don't suppose to have any problems on the Statute of Limitation? I suppose you can justify on the amount of damages claimed? Where does the burden of proof lie? Etc.

Some Techniques Used in Court-Annexed Conciliation

Recently, Section 20 of the Civil Procedure Code[13] which initiated court-annexed conciliation since 1935, has been amended to incorporate further modern techniques in conciliation. Three more paragraphs are added as follows:

For the purpose of conciliation, where the court deems appropriate or where on request of a party, the court may order that the conciliation be conducted behind closed doors in the present of all or any of the party with or without attorney.

Where the court deems appropriate or where on request of a party, the court may appoint a sole conciliator or a panel of conciliators to assist the court with the conciliation.

Rules and means of court-annexed conciliation, the appointment, powers and responsibilities of conciliators shall be governed by Ministerial Regulations.[14]

Furthermore, Section 19 of the Civil Procedure Code empowers the court, for the purpose of conciliation, to order litigants in the proceedings to be present in court, although legal representation is appointed. The sanction for disobeying the court order to make a personal appearance is contempt of court. **(Section 31(5))**

There are some practical points used in court-annexed conciliation where the judge acts as conciliator in Thailand:

- Conciliation is conducted in a conference room not in the court room. Formalities are dispensed with. Secrecy is enforced. Public and the press are barred from witnessing the conciliation proceedings.
- Non-disclosure agreement is made. Without prejudice condition is added to facilitate the invention of options for compromise.
- Although the law allows conciliation without attorney, in practice the conciliator never discourages the present of an attorney. Attempt to do so is likely to have an adverse effect on the trust of the parties in dispute towards the conciliator. The decision to exclude attorney should come from the party itself. It is the conciliator who should say, attorneys are welcome.
- Caucuses with each of the parties to the exclusion of the other are helpful; sometimes to dilute some of the less-than-reasonable claims or to increase some of the more-reasonable offers. Although the law allows the use of caucuses, it is best policy to obtain the consent of the parties first.
- An atmosphere of joint effort to solve the problem is perhaps the best environment to create in conciliation. Parties are invited to present options to settle the dispute. Each option caters for the mutual interests of the parties. Conciliator to be sensitive to the need and legitimate interest of each party.
- Conciliator to be careful about objectivity and neutrality. Instead of making a statement in the affirmative. Asking a question is more "politically correct" and may achieve the same result.

[13] As amended by the Civil Procedure Amendment Act (No. 17) B.E. 2542 (1999).
[14] No such regulations have yet been formulated.

- Refreshments, coffee breaks, (good) working lunch or even a few jokes of the day do help the atmosphere in a negotiation. Miracles sometimes happen during these "time-out".
- It is arguable the wisdom of forcing litigant to appear in conciliation with the threat of contempt of court. The devise is sometimes used in consumer claims where the defendant is a corporation.
- Under a recent amendment to the Civil Procedure Code, conciliation is compulsory in small claims disputes[15].

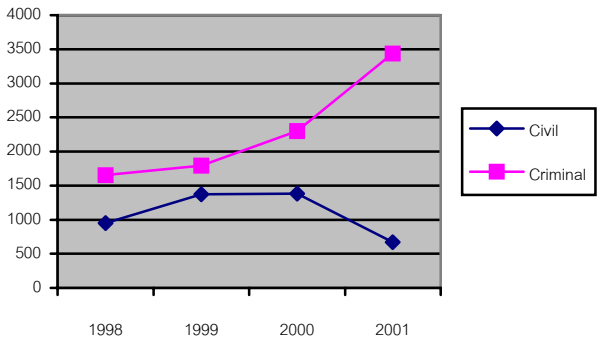
In the advent of Guidance, courts of justice is now practicing conciliation throughout the country. However, some courts, namely the Bangkok-South Civil Court and the Central Intellectual Property and International Trade Court, provided more detail on procedure and regulation toward conciliation which rendered the same mechanism like the example of conciliation regulation in the Civil Court.

Number of cases brought into mediation process of the Central Intellectual Property and International Trade Court[16].

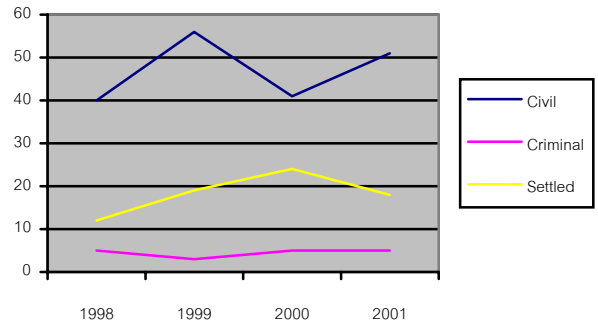
Year	Civil cases	Criminal cases	Civil cases settled	Criminal cases settled	Total number
1998	40	5	9	3	12
1999	56	3	17	2	19
2000	41	5	23	1	24
2001	51	5	17	1	18

Number of cases in the Central Intellectual Property and International Trade Court

Number of cases in Mediation



Number of cases in mediation process.



In 1999 the Civil Procedure Code was amended in the section of conciliation with more open approach for judges to facilitate amicable settlement. The Law on Section 20 states "*At any stage of trial, the court may conciliate the parties on the dispute issues to bring about the agreement or compromise*" And with additional approach of the Law, Section 20 bis provides that "*For the purpose of conciliation, where the court deems appropriate or where on request of a party, the court may order that the conciliation be conducted behind closed doors in the present of all or any of the party with or without attorney. Where the court deems appropriate or where on request of a party, the court may appoint a sole conciliator or a panel of conciliators to assist the court with the conciliation. Rules and means of court-annexed conciliation, the appointment, powers and responsibilities of conciliators shall be governed by Ministerial Regulations.*" This amending law shows very interesting point of a conciliation

[15] Section 193 paragraph two of the Civil Procedure Code as amended by the Civil Procedure Amendment Act (No. 17) B.E. 2542 (1999).

[16] The Central Intellectual Property and International Trade Court was inaugurated in 1998.

in court where the law allows a presiding judge separate both parties and provide separate meeting with each side. Moreover, the judge can discuss the dispute issue in the absent of their lawyers. This approach provides more room for judges to play a effective role of a mediator, discussing and discovering some information to bring both parties to satisfactory remedy besides litigation where, in practice, judges most of whom familiar with the concept of adversarial system of litigation would be cautious to provide privately discussion with each side of parties on the matter of the law suit. Furthermore, the judge, with a view of appropriation, can appoint a person or a group of person, within the court authority, to be a case mediator(s) facilitating the settlement for both parties. With this amendment to the law, some judges use this approach effectively with outstanding performance on the numbers of cases being settled.[17]

In 2001 the Courts of Justice enacted two regulation on conciliation for every courts in the country to apply these regulations and practice in conciliation. The first one is the Regulation of Court of Justice pertaining to the Conciliation on Financial Dispute B.E. 2544 (2001).[18] This regulation was established in the midst of increasing number of cases on financial disputes (most of cases dealing with Non-performing Loan) consequently deriving from economic crisis. These types of cases have been causing turbulent to case management of the courts all around the country especially the courts in many big cities where cases numbered more that 10,000 a year. Having considered the conciliation as the potential channel to settle down this type of dispute effectively, the Court of Justice, therefore, provides this conciliation practice in the courts with expectation of helping to ease problems of case management. Under this regulation, the Court of Justice assigned the Mediation Center under the Alternative Dispute Resolution Office to take responsibility and defined the type of financial dispute that should come to play[19]. The regulation set up a conciliator or mediator attached to the office, in prompt preparation to be called on duty when a case is sent to be mediated.[20] An expert can also be called for service in case that there should be some comment or suggestion in some particular financial conflicts or issues, in role of helping to bring about the fair treatment for parties to come to the settlement. A party to the case can ask the court to send the case to be conciliated with restructuring of debt or payment plan.[21] The procedure of conciliation is set up under this regulation to provide effective process with the concept of mediation for example the authorized person of each party should be present in the meeting to provide immediate decision making or information during the process should be under confidential agreement. Moreover, the regulation imposes timing of the procedure on the reason that the process of conciliation should not consume inappropriate or over reasonable timeframe causing delay of the case. The regulation also provides the registration of mediators or conciliators after passing the process of recruitment. The code of conduct of mediator is stated in this regulation. Finally, payment of conciliation which is one important matter is imposed as well in this regulation.

The second conciliation regulation is the Court of Justice Regulation pertaining to Mediation B.E. 2544 (2001).[22] This regulation was enacted follow the first regulation with the reason of setting guideline procedure for courts to practice conciliation procedure on general dispute cases different from particular financial dispute. Based on the same rationale, the Court of Justice considers the usefulness of the conciliation toward parties and the court procedure where conciliation not only facilitates amicable settlement under the factors of expeditiousness and less expense but also brings satisfaction among the parties while keeping good relationship with each other. And conciliation is one of the best options for the courts to apply when dealing with case management. Having considered the above rationale, the Court of Justice, with intention to initiate and support this mechanism, set up the standard regulation on conciliation procedure of the courts in the country to

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[17] Judges in the Central Intellectual Property and International Trade Court apply Section 20 bis paragraph one with satisfactory results.

[18] For details, *see* the text of the Regulation in Appendix.

[19] Section 3 states that "financial dispute" means the dispute where a financial institute as the creditor claims a debtor(s) for monetary payment.

[20] A list of conciliators and experts is maintained under the Regulation by the Center.

[21] Even after the submission of 'reconstruction plan', the court, with the consent of the parties, may refer the case to the Mediation Center.

[22] For details, *see* the text of the Regulation in Appendix.

apply. Under Section 17(1) of the Court of Justice Administration Act B.E. 2543 (2000), the Court of Justice Administration Committee enacted the Court of Justice Regulation pertaining to Mediation B.E. 2544 (2001). This regulation provides general procedure for courts to recruit conciliators or mediators who could be any judge in that court (who should not be the one responsible to adjudicate that case), court official or any appropriate person[23]. The conciliator must have no relationship or interest with any parties otherwise could be revoked by the court[24]. The procedure of conciliation is also stated in this regulation with the process to bring the case to settlement under the concept of conciliation for example asking voluntary consent to conciliate before starting the process[25], initiating information exchange and generating options[26] or providing confidential process without any record except otherwise agreed among parties[27]. One important matter of conciliation is confidentiality where the regulation provides confidential agreement among parties not using any information or fact in the conciliation discuss for any other purpose especially in the trial of court or arbitration[28]. This regulation sets up official registration of the conciliator and provides the lists to all courts. A conciliator should be familiar conciliation and have some special knowledge on other field with no bad personal record[29]. Finally, the regulation provides fee of duty for a conciliator who is paid by the court in case the conciliation is under official registration. If a conciliator is any other person, parties must agree on expense before starting the process.[30]

According to the statistics, in 2001 all courts of the first instance in Thailand mediated 33,376 cases .

Court-Annexed Arbitration

Court-annexed arbitration is a welcome development of 'case management'. It helps solve the problem of backlog of cases. It is particularly useful in construction cases where the services of an expert are of great importance. It can save days, weeks or even months of court time in the testimony of expert witnesses. Court-annexed arbitration often occurs at the pre-trial conference where a difficult question of fact is singled out for special consideration by a specialized arbitrator.

The advantages of arbitration compared to litigation are traditionally listed as follows:
(a) Privacy.
(b) Tribunal of the parties' choice.
(c) Informality of proceedings.
(d) Speed and efficiency.
(e) Lower costs.[31]
(f) finality of the award.

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[23] Section 6.
[24] Section 11 and 12.
[25] Section 16.
[26] Section 18.
[27] Section 21.
[28] Section 26.
[29] Section 28.
[30] Section 35, 36 and 37.
[31] In many cases whether arbitration incurs lower costs than litigation is debatable. With respect to one of the direct costs - filing fees and other tribunal fees - arbitration can be more expensive than all other forms of dispute resolution including litigation. Since in most jurisdictions filing fees and court fees are nominal. In Thailand, court fee is calculated at 2.5% of the amount in dispute but not exceeding 200,000 baht (approx. US$ 5,300). The International Chamber of Commerce (ICC) Court of Arbitration's filing of registration fee is US$ 2,000 and an additional administrative charge, a percentage of the amount in dispute is added. In an apparent effort to counter its reputation for being too expensive, the ICC announced that the administrative charge is now capped at US$ 50,500 regardless of the amount in contention. Attention must also be given to the fact that while judges work may be described as public service most arbitrators charge for fees. Two other factors must also be taken into consideration. First, attorney fees can be huge if the trial lasts a long time. Secondly, in comparing arbitration costs to litigation costs, one must remember that arbitral awards are not themselves enforceable and if the losing party does not voluntarily pay, additional costs for a judicial enforcement proceeding will be incurred.

The ultimate end of both litigation and arbitration from the plaintiff's or claimant's point of view is the effective enforcement of the judgment or award. The most certain method to ensure the enforceability of a judgment is to litigate in the national court of the defendant. But most international businessmen and their lawyers are reluctant to sue in the defendant's national court. The alternatives are arbitration or litigation in the national court of the plaintiff or, possibly, in a neutral country. Unless the defendant has sufficient assets in the place where the litigation takes place, the plaintiff will have to seek enforcement of the judgment in another country. In case of arbitration, if the respondent does not voluntarily pay, the claimant will have to seek judicial assistance in the enforcement of the award regardless of where the arbitration took place.

Court-annexed arbitration has been included in Sections 210-222 of the Civil Procedure Code since its publication in 1935, but the provisions have never been used until very recently when ADR is seriously considered and practiced. Court-annexed arbitration arises when the parties fail to put an arbitration clause in the contract and later bring a civil action in court. At the pre-trial conference when considering the issues in dispute, the judge may, in consultation with and by consent of the parties, refer complicated technical issues on question of fact to arbitration. This is seen as a means of involving a judge in case management. Most of the advantages of arbitration as a means of dispute resolution can be obtained by court-annexed arbitration. However since the award is incorporated into the final judgment of the court, it loses the enforceability of the award abroad under the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards 1958. Since the incorporation of arbitration clause in a contract is of recent phenomenon in Thailand, many commercial disputes that would have gone to arbitration were brought to courts of justice creating a great amount of backlog. Referring some of the issues to arbitration is a welcome option for judges at the pre-trial conference.

The Establishment of the Central Intellectual Property and International Trade Court

Although litigation is not considered as an ADR, modern techniques learned from ADR could be valuable for judicial reform of civil litigation. This is particularly true in Thailand with the recent establishment of the Central Intellectual Property and International Trade Court (IP&IT Court) whereby ADR methods are adopted to a large extent. ADR, originally conceived as means for alternative dispute resolution has now been accepted as method for litigation in court. The significance of ADR has turned a full circle. It is proposed now to examine some salient points of this court.

In late 1996, the Act Establishing the Intellectual Property and International Trade Court and Its Procedure 1996 was passed by the Parliament. The Act was the culmination of a joint effort between the Ministry of Justice and the Ministry of Commerce in the wake of negotiations between Thailand and the United States as well as the European Countries on trade related aspects of intellectual property rights. The Court is established to create a 'user-friendly' forum with specialized expertise to serve commerce and industry. International trade is added to the jurisdiction of the court for the reason that in a country like Thailand specialized Bench and Bar in intellectual property and international trade should be grouped together for easy access and administration. This is also seen as an answer from Thailand to the problem of delay and lack of expertise in civil litigation.

The followings are some of the prominent features in the new court system:

- Liberal use of Rules of the Court to facilitate the efficiency of the forum.
- Exclusive jurisdiction in the enforcement of arbitral awards in intellectual property and international trade matters.
- Panel of three judges to constitute a quorum. Two of whom must be career judges with expertise in intellectual property or international trade matters. The third member of the panel shall be an associate judge who is a lay person with expertise in the matters. A double guarantee of specialization.
- Availability, for the first time in Thai procedural law, of the '*Anton Piller* Order' type of procedure.
- Possibility of the appointment of expert witness as *amicus curiae.*
- Leap-frog procedure where appeals lie directly to the Intellectual Property and International Trade Division of the Supreme Court.

- Use of pre-trial conference.
- Use of court-annexed conciliation.
- Use of court-annexed arbitration.
- Use of videoconference for witness abroad.
- Continuous trial.
- Subject to the consent of the parties, documents in English do not have to be translated into Thai.
- Use of written statement in conjunction with oral cross- examination and re-examination.

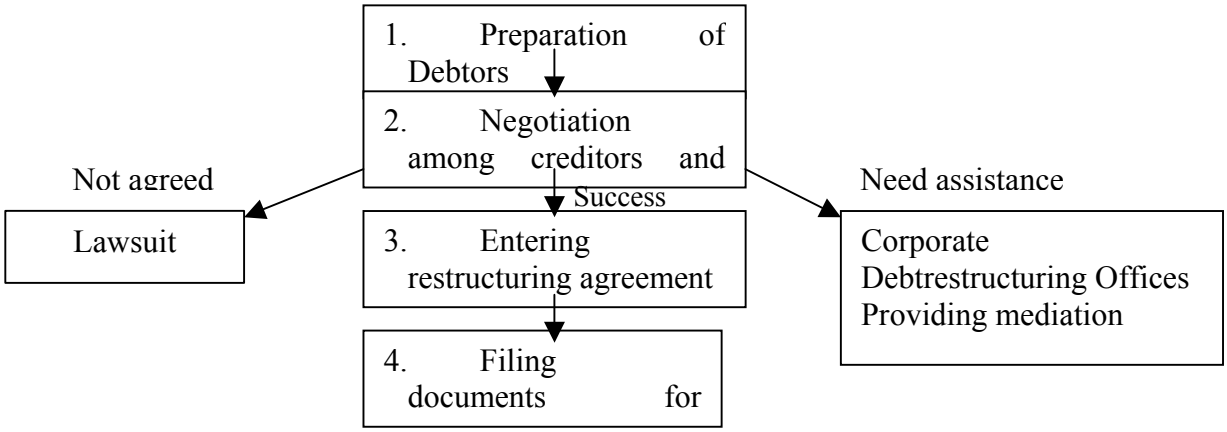
While establishing a new court is not an easy task, the promotion of it to international commerce and industry is most difficult. One will have to create the right 'legal environments' to attract international commercial litigation. Reputation, integrity, expertise, convenience, accessibility, expenses, respect and the enforceability of judgment in jurisdictions where it matters most are some of the criteria one considers hard when choosing a forum to conduct international commercial litigation.

With the expansion of trade and investment in the Asia-Pacific region and the growing needs for effective mechanism and management for international commercial dispute resolution. Many arbitration centres have been established in the region in direct competition with the more established centres in Europe and America. One sees an increasing attempt to create and promote ADR. Prospective claimants will have more opportunity than in the past for forum shopping. A predictable phenomenon in the climate of free market economy. The more difficult question is 'quality control'.

D. Bank of Thailand

As having mentioned before, when economic crisis hit Thailand, a lot of businesses could not tolerate to maintain their financial status and became under heavy debt or went bankrupt. Many financial institutes ran into problems with unpaid loan or the so-called "Non-Performing Load or NPL". This phenomenal has been impacting Thailand since 1997 and the Royal Thai Government has been trying very hard to gain back the momentum of financial stability. With cooperation of the Bank of Thailand, many financial institutions agreed to put the plan to solve bad debt problem by way of negotiation rather than starting the lawsuit with debtors. The process of debt-restructuring, therefore, was initiated with the objective to settle these financial disputes with cooperation among parties involved. Because of the purpose of this process is to provide assistance for debtors to keep on their businesses meanwhile creditors will have opportunity to repay money on appropriate basis, this restructuring plan was the important process to support the coming back of Thailand economic stability. To the success of this plan, both creditors and debtors must provide enough effort and cooperation with support from public sectors especial the government agencies and the Bank of Thailand. Within implementation of debt-restructuring plan, the Bank of Thailand established the mechanism to facilitate the process of restructuring for parties by assigning in June 1998 the Corporate Debt-restructuring Advisory Committee (CDRAC) which comprises of representatives from the Bank of Thailand, the Thai Chamber of Commerce, the Industrial Association of Thailand, the Thai Banker Association, the Foreign Bank Association and the Association of Finance Companies of Thailand to be responsible in setting up the policy, organizing the master plan and accelerating the implementation of restructuring negotiation. In August 1998, the Creditor Association and debtors have implemented and signed on the Framework for Corporate Debt-restructuring in Thailand to be the guideline for parties entering Debtor-Creditor Agreement on Debt-restructuring Process and Inter-Creditor Agreement on Restructuring Plan Votes and Executive Decision Panel Procedures including memorandum of debt-restructuring. With the support of the public sectors, there were around 20 items of privilege measurement regulated by the government agencies to benefit both parties who enter to this plan.[32] The process of restructuring can be pictured as this diagram:

[32] The examples of privilege are personal and value added tax deduction and real estate transferring fees waive and no tariff tax..



From March 1999 to June 2001 there were 1,243 debtors entering to the restructuring process with case value of 1,333,885 million baht. 839 cases were settled with case value of 1,176,913 million baht. According to the diagram, it is important to note that the debt-restructuring is the process of the creditor and debtor negotiation on voluntary basis. Therefore, any dispute can arrive at any point of negotiation. The parties can seek assistance from CDRAC to set up mediation meeting by providing a mediator to assist parties settle their disputes.

Process of Mediation

The process of mediation provided by CDRAC can be divided according to the agreement between creditor and debtor or sometimes among creditor and creditor first on the agreement of restructuring plan as follows:

1. In case of debtors with large amount of debts selected by CDRAC to enter into debt-restructuring process according to the Debtor-Credit Agreement on Debt-restructuring Process and Inter-Creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures, the process of mediation will be as follows:

    - When there is any dispute, parties can request CDRAC to appoint a mediator on the issues of dispute.
    - CDRAC will appoint a mediator from the list of persons who have been certified to act as mediator. CDRAC will notify the mediator to parties within 3 days. Parties can make an objection with reasonable ground on the mediator. The selection will be again revived. After agreed on the mediator, CDRAC will have parties submit issues of dispute with all relevant documents within 5 days and after received all documents CDRAC will send them to the mediator within 3 days. The mediation meeting must start with in 10 days from the date of mediator appointment.
    - The creditor and the debtor must offer their positions in form of letter with supporting documents to the mediator within 10 days from the date of mediator appointment.
    - The mediator must finalize report of offers and results of the solutions to all parties and CDRAC within 20 days from the date of submitting positions of parties except the mediator deems appropriate to extend the time.

2. In case of debtors with medium or small amount of debts who enter debt -restructuring process according to the agreement on restructuring plan, the mediation process will be as follows:

    - When all parties agree to enter into the process of debt-restructuring plan, they should finalize the negotiation within 60 days. If they can not settle the dispute within that time, the dispute can be sent to CDRAC to set up mediation process.
    - The mediation process must be implemented within 15 days from the date of requesting mediation. In this process of mediation, parties must summit issues of dispute and options with all relevant documents to CDRAC. CDRAC will appoint

a mediator handling the case within the above timeframe. After the meeting, the mediator must report result to CDRAC.

In 2001, the government enacted Royal Decree to establish the so-called “Thai Asset Management Corporation” or TAMC to manage bad debts transferred from State Financial Institutions with authorities to settle financial disputes by its own decision making. This regulation is the other mechanism that helps to solve the country financial problems.

E. The Securities and Exchange Commission (SEC)

The SEC has been established to supervise and develop the primary and secondary markets of the country's capital market system as well as financial or securities related participants and institutions. Its prime roles are to formulate policies, rules and regulations regarding the supervision, promotion, and development of securities businesses as well as other activities pertaining to the securities businesses; such as issuance and offer of securities for sale to the public; securities exchange, the Over-the-Counter Center, and entities related to securities businesses: acquisition of securities for business take-overs; and prevention of unfair securities trading practices. On the policy of providing standard protection to investors in the capital market, the SEC tries to solve the problem arising from the any malpractice according to the regulation of the security and stock exchange market and other laws. Foreseeing that to recover any compensation, any party concerned has to suffer costs and waste of time in pursuing to recover the damages, the office of SEC, therefore, set up the alternative dispute resolution by way of arbitration among investors and security companies or the likes. The office with hope to save time and money and provide justice with efficiency to the parties, consequently, imposed the process of dispute resolution with 2 steps. First, the process of receiving inner petition of a security company. When dispute arising between an investor and a company, the investor has to proceed the measure according to the inner petition process of that company. If there is no settlement among the parties or the company disagrees with the petition, the investor and the company can agree to submit the issue of dispute to the second step. Second, arbitration process. The dispute matter will be sent to the office of SEC based on voluntary basis. The parties must provide letter of intent to settle the dispute by way of arbitration and submit the matter into the process. During this period, the office can generate brief conciliation before initiate arbitration process. If the dispute can not be solved, the arbitration process will be started. The office enacted the regulation of arbitration according to the Proclaimer of the Office of Securities and Exchange Commission 25/2544 pertaining to Arbitration Procedure. This regulation provides 9 basic procedures toward arbitration concerning conditions to admit the dispute matter, processes of receiving the dispute, mediation processes, arbitration processes, appointment and objection to the arbitrator, expense of managing the procedure, security measure, confidential cause and registration of arbitrators. Because the Office recently developed this regulation of dispute settlement last year, therefore, the number of case is not recorded officially.

4.2 Private Alternative Dispute Resolution Mechanism

Besides the public sector’s provisions on alternative dispute resolution, the private sectors try to establish their own creative channel toward settlement of any relevant dispute. Some of institutes provide effective resolution measure which is very popular among disputants. Some institutes are just in the process of incubation on alternative dispute resolution. Some of private institutes which are interesting to touch upon are as follows:

A. Board of Trade of Thailand

Board of Trade of Thailand is, inter alia, one of very important organizations in commercial transaction in Thailand. Besides promoting and supporting all type of business in the country, the Board realizes importance of avoiding business dispute which is one factor causing drawback to the development of country economy. The Board set up the Thai Commercial Arbitration Committee to be responsible in providing channels to business partners settle their disputes besides conventional court lawsuit. To assist the committee with the dispute resolution, the office of the Arbitration Tribunal was established to be responsible to the committee policy and main tasks.

Arbitration

Board of Trade of Thailand enacted the regulation pertaining to arbitration since July 1, 1968. However, this regulation is rarely used. When Thailand joined the New York Convention on the Recognition and Enforcement on Foreign Arbitration Award, there was no amending of this regulation. The Thai Commercial Arbitration Committee, therefore, suggested the amending of the regulation according to that international standard and the situation of Thailand economic. In 2000, the Board enacted the amending regulation on arbitration procedure called the Thai Commercial Arbitration Rules. These Rules provide the Thai Commercial Arbitration Committee with powers to lay down arbitration rules and regulations under Article 3. Under Chapter 4, the Rules regulate procedure to appoint an arbitrator. In Chapter 5, the Rules imposes the procedure of arbitration where there are proceeding of registration and timeframe including the process of hearing the case. After the hearing, the award will be delivered according to the rules in Chapter 6 where the award shall be made in writing within 180 days of the joint appointment of the arbitrator. The award should clearly specify the obligation, costs and other expenses, which either one or both parties shall perform or undertake, to whom such performance is due and in what manner it is to be performed. Finally, fees and expense are provided under Chapter 7. These Rules were recently enacted. The Office of Arbitration Tribunal does not have official record of dispute under this regulation.

Conciliation

Whereas the Board of Trade of Thailand is a contributor to economic development in Thailand by fostering strong commercial relations among business communities. It is in the best interest of good trade relations to establish amicable dispute resolution mechanisms to settle commercial disputes as a more favourable alternative to litigation where Article 6 of the Thai Commercial Arbitration Rules provides for settlement of disputes by conciliation procedure whenever appropriate. The Board, therefore, set up the Conciliation Rules to facilitate the settlement of all commercial disputes. The Rules provide the process of application where the dispute arising out of or relating to contractual or other legal relationship and the parties seek an amicable settlement by agreeing to place it under the rules and agree to refrain from exercising their right of bringing the dispute in court or arbitration while the process is pending on conciliation. After applying the dispute to the registrar, the parties must present letter of intent to conciliation within 30 days.[33] The conciliator will be appointed by the Thai Commercial Arbitration Committee and after appointment, the parties must submit a written statement describing the general nature of the dispute and the points at issue to the conciliator including further facts if requested.[34] During the process of conciliation, the Office and the conciliator shall keep confidential all matters relating to the conciliation proceedings except otherwise agreed by both parties.[35] Upon termination of the conciliation proceeding whether there is a settlement or not, the Office shall fix the costs of the conciliation subject of payment equally by the parties.[36] And one important matter which is provided in these rules is the model conciliation clause. Article 19 provides that the parties may stipulate the following conciliation clause in the contract so that the Board of Trade of Thailand may conduct the conciliation of dispute arising and apply the Conciliation Rules of the Board of Trade of Thailand to the dispute:

" where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek and amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the Board of Trade of Thailand then in force and the conduct of the conciliation thereof shall be under the auspices of the Office of the Arbitration Tribunal, Board of Trade of Thailand"

Since these Rules were endorsed to become effective as from May 1, 2001, therefore, there has no official record on any of the case proceeding under the rules.

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[33] Article 5.
[34] Article 8.
[35] Article 12.
[36] Article 14 and 15.

B. Casualty Insurance Company Association

Any dispute arising out of losses under the condition of insurance policy can occur in many situations. Insurance companies have routinely the duty to manage those disputes under insurance policy as their business objective. Among parties in casualty claim dispute, sometimes, they are both covered by insurance policies from different companies. Therefore, it is important to the business of those companies to settle down that type of dispute in amicable way while spending less time and cost to the resolution. Many of insurance companies, almost all of them, are members of Casualty Insurance Company Association, therefore, agree to have the Association provide alternative dispute resolution to settle the dispute under their insurance policies. In 1994 the Accident Insurance Association entered into the agreement with the Arbitration Office of the Ministry of Justice on cooperation to assistance on the arbitration for the Association to provide justice, fast and legitimate mechanism toward dispute settlement for members. In the meantime, the Association set up the Office of Arbitration as well as the Regulation of the Association pertaining to Arbitration which was effective on December 1 of that year. After the Association established this alternative dispute resolution by way of arbitration, the responses of the members reflect significant success of this mission. Number of disputes arising have been increasing each year. Most of disputes involve car accidents. The statistic of disputed is showed on the table as follows:

Year	Number of cases	Cases disposed
1994	35	2
1995	746	419
1996	1698	1004
1997	3869	3155
1998	5746	4580
1999	6853	6599
2000	6117	6661
2001	5331	6033

5. Conclusion

This chapter provides general practices of alternative dispute resolution in Thailand. One can notice significant development channels of dispute resolution, which more and more improve their implication to out-of-court settlement over conventional judicial proceeding. Whereby the public sectors are considered as the key factor to support facilitating alternative dispute resolution mechanism to the best effectiveness, the private sectors are following this path of practices and develop its mechanism to support this procedure as well. However, based on statistical information showed above, the alternative dispute resolution in Thailand needs more systematic improvement to enhance its ability to persuade more cases coming to its mechanism especially conciliation or mediation and consequently managing those cases with effectiveness. It is the effort of the Court of Justice as the embedded organization of dispute resolution, as mentioned earlier, paying close attention to improve mediation as the alternative dispute resolution to assist the problem of caseloads in the courts. Upon serious perception, it has been set up new regulations on the procedure of mediation in 2001, supporting the formal rules and law which are using for some period of time but the result of mediation is not satisfactory comparing to the number of cases in the courts. The consequent of mediation under these new regulations has yet to come by some period of time in the future. Therefore, it is interesting to follow this development of mediation in Thailand during this verging period. In the mean time,

arbitration situation in Thailand, perhaps, run into the stage of transforming to the upper level. Arbitration Institute of Thailand (AIT) has developed its reputation to the point of success in some degree especially, *inter alia*, international business dispute. However, arbitration within domestic dispute may need some specific mechanism providing efficient and acceptable process to concerned parties. Meanwhile, the relevant institutes shall provide more effort to promote more arbitration mechanism available in their organizations. Look at the success of arbitration on accident disputes of the Office of Arbitration, the Casualty Insurance Company Association. This is very good example toward other institutes trying to provide trust and acceptable mechanism of alternative dispute resolution in specific matters. In conclusion, there is still more room, perhaps, big room to development of alternative dispute resolution in Thailand.

6. Appendix

6.1 ARBITRATION ACT B.E. 2530 (1987)

ARBITRATION ACT
B.E. 2530 (1987)

BHUMIBOL ADULYADEJ, REX.,

Given on the 19th day of July B.E.2530 (1987);
Being the 42nd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is deemed expedient to enact the law governing out-of-court arbitration.

Be it, therefore, enacted by the King, by and with the advice and consent of the House of Parliament as follows:

Section 1. This Act shall be called the "Arbitration Act B.E. 2530".

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. Whenever a reference is made by any law to the provisions of the Civil Procedure Code relating to out-of-court arbitration, such reference shall be deemed to have been made to this Act.

Section 4. The Minister of Justice shall take charge and control of the execution of this Act.

Chapter 1

Arbitration Agreement

Section 5. Arbitration agreement means an agreement or an arbitration clause in a contract whereby the parties agree to submit present or future civil disputes to arbitration, irrespective of whether there being the designation of an arbitrator.

Section 6. An arbitration agreement shall be binding upon the parties only when there is evidence thereof in writing, or there appears an agreement in an exchange of letters, telegrams, telexes, or other documents of the similar nature.

Section 7. The validity of an arbitration agreement and the appointment of arbitrator shall not be affected even it appears thereafter that any party thereto is dead, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent.

Section 8. When there is a transfer of any claim or liability, the existing arbitration agreement concerning such claim or liability shall accordingly be vested in the transferee.

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* Published in the Government Gazette, Volume 104, Part 156, dated 12th August B.E.2530 (1987).

Section 9. An arbitration agreement may stipulate that a dispute be submitted to arbitration within a period which is shorter than the period of prescription under the law. However, the violation of such stipulation shall only result in the forfeiture of the right to arbitration. It shall not preclude the right of the party concerned to bring an action in court.

When there is an extraordinary circumstance, the party concerned may file an application requesting a competent court to extend the period of time under paragraph one. Such application shall be filed before the expiration of the said period of time, except in case of *force majeure.*

Section 10. In case where any party commences any legal proceedings in court against any other party to the arbitration agreement in respect of any dispute agreed to be referred to arbitration, the party against whom the legal proceedings are commenced may file with the court a petition prior to the date of taking of evidence, or prior to the passing of the judgement in case where there is no taking of evidence, for an order to stay the legal proceedings, so that the parties may first proceed with the arbitration proceedings. Upon the court having completed the enquiry and it appears that there is nothing that causes the arbitration agreement to be null and void, inoperative or unenforceable by any other reasons or incapable of being performed, the court shall make an order staying the proceedings.

Chapter 2

Arbitrator and Umpire

Section 11. There may be one or several arbitrators. In case where there are several arbitrators, each party shall appoint an equal number.

In case where the arbitration agreement does not specify the number of arbitrator, the parties shall each appoint one arbitrator, and the said arbitrators shall jointly appoint a third person as additional arbitrator.

Section 12. Unless otherwise specified in the arbitration agreement, the appointment of arbitrator shall be carried out within a reasonable time with the consent of the person to be appointed. The appointment shall be made in writing, dated and signed by the person appointing the arbitrator.

Section 13. In case where the person who is to appoint an arbitrator fails to do so within the time stipulated in the arbitration agreement, or within a reasonable time under Section 12, or there is a circumstance indicating that the said person is not willing to appoint an arbitrator, any party may then file a petition with a competent court for an order appointing an arbitrator.

Section 14. No arbitrator who has been duly appointed may have his appointment revoked except with the consent of all the parties.

A duly appointed arbitrator may be challenged in a competent court. An arbitrator appointed by the court or by a third person may be challenged by any party. An arbitrator appointed by one of the parties may be challenged by the other party. No party shall challenge the arbitrator whom he has appointed or whom he has jointly appointed, except where the said party did not know of or could not have known of the grounds for challenge at the time of appointment.

The grounds for challenge under paragraph two shall be the same as for challenging a judge under the Civil Procedure Code or other grounds which are of such serious nature as may prejudice the impartiality of the hearing or the rendering of an award.

In case where an arbitrator is challenged under paragraph two, the provisions governing the challenge of a judge under the Civil Procedure Code shall apply *mutatis mutandis*. If the challenge is sustained, a new arbitrator shall be appointed to replace the challenged arbitrator by the same method of appointment as that of the challenged arbitrator.

Section 15. In case where the arbitration agreement stipulates that there shall be one or more arbitrators, or that a third person shall appoint an arbitrator, and the said person refuses to accept the appointment, or is dead, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent prior to the acceptance of the appointment or prior to the appointment, as the case may be, it shall be deemed as if there were no designations of arbitrator or of the person to appoint such arbitrator.

If an arbitrator who has accepted the appointment dies, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent, a new arbitrator shall be appointed in lieu thereof, by the same method of appointment as that of the said arbitrator.

In case where an arbitrator who has accepted the appointment is unable, unwilling or ignores to perform his duties within a reasonable time, any party may file with a competent court a petition for an order appointing a new arbitrator in lieu of the said arbitrator.

Section 16. An arbitral award shall be rendered by a majority of votes. If it is not possible to obtain a majority, the arbitrators shall jointly appoint an umpire. In case where the arbitrators fail to appoint an umpire, any arbitrator or any party may petition a competent court for an order appointing an umpire, in which case Section 14 and Section 15 shall be applied *mutatis mutandis*.

Chapter 3

Arbitration Proceedings

Section 17. Before rendering an award, the arbitrator shall hear the case presented by the parties and have the power to make an enquiry into the dispute submitted as he deems appropriate.

Unless otherwise provided by the arbitration agreement or law, an arbitrator shall have the power to conduct any procedure as he deems appropriate taking the principle of natural justice as prime consideration.

Section 18. Where resort to the power of the court is required in regard to the summons of a witness, the administration of oath, the order for submission of any document or material, the application of provisional measures for the protection of interests of the party during arbitration proceedings, or the giving of a preliminary decision on any question of law, an arbitrator may file a petition requesting a competent court to conduct the said proceedings. If the court is of the opinion that such proceedings could have been carried out by the court if a legal action were brought, it shall proceed in compliance with the petition, provided that the provisions of the Civil Procedure Code in the part relating to such proceedings shall apply *mutatis mutandis.*

Section 19. In the arbitration proceedings, a party may act on his own behalf or authorize a person or persons or appoint one or more attorneys to act on his behalf.

Chapter 4

Award and Enforcement of Award

Section 20. An award shall be made in writing, signed by the arbitrator or the umpire, as the case may be, and shall clearly state the reasons for all decisions. However, it shall not prescribe or decide on any matters falling beyond the scope of the arbitration agreement or the relief sought by the party, except in fixing the fees, expenses or remunerations of the arbitrator or umpire under Section 27, or in case where the award is rendered in accordance with the agreement or the compromise between the parties.

Section 21. Except where the parties have agreed otherwise, an award shall be rendered within one hundred and eighty days from the day on which the last arbitrator or umpire was appointed.

The parties may agree to extend the period of one hundred and eighty days or the period otherwise agreed upon under paragraph one. If an agreement cannot be reached, either party, an arbitrator or umpire may file a petition with a competent court and the court shall have the power to order the extension of the said period as it deems appropriate.

No party may challenge the execution of an arbitral award on the grounds that the arbitrator or the umpire has failed to render the award within the time prescribed under paragraph one or paragraph two unless he has protested such failure in writing to the arbitrator or the umpire within fifteen days from he expiration of the period under paragraph one or paragraph two and prior to the submission of a copy of the award to the said party.

Copies of the award so rendered shall be sent to all the parties concerned by the arbitrator or the umpire.

Section 22. Subject to Section 23 and the arbitration agreement, the arbitral award shall be final and binding on the parties when a copy thereof has been sent to the parties under Section 21 paragraph four.

When an arbitral award contains an insignificant error or mistake, if the arbitrator or umpire thinks fit or upon the application of any party concerned, the arbitrator or umpire may correct such error or mistake.

Section 23. In case where a party refuses to comply, the arbitral award may not be enforced unless the other party files a request with a competent court for a judgement confirming the award. The request shall be filed within one year from the date of sending the copy of the award to the parties under Section 21 paragraph four.

Upon receipt of the request under paragraph one, the court shall hold an enquiry and give judgement without delay, provided that the party against whom the award is rendered had an opportunity to challenge the request.

Section 24. In case where the court is of the opinion that an award is contrary to the law governing the dispute, is the result of any unjustified act or procedure or is outside the scope of the binding arbitration agreement or relief sought by the party, the court may deny the enforcement of the award.

In case where an award contains an insignificant error and may be corrected, such as erroneous calculation or erroneous reference to any person or property, the court may correct the error and give judgement for the enforcement of the corrected award.

Section 25. Unless otherwise provided in the arbitration agreement, a competent court under this Act is the court having jurisdiction over the place where the arbitration proceedings take place, having jurisdiction over the domicile of a party or the court which has jurisdiction over the dispute submitted for arbitration.

Section 26. No appeal shall lie against the order or judgement of the court unless :

(1) There is an allegation that the arbitrator or umpire did not act in good faith or that fraud was committed by any party;

(2) The order or judgement is contrary to the provisions of law governing public order ;

(3) The order or judgement is not in accordance with the arbitral award ;

(4) The judge who held the enquiry of the case has given a dissenting opinion or has certified that there are reasonable grounds for appeal; or

(5) It is an order concerning the provisional measures for the protection of interests of the party pending arbitration proceedings under Section 18.

Chapter 5

Fees Expenses and Remunerations

Section 27. Unless otherwise agreed in the arbitration agreement, the fees and expenses incidental to arbitration proceedings and the remunerations for arbitrator or umpire, excluding attorney's fees and expenses, shall be in accordance with that stipulated in the award of the arbitrator or umpire, as the case may be. However regardless of what has been agreed in the arbitration agreement or stipulated in the arbitral award, the said fees, expenses or remunerations may be reviewed and adjusted by a competent court, should it deem appropriate, basing upon the principle of reasonableness.

In case where the said fees, expenses or remunerations have not been fixed in the award, any party, the arbitrator or umpire may petition a competent court for a ruling on the arbitration fees, expenses and remunerations for the arbitrator or umpire.

Chapter 6

Recognition and Enforcement of Foreign Arbitral Award

Section 28. Foreign arbitration means an arbitration conducted wholly or mainly outside the Kingdom of Thailand and any party thereto is not of Thai national.

Section 29. A foreign arbitral award shall be recognised and enforced in the Kingdom of Thailand only if it is covered by the treaty, convention or international agreement to which Thailand is a party, and it shall have effect only as far as Thailand accedes to be bound.

A foreign arbitral award which is covered by a treaty, convention or international agreement to which Thailand becomes a party after the date of entry into force of this Act may be recognised and enforced in the Kingdom of Thailand under this Act, subject to the conditions prescribed by the Royal Decree.

Section 30. A party seeking to execute a foreign arbitral award under Section 29 may file a request with a competent court within a period of one year from the date of the sending of a copy of the award to the parties under Section 21 paragraph four.

The provisions of Section 23 paragraph two shall apply *mutatis mutandis* to the court proceedings.

Section 31. An applicant for a judgement on foreign arbitral award shall produce the following documents :

(1) Original copy of the award or a certified copy thereof ;

(2) Original copy of the arbitration agreement or a certified copy thereof ;

(3) Translation in Thai of the award and arbitration agreement which must be certified by a sworn translator, an officer of the Ministry of Foreign Affairs, a diplomatic delegate or a Thai consul.

Section 32. An application for the execution of a foreign arbitral award under the auspices of the Convention for the Execution of Foreign Arbitral Awards, signed at Geneva, 26

September 1927, shall be sanctioned by the court if the party applying for the execution can prove that the award fulfills all the following conditions :

(1) The award has been made in a territory of one of the High Contracting Parties to which the Convention for the Execution of Foreign Arbitral Awards, signed at Geneva, 26 September 1927 applies, and between persons who are subject to the jurisdiction of one of the High Contracting Parties;

(2) The award has been made by virtue of an arbitration agreement sanctioned by the Protocol on Arbitration Clauses, signed at Geneva, 24 September 1923 ;

(3) The award has been made in pursuance of an arbitration agreement which is valid under the law applicable thereto ;

(4) The award has been made by the Arbitral Tribunal provided for in the arbitration agreement or constituted in the manner agreed upon by the parties ;

(5) The award has been made in conformity with the law governing the arbitration procedure ;

(6) The subject matter of the award is capable of settlement by arbitration under Thai law ;

(7) The award is binding and final in the country in which it has been made ;

(8) The recognition or enforcement of the award is not contrary to Thai law or public policy or good morals.

Section 33. The court may refuse recognition and enforcement of the award under section 32 if it appears to the court that :

(1) The award has been annulled in the country in which it was made ;

(2) The party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented; or

(3) The award does not deal with all the differences submitted to arbitration by the parties or contains decisions on matters beyond the scope of the arbitration agreement.

Section 34. An application for the execution of a foreign arbitral award under the auspices of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958, may be denied by the court, if the party against whom the execution of the award is sought can prove that :

(1) Any party to the arbitration agreement was, under the law applicable to him, under some incapacity ;

(2) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made ;

(3) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case ;

(4) The award contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced ;

(5) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(6) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. If merely an application for the setting aside or suspension of the award has been made to a competent authority, the court where the enforcement of the award is sought may, if it deems appropriate, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Section 35. The court may refuse recognition and enforcement of the award under Section 34 if it appears before the court that the subject matter of the dispute is not capable of settlement by arbitration under Thai law, or that the recognition or enforcement of the award would be contrary to the public policy or good morals or the principle of international reciprocity.

Transitional Provisions

Section 36. The provisions of this Act shall not prejudice the validity of the arbitration agreements and arbitration proceedings which have been carried out prior to the date of entry into force of this Act.

COUNTERSIGNED :
GENERAL PREM TINSULANONDA
PRIME MINISTER

6.2 Arbitration Rules Arbitration Institute, Ministry of Justice

ARBITRATION RULES*
THE ARBITRATION INSTITUTE , MINISTRY OF JUSTICE

Whereas, the Ministry of Justice has established an arbitration institute under the Office of the Judicial Affairs to promote and develop conciliation and arbitration as alternative dispute resolution parallel to judicial proceedings conducted by the Courts ; it is, therefore, necessary to issue Arbitration Rules for the Arbitration Institute, Ministry of Justice as follows:

ARBITRATION RULES
ARBITRATION INSTITUTE, MINISTRY OF JUSTICE

SECTION I DEFINITIONS

RULE 1. In these Rules :

(1) "Office" means the Arbitration Office, Ministry of Justice ;

(2) "Institute" means the Arbitration Institute of the Arbitration Office ;

(3) "Commission" means the Arbitration Commission of the Arbitration Office which is appointed by the cabinet ;

(4) "Director" means the Director of the Arbitration Office ;

(5) "Conciliator" means the conciliator registered with the Office by the advice and consent of the Commission. It shall include ***ad hoc*** conciliator who is appointed by the parties and whose name does not appear in the list of the Office ;

(6) "Arbitrator" means the arbitrator registered with the Office by the advice and consent of the Commission. It shall include ***ad hoc*** arbitrator who is appointed by the parties and whose name does not appear in the list of the Office;

(7) "Conciliation Rules" means the Conciliation Rules of the Institute ;

(8) "Arbitration Rules" means the Arbitration Rules of the Institute.

SECTION II ARBITRATION PROCESS

MODEL ARBITRATION CLAUSE

RULE 2. The parties to a dispute may stipulate the following arbitration clause in the contract so that the Institute may conduct the arbitration of the dispute arising and apply the Arbitration rules of the Institute to the dispute :

* Published in the Government Gazette, Volume 107, Part 54, dated 3rd April 1990

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute, Ministry of Justice applicable at the time of submission of the dispute to arbitration and the conduct of the arbitration thereof shall be under the auspices of the Arbitration Institute."

MEETING OF THE PARTIES

RULE 3. (1) Before submission of the dispute to arbitration, the Director shall convene the parties to bring about a settlement. If the Director deems appropriate and the parties agree, one or more conciliator shall be appointed.

(2) The person who is appointed conciliator in any dispute may not be arbitrator in the same dispute.

(3) The Conciliation Rules shall apply to the conciliation process.

APPLICATION OF THE RULES

RULE 4. (1) Except where the parties agree otherwise in writing with the consent of the Director, the Arbitration Rules shall apply to arbitration organized by the Arbitration Institute.

(2) Matters fallen outside the scope of the Arbitration Rules shall be dealt with by agreement between the parties or by the discretion of the arbitrator or by the resolution of the Arbitration Commission respectively.

RULE 5. (1) For the purposes of these Rules, the service of pleadings, notices or other documents shall be valid when they are received by the other party, its representative or attorney, or they are delivered at the domicile or place of business of the addressee ; in case where the domicile or place of business cannot be found, the same may be delivered at his last-known residence or place of business.

(2) For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a pleading, notice or other communication is received. If the last day of such period is an official holiday, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period.

PLEADINGS AND THE SERVICE OF PLEADINGS

RULE 6. The party initiating recourse to arbitration may submit a statement of claim in the form provided by the Institute to the Director. The statement shall consist of the following particulars:

(1) A request to settle the dispute by arbitration;

(2) Name and addresses of the parties;

(3) Applicable arbitration clause or arbitration agreement;

(4) The contract or legal relationship which gives rise to the dispute;

(5) The facts which form the basis of the claim and the amount claimed ;

(6) The relief or remedy sought ;

(7) The number of arbitrators, if the parties have not previously agreed upon.

RULE 7. When a statement of claim is filed with the Institute and the Director is satisfied that the statement conforms with the requirements set forth, the Institute shall, without delay, serve the other party with the statement at his domicile or place of the business by return post or by any other means as it deems appropriate.

RULE 8. When the other party has been served with the statement of claim, he may file a defence or a counter-claim in writing with the Director within 15 days from the day on which the statement of claim is served on him.

RULE 9. The parties may appoint are presentative or any other person to assist them in the arbitration process. The parties shall notify in writing the name and address of such person to the Director.

APPOINTMENT OF ARBITRATORS

RULE 10. Unless otherwise agreed upon, there shall be one or three arbitrators.

RULE 11. If a sole arbitrator is to be appointed, the following procedure shall apply:

(1) The Institute shall dispatch, without delay, an identical list containing at least three names from the list of arbitrators to the parties;

(2) Within 15 days from the date of the receipt of this list, each party may return the list to the Institute after having deleted the name or names to which he objects and numbered the remaining names on the list in order of his preference;

(3) After the expiration of the above period of time the Director shall appoint the sole arbitrator from among the names approved on the lists returned to him and in accordance with the order of preference indicated by the parties;

(4) If any party fails to perform his duty under (2), the Director may exercise his discretion in appointing the sole arbitrator. In making the appointment, the Director shall have regard to the independence and impartiality of the arbitrator;

(5) The parties may, by consensus, appoint a person not registered with the Institute to be the sole arbitrator.

RULE 12. If three arbitrators are to be appointed, the following procedure shall apply:

(1) Each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal ;

(2) Rule 11 shall apply to the appointment of the presiding arbitrator ***mutatis mutandis ;***

(3) The presiding arbitrator and arbitrators shall have equal vote ;

(4) The arbitral award shall be rendered on the majority basis.

RULE 13. (1) The appointment of arbitrator shall be made in writing, signed by the party who appoints him, indicating the address, nationality, occupation and other qualifications of the arbitrator.

(2) The arbitrator must consent to the appointment.

(3) The Director shall notify the names and addresses of the arbitrators to all parties concerned without delay.

CHALLENGE OF ARBITRATORS

RULE 14. Upon appointment, the arbitrator shall disclose to the Director any circumstances likely to give rise to justifiable doubts as to his impartiality and independence.

RULE 15. (1) A party may challenge the arbitrator appointed by another party if circumstances exist that give rise to justifiable doubts as to the impartiality and independence of the arbitrator.

(2) The challenge shall be made in writing notifying the grounds for challenge and submit to the Director within 15 days from the date of the notification of the name and particulars of the arbitrator.

RULE 16. (1) If the other party agrees with the grounds for challenge of arbitrator submitted by one party or the arbitrator withdraws after the challenge ; the procedure provided in Rules 11 and 12 shall apply for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise his right to appoint or to participate in the appointment.

(2) The facts that the other party agrees with the grounds for challenge of arbitrator or that the arbitrator withdraws from the appointment shall not be construed to indicate the validity of the grounds for challenge.

RULE 17. In case where the other party does not agree with the grounds for challenge and the arbitrator does not withdraw from the appointment, the Director shall submit the matter with advice to the Commission without delay. If the Commission satisfies that the grounds for challenge can be substantiated and orders a replacement of arbitrator, Rule 16(1) shall apply ***mutatis mutandis.***

RULE 18. In the event of the resignation, death, being placed under a final receiving order or being unable to perform a duty for any other reasons of an arbitrator during the course of the arbitral proceedings; a new arbitrator shall be appointed to replace him in the same manner as the replaced arbitrator was appointed.

RULE 19. In case where the new arbitrator under Rule 16, Rule 17 and Rule 18 is a sole arbitrator or is the presiding arbitrator of the tribunal, the arbitral proceedings will commence anew. If the new arbitrator is not a sole arbitrator, the arbitral tribunal shall decide whether to commence the proceedings anew.

ARBITRAL PROCEEDINGS

RULE 20. The parties may agree upon the language or languages to be used in the arbitral proceedings.

RULE 21. Subject to these Rules and the agreement between the parties, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.

RULE 22. Unless otherwise agreed upon, the hearings of evidence shall be in the following manner:

(1) The parties shall submit all the documents in support of their claim or defence to the arbitral tribunal on the first day of the hearings. In case where the arbitral tribunal deems appropriate, the tribunal may order the parties to submit to it all the relevant documents.

(2) The taking of evidence shall be conducted by the arbitral tribunal. The tribunal shall note down the testimony of the witnesses in the memorandum and read it to the witnesses, the witnesses will then sign the memorandum. The memorandum thus signed shall be kept in the dossier of the case.

(3) The arbitral tribunal may assign an officer designated by the Institute to record the testimony in the memorandum.

(4) The hearings shall be held ***in camera.***

RULE 23. Each party shall have the burden of proving the facts relied upon to support his claim or defence.

RULE 24. The arbitral tribunal may appoint one or more experts to report to it in writing. In such case, the parties shall disclose the facts demanded to the expert.

The Institute shall communicate the report to the parties. If requested, the office shall send a copy of the report to the parties.

The parties may file a request to question the expert witness. If the request is granted the rules of the hearings of evidence under Rule 22 shall apply ***mutatis mutandis.***

RULE 25. The arbitral tribunal may inquire the parties if they have any further proof to offer or witnesses to be heard and submissions to make and, if there are none, it may declare the hearings closed.

SECTION III THE AWARD

RULE 26. Unless otherwise agreed upon, the award shall be made within 180 days from the day on which the last arbitrator was appointed.

RULE 27. The award shall be made by a majority of the arbitrators. The award must not exceed the scope of the arbitration agreement or the relief sought except in the matters concerning costs, expenses in the arbitral proceedings, the arbitrator's fee or that the award is made in accordance with an agreement or a compromise between the parties.

RULE 28. The arbitral tribunal shall decide in accordance with legal principle and the rule of justice.

In the interpretation of contract, the tribunal shall take into account its enforceability and the usages of trade applicable to the transaction.

RULE 29. The award shall be made in writing and signed by the arbitrators. It shall contain the date on which and the place where the award was made. In case where an arbitrator fails to sign his name in the award, the tribunal or the Director shall state the reason for such absence.

The award shall state clearly the reasons upon which it is based.

The arbitrator, Director, Institute and the Office shall not disclose the award to the public, unless with the consent of the parties.

When the award is made, the Institute shall without delay, deliver a copy of the award to the parties concerned. The award shall be final and binding upon the parties from the day on which it reaches the party.

RULE 30. Within 30 days from the day on which a copy of the award reaches the party, if any reasonable doubt arises concerning the contents of the award, a party may request the arbitral tribunal to interpret such contents. The interpretation shall constitute a part of the award and shall be adhered to in the same manner as the award.

RULE 31. When an award contains an insignificant error or mistake and if the arbitral tribunal itself deems appropriate or upon the application by either party, the arbitral tribunal may correct such error or mistake.

RULE 32. Within 30 days from the day on which a copy of the award reaches the party, either party may request the arbitral tribunal to make an additional award as to any material issue which in the opinion of that party, was not covered in the original award.

If the arbitral tribunal considers the request for an additional award to be justified, it shall complete its additional award within 30 days from the day on which the request has been filed.

If the arbitral tribunal is of the opinion that the additional award cannot be made without any further hearings or evidence, it may request further hearings or evidence from the parties. In such case, the arbitral tribunal shall complete its additional award within 60 days from the days on which the request has been filed.

RULE 33. The arbitral tribunal shall deliver the dossier as well as the documents submitted in the case to the Institute within 40 days from the day on which the award is made. In case where there is an interpretation, correction of insignificant error or mistake, or additional award, the arbitral tribunal shall submit the dossier as well as the documents to the Institute when the same is made.

SECTION IV COSTS EXPENSES AND FEES

RULE 34. Unless otherwise stated in the arbitration agreement, costs and expenses in the arbitral process as well as fees of the arbitrators but not including fees and expenses of legal representation, shall be fixed by the arbitral tribunal in its award.

RULE 35. Before commencing any arbitral proceedings, if the Director deems appropriate, he may request the party concerned to deposit any expenses incurred. In special circumstances, the Director may request the security of costs and fees from the parties.

In case where the parties fail to pay the required expenses, costs or fees within the period specified by the Director, the Director shall report the same to the arbitral tribunal to consider the suspension or termination of the arbitral proceedings.

6.3 Conciliation Rules Arbitration Institute, Ministry of Justice

CONCILIATION RULES*
THE ARBITRATION INSTITUTE, MINISTRY OF JUSTICE

Whereas, the Ministry of Justice has established an arbitration institute under the Office of the Judicial Affairs to promote and develop conciliation and arbitration as alternative dispute resolution parallel to judicial proceedings conducted by the Courts ; it is, therefore, necessary to issue Conciliation Rules for the Arbitration Institute, Ministry of Justice as follows :

CONCILIATION RULES
ARBITRATION INSTITUTE, MINISTRY OF JUSTICE

SECTION I DEFINITIONS

RULE 1. In these Rules :

(1) "Office" means the Arbitration Office, Ministry of Justice ;

(2) "Institute" means the Arbitration Institute of the Arbitration Office ;

(3) "Commission" means the Arbitration Commission of the Arbitration Office which is appointed by the cabinet ;

(4) "Director" means the Director of the Arbitration Office ;

(5) "Conciliator" means the conciliator registered with the Office by the advice and consent of the Commission. It shall include ***ad hoc*** conciliator who is appointed by the parties and whose name does not appear in the list of the Office ;

(6) "Arbitrator" means the arbitrator registered with the Office by the advice and consent of the Commission. It shall include ***ad hoc*** arbitrator who is appointed by the parties and whose name does not appear in the list of the Office ;

(7) "Conciliation Rules" means the Conciliation Rules of the Institute ;

(8) "Arbitration Rules" means the Arbitration Rules of the Institute.

SECTION II CONCILIATION PROCESS

MEETING OF THE PARTIES

RULE 2. (1) Before submission of the dispute to conciliator, the Director shall convene the parties to bring about a settlement. If the Director deems appropriate and the parties agree, one or more conciliator shall be appointed.

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* Published in the Government Gazette, Volume 107, Part 54, dated 3 rd April 1990

(2) The person who is appointed conciliator in any dispute may not be arbitrator in the same dispute.

APPLICATION OF THE RULES

RULE 3. (1) The Conciliation Rules shall apply to conciliation of disputes arising out of or relating to contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed to place it under the organization of the Institute.

(2) The parties may agree, in writing, to exclude or vary any of the Conciliation Rules at any time. Such exclusion or variation shall not affect the validity of the acts accomplished.

(3) Where any of the Conciliation Rules is in conflict with a provision of law relating to public order or good morals, that provision prevails.

RULE 4. The parties agree to refrain from exercising their right of bringing the dispute for resolution in court or by arbitration pending the conciliation process.

CONCILIATION PROCEEDINGS

RULE 5. (1) A party may send a written invitation to the other party for conciliation of their dispute under the Conciliation Rules.

(2) Conciliation proceedings commence when the other party accepts, in writing, the invitation to conciliate.

(3) If the party initiating conciliation does not receive a reply within 30 days from the date on which the other party receives the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he shall inform the other party accordingly.

NUMBER OF CONCILIATORS

RULE 6. There shall be one conciliator unless the parties agree that there shall be more than one conciliator. In the latter case, the conciliators shall act jointly.

APPOINTMENT OF CONCILIATORS

RULE 7. The parties may appoint the conciliator or entrust the appointment to the Director or seek assistance and recommendation from the Director as to the appointment.

RULE 8. (1) After the appointment of conciliator , each party shall submit a written statement describing the general nature of the dispute and the points at issue to him. Each party shall also send a copy of his statement to the other party.

(2) Pending the conciliation process, the conciliator may, if he deems appropriate, request further facts from the parties.

ROLE OF CONCILIATOR

RULE 9. (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator shall be guided by principles of fairness and justice, giving consideration to, ***inter alia,*** the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) If the conciliator deems appropriate, upon the request of either party, the conciliator may hear oral statements, taken into consideration of the principle for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

RULE 10. The Director of the Office shall arrange the place for the conciliation proceedings, facilitate and supervise the conduct of the proceedings with regard to the principles of speediness and fairness.

SETTLEMENT AGREEMENT

RULE 11. (1) When the parties have reached an agreement as to the dispute, the conciliator shall draw up the settlement agreement accordingly. The parties shall then sign the settlement agreement.

(2) The settlement agreement under (1) may, if requested by the parties, include an arbitration clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.

CONFIDENTIALITY

RULE 12. The Office and the conciliator shall keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

TERMINATION OF CONCILIATION PROCEEDINGS

RULE 13. The conciliation proceedings are terminated :

(1) By the signing of the settlement agreement by the parties; or

(2) By a written declaration of the conciliator to the effect that further efforts at conciliation are no longer justified; or

(3) By a written declaration of the parties to the effect that the conciliation proceedings are terminated; or

(4) By a written declaration of a party to the other party and the conciliator to the effect that the conciliation proceedings are terminated.

COSTS

RULE 14. Upon termination of the conciliation proceedings, the Office shall fix the costs of the conciliation and give written notice thereof to the parties. The term costs shall include :

(1) The fee of the conciliator ;

(2)The travel and other expenses of the conciliator ;

(3) The travel and other expenses of witnesses ;

(4) The administrative fee of the Office.

RULE 15. Unless otherwise specified by the settlement agreement, the costs are borne equally by the parties.

RULE 16. (1) Before the conciliation proceedings, the Director may request each party to deposit an equal amount as an advance for the costs of the proceedings.

(2) During the course of the conciliation proceedings, the Director may request supplementary deposits from each party.

(3) If the required deposits under paragraphs (1) and (2) of this Rule are not paid in full by both parties within 30 days from the day of notice, the Director may suspend the proceedings.

(4) Upon termination of the conciliation proceedings, the Office shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

RELATIONS BETWEEN CONCILIATOR AND THE PARTIES

RULE 17. The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

RULE 18. The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings :

(1) Views expressed or suggestions made by the other party in the course of the conciliation proceedings ;

(2) Admissions made by the other party in the course of the conciliation proceedings ;

(3) Proposals or views made by the conciliator ;

(4) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

MODEL CONCILIATION CLAUSE

RULE 19. The parties may stipulate the following conciliation clause in the contract so that the Institute may conduct the conciliation of the dispute arising and apply the Conciliation Rules of the Institute to the dispute :

"Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the Arbitration Institute, Ministry of Justice applicable at the time of submission of the dispute to conciliation and the conduct of the conciliation thereof shall be under the auspices of the Arbitration Institute."

6.4 The Court of Justice Regulations Pertaining to Mediation of Financial Dispute of 2544 B.E. (2001)

According to significant increasing of number on financial dispute cases in the Courts of Law, the court procedure has been impacting and the delay of all process is imminent. Mediation is one way to resolve financial disputes with appropriate time and become one factor to assist business activities passing through this difficult time. The Court of Justice, under consideration of this important factor, imposed the system of mediation to bring about dispute resolution in conjunction with reduction of the caseload in the courts.

Empowering by Section 17 (1) of Court of Justice Administration Act of 2543 B.E. (2000), the Court of Justice Administrative Committee deems appropriate to impose the following rules:

Article 1. This regulation is called "the Court of Justice Regulation Pertaining to Mediation on Financial Dispute of 2544 B.E. (2001)"

Article 2. This Regulation shall come into force from the date of publication.

Article 3. In this Regulation, except otherwise interpreted,

"Mediation Center" means the Mediation Center of the Alternative Dispute Resolution, the Court of Justice.

"Director" means the Director of the Alternative Dispute Resolution, the Court of Justice.

"Dispute" means the civil dispute where can be settled by parties.

"Financial Dispute" means the dispute where the financial institute as the creditor claims the debtor(s) on any payment or on any other claim including payment.

"Disputant" means any party in the dispute who intends to settle the dispute by mediation or any party of the dispute under process of mediation. For the benefit of mediation, the disputant also includes a person act legitimately as the representative of the party.

"Mediator" means a disinterested person who is appointed to act as a mediator to interpose between parties at variance for purpose of reconciling them according to this Regulations.

"Expert" means a person, being particularly knowledgeable in specialized field, is appointed to make comment or examine any fact or information due to his or her expertise in the benefit of mediation according to the Regulations.

"Expense" means remuneration, travelling cost and allowance of the mediator or expert.

Article 4. The Secretary of the Court of Justice is empowered to impose announcement, rules, code of conduct or any regulation to implement any task according to this Regulation. The Secretary can assign his duty to any person.

Article 5. The Director may require parties, when filing any document, to follow the written format enacted by him.

Chapter 1
Initiation of Mediation

Article 6. The Mediation Center will proceed mediation on financial dispute case pending in the trial of the court when the debtor submits a plan of debt restructuring or schedule of payment to the judge and the judge with consent of the parties informs the Center to proceed mediation.

Article 7. *When informed according to Article 6, the Mediation Center shall provide the parties to sign an agreement to bring the case to mediation.*

The parties are subject to accept and obligate to the process of mediation according to the agreement and this Regulation after signing.

If any party refuse to sign in the agreement, the process of mediation is terminated.

Article 8. In mediation of financial dispute, one mediator shall be responsible to the proceeding.

When the parties have signed the agreement according to Article 7, the Director shall appoint a mediator from the register of mediators.

Article 9. Parties can object the appointment of mediator. In this case, the Director shall appoint a new mediator.

Parties have a right to object the mediator appointment only one time for each party, However, this is not prohibit the party to object the mediator according to Article 31.

Article 10. The appointed mediator shall sign the agreement, accepting to act as Mediator and shall disclose any information on interest or relationship to any party (if any) to the Center according to Article 31.

Chapter 2
Mediation Process

Article 11. The party who is a natural person shall participate in the mediation meeting by him or herself. He or she, however, may appoint a representative participating with him or her as well.

If the party is a juristic person, that party shall authorize a representative with power of decision-making to participate in the meeting. The appointment must be done in writing and submitted to the mediator.

Article 12. Before starting mediation, the mediator may discuss with parties to set up the agenda or guideline of the mediation proceeding.

Article 13. For the benefit of mediation, the mediator may require parties to submit any introduction of fact or information of dispute including offer to resolve the dispute. The mediator may provide any exchanging of those information and offers among parties.

Parties may request the mediator to arrange the mediation accordingly to paragraph one above. In that case, the mediator may follow as request.

Article 14. The mediation may be participate by both parties and on the time and place according to the mediator's arrangement.

Article 15. During mediation, the mediator, when deems necessity for the benefit of mediation, may allow only one side of the parties to be present in the meeting.

Paragraph one is applied to a representative, authorized person, advisor of the party or any other person whom the mediator may allow.

Article 16. The mediation must be proceeded under confidentiality. No recording of any detail shall be allowed not even audio, video recording or transcript of mediation procedure except mutual consent of parties allowing that activity in all or in part.

Article 17. During mediation, if the mediator consider that there is other person involving with the financial dispute and that person must be mediated as well, the mediator, with consent of the parties, may arrange the mediation including that person regardless that the dispute of that person is in what stage of trial.

In the case according to paragraph one, the mediator may inform the Center for the arrangement of that third person.

Article 18. The Director is empowered to appoint an expert according to request of the parties to examine any fact or information or to present any comment or suggestion and provide those in writing for the benefit of mediation.

An expert must be appointed from the expert register of the Center except otherwise agreed by the parties to appoint other expert but a letter of consent of that expert must be provided.

Article 19. When the mediator deems appropriate, the mediator may provide a draft of an agreement to settle the dispute. If the process of drafting induces any expense bound by the parties, the mediator shall require consent of the parties and agreement liability to that expense before drafting.

Article 20. The timeframe of financial dispute mediation must not exceed than 45 days from the date of the mediator appointment. The Center, however, may extend the timeframe for 15 days with no more than 2 times. The extension shall be granted when the Center considers the mediation is close to the point of settlement.

Article 21. The communication among disputants including all information or suggestion which is disclosed in the mediation can not be referred or identified in the proceeding of an arbitration or court except the parties otherwise agree.

Chapter 3
Termination of Mediation

Article 22. The mediation shall come to an end when the parties reach the agreement and the Center shall have these following duties:

(1) In case the dispute is not filed in the court, the Center has duty to provide assistance to the agreement.

(2) In case the dispute is in the court trial, the Center shall report the settlement and the agreement to the judge for further arrangement.

Article 23. Besides Article 22, the mediation comes to an end as follows:

(1) Any party does not sign the agreement to bring the dispute to mediation.

(2) Any party withdraws from the mediation.

(3) Any party does not deposit security payment according to Article 39 in time.

(4) The mediator can not proceed the mediation within timeframe according to Article 20.

(5) The mediator considers that the mediation can not be fulfilled.

(6) The Director considers that the mediation can not be fulfilled.

Article 24. When mediation ends, the Center shall inform the disputants. In case the dispute is in the court trial, the Center shall inform the judge immediately.

Article 25. In case of the mediation is not successful reaching the agreement and the dispute is in the court trial, the mediator shall provide an opinion on what option will be the most beneficial to both parties of the dispute to the judge for consideration of appropriate continuation of the court proceeding.

Chapter 4
Mediator and Expert

Article 26. The Center shall provide registration of mediators and experts and publish in the Alternative Dispute Resolution Office, the Court of Justice.

Registration process of mediators and experts including revocation will be regulated according to the provision enacted by the Director with approval of the Secretary of the Court of Justice.

Article 27. The register of mediators and experts shall be terminated at the end of the calendar year regardless of the date of registration of each person.

When the register is terminated, the Center shall arrange new registration immediately.

The termination according to paragraph one of this article shall not effect the activities of mediator or expert which has been proceeded and the appointee can continue acting on his or her duty and be entitled to the expense according to the Regulations.

Article 28. The Mediator shall:

(1) be prepared to mediate

(2) obligate to the agreement according to 10

(3) assist, support the negotiation among the parties and suggest solution to settle the dispute.

(4) not opine in any way of the result of the decision of the dispute except the disputants agree to allow that evaluation.

(5) Assist the disputants to draft an agreement.

Article 29. The mediator and expert shall deliver his or her duties according to this Regulations including announcements, rules, conducts or any regulation enacted by this Regulations to maintain appropriateness of mediation for the best benefit of the disputants.

Article 30. The mediator and expert may not liable to any action to bring about the settlement in mediation except that action or ignorance to act of the mediator or expert cause damages to the disputant by intention, recklessness or violation of this Regulations.

Article 31. Within these following cases, the mediator or expert is revoked from duty.

(1) The mediator or expert acts as the representative of any party.

(2) The mediator or expert has any interest or relationship with any party on the dispute matter.

(3) The mediator or expert is revoked from the register.

(4) The Director orders revocation of the mediator or expert because of defraud or negligence of duty.

The Director shall appoint new mediator or expert except disputants allow that mediator or expert continues his or her duty.

The appointment of the mediator or expert according to this article may be processed at any stage before ending of the mediation.

Chapter 5
Confidentiality

Article 32. Any person involving in the mediation is obligated to keep secret information of the disputant confidential and never provide this following information in the trial of the arbitration or the court:

(1) any fact concerning the mediation

(2) comment or suggestion submitted by the disputant in the mediation process

(3) comment or suggestion submitted by the mediator except comment or suggestion according to Article 25

(4) any fact of the disputant accepts or rejects to the offer in the mediation of the mediator.

(5) any other information concerning the mediation including a settlement agreement except in necessary case when it is the benefit to enforcement of that agreement.

Article 33. *Any Document in any form or information which is used or was used or has occurred from the mediation may not be used to refer or apply in any court proceeding.*

Article 34. *The disputants agree not to refer or request the court issue warrant to the mediator, expert or Director including official who participates in the mediation meeting to testify on material fact or detail of negotiation in mediation process.*

The disputant may forbid the mediator, expert or Director including official who participates in the mediation meeting to testify before the court on material fact or detail of negotiation in mediation process.

Article 35. *The disputants agree not to call upon the mediator, expert, Director including official who participates in the mediation meeting to act as an advisor, arbitrator, expert witness or other duty which may lead to disclose the fact from mediation to be used in any procedure concerning with the dispute.*

Chapter 6
Expense

Article 36. Expense of the mediator or expert shall be paid to a person who is in the register. Rules and methods of payment shall be according to the provision imposed the Secretary of the Court of Justice with approval of the Court of Justice Administration Committee.

Other expense beyond the expense mentioned on paragraph one, the disputants shall be liable equally except otherwise agreed.

Article 37. In case of appointing a person who is in the register according to Article 18 second paragraph, the disputants shall be liable for the expense of the expert equally except otherwise agreed.

Article 38. In case of appointing the expert to examine the fact involved financial status or any information showing ability of payment of the debtor, providing options to debt restructuring or debt payment or other matter where there is expense to pay to the expert, the payment shall be according to the expert imposition but not exceed the amount which the Secretary of the Court of Justice imposes under approval of the Court of Justice Administration Committee.

If the payment of the expert according to paragraph one is higher than the amount imposed by the Secretary, the disputants shall be liable for the exceeding amount equally.

Article 39. Before mediation starts, the Center may request the disputants to deposit security fees for the expense in mediation according to the number as the Center imposes.

The Center may require the disputants to deposit the additional security fees at any time before the ending of mediation process.

In case the party fails to comply with the above paragraph, the Director is empowered to cease the mediation process or adjourn the mediation meeting until that party complies to lay down the deposit according to the Regulations.

When the mediation comes to an end, the Center shall provide a balance report and return deposit remaining money to the disputant.

Article 40. In case the mediator can bring the dispute to the settlement, the extra payment shall be awarded according to the Regulation and methods imposed by the Secretary with approval the Court of Justice Administrative Committee.

The mediation is fulfilled when:

(1) if the dispute is not in the court trial, the disputant signs the settlement agreement

(2) if the dispute is in the court trial whether in one court or more, the judges of all cases deliver judgments according to the settlement agreement.

Article 41. The expert whom the court appoints for the benefit of settlement on financial dispute in the case shall be entitled to receive expense by applying the same rules as the expert who is appointed according to this Regulation. Procedure and method of payment according to this Regulation is applied mutatis mutandis.

Announcing on March 22, 2544 B.E. (2001)

The Chief Justice of the Supreme Court as the Chairman of the Court of Justice Administrative Committee.

6.5 The Court of Justice Regulations Pertaining to Mediation of 2544 B.E. (2001)

Where mediation is useful to parties in a dispute, it is important at the same time to the court procedure because mediation brings efficient timeframe to settle the dispute with small cost and all parties are satisfied with the result where relationship can be prolonged. Whereas new cases have been arrived to the courts dramatically and impact the caseload pending in the courts, mediation, therefore, is the other important alternative option to the court to apply for settling the dispute in the court. To promote applying efficient mediation there must be standard regulation and procedure. The Court of Justice, in consideration of setting up the same standard, imposed procedure and regulation on mediation for judges and mediators as follows:

Empowering by Section 17 (1) of Court of Justice Administration Act of 2543 B.E. (2000), the Court of Justice Administrative Committee deems appropriate to impose the following rules:

Article 1. This regulation is called "the Court of Justice Regulation Pertaining to Mediation of 2544 B.E. (2001)"

Article 2. This Regulation is effected from the date of publication.

Article 3. In this Regulation, except otherwise interpreted,

"Case" means the civil case or other type of case which can be settled by the agreement of parties.

"Office Authorized person" means the Chief Justice of the Supreme Court, the Chief Justice of the Appeal Court, the Chief Justice of the Region Courts of Appeal, the Chief Justice of the Courts of First Instance, the Chief Judge of the Courts and also means a person who is assigned to act according to this Regulation.

"Mediator" means the judge, court official, person or panel of person who are appointed to act as the mediator facilitating dispute settlement in mediation according to this Regulation.

"Secretary" means the Secretary of the Court of Justice.

Article 4. The Secretary shall be responsible to this Regulation and shall be empower to interpret or decide any problem arising to this Regulation.

Chapter 1 Mediation by Judges in Quorum

Article 5. Judges in the quorum are empowered to mediate the case according to the Civil procedure Code.

Any procedure according to this Regulation shall not impact any power of the judges to mediate their case.

Chapter 2 Mediation by Mediator

Section 1 Appointment and Termination of Mediator

Article 6. When the case is brought to the court, the Office Authorized Person or the judges in the quorum who are responsible to the case shall appoint other judge, court official or a person or a penal of persons to act as the mediator.

Article 7. When the Office Authorized Person deems appropriate or is informed by the judges in the quorum, the Office Authorized Person may appoint a judge or judges to act as the mediator.

In the case where the Office Authorized Person provides the list of judges who may be the mediator especially in that court, the judges of the quorum may appoint the mediator according to that list.

The Office Authorized Person or the judges in the quorum may appoint the court official or the panel of court official to act as the mediator.

The judge or court official who is appointed as the mediator shall not be entitled to any remuneration according to the Regulation.

Article 8. In the case that the mediation ends according to Article 24(1), the judge who is appointed to act as the mediator may be assigned to join the quorum to adjudicate that case.

Article 9. When appointing a person or a penal of person to be the mediator, the Office Authorized Person or the judges in the quorum shall consider appropriateness of that person and satisfactory of all parties. In case of appointing the person who registers as the mediator, the Office Authorized Person or the judges in the quorum may appoint that person as the mediator under consent of all parties and agreement to liable to any expense of that person.

Article 10. If appointing process of the mediator effects the trial procedure or causes improper delay, the judge, when considering the benefit of all parties, may proceed the trial simultaneously with the mediation proceeding.

Article 11. The mediator, when appointed, shall disclose any personal interest or relationship with any party if any immediately.

Article 12. In these cases, the mediator is terminated from duty:

(1) when the mediator is revoked from the registration list.

(2) When the judge revokes the mediator under these information.

(a) acting in any way as a representative or authorized by any party

(b) sharing any interest or relationship with any party in the way that causes impartiality to mediation

(3) acting on duty with malpractice or ignorance to duty

Article 13. When the mediator is revoked from duty, the judge may end the mediation or appoint new mediator.

Section 2 Mediation Procedure

Article 14. When the judge appoints the mediator, the procedure of sending and receiving case files and documents or any communication among the court and the mediator shall be proceeded as the rules provided by that court.

Article 15. The party who is natural person shall participate the mediation by himself or herself. However, the party may assign a representative to participate.

If the party is juristic person, that party may authorize a representative with decision-making to participate. The authorization must be done in writing.

Article 16. *Before starting mediation, the mediator shall arrange the parties to sign on the agreement to mediate and consent to abide by this Regulation.*

Article 17. *The mediator may discuss with the parties on steps or guidelines of the case mediation process before proceeding the mediation.*

Article 18. For the benefit of mediation, the mediator may require the parties to submit introduction of fact or information of the dispute including offer to settle the dispute to the mediator. The mediator may suggest the exchange of information among parties.

Article 19. The mediation may be proceeded in any function and in any place and time according to the mediator to arrange. The mediation, however, shall inform the procedure to the party who is not present in the meeting.

Article 20. The mediator, when deems necessary, may allow only one side of the parties to be in the meeting room.

Paragraph one is applied to the person who is authorized by the party or the advisor of the party or anybody whom the mediator allows to participate in the mediation.

Article 21. Mediation shall be proceeded under confidentiality. No recording either in writing or any form of electronic or other information technology shall be allowed except the parties agree to allow recording in part or all of the information where the parties are liable to the expense.

Article 22. The mediator, when deems appropriate, may arrange drafting the settlement agreement for the parties. If there is expense of drafting which the parties are liable, the mediator shall require consent and agreement to payment of the parties before drafting.

Article 23. The mediator shall proceed the mediation within the timeframe imposed by the person who appoints the mediator. The appointor, when deems appropriate or the mediator requests, may extend the timeframe if the mediation is close to the settlement agreement.

If the mediator considers that any party intentionally induces the delay of the case, the mediator shall inform the appointor immediately.

Section 3 Termination of Mediation

Article 24. The Mediation is terminated according to these following situations:

(1) The parties agree to settle the dispute by withdrawing the lawsuit or request the judges to provide the judgment according to the agreement.

(2) Any party withdraws from the mediation.

(3) The Mediator can not proceed the mediation within the timeframe.

(4) The Mediator considers that the mediation will not be implemented.

(5) The Judge considers that the dispute can not settle by mediation or the mediator is worthless to the case.

Article 25. *The mediator shall inform the result of the mediation to the judge immediately when the mediation is terminated.*

In case of the dispute is partly settled or the parties agree to accept some certain fact and agree to bring those information to use in the court trial, the mediator shall provide the record of the agreement and inform the judge.

Section 4 Confidentiality

Article 26. Except otherwise agreed by the parties, the parties and any person involving in mediation shall obligate to keep any fact arising in mediation confident and agree not to bring any fact to be used as evidence in the court or arbitration whatsoever.

Fact under paragraph one includes communication among parties, fact concerning mediation, fact of detail or substantial information of negotiation in mediation, fact which is accepted or rejected by any parties or comment of any party or the mediator in mediation process.

Section 5 Registration of Mediator

Article 27. The Secretary shall provide the mediator registration according to necessity and requirement of the courts and shall inform all courts the registration list.

Article 28. The candidate to register as the mediation shall be a person who has skill and knowledge or experience in mediation and shall have these following qualifications:

(1) having knowledge in the field of science, economic, law, social etc.
(2) above 25 years of age
(3) not being an official of the Court of Justice according to the regulation of the Court of Justice
(4) having no bad personal record
(5) not being a incapacitated person
(6) having not served sentencing in jail except the offense is pretty crime or committing crime with negligence.

Article 29. The mediation registration list shall be terminated on every two years from the date of providing registration regardless of the date of registration of each person in the list.

For the first registration, the termination date shall be effected at the end of the date of the calendar year.

The termination of the mediation registration list shall not effect the previous appointment of the mediation and that mediator shall carry on the duty and be entitled to any remuneration according to this Regulation.

Article 30. *The Secretary shall provide new mediator registration list immediately after the old list is terminated. Article 27 shall be applied, mutatis mutandis.*

Article 31. The Secretary shall revoke the mediator for the registration list when:
(1) the mediator dies
(2) the mediator resigns
(3) the mediator is lack of qualification or forbid according to Article 28
(4) the judge revokes according to 12(3) or there is the fact that the mediator behaves improper to the duty or intentionally manages malpractice by act or ignore to act or reckless to act on duty, causing damage to the party.

Article 32. The mediator shall:
(1) prepare to mediate
(2) assist or support the parties to negotiate and suggest solution to settle the dispute
(3) do not opine any comment which decides the result of the dispute except the parties agree to allow the mediator to make such comment
(4) do not treat, force or intimidate in any way which causes impact to decision-making of the party

Article 33. The mediator shall perform duty according to this Regulation including announcement, rules, conducts or regulation enacted by this Regulation in order to facilitate proper mediation process for the most benefit of the parties.

Article 34. *The mediator may not be liable to the parties of any activity arising during the mediation process except where the mediator intentionally or recklessly act or ignore to act in the mediation process causing damage to the parties.*

Section 6 Expense

Article 35. The mediator, appointed from the mediator registration list, shall be entitled to remuneration and expense according to the rule and method provided by the Secretary with approval of the Court of Justice Administration Committee.

Article 36. The parties shall be liable to expense of the mediator who is not in the mediator registration list equally except otherwise agreed.

Article 37. In case that the mediator deems appropriate to hire any person to produce any matter benefit to the mediation, the mediator shall require the agreement of payment by the parties before proceed with the hiring.

Published on August 2544 B.E. (2001)
The Chief Justice of the Supreme Court as the Chairman of the Court of Justice Administrative Committee.

6.6 Inter-Creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures

INTER–CREDITOR AGREEMENT ON RESTRUCTURE PLAN VOTES AND EXECUTIVE DECISION PANEL PROCEDURES

THIS AGREEMENT is made effective as of March 19, 1999 by and among

(1) all financial institutions which by their respective authorized representatives

(a) execute a copy of this Agreement; or

(b) otherwise agree in writhing to be bound by the terms and conditions of this Agreement

(hereinafter collectively referred to as the "Creditors under this Agreement" and individually as a "Creditor under this Agreement");

This Agreement is acknowledged by:

(2) the corporate Debt Restructuring Advisory Committee (hereinafter referred to as "CDRAC"), an unincorporated body consisting of each Association, the Board of Trade, the Thai Federation of Industries and the Bank of Thailand and advising on corporate debt restructuring in Thailand pursuant to the Joint Public Private Consultative Committee (JPPCC) Resolution No. 1/2541 dated June 22, 1998 and the Order of the Bank of Thailand No. 215/2541 dated June 25, 1998; and

(3) the Bank of Thailand (hereinafter referred to as "BOT").

WHEREAS:-

(A) The BOT, certain Creditors under this Agreement and other parties have created and acknowledged the Framework for Corporate Debt Restructuring in Thailand (the "Framework") for the efficient restructuring of the corporate debts of viable entities to benefit the creditors, debtors, employees, shareholders and the Thai economy.

(B) The creditors under this Agreement will execute binding agreements on the processes and schedules of corporate debt restructuring, including mediation where appropriate (hereinafter "Debtor-Creditor Agreements on Debt Restructuring Process") with individual Debtors on the CDRAC list of 351 TDR cases and such other debtors as CDRAC may agree (hereinafter the "Debtors" and individually a "Debtor"). Execution of a Debtor Accession to the Debtor Creditor Agreement on Debt Restructuring Process by on individual Debtor will be a condition precedent to the applicability of the Agreement to the Workout of the Credits of such Debtors.

(C) For the purposes of assisting Creditors under this Agreement to reach consensus as efficiently as possible on approval or disapproval of proposed plans for restructuring of outstanding Credits, including any related legal documentation of such plans, and to prevent further deterioration of the Debtor's assets, the Creditors under this Agreement deem it appropriate and helpful to create this Agreement.

Now, THEREFORE, it is agreed as follows:-

CHAPTER I. GENERAL PROVISIONS

Section 1. Definitions

(a) "AFC" shall mean the Association of Finance Companies in Thailand.

(b) "Affiliate" in relation to a person means any person which directly or indirectly controls, is controlled by, or is under common control with the person in question, but only so long as the control relationship persists. For the purpose of this definition, "direct control" of a company shall mean ownership of shares carrying at least fifty percent (50%) of the votes at a general meeting of the shareholders of the controlled company (or the equivalent of such a meeting), and "indirect control" of a company shall result if a series of companies can be specified, beginning with a "parent" company and ending with the affiliate in question, so related to each company of the series except

the parent is directly controlled one or (by aggregating shareholdings) more of the previous companies in the series.

(c) "Agreement" shall mean this Inter-Creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures, including all Appendices hereto, as amended from time to time.

(d) "Executive Decision Panel" shall have the meaning ascribed to it in section 5 (a).

(e) "Association" shall mean the AFC, FBA or TBA.

(f) "Business Day" shall mean any day, other than a Saturday or Sunday, on which banks and finance companies in Bangkok Thailand are allowed to conduct normal business.

(g) "Credits" mends loans, avals, advances, guarantees, trade credits extended by financial institutions, discount and acceptance facilities, contingent credits, foreign exchange agreements, forwards, swaps, swaps, derivatives and other forms of market credit facilities, in accordance with generally accepted accounting principles, and any other credit or financial arrangement in whatever form provided to a Debtor by a financial institution, including interest thereon accrued up to the date of the First Meeting of Creditors, converted to Thai Baht for voting purposes only at the BOT reference rate on the date of the First Meeting of Creditors where necessary.

(h) "Creditors under this Agreement" means financial institutions individually having outstanding Credit extended to a particular Debtor and that duly execute this Agreement, a Creditor Accession to the Debtor-Creditor Agreement on Debt Restructuring Process or another document in order to be bound by the terms and conditions hereof in relation to the Credit they hold on their own behalf and not in a capacity as agent, trustee, fiduciary or advisor;

(i) "Debtor" means a corporate debtor on the CDRAC list of 351 TRD cases and such other corporate debtors as CDRAC may agree.

(j) "Debtor Accession" shall mean an accession in the form of Appendix I to the Debtor-Creditor Agreement on Debt Restructuring Process.

(k) "Debtor-Creditor Agreement on Debt Restructuring Process" shall have the meaning ascribed to it paragraph (B) of the preamble hereto.

(l) "FBA" shall mean the Foreign Banks' Association in Thailand.

(m) "First Meeting of Creditors" shall mean a creditors' meeting called pursuant to section 2 (a) of the Debtor-Creditor Agreement on Debt Restructuring Process.

(n) "Framework" shall mean the Framework for Corporate Debt Restructuring in Thailand.

(o) "Lead Institution" shall mean a Creditor or Creditors under this Agreement (or other creditor approved by CDRAC) that have been appointed to manage and coordinates a Workout, substantially in accordance with section 3 of the Debtor-Creditor Agreement on Debt Restructuring Process or in accordance with the Framework.

(p) "Majority Creditors" means Creditors under this Agreement holding at least fifty-one percent (51%) of all the outstanding Credits owed by the Debtor to all Creditors under this Agreement.

(q) "Non-Complying Creditor" shall have the meaning ascribed to it in section 7.

(r) "Process Schedule" means the schedule set forth in Appendix IV of the Debtor-Creditor Agreement on Debt-Restructuring Process.

(s) "Proposed Plan" means a plan for the business and financial restructuring of a Debtor, submitted under step 8 or 10 of the Process Schedule, provided always

  (i) such plan provides for a financial return to creditors greater than that which would be achieved by liquidation of the Debtor;

  (ii) all creditors are treated reasonably and fairly under such plan, taking into account the rankings of creditors in the event of bankruptcy proceedings and the creditors' likely respective contributions to the Debtor's survival as a going concern; and

  (iii) such plan is in substantial compliance with the Framework.

(t) "Statement of Issues" shall have the meaning given to it in Section 6(a)(5).

(u) "Steering Committee" means the committee of representatives of the Creditors under this Agreement formed substantially in accordance with section 4 of the Debtor-Creditor Agreement on Debt Restructuring Process or the Framework.

(v) "Sufficient Plan Approval" means approval, by a vote at a creditors meeting, of a Proposed Plan by such percentage of all voting creditors with such percentage of aggregate Credits sufficient to meet the definition of a "Special Resolution" under section 6 of the Bankruptcy Act B.E. 2483 as amended (or any amended or succeeding definition of "Special Resolution" under the Bankruptcy Act).

(w) "TBA" shall mean the Thai Bankers' Association.

(x) "Workout" means multilateral efforts to restructure the outstanding financial obligations and the business of a Debtor pursuant to the Framework and the Debtor-Creditor Agreement on Debt Restructuring Process and to document and legally agree on the terms of any such restructure.

Section 2 Applicability

This Agreement shall be binding on all Creditors under this Agreement for any and all Workouts, as soon as, and only if, the Debtor involved in the Workout duly executes a Debtor Accession to the Debtor-Creditor Agreement on Debt Restructuring Process.

CDRAC and the BOT shall perform hereunder, and obtain the benefit hereof, to the greatest extent permissible under the laws and regulations of Thailand in effect from time to time.

Section 3. Voting on Proposed Plan[1]

Subject to timely submission of a Proposed plan all Creditors under this Agreement in any Workout agree to cast their votes in favor of or against and Proposed plan or alternative Proposed Plan within the time limits set forth in the Process Schedule or any other deadlines established by a Lead Institution or Steering Committee. Any vote cast against a Proposed Plan or an alternative Proposed Plan shall be accompanied by a written statement of substantive objections to specific portions of the Proposed Plan or alternate Proposed Plan.

Section 4. Plan Approval Levels

(a) If, in the second vote of the creditors under step 11 of the Process Schedule, a Proposed Plan is approved by creditors holding not less than fifty percent (50%) of the total Credits owed to voting creditors or not less then fifty percent (50%) of the number of voting creditors, but does not receive Sufficient Plan Approval, the steering Committee, Lead Institution or any Creditor shall submit the Proposed plan to CDRAC within ten Business Days from the date of such second vote with a request for CDRAC to appoint an Executive Decision Panel as set forth in Section 5 below.

In the event of any submission of a Proposed Plan to CDRAC, this Agreement will continue to be binding on all Creditors under this Agreement, provided however, that any Creditor under this Agreement may elect in writing not to continue to be bound to this Agreement for its particular Credit (regardless of amount) to a Debtor that has Credits outstanding totalling in aggregate more than 1,000,000 (one thousand million) in principal obligations. To be an effective, such Creditor under this Agreement must provide notice of such election to CDRAC and the Lead Institution or Steering Committee within ten Business Days of service of the Statement or Issues under section 6(b) below. Such notice must state specific reasons for the election and the minimal amendments to the Proposed Plan necessary to cause the Creditor under this Agreement to be bound

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[1] The Thai Bankers' Association, the Foreign Banks' Association the Association of Finance Companies Concur on the clarification with respect to Section 3 and Section 9 of the Inter-creditor Agreement (ICA) and the Debtor-Creditor Agreement (DCA):

(a) All financial creditors who hold credits (as defined in the Agreement) will be invited to vote at the creditors' meeting regardless of whether they are current signatories of the Agreement or not.

(b) That all attending creditors must vote at the meeting to indicate their support to the proposed plan or otherwise.

(c) That all creditors costing a vote must sign a voting paper to confirm their formal vote and their written agreement to abide by the vote, in accordance to the terms of the Agreements.

Definition of Financial Creditors

A financial creditor is defined broadly as any one of the following;

1. An institution that is regulated by law under the Commercial Banking Act or Finance Companies Act or is regulated by the Bank of Thailand
2. An institution that is regulated under any applicable insurance Act.
3. Any institution that is established by a specific law and that is owned/controlled/regulated by the Ministry of Finance or Ministry of Commerce, e.g. Industrial Finance Corporation of Thailand. This also includes any equivalent institutions in other jurisdictions, e.g. The export-import Bank of the United states.
4. Any public or privately owned Asset Management Company established under Thai Law
5. Any entity whose main business is the provision of credit (as defined in the DCA)
6. Bondholder (voting either in their own right or through a trustee)

But for avoidance of doubt a financial creditor excludes:-

1. Trade creditors
2. Any creditor which holds the debt on behalf of the debtor or shareholder of the debtor or any affiliate or associated company, whether directly or through an agent or nominee.

hereunder as regards the Proposed Plan. CDRAC shall provide any such notices to all Creditors under this Agreement within three Business Days of receipt thereof.

(b) If, after completion of the second vote under step 11 of the Process Schedule, the Proposed Plan is not approved by Creditors holding at least fifty percent (50%) of the total Credits of all voting creditors or being at least fifty percent (50%) of the number of voting creditors, the Creditors under this Agreement shall immediately file a joint petition with a court having jurisdiction for collection of all their Credits and/or the reorganization under new management or the liquidation of the Debtor.

Section 5. Executive Decision Panel

(a) For the sole purpose of a binding decision on the approval or rejection of a Proposed Plan in the circumstances set forth in Section 4 (a). the Creditors under this Agreement agree to establish an independent executive decision panel (the "Executive Decision Panel") consisting of three executives appointed from three separate lists of executives proposed by each of the TBA, the FBA and the AFC, approved by all three such Associations and submitted to CDRAC. If the Creditors under this Agreement in respect of the relevant Debtor consist of financial institutions which are members of each of the three Associations, the members of the Executive Decision Panel will consist of one executive appointed from each of the three lists of executives, unless on Association(s) elects to give up the right to appoint on executive to one of the other Association(s), which executive shall then be appointed from the list of such other Association(s). If the Creditors under this Agreement of the relevant Debtor consist of only financial institutions which are members of two of the three Associations, the members of the Executive Decision Panel will consist of one executive appointed from each of the lists of the two Associations whose members are Creditors under this Agreement and the two such appointed executives shall mutually select one additional executive from the list of the two involved Associations. Executives shall be appointed by CDRAC in rotation (subject to executive availability and acceptance and the absence of any conflict of interest under section 5 (b) or section 6 (g) in the order their names appear on the lists of executives proposed by the TBA, FBA and AFC.

(b) No executive on an Executive Decision Panel shall be a shareholder, director, officer, or employee of any Debtor, Affiliate of the Debtor or any Creditor under this Agreement having outstanding Credit to the Debtor or any other person who has an association with the Debtor which may give rise to a conflict of interest. Each of the TBA, FBA and AFC shall ensure that its appointees have adequate experience in both finance and debt restructuring.

(c) The Executive Decision Panel may appoint one or more financial advisors, lawyers and other experts, at the expense of the Debtor (to be taken into account in any Approved Restructuring Plan), to advise or work for the Executive Decision Panel on such matters as the Executive Decision Panel may deem necessary.

(d) The Executive Decision Panel meetings shall be conducted in the Thai language unless one or more executives are not native Thai speakers, in which case the meetings shall be conducted in the English language.

Section 6. Executive Decision Panel Procedures

(a) The Steering Committee, Lead Institution or any Creditor under this Agreement shall submit the Proposed Plan and a written summary to CDRAC within ten Business Days of the second vote resulting in the outcome specified in Section 4 (a). The summary shall consist of the following particulars:
   (1) a request to settle inter-creditor issues by executive decision;
   (2) names, addresses and contact information of the Debtor and each Creditor under this Agreement;
   (3) the term sheet and the terms and conditions of the Proposed Plan;
   (4) any due diligence reports or financial statements or projections concerning the Debtor and its business;
   (5) a statement of significant issues, terms or conditions (the "Statement of Issues") on which all Creditors under this Agreement could not agree;
   (6) the results of the vote or votes on the Proposed Plan;
   (7) a written confirmation that the conditions specified in section 4 (a) apply to the Proposed Plan; and
   (8) such other information as the Steering Committee, Lead Institution or Creditor under this Agreement submitting the Proposed Plan believes may be relevant.

(b) When a Statement of Issues in filed with CDRAC, within three (3) Business Days CDRAC shall deliver to all Creditors under this Agreement with the Statement of Issues at their respective domiciles or places of business by telefax, return post or by any other means as it deems appropriate.

(c) Any Creditor under this Agreement may file its own written submission with CDRAC of its position on any inter-creditor issues within ten (10) Business Days from the day on which the Statement of issues is delivered to it.

(d) Within five (5) Business Days of the delivery of the Statement of Issues, CDRAC shall select executives by rotation from each of the lists of executives proposed by the TBA, the FBA, and the AFC, as set forth in Section 5(a), confirm their availability and acceptance and immediately notify all Creditors under this Agreement of the names of the three executives.

(e) Upon appointment, each executive shall disclose to CDRAC any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence.

(f) Any Creditor under this Agreement may challenge any appointed executive as to the impartiality and independence of the executive.

The challenge shall be made in writing notifying the grounds for challenge and submitted to CDRAC within five (5) Business Days from the date of the notification by CDRAC of the names of the executives.

(g) If CDRAC or the Association that originally nominated the executive agrees with the grounds for challenge or the executive withdraws after the challenge, the procedure provided in Section 6 (d) shall apply for appointment of a substitute executive, otherwise the challenged executive will stand appointed.

(h) In the event an executive resigns, dies, is placed under a final receiving order or is unable to perform his or her duty for other reason during the course of the Executive Decision Panel proceedings, a new executive shall be appointed to replace him or her in the same manner as the replaced executive was appointed but the proceedings will continue without delay or review.

(i) Subject to this Agreement, the Executive Decision Panel may conduct its review in such manner as it considers appropriate, provided that

(aa) all creditors are treated reasonably and fairly taking into account the rankings of creditors in the event of bankruptcy proceedings and the creditors' likely respective contributions to the Debtor's survival as a going concern,

(bb) each Creditor under this Agreement is given a fair opportunity of presenting its position prior to any final decision of the Executive Decision Panel,

(cc) the Proposed Plan is in substantial compliance with the Framework; and

(dd) the Executive Decision Panel commences deliberations within ten (10) Business Days of the appointment of the Executive Decision Panel. CDRAC may attend Executive Decision Panel meetings as a non-voting observer.

(j) Unless otherwise agreed upon, the presentation of positions shall be in the following manner:

(aa) Any Creditor under this Agreement may request to appear before the Executive Decision Panel to explain its position, in which case the Executive Decision Panel must meet with the Creditor under this Agreement. A Creditor under this Agreement must appear for a hearing if requested by the Executive Decision Panel. In case where the Executive Decision Panel deems appropriate, Creditors under this Agreement may be requested to submit to the Executive Decision Panel documents as reasonably required, provided the disclosure of such documents is not restricted by applicable law, regulation, agreement or fiduciary obligation.

(bb) The deliberations of the Executive Decision Panel shall be held in privacy and no executive nor Creditor under this Agreement shall make any statement or disclose any information concerning the deliberations to any person other than other Creditors under this Agreement, the executives and their advisors.

(k) The Executive Decision Panel:-

(aa) may require personnel of the Creditors under this Agreement to attend the meetings of the Executive Decision Panel as representatives of Creditors under this Agreement and present opinions on the subject matter, in which case such personnel must attend the meeting as required;

(bb) when necessary, may request management members of the Debtor to attend meetings of the Executive Decision Panel and present opinions on the Proposed Plan.

(l) Decisions of the Executive Decision Panel shall be unanimous and shall consist only of approval or rejection of the submitted Proposed Plan and written reasons for the decision. In no circumstances may the Executive Decision Panel amend, modify or supplement the Proposed Plan. If the

Executive Decision Panel does not reach a unanimous decision, the submitted Proposed Plan will be considered to have been rejected.

(m) The decision of the Executive Decision Panel shall be rendered within 20 Business Days from the submission of documents under section 6 (c), unless an extension of time is deemed necessary by the Executive Decision Panel and CDRAC concurs.

(n) Decisions of the Executive Decision Panel shall be made in writing, signed by the executives and clearly state the reasons for approval or rejection of a Proposed Plan. The decisions shall not include any stipulations beyond the limits of this Agreement.

(o) After giving the decision, the Executive Decision Panel shall inform CDRAC of its decision and CDRAC shall inform all the Creditors under this Agreement of such decision.

(p) The decision of the Executive Decision Panel shall be final and binding on all the Creditors under this Agreement (other than Creditors under this Agreement making an election under section 4(a)) upon copies of the decisions having been delivered to all the Creditors under this Agreement.

(q) In the event a Proposed Plan is accepted by the Executive Decision Panel or obtains Sufficient Plan Approval, unless otherwise determined by Creditors under this Agreement that hold a majority of all Credits that voted in favor of the Proposed Plan, all Creditors under this Agreement who have not previously made an effective election pursuant to section 4 (a) shall vote in favor of the Proposed Plan without modification at any further creditors meetings or court proceedings and shall use all reasonable efforts to implement all the terms thereof in a prompt and effective manner, including but not limited to submission of the accepted plan to a court having jurisdiction under chapter 3/1 of the Bankruptcy Act. Notwithstanding the foregoing or any other provision hereof, no Creditor under this Agreement shall be required to provide involuntarily any new Credits to the Debtor.

(r) In the event a Proposed Plan is rejected by the Executive Decision Panel, the Debtor or any creditors holding in aggregate twenty-six percent or more of the Credits may submit a modified termsheet (the “Modified Termsheet”) to all Creditors under this Agreement within fifteen (15) Business Days of the notice of the Executive Decision Panel rejecting the previous Proposed Plan. Such Modified Termsheet shall be considered a new Proposed Plan under item 8 of the Process Schedule and all relevant terms and conditions of this Agreement shall apply thereto. If such a Modified Termsheet is rejected by a second Executive Decision Panel, the Creditors under this Agreement shall immediately file a joint petition with a court having jurisdiction for collection of all their Credits, and/or the reorganization under new management or the liquidation of the Debtor.

(s) If no Modified Termsheet is submitted within fifteen (15) Business Days of the notice of the Executive Decision Panel rejecting the previous Proposed Plan, the Creditors under this Agreement shall immediately file a joint petition with a court having jurisdiction for collection of all their Credits, and/or the reorganization under new management or the liquidation of the Debtor.

Section 7. Enforcement Mechanisms

If any Creditor under this Agreement (a “Non-Complying Creditor”) fails to comply with the decisions of the Executive Decision Panel or any other material term or condition herein in relation to a Credit while it is the holder of such Credit, any other Creditor may report the non-compliance to CDRAC and BOT.

Subject to the laws and regulations applicable to financial institutions in Thailand, BOT by virtue of the provisions of this Agreement may take any or all of the following measures with respect to any Non-Complying Creditor

(i) give a warning letter to the Non-Complying Creditor;

(ii) impose a fine on the Non-Complying Creditor as a result of non-compliance. Such fine shall be payable to CDRAC against the operating expenses of CDRAC and its members and shall not exceed 50% of the Non-Complying Creditor’s claims against the Debtor but in no event be less than Baht 1,000,000.

Section 8. Fees, Expenses and Charges of Executive Decision Panel

Expenses and charges due to the advisors of the Executive Decision Panel and the payment thereof, but not including fees and expenses of lawyers and/or advisors of the Debtor or any creditor, shall be born by the Debtor and taken into account under any Approved Restructuring Plan.

Section 9. Release

Each of the Creditors under this Agreement (the “Releasing Party”) on its own behalf and on behalf of any and all of its officers, directors, employees, and representatives (all such persons and entities are herein referred to as “ the Releasing Party’s Related Parties”) does hereby irrevocably and absolutely:

(i) release, discharge, acquit and agree to hold harmless and indemnify prorata to their Credits each executive serving under this Agreement (the "Released Party") each of their heirs and successors (all such persons are hereinafter referred to as "the Released Party's Related Parties") collectively and individually from any and all claims, suits, demands, causes of action, liabilities, debts, agreements, expenses, obligations or damages of whatever nature, whether in contract or tort or pursuant to statute, at law or in equity, whether matured or ummatured, known or unknown, foreseen or unforeseen, including but not limited to claims, suits, demands, causes of action, liabilities, debts, agreements, expenses, obligations or damages arising out of or in any way related to any actions or non-action of any Executive Decision Panel under this Agreement; and

(ii) covenant and agree never to sue, bring, commerce, prosecute, institute, maintain, continue, aid, or join in any lawsuit, action at law, arbitration or other proceeding against or involving any of the released Party or the Released Party's Related parties based upon any claims, demands, liabilities, causes of action, obligations, expenses or damages arising from or in any way related to any actions or non-action of any Executive Decision Panel under this Agreement.

Section 10. Good Faith

The Creditors under this Agreement shall in good faith comply with the provisions of this Agreement and the decisions made by a Steering Committee, Executive Decision Panel, CDRAC or the BOT pursuant to the provisions of this Agreement.

Section 11. Notices

All notices and other communications provided for in, or effected pursuant to, this Agreement shall be in writing and shall be effective as of the following dates: (i) if delivered by hand, then at delivery; (ii) if mailed, first class postage prepaid, return receipt requested, then on the fifth Business Day after deposit in the mail; (iii) if sent by overnight courier, then on the third Business Day following the Business Day on which it is delivered to the courier service; or (iv) if sent by facsimile transmission and followed by hand-delivery, mail or overnight courier copy, then upon confirmation of transmission by the sender's facsimile machine.

Section 12. Applicable Law

This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of Thailand, without regard to conflicts of laws principles.

Section 13. Counterparts; Effectiveness

This Agreement and any amendments, waivers, consents, or supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed on original and all of which, when taken together, shall constitute but one and the same instrument.

Section 14. Scope of Rights

In no event shall this Agreement confer, or be deemed to confer, any rights or privileges on any Debtor or any other person not a party hereto, other than as provided in section 9 hereof.

Section 15. Transitional Provisions

This Agreement shall apply to the future conduct of all existing Workouts involving any Creditors under this Agreement immediately upon execution of or accession to this Agreement by such Creditors under this Agreement, provided that section 7 of this Agreement (Enforcement Mechanism) shall only apply to any non-compliance occurring or continuing after the Non-Complying Creditor has agreed to be bound to the terms hereof.

Section 16. Term

This Agreement shall remain in full force and effect until December 31, 2000 and shall continue to bind Creditors under this Agreement thereafter indefinitely, provided that any Creditor or Creditors under this Agreement may elect to terminate its or their individual obligations and rights under this Agreement effective on any date after December 31, 2000 by giving at least thirty days prior written notice to CDRAC.

IN WITNESS WHEREOF, the parties, after having read and understood all the terms and conditions hereof, execute this Agreement.

6.7 Debtor-Creditor Agreement on Debt Restructuring Process

DEBTOR-CREDITOR AGREEMENT ON DEBT RESTRUCTURING PROCESS

THIS AGREEMENT is made by and between

(1) Any corporate debtor that is a separate juristic person on the CDRAC list of 351 TDR cases and such other corporate debtors as CDRAC may agree, provided that such debtor agrees to be bound by the terms and conditions of this Agreement by supplying to CDRAC a duly executed Debtor Accession in the form attached hereto as Appendix I (the "Debtor");

(2) The financial institutions set forth in Appendix II hereto or any other financial institution who otherwise at any time agrees in writing to the terms and conditions hereof by supplying to CDRAC a duly executed Creditor Accession in the form attached hereto as Appendix III (collectively the "Creditors under this Agreement" and individually a "Creditor under this Agreement"), provided such Creditors under this Agreement are also subject to the Inter-Creditor Agreement on Restructuring Plan Votes and Executive Decision Panel Procedures dated March 19, 1999.

This Agreement is acknowledged by:

(3) The Corporate Debt Restructuring Advisory Committee (hereinafter referred to as "CDRAC"), an unincorporated body consisting of the Associations, the Board of Trade, the Thai Federation of Industries and the Bank of Thailand and advising on corporate debt restructuring in Thailand pursuant to Joint Public-Private Consultative Committee (JPPCC) Resolution No. 1/2541 dated June 22, 1998 and the order of the Bank of Thailand No. 215/2541 dated June 25, 1998; and

(4) The Bank of Thailand (hereinafter referred to as "BOT").

WHEREAS the Creditors under this Agreement have outstanding credits or other financial arrangements to one or more corporate debtors registered, domiciled or otherwise operating in Thailand.

WHEREAS the Debtor desires that its outstanding indebtedness to its creditors be efficiently and promptly restructured in order to minimize losses to the Debtor, such creditors and the Thai economy through a coordinated workout, thereby preserving assets, jobs and productive capacity.

WHEREAS in order to promote on efficient debt restructuring process, the parties wish to establish procedures, time limits and issue resolution mechanisms concerning the potential restructure of the outstanding indebtedness of the Debtor.

NOW, THEREFORE, it is agreed as follows:-

Section 1. Definitions

(a) "Affiliate" in relation to a party means any party which directly or indirectly controls, is controlled by, or is under common control with the party in question, but only so long as the control relationship persists. For the purpose of this definition, "direct control" of a company shall mean ownership of shares carrying at least fifty percent (50%) of the votes at a general meeting of the shareholders of the controlled company (or the equivalent of such a meeting), and "indirect control" of a company shall result if a series of companies can be specified, beginning with a "parent" company and ending with the affiliate in question, so related that each company of the series except the parent is directly controlled by one or (by aggregating shareholdings) more of the previous in the series.

(b) "Approved Restructuring Plan" means a Proposed Plan that receives Sufficient Plan Approval.

(c) "Business Day" means any day other than a Saturday or Sunday on which banks and finance companies in Bangkok, Thailand are allowed to conduct normal business.

(d) "Convening Creditor" shall have the meaning ascribed to it in section 2 (a).

(e) "Confidential Information" shall have the meaning ascribed to it in section 5.

(f) "Creditors under this Agreement" shall mean those financial institutions individually having outstanding Credit to a particular Debtor and that duly execute either this Agreement, a

Creditor Accession or another document in order to be bound by the terms and conditions hereof in relation to the Credit they hold on their own behalf and not in a capacity as agent, trustee, fiduciary or advisor, provided such financial institutions are also subject to the Inter-Creditor Agreement on Restructuring Plan Votes and Executive Decision Panel Procedures dated March 19, 1999;

(g) "Credits" means loans, avals, advances, guarantees, trade credits extended by financial institutions, discount and acceptance facilities, contingent credits, foreign exchange agreements, forwards, swaps, derivatives and other forms of marked to market credit facilities, in accordance with generally accepted accounting principles and, for voting purposes only, converted to Thai Baht at the BOT reference rate on the date of the First Meeting of Creditors where necessary, and any other credit or financial arrangement in whatever form provided to a Debtor by a financial institution, including interest thereon accrued up to the date of the First Meeting of Creditors.

(h) "Debtor" means a corporate debtor on the CDRAC list of 351 TDR cases and such other corporate debtors as CDRAC may agree.

(i) "First Meeting of Creditors" shall have meaning ascribed to it in section 2(a).

(j) "Framework" shall mean the Framework for Corporate Debt Restructuring in Thailand, a copy of which is attached hereto as Appendix VI.

(k) "Lead Institution" shall mean a Creditor or Creditors under this Agreement or such other creditor as approved by CDRAC that have been appointed to manage and coordinate a Workout, substantially in accordance with Principle 6 of the Framework or section 3 of this Agreement.

(l) "Majority Creditors" means Creditors under this Agreement holding at least fifty-one percent (51%) of the outstanding Credit owed by the Debtor to all Creditors under this Agreement.

(m) "Plan Term" means the period from the date of Sufficient Plan Approval until all the obligations under an Approved Restructuring Plan have been fulfilled or waived and all restructured debt has been paid in full.

(n) "Process Schedule" means the schedule set forth in Appendix IV hereto.

(o) "Proposed Plan" means a plan for the business and financial restructuring of a Debtor, submitted under step 8 or 10 of the Process Schedule, provided always:

  (i) such plan provides for a financial return to creditors greater than that which would be achieved by liquidation of the Debtor;

  (ii) all creditors are treated reasonably and fairly under such plan, taking into account the rankings of creditors in the event of bankruptcy proceedings and the creditor's likely respective contributions to the Debtor's survival as a going concern; and

(iii) such plan is in substantial compliance with the Framework.

(p) "Required Creditors" means Creditors under this Agreement holding at least twenty-six percent (26%) of all the outstanding Credits owed by the Debtor to all Creditors under this Agreement.

(q) "Steering Committee" means the committee of representatives of creditors formed substantially in accordance with Principle 7 of the Framework and section 4 of this Agreement.

(r) "Sufficient Plan Approval" means approval, by a vote at a creditors meeting, of a Proposed Plan by such percentage of all voting creditors with such percentage of aggregate Credits sufficient to meet the definition of a "Special Resolution" under section 6 of the Bankruptcy Act B.E. 2483 as amended (or any amended or succeeding definition of "Special Resolution" under the Bankruptcy Act).

(s) "Transferee" shall have the meaning ascribed to it in section 8.

(t) "Workout" means multilateral efforts to restructure the outstanding Credits and the business of the Debtor.

(u) "Workout Schedule" shall have the meaning ascribed to it in Section 3.

Section 2. Convening of First Meeting of Creditors under this Agreement

(a) By a Creditor: Any Creditor under this Agreement (the "Convening Creditor") may call a meeting of all creditors (the "First Meeting of Creditors") to commence a Workout. The Convening Creditor shall give the Debtor written notice at least fifteen Business Days prior to the scheduled date of the First Meeting of Creditors. Within five Business Days of receipt of the notice for the First Meeting of Creditors, the Debtor must provide in writing to the Convening Creditor a complete current list of all its outstanding Credits including the name, address, telefax and telephone numbers of each creditor, as well as a copy of the Debtor Accession duly executed by the Debtor. Within three Business Days of receipt of the creditor

list from the Debtor. Within three Business Days of receipt of the creditor list from the Debtor, the Convening Creditor shall notify each creditor whose name appears on the list of creditors of the Debtor or who is otherwise known to the Convening Creditor of the time and place of the First Meeting of Creditors.

(b) By a Debtor: A Debtor may call the First Meeting of Creditors by giving all its creditors at least ten Business Days notice prior to the scheduled date of the First Meeting of Creditors, as well as a copy of a Debtor Accession duly executed by the Debtor.

(c) By CDRAC: CDRAC may call the First Meeting of Creditors by giving the Debtor written notice at least fifteen Business Days prior to the scheduled date of the First Meeting of Creditors. Within five Business Days of receipt of the notice for the First Meeting of Creditors, the Debtor must provide in writing to CDRAC a complete current list of all its outstanding Credits including the name, address, telefax and telephone numbers of each creditor, as well as a copy of the Debtor Accession duly executed by the Debtor. Within three Business Days of receipt of the creditor list from the Debtor, CDRAC shall notify each creditor whose name appears on the list of creditors of the Debtor or who is otherwise known to CDRAC of the time and place of the First Meeting of Creditors.

Section 3. Lead Institution

At the First Meeting of Creditors, all the attending Creditors under this Agreement agree to vote to elect as the Lead Institution(s) a Creditor (s) under this Agreement, or such other creditor as approved by CDRAC, having restructuring experience, a significant exposure to the Debtor, and a professional working relationship with the senior management of the Debtor. The Lead Institution or the Debtor shall notify all known creditors, the Debtor and CDRAC of the Lead Institution's appointment within five Business Days thereof. Such notice shall contain the name, telephone and telefax numbers of an individual at the Lead Institution that will manage the Workout. The Lead Institution shall establish goals and schedules, organize inter-creditor discussions, help resolve inter-creditor issues, liaise with financial and other advisors, calculate the amount of Credits outstanding for voting purposes, lead negotiations with the Debtor, and ensure the distribution of information to and timely responses from, other creditors. Expenses and fees of the Lead Institution shall be borne by the Debtor and taken into account in any Approved Restructuring Plan.

The First Meeting of Creditors shall also draw up an action plan and a time frame for the debt restructuring process. The Lead Institution shall submit the same to all known creditors, the Debtor and CDRAC within ten (10) Business Days of the First Meeting of Creditors. Such action plan and time frame shall contain at a minimum the restructuring steps and a schedule meeting at least the deadlines of Appendix IV (the "Workout Schedule") unless otherwise agreed by CDRAC.

Section 4. Steering Committee

At the request of the Lead Institution or at least two Creditors under this Agreement, all the Creditors under this Agreement agree to decide on the need to vote to appoint a steering committee.

The Lead Institution shall be considered as the chairman of the Steering Committee.

Neither the Lead Institution nor any member of the Steering Committee will be deemed under any circumstances to be an agent of any creditor or third party.

Section 5. Provision and Confidentiality of Information

(a) Within the time frames set forth in the Workout Schedule (or Appendix IV hereto in the absence of a Workout Schedule), the Debtor shall provide, and the Lead Institution and the Steering Committee shall collect and gather the fullest possible information on all relevant matters (including but not limited to all information required under applicable Bank of Thailand regulations) for the analysis of the current condition of the Debtor, an indication of its future viability in the form of a comprehensive business plan, and therefore the feasibility of debt restructuring. Such information should include but not be limited to the items specified in Appendix V.

To ensure transparency in the process, relevant information is to be shared amongst creditors, Debtors and other concerned parties in the Workout that execute this Agreement or an appropriate confidentiality agreement.

(b) The executive (decision making) officers of the Debtor must make themselves immediately available upon request of the Lead Institution or the Steering Committee to answer all questions during a Workout.

(c) A Debtor's executive management must provide all required information in a timely manner, including but not limited to all the information set forth in Appendix V hereto. Such executive

management or persons expressly authorized to act on their behalf in all matters related to a Workout must attend all meetings as requested by the Lead Institution or the Steering Committee.

(d) The Debtor, after consultation with professional advisors and creditor representatives, must submit to the Lead Institution a comprehensive, transparent and achievable business plan including industry analysis and reasonable cash-flow projections within the Workout Schedule (or within the timeframe set forth in Appendix IV hereto in the absence of a Workout Schedule).

(e) At the request of the Lead Institution or the Steering Committee, the Debtor shall promptly on behalf of all creditors appoint for the benefit of all creditors an independent and reputable accounting and/or law firm or other expert nominated by the creditors to undertake appropriate duties, including, if requested, the preparation of audited financial statements. The Debtor must cooperate fully with such firm and promptly provide all requested information. All debtor expenses under this clause will be taken into account in any Approved Restructuring Plan.

(f) Each recipient shall protect in strict confidence and shall refrain from disclosing any non-public information ("Confidential Information") provided by the Debtor or any other party and not use any Confidential Information except in the debt restructuring process. Each recipient shall refrain from disclosing Confidential Information except to its employees and advisors (including mediators and executives) who have a need to know such Confidential Information for the sole purpose of restructuring the Debtor's business and its financial obligations, and to potential Transferees that duly execute prior to disclosure a confidentiality agreement having terms corresponding to section 5(f) and 5(g).

Notwithstanding the foregoing, no recipient shall have any obligation to preserve the confidentiality or restrict the use of any information which

(i) was previously know to the recipient without breach of this Agreement, or
(ii) is disclosed to third parties by the owner thereof without restriction, or
(iii) is or becomes available to any member of the public by other than unauthorized disclosure by the recipient seeking to use such Information, or
(iv) was or is independently developed by the recipient, or
(v) is by agreement of the owner released for disclosure by a third party.

(g) Disclosure of Confidential Information shall not be precluded if disclosure is:

(i) in response to a valid order of a court, other governmental body or any political subdivision thereof or any regulatory agency;
(ii) otherwise required by the applicable law of any jurisdiction;
(iii) of information provided by the Debtor in judicial proceedings; or
(iv) done to allow Creditors under this Agreement to share information with regards to their claims on the Debtor.

Section 6. Covenants[1]

(a) From the date of its execution of a Debtor Accession, the Debtor must not without the consent of all creditors:

(i) create or assume additional indebtedness;
(ii) make any investments or incur any expenses outside the ordinary course of its business;
(iii) dispose of any assets outside the ordinary course of its business;
(iv) lend money or guarantee any other person's obligations;
(v) enter into any transactions with related parties other than in the ordinary course of business and in such a manner that would be conducted with an unrelated party;

[1] The Thai Bankers' Association, the Foreign Banks' Association and the Association of Finance Companies concur on the clarification with respect to Section 6 within the Debtor-Creditor Agreement (DCA):

(a) The term "all creditors" in Section 6 of the DCA shall refer to creditors who are signatories to the DCA only. However, in consideration of additional loans being sought, consent must be obtained from all signatory creditors. In addition, the debtor must contact non-signatory creditors and request consent. The timeframe for response from non-signatory creditors will be two weeks.

(b) Where the debtor utilizes existing credit facilities, the debtor is not considered to have incurred additional liabilities for the purpose of the DCA

(c) Where the debtor requires additional credit facilities or loans, the additional credit should be repaid in full before the debtor's other credit. Therefore, additional credit should be approved as described in 1(a)

(vi) create any additional security interests on or in the Debtor's assets (including but not limited to assignments of accounts receivable);
(vii) make any preferential payments including preferential debt repayments to creditors;
(viii) enter into any foreign exchange, swap, or derivative transactions except in the ordinary course of their business to cover existing commercial exposures;
(ix) demand or take any action to recover from any creditor any amounts related to any creditor or otherwise seek to enforce any right or remedy relating to any creditor;
(x) directly or indirectly engage in any activity not engaged in by the Debtor as of the First Meeting of Creditors;
(xi) make any payments to shareholders, whether in the from of dividends, redemption of equity, repayment of subordinated loans or otherwise; or
(xii) removed any non-trade assets from the jurisdiction of the Thai courts.

(b) From the date Debtor executes a Debtor Accession, the Creditors under this Agreement agree to temporarily suspend payment of default interest on any of their Credits. Upon the Debtor achieving Sufficient Plan Approval, the Creditors under this Agreement agree to waive any default interest accrued up to the date the Debtor receives Sufficient Plan Approval. If Sufficient Plan Approval is not achieved by the end of the Workout Schedule, all suspended default interest and other Credits of the Creditors under this Agreement shall become immediately due and payable.

Section 7. Mediation

To assist in the settlement of any material issues arising between the Debtor and one or more Creditors under this Agreement, at any time or times during a Workout, the Debtor jointly with the Lead Institution or the Steering committee may request CDRAC to appoint a mediator (the "Approved Mediator") from the list of mediators complied by CDRAC and approved by the association of Finance Companies, the Board of Trade, the Federation of Thai Industries, the foreign Banks' Association and the Thai Bankers, Association. The parties making a written request for mediation shall provide to CDRAC a statement of the issues requiring mediation and any relevant documents.

(b) Upon receipt of a request for mediation, CDRAC shall within three (3) Business Days inform all other relevant persons affected by such issue of the name if the Approved Mediator and invite them to submit a statement of issues and any relevant documents with five (5) business Days. CDRAC shall provide the Approved Mediator with all statements of issues and related documents within three (3) Business Days of CDRAC's receipt thereof.

(c) Upon appointment, each Approved Mediator shall disclose to CDRAC any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence.

(d) Any Creditor under this Agreement may challenge any Approved Mediator as to the impartiality and independence of the Approved Mediator.
The challenge shall be made in writing notifying the grounds for challenge and submitted to CDRAC within five (5) Days from the date of the notification by CDRAC of the name of the Approved Mediator.

(e) If CDRAC agrees with the grounds for challenge or the approved Mediator withdraws after the challenge, the procedure provided in Section 7 (b) shall apply for appointment of the substitute Approved Mediator, otherwise the challenged Approved Mediator will stand appointed.

(f) Subject to this Agreement, the approved Mediator may conduct mediation in such manner as he or she considers appropriate, provided that all Creditors under this Agreement and the Debtor are treated with equality and fairness, all Creditors under this Agreement and the Debtor are given a fair opportunity of presenting this position prior to any final proposal of the Approved Mediator, the mediation shall commence within ten (10) Business Days of the later of appointment of the Approved Mediator of CDRAC rejection of any challenge under section 7 (e), and any proposal is in accordance with all sections of the Framework.

(g) Unless otherwise agreed upon, the presentation of positions shall be in the following manner:
(i) all documents in support of a position of a Creditor under this Agreement of a Debtor shall be submitted to the Approved mediator with a copy to CDRAC within ten (10) Business Days of the appointment of the approved Mediator. In cases where the approved Mediator deems appropriate, the approved Mediator may request additional documents as reasonably required that are not restricted from disclosure by any law, regulation, agreement or fiduciary obligation.
(ii) Any Creditor under this Agreement of the debtor may request to appear before the Approved Mediator to explain its position, in which case the Approved Mediator must

meet with such person. A Creditor under this Agreement or the Debtor must appear for a mediation session if requested by the Approved Mediator.

(iii) All mediation efforts shall be held in private and no mediator nor other person shall make any public statement nor disclose any confidential Information except as provided in Section 5.

(h) The proposal of the Approved Mediator shall be given within twenty (20)n Business Days from the submission of documents under section 7 (g) (i), unless an extension of time is deemed necessary by the approved Mediator.

(i) Proposals of the Approved Mediator shall be made in writing, signed by the Approved Mediator and state a proposed resolution to any specific issue presented or an overall potential structure for a Workout.

(j) The Approved Mediator shall inform CDRAC of its proposal CDRAC shall inform the Creditors under this Agreement and the Debtor of the Approved Mediator's proposal.

(k) Except as expressly provided herein, nothing that transpires in or results from any mediation efforts shall in any manner affect or alter any legal rights of remedies of any person unless such person executes a binding agreement as to such affected or altered rights or remedies or remedies or such legal rights or remedies are otherwise altered or affected by operation of law.

(l) The frees and expenses of the approves Mediator shall be born the Debtor and taken into account under any Approved Restructuring Plan.

Section 8. Debt Trading

Any Creditor electing to sell some or all of its Credits to a third party the ("Transferee") during the Workout must

(a) inform the Transferee in writing of the current status of the Workout and that previously decided issues are not subject to renegotiations; and

(b) for sale to Affiliates only, have the intended Transferee execute a binding agreement to accept and be governed by the terms of this Agreement.

Section 9. Voting on Proposed Plan; Implementation of Approved Restructuring Plan[2]

Subject to due complian1ce by the Debtor with the terms and conditions hereof including but not limited to the Debtor's submission of a Proposed Plan under item 8 of Appendix IV, all Creditors

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[2] The Thai Bankers' Association, the Foreign Banks' Association and the Association of Finance Companies concur on the clarification with respect to Section 3 and Section 9 of the inter-creditor Agreement (ICA) and the Debtor-Creditor Agreement (DCA):

(a) All financial creditors who hold credits (as defined in the Agreement) will be invited to vote at the creditors' meeting regardless of whether they are current signatories of the Agreement or not.

(b) Thai all attending creditors must vote at the meeting to indicate their support to the proposed plan or otherwise.

(c) That all creditors casting a vote must sign a voting paper to confirm their formal vote and their written agreement to abide by the vote, in accordance to the terms of the Agreement.

Definition of Financial Creditors

A financial creditor is defined broadly as any one of the following;

1. An Institution that is regulated by law under the Commercial Banking Act or Finance Companies Act or is regulated by the Bank of Thailand.
2. An institution that is regulated under any applicable Insurance Act.
3. Any institution that is established by a specific law and that is owned / controlled / regulated by the Ministry of Finance or Ministry of Commerce, e.g. Industrial Finance Corporation of Thailand. This also includes any equivalent institutions in other jurisdictions, e.g. The export-import Bank of the united States.
4. Any public or privately owned Asset Management Company established under Thai Law.
5. Any entity whose main business is the provision of credit (as defined in the DCA).
6. Bondholder (voting either in their own right or through a trustee)

But for avoidance of doubt a financial creditor excludes:-

1. Trade creditors
2. Any creditor which holds the debt on behalf of the debtor or shareholder of the debtor or any affiliate or associated company, whether directly or through an agent or nominee.

under this Agreement in any Workout agree to cast their votes in favor of or against any Proposed Plan within the schedule set forth in Appendix IV hereto and any other earlier deadlines in the Workout Schedule. Any vote cast against a Proposed Plan shall be accompanied by a written statement of substantive objections to specific portions of the Proposed Plan.

If a Debtor fails to submit a Proposed plan under item 8 of Appendix IV, CDRAC will appoint at the Debtor's expense a qualified financial advisor to prepare a Proposed Plan within thirty calendar days of appointment and the terms hereof shall apply to such Proposed Plan.

If, after completion of step 10 or step 11 of the process set forth in Appendix IV, a Proposed Plan receives Sufficient Plan shall be deemed an Approved Restructuring Plan binding on the Debtor and all creditors. Thereafter, unless otherwise determined by Creditors under this Agreement that hold a majority of all Credits of the Creditors under this Agreement that hold a majority of all Credits of the Agreement shall vote at any creditors meeting or court proceeding only in favor of such Approved Restructuring plan without modification. The Debtor all Creditors under this Agreement shall use all reasonable efforts to implement the terms of the Approved Restructuring Plan, including where necessary by seeking approval of the Approved Restricting Plan, including where necessary by seeking approval of the Approved Restructuring Plan under Chapter 3/1 of the Bankruptcy Act from a court having jurisdiction.

Section 10. Releases

Each of the Creditors under this Agreement and the Debtor (the "Releasing Party" on its own behalf and on behalf of any all of its officers, director, employees, and representatives (all such persons and entities are herein referred to as "the Releasing Party's Related Parties" does hereby irrevocably and absolutely:

(i) release, discharge and acquit and agree to hold harmless and indemnify BOT, CDRAC, Approved Mediators, Lead Institutions and any member of a Steering /committee serving under this Agreement (the "Released Party") and each of their officers, directors, employees, advisors, representatives, heirs and successors (all such persons are hereinafter referred to as "the Released Party's Related Parties") collectively and individually from any and all claims, suits, demands, causes of action, liabilities, debts, expense, obligations or damages of whatever nature, whether in contract or tort or pursuant to statute, at law or in equity, whether matured or unturned, known, foreseen or unforeseen, including but not limited to claims, suits, demands, causes of action, debts, agreements, expenses, obligations or damages arising out of or in any way related to this Agreement; and

(ii) Covenant and agree never to sue, bring, commence, prosecute, institute, maintain, continue, aid, or join in any lawsuit, action at law, arbitration or other proceeding against or involving any. of the Released Party or the Released Party's Related Parties based upon any claims, demands, liabilities, causes of action, obligations, expenses or damages arising from or in any way related to this Agreement.

Section 11. Breach of Agreement

The occurrence of any of the following events shall constitute a breach of this Agreement :

(a) the Debtor for any reason fails to perform or observe any of its obligations under this Agreement and, if such failure is capable of remedy, the Debtor does not effect a full remedy within five Business Days;

(b) any representation or warranty given, made or deemed made by the Debtor is or becomes or proves to have been untrue, incorrect or misleading in any material respect and, it capable of remedy, the Debtor does not effect a full remedy within five Business Days;

(c) this Agreement or any part hereof shall at any reason cease to be declared to void or shall be repudiated or frustrated or the validity or enforceability hereof shall at any time be contested by their Debtor or any person, or the Debtor shall deny that it has any or further liability or obligations hereunder;

(d) any action or proceeding of or before any court or authority shall be commenced to enjoin or restrain the performance of and compliance with the obligations expressed to be assumed by the Debtor hereunder, or in any manner to question the legality, validity, binding effect or enforceability of this Agreement.

Any governmental authority or any person acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the property of their Debtor of shall have taken any

action to displace the management of the Debtor to curtail its authority in the conduct of the business of the Debtor; or

(f) The Kingdom of Thailand or any legislative, executive or judicial body thereof (whether by a general suspension of payments or a moratorium on the payment of indebtedness or otherwise), or any treaty, law, regulation, communiqué, decree, ordinance or policy of Kingdom of Thailand shall purport to render any provision of this Agreement invalid or unenforceable or shall purport to prevent or materially delay the performance or observance by the Debtor of its obligations hereunder.

At any time after the occurrence of a breach of this Agreement and upon the receipt by the Debtor of written notice from the Required Creditors under this Agreement, this Agreement shall terminate immediately as to Debtor without the requirement of any further notice or action. After three unremedied breaches by the Debtor under sections 11 (a) and (b), or if any Debt of fails to timely execute and provide a Debtor Accession under section 2, the Creditors under this Agreement agree to seek collection of their Credits under judicial process and/or immediate liquidation or reorganization of the Debtor under new management pursuant to the Bankruptcy Act.

If any Creditor under this Agreement (a "Non-Complying Creditor") fails to comply with Section 9 hereof (Voting on Proposed Plan; Implementation of Approved Restructuring Plan) any other Creditor under this Agreement may report the non-compliance to CDRAC.

Subject to the laws and regulations applicable to financial institutions in Thailand , by virtue of the provisions of this Agreement BOT may take any or all of the following measures with respect to any Non-Complying Creditor

(i) give a warning letter to the Non-Complying Creditor;

(ii) impose a fine on the Non-Complying Creditor as a result of non-compliance, Such fine shall be payable to CDRAC against the operating expenses of CDRAC and its members and shall not exceed 10 % of the Non-Complying Creditor's claims against the Debtor but in no event be less than Baht 500,000.

In the event of any material breach of a provision of this Agreement other than section 9 by a Creditor under this Agreement, any other Creditor under this Agreement may report such breach to CDRAC and CDRAC may issue a warning letter to the breaching Creditor under this Agreement.

Section 12. Amendments to Framework

The Parties agree that the Framework shall be amended as follows:

(a) Principle 1 of the Framework is amended by adding the following as Implementing Policies 1 (E) and 1 (F)

(E) Management of Debtor: Whenever possible, existing management of the Debtor should be retained in such positions, and with such duties and responsibilities, that such management will, in the opining of a majority of performance equivalent to the management of the Debtor's main competitors, Mutually agreed new executives shall be added to manage only those functions where existing management is currently non-comcutives of the Debtor's main comertitors. Notwithstanding the foregoing, the appointment of the chief financial officer or other person having ultimate management responsibility for the financial affairs of the Debtor must receive the approval of a majority of all creditors throughtout the Plan Term. In addition, where feasible creditors should have the option of eing equitable represented of the board of directors of the Debtor throughout the Plan Term.

(F) Sales of Assents: Any assets of the Debtor scheduled to be sold by a plan approved by the creditors should be sold to yield the most immediate commercial return unless there is a strong probability in the opinion of a majority of all creditors that retention of such assents for a longer period will yield a greater overall return to the creditors when discounted to a present value. Such sales may be made to third parties of special purpose vehicles established for the benefit of the creditors, such as asset management companies or property mutual funds."

(b) Implementing Policy 2(E) of the Framework is amended to read as follows:

"(E) Debt-to – Equity Conversions: Under normal circumstances debt-to-equity conversions shall be a "last resort" in any Workout and used only in circumstances which result in greater than liquidation value for creditors Debt-to-equity conversions should be conducted at a fair and equitable price with regards to the independently appraised value of the Debtor as a going concern at the date of the conversion (assuming adequate working capital under an Approved

restructuring plan). Creditors must be given a feasible exit strategy to dispose of such equity , either by sale on a recognized exchange or some other liquid process. Whenever feasible, existing shareholders should be given the first option to purchase such equity."

Section 13. No Waiver

All Credits are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed.

Except as otherwise expressly provided in this Agreement, the execution, delivery and effectiveness of this Agreement and the performance of obligations and exercise of rights hereunder shall not constitute a waiver by any of the Creditors under this Agreement of any right, power of remedy which any of the creditors under this Agreement may have under of in respect of any Credit of otherwise. Without limiting the foregoing, the execution, delivery and effectiveness of this Agreement shall not operate as a waiver of the right of any Creditor under this Agreement to the payment of any Credit, interest or default interest thereon, or as a waiver of any breach of default thereunder.

Section 14. Amendment

The amendment of waiver of any provision of this Agreement shall not be effective unless the same shall be in writing and signed by the Debtor and, with respect to Sections 3, 4, 8, 12, and 15 the Majority Creditors, and with respect to any other provision of this Agreement, all Creditors under this Agreement, and then such amendment, waiver of consent shall be effective only in the specific instance and for the specific instance and for the specific purpose for which given.

Section 15. Notices

All notices and other communications provided for in, or effected pursuant to, this Agreement shall be in writing and shall be effective as of the following dates: (I) if delivered by hand, then at delivery; (ii) if mailed, first class postage prepaid, return receipt requested, then on the fifth Business Day after deposit in the mail; (iii) if sent by overnight courier service; or (iv) if sent by facsimile transmission and followed by hand-delivery, mail or overnight courier copy, then upon confirmation of transmission by the sender's facsimile machine.

Section 16. Applicable Law

This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of Thailand, without regard to conflicts of laws principles.

Section 17. Transitional Provisions

Within forty-five Business Days of the date of execution hereof, all debtors and Creditors under this Agreement shall inform CDRAC in writing of the current status of and Workouts involving a Debtor hereunder. CDRAC shall notify in writing the Debtor and all affected Creditors under this Agreement of the step of the Process Schedule corresponding to such current status. Upon receipt of such notice from CDRAC, this Agreement shall apply to such Workout, provided that section 11 of this Agreement (Breach of Agreement) shall only apply to any breach occurring or continuing after the date.a Debtor of Creditor under this Agreement has agreed to be bound to the terms hereof

Section 18. Term

This Agreement shall bind all Creditors under this Agreement until December 31, 2000 and indefinitely thereafter provided, however, any Creditor under this Agreement may elect to terminate its individual obligations and rights under this Agreement effective on any date after December 31, 2000 by giving at least thirty days prior written notice to CDRAC. Notwithstanding the foregoing, this Agreement will bind each Debtor throughout the term of the Workout of such Debtor.

Section 19. Counterparts; Effectiveness

This Agreement and any Creditor Accession, Debtor Accession or amendments, waivers, consents, of supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute but one and the same instrument.

Section 20. Scope of Rights

In no event shall this Agreement confer, or be deemed to confer, any rights or privileges on any person not a party hereto other than as expressly provided in section 10 hereof.

Section 21. Good Faith

All parties shall in good faith comply with the provision of this Agreement and the decisions made by a Steering Committee, CDRAC or the BOT pursuant to the provisions of this Agreement.

IN WITNESS WHEREOF, *the parties after having read and understood all the terms and conditions hereof, execute this Agreement intending to be legally bound by all its provisions.*

APPENDIX *– Debtor Accession*
(Letterhead of Debtor)
To : All Parties (as defined under the Debtor – Creditor Agreement on Debt Restructuring Process)
Dear Sirs ,

Reference is made to the Debtor-Creditor Agreement on Debt Restructuring Process (the "Agreement") and made between certain financial institutions (the "Creditors under this Agreement") the Corporate Debt Restructuring Advisory Committee ("CDRAC") and the Bank of Thailand ("BOT"). Capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

We,_____Limited (the "Debtor"), hereby agree to be bound by all the terms and condittions of the Agreement as an original party thereto for the proposed Workout of our Credits to the Creditors under this Agreement. We also agree to support and implement, and use our best efforts to cause our shareholders to support, any Proposed Plan or Approved Restructuring Plan.

We confirm that we have received a copy of the Agreement together with such other documents and information we require.

We hereby irrevocably and unconditionally undertake that we will perform in accordance with all the terms and conditions under the Agreement as a Debtor from the date hereof.

This Debtor Accession shall be governed by and construed in accordance with the laws of Thailand.

We execute this Accession by our authorized representative(s) intending to be fully and legally bound to all the terms and conditions hereof and of the Agreement.

Debtor

……..Limited

……..
By :
Name (S) : *(corporate seal if required)*
Address :
Telefax :

6.8 Creditors under this Agreement

The Thai Banker's Association

Bangkok Bank Public Company Limited
Bangkok Metropolitan Bank Public Company Limited
Bank of Asia Public Company Limited
Bank of Ayudhya Public Company Limited
Bankthai Public Company Limited
Krung Thai Bank Public Company Limited
Nakornthon Bank Public Company Limited
Radanasin Bank Public Company
Siam City Bank Public Company Limited
Siam Commercial Bank Public Company Limited
Thai Farmers Bank Public Company Limited
Thai Military Bank Public Company Limited
The Thai Danu Bank Public Company Limited

The Association of Finance Companies

AIG Finance (Thailand) Public Company Limited
Asec Finance & Securities Company Limited
Asia Finance Public Company Limited
Ayudhya Investment and Trust Public Company Limited
Bangkok First investment & Trust Public Company Limited
BTM Finance & Securities (Thailand) Limited
Citicorp Finance & Securities (Thailand) Limited
Ekachart Finance Public Company Limited
Global Thai Finance & Securities Limited
HSBC Finance & Securities (Thailand) Limited
Kiatnakin Finance & Securities Public Company Limited
National Finance Company Limited
National Finance Public Company Limited
Phatra Thanakit Public Company Limited
Radanatun Finance Public Company Limited
SG Asia Credit Public Company Limited
Thai Capital Finance Company Limited
Thai Sakura finance & Securities Company Limited
The Book Club Finance & Securities Public Company Limited
The Ocean Finance Company Limited
The Siam Industrial Credit Public Company Limited
Tisco Finance Public Company Limited

Thaksin Finance Company Limited

The Foreign Banks' Association

ABN-AMRO Bank N.V.
American Express Bank Limited
Bank of America N.T. & S.A.
Bank of China
Banque Paribas
Banque Nationnale de Paris
Bharat Overseas Bank Limited
Chinatrust Commercial Bank Limited
Citibank, N.A.
Credit Agricole Indusuez
Credit Lyonnais
Deutsche Bank AG
Dresdner Bank AG
First Commercial Bank
Generale Bank, S.A.
ING Bank N.V.
KBC Bank N.V.
Korea Exchange Bank
NATEXIS Banque
National Australia Bank Asia, Limited
Oversea Chinese Banking Corporation Limited
Overseas Union Bank Limited
Rabobank Nederland
Sime Bank Berhad
Societe Generale
Standard Chartered Bank
The Bank of New York
The Bank of Nova Scotia
The Bank of Tokyo-Mitsubishi, Limited
The Chase Manhattan Bank
The Dai-Ichi Kangyo Bank, Limited
The Daiwa Bank, Limited
The Development Bank of Singapore Limited
The Fuji Bank, Limited
The Hong Kong and Shanghai Banking Corporation Limited (HSBC)
The Industrial Bank of Japan, Limited
The International Commercial Bank of China

The Sakura Bank, Limited

The Sanwa Bank, Limited

The Sumitomo Bank, Limited

The Tokai Bank, Limited

The Yamaguchi Bank Ltd.

UBS AG

Union Bank of California, N.A.

United Overseas Bank Limited

United World Chinese Commercial Bank

Specialised Financial Institutions

The Export – Import Bank of Thailand

The Industrial Finance Corporation of Thailand

Asset Management Companies

Chanthabure Asset Management Company Limited

NFS Asset Management Company Limited

Radanasin Asset Management Company Limited

Thonburi Asset Management Company Limited

Tawee Asset Management Company Limited

บริษัท บริหารสินทรัพย์ทวี จำกัด

6.9 Creditor Accession

(Letterhead of Financial Institution)

To : All Parties (as defined under the Debtor-Creditor Agreement on Debt Restructuring)

Dear Sirs ,

Reference is made to the Debtor-Creditor Agreement on Debt Restructuring Process (the "Agreement") and made between certain financial institutions (the "Creditors under this Agreement"). The Corporate Debt Restructuring Advisory Committee ("CDRAC") and the Bank of Thailand ("BOT"). Capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

We,_____ hereby agree to be bound by all the terms and conditions of the Agreement as well as all the terms and conditions of the Inter-creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures dated March 19, 1999 as a "Creditor under this Agreement" and an original party thereto .

We confirm that we have received a copy of the Agreement and the Inter-creditor Agreement on Restructure Plan Votes and Executive Decision Panel Procedures together with such other documents and Information we require

We hereby irrevocably and unconditionally undertake that we will perform in accordance with all the terms and conditions under the Agreement and the Agreement on Restructure Plan Votes and Executive Decision Paned Procedures as a "Creditor under this Agreement" from the date hereof.

This Creditor Accession shall be governed by and construed in accordance with the laws of Thailand.

We execute this Accession by our authorized representative (s) intending to be fully and legally bound to all the terms and conditions hereof, of the Agreement, and the Inter-creditor Agreement on Restructure Plan Votes and Executive Decision Paned Procedures.

_____

_____

By :
Name (s) : (corporate seal if required)

Address :

Telefax :

6.10. Process Schedule

	Stage	Time
1.	Call First Meeting of Creditors	Anytime by CDRAC, Debtor or any Creditor under this Agreement
2.	Debtor executes Debtor Accession: First Creditors Meeting, appointment of Steering Committee/lead Institution; Establishment of Workout Schedule	Within fifteen Business Days of # 1
3.	Creditors submit claims in writing to Steering Committee/ lead Institution	Within fifteen days of # 2
4.	At any creditors meeting or Steering Committee meeting a debtor representative with decision-making authority must appear and answer any and all questions	Continuous
5.	Debtor's "Management" (i.e. directors officers) must submit at a minimum the following information: assets, liabilities and obligations the Debtor owes to creditors; property given by the Debtor as security to creditors and the date given; property of other parties in the Debtor's possession: the Debtor's shareholdings in other companies or juristic persons; names, businesses and addresses of all creditors; names, businesses and addresses of the Debtor's debtors; details of the property including payments which the Debtor expects to receive in the future	within 7 days of # 2
6.	The appointment of an independent Accountant and/or other experts shall be carried out as requested by the creditors based on the agreed terms of reference	Within 7 days of # 2
7.	Debtor submits information set forth in Appendix V, draft business plan and all Further information requested by creditors Or independent accountant	Within two months of # 2, extendable by CDARC up to one month maximum

8.	Proposed Plan submission to all Creditors by Creditors Committee, Debtor and independent accountant, along with written approval of the Proposed Plan by the Debtor	Within three months of # 2, extendable up to two months with consent of CDRAC. If no timely Proposed Plan is submitted, CDRAC will appoint at Debtor's Expense a qualified financial advisor to prepare a Proposed Plan within Thirty calendar days.
9.	Creditors propose amendments to Proposed Plan	Within 10 Business Days of # 8
10.	Creditor Meeting to vote on plan, dissenting creditors may submit an alternative Proposed Plan	15 Business Days after # 9
11.	Second vote on Proposed Plan or vote On Alternate Proposed Plan (if necessary)	10 Business Days after # 10 (if Sufficient Plan Approval is not achieved under # 10)

6.11. Information Required From Debtor

A. GROUP AND CORPORATE STRUCTURE

(1) All subsidiaries and associated companies, percentage shareholding, and Country of incorporation.

(2) Business reporting and management structure

(3) Legal ownership of all major assets

(4) Summary of senior management/board experience and qualifications

(5) Summary of corporate governance policies, standards and procedures

(6) Summary of management information systems

(7) Summary of accounting policies, standards and procedures

(8) All related inter-company transactions or other inter-company revenue-Earning agreements (trading and non-trading) and the basis and terms and Conditions thereof

(9) Shareholder and director remuneration and agreements

B. LIABILTIES

(1) All liabilities (including contingent and off-balance sheet) with current utiliza tions, original maturities and purpose of each separate utilization

(2) Legal claims or potential legal claims

C. RECOURSE STRUCTURE

(1) Specific details of tender, borrower, secured party, guarantors/letters of Comfort and any limitations thereon

(2) Details of any security, negative pledge and subordination arrangements

D. ASSETS

(1) List of all tangible and non-tangible assets (current or long term)

(2) Any existing assets registers
(3) Latest internal of independent appraisals of assets
(4) Aging reports of accounts receivable

E. BUSINESS PLAN

(A) Industry analysis and Debtor profile

(1) Brief summary of the Debtor's industry outlook over the forecast period, fore casted industry profitability and growth rates, supply and demand forecasts for industry inputs and outputs, regulatory and taxation aspects

(2) Description of the Debtor's business operations, identification of core business non-core business and surplus assets

(3) Analysis of the Debtor's competitive position within the (core) industry. This analysis should include market share analysis and profitability/cost benchmarking.

(B) Historical Results and Present Financial Position

(1) Brief analysis of results over the previous 12 month (cashflow, profit and loss And balance sheet)

(C) Forecasts

(1) Trading forecasts (cashflow, profit and loss and balance sheet) for the next 12 months on a month by month basis, and for the next (3) years on an annual basis.

(2) Sensitivity analysis of major assumptions.

(3) Identification of future working capital requirements

(4) Planned cost-cutting and revenue enhancement initiatives

(5) Planned sale of non-strategic assets and anticipated proceeds

The analysis in parts B and C should identify the major business lines or product groups] And classify them according to whether they are likely to be profitable or unprofitable during the forecast period. If unprofitable, indicate what reasons, if any, exist to justify their continued existence.

F. MAJOR AGREEMENTS FOR LAST THREE YEARS

(1) Customers
(2) Suppliers
(3) Lenders
(4) Shareholders
(5) Executives

6.12 Framework for Corporate Debt Restructuring in Thailand

The Framework for Corporate Debt Restructuring in Thailand has been drafted and approved by the following organisations as acknowledged by each respective Chairman:

Chairman of the Corporate Debt Restructuring Advisory Committee
Vice Chairmen of the Corporate Debt Restructuring Advisory Committee
Chairman of the Board if Trade of Thailand
Chairman of the Federation of Thai Industries
Chairman of the Thai Bankers' Association
Chairman of the Association of Finance Companies
Chairman of the Foreign Banks Association

Introduction

The Board if Trade of Thailand, Federation of Thai Industries, the Thai Bankers' Association, the Association of Finance Companies and the Foreign Banks' Association have jointly prepared this framework for corporate debt restructuring.

The framework is non-binding and non-statutory but is a statement of the approach that is expected to be adopted in corporate workouts involving multiple creditors. The framework exists based on general market acceptance and its practices may be altered of amended to serve the needs of the business and financial communities.

The basic premise is to ensure that a business can survive if there is a reasonable Possibility that it is viable. The framework is designed to promote a spirit of timely co-operation amongst concerned stakeholders for their mutual benefit.

There is no intention within this approach to force any creditor to forgo any rights.

Objective

Successful implementation of an informal framework outside bankruptcy proceedings for the efficient restructure of the corporate debt of viable entities to benefit creditors, debtors, employees, shareholders and the Thai economy by

i) Minimising losses to all parties through co-ordinated workouts.
ii) Avoiding companies being placed unnecessarily into liquidation, thereby preserving jobs and productive capacity wherever feasible.

PRINCIPLE 1. ANY CORPORATE DEBT RESTRUCTURING SHOULD ACHIEVE A BUSINESS, RATHER THAN JUST A FINANCIAL, RESTRUCTURING TO FURTHER THE LONG TERM VIABILITY OF THE DEBTOR.

Implementing Policies:

A. All participants in a corporate debt restructuring exercise must recognize the need for Thai companies to return to commercially viable operations for the foreseeable future. Short term concessions, reduction of principal and interest and even additional credit cannot by themselves make a business viable long-term. Rather, such concessions and reductions are at best a basis to allow a company to implement a business plan that will ensure its long-term profitable existence.
B. Any proposed debt restructuring must be analysed in terms of the probability a business plan can and will be implemented that will provide creditors an agreed acceptable return while leaving the debtor able to contribute meaningfully to the Thai economy in the future. Any successful business restructuring will require a business plan which aims for the ongoing viability of the business without reliance on short-term concessions.
C. A prerequisite to determining the viability of a business is the obligation of the debtor to appoint for the benefit of the creditors an independent and reputable accountant or other expert as nominated by the creditors to undertake appropriate due diligence. (See Principle 9) The provision of credible and reliable financial and operational information is essential in determining the future viability of the affected business. (See Principle 8)

N.B. For smaller or less complex cases, this provision does not apply.

D. As the party that is closest to market conditions, and may know what is required to be competitive and profitable in its market, it is incumbent on the management of the debtor after consultation with professional advisors and creditor representatives to present a comprehensive, transparent and achievable business plan including cash-flow projections as a prerequisite to any restructuring or provision of new credit.

PRINCIPLE 2. PRIORITY MUST BE GIVEN TO REHABILITATE ASSETS TO PRRFORMING STATUS IN FULL COMLONACE WITH BANK OF THAILAND REGULATION

Implementing Policies:

A. Financial restructuring must not be implemented in a manner to merely avoid debt classification or the maintenance of reserves or to evade income recognition riles (See BOT Notification 1837/2541 Attachment 1, paragraph 1.)
B. Reports by the independent accountants, lead institution or creditors' committee must contain at a minimum the information required in paragraph 4.1 of Attachment 1 to the BOT Notification 1837/2541.
C. A final restructuring agreement should establish at minimum a monitoring system in conformity with paragraph 4.2 of BOT Notification 1837/2541.
D. Optimal viable interest rates and payment schedules should be established considering the debtor's actual ability to make payments, a reasonable risk return for creditors and the legitimate need to minimize reserve requirements.
E. Any non-traditional restructuring approach such as debt forgiveness, should only be considered as a last resort. To the extent debt forgiveness is requested, it must be compensated in some manner such as stock or warrants
F. A prime consideration in restructuring plans must be to allow the debtor to become and stay current on principal and interest as soon as feasible.

PRINCIPLE 3. EACH STAGE OF THE CORPR\ORATE DEBT RESTRUCTURING PROCESS MUST OCCUR IN A TIMELY MANNER

Implementing Policies:

A. Any delay in implementing the debt restructuring of a company that has the potential to be economically viable diminishes the probability of the resurrection of the company and harms the debtor, creditors, and other stakeholders.
B. It is thus a fundamental requirement that a schedule of fixed deadlines be established and met in any attempted debt restructuring process. Appendix I is a guideline for such schedules and can be shortened or lengthened if agreed by all parties.

PRINCIPLE 4. FROM THE FIRST DEBTOR-CREDITOR MEETING, IF THE DEBTOR'S MANAGEMENT IS PROVIDING FULL AND ACCURATE INFORMATION ON THE AGREED SCHEDULE AND PARTICIPATING IN ALL CREDITOR COMMITTEE MEETINGS, CREDITORS SHALL "STANDSTILL" FOR A DEFINED, EXTENDABLE PERIOD TO ALLOW INFORMED DECISIONS TO BE MADE.

Implementing Policies:

A. Standstills will normally run for an initial limited period of the lesser of sixty calendar days or the time required to gather information and make a preliminary assessment of the commercial viability of the debtor.
B. Standstill arrangements can be extended pending a full restructuring if commercial viability is demonstrated by the business plan.
C. During the period of a standstill, individual creditors should not
   (i) amend any outstanding credit facility
   (ii) take additional security or guarantees
   (iii) make demand or accelerate facilities
   (iv) charge default interest

(v) commence collection or bankruptcy proceedings
(vi) enforce security except for set-off rights

D. During a standstill period. debtors should not without consent of all creditors :
(i) incur any expenses outside the ordinary course of their businesses;
(ii) dispose of any assets outside the ordinary course of their businesses;
(iii) lend money;
(iv) enter into any transactions with related parties other than in the ordinary course of business and in such a manner that would be conducted with an unrelated party;
(v) create any additional security interests; or
(vi) make any preferential payments.
(vii) enter into any foreign exchange, swap, or derivative transactions except in the ordinary course of their business to cover existing commercial exposures

E. Any creditor not intending to stand still shall give at least three banking days prior written notice to the lead bank of their intention to take any action.

PRINCIPLE 5. BOTH CREDITORS AND DEBTORS MUST RECOGNEZE THE ABSOLUTE NECESSITY OF ACTIVE SENIOR MANAGEMENT INVOLMENT THROUGHOUT THE DURATION OF THE DEBT RESTRUCTURE.

Implementing Policies:

A. The executive decision-makers of all parties must be directly and actively involved at all stages of the restructuring effort in order to avoid last minute changes and ensure compliance with the agreed schedule.

B. From the creditors' side, representatives at all meetings must undertake to keep their ultimate decision-makers fully informed at all stages and receive their timely input (especially requests for further information). Decision-makers must be made aware of all scheduled deadlines and be able to convey their institution's position in conformity with the schedule. Bank officers taking part in restructuring efforts must be delegated the authority to negotiate in the name of their financial institution (See BOT Notification 1837/2541, Attachment 1, paragraph 3.3). Creditor executives are also responsible fo ensure that any information provided shall not be used for purposes other than corporate debt restructuring such as insider trading. Furthermore, creditor executives are responsible for ensuring that affiliated units or offices in their organisations not directly involved in the restructuring process do not have access to or receive any such information that is not in the public domain.

C. Debtor's executive management should provide all requisite information in a timely manner. Such executive management. or persons expressly authorized to act on their behalf in all matters related to the restructuring, must attend all creditor meetings.

PRINCIPLE 6. A LEAD INSTITUTION, AND A DESIGNATED INDIVIDUAL WITHIN THE LEAD INSTITUTION, MUST BE APPOINTED EARLY IN THE RESTRUCTURING PROCESS TO ACTIVELY MANAGE AND COORDINATE THE ENTIRE PROCESS ACCORDING TO DEFINED OBJECTIVES AND DEADLINES.

Implementing Policies:

A. One lead creditor institution should establish goals and schedules, organize inter-creditor discussions, help resolve inter-creditor issues, liaise with financial and other advisors, lead negotiations with the debtor and ensure the distribution of informationto, and timely responses from, all other creditors.

B. The lead institution shall also draw up an action plan and a time frame to be used as a guideline for debt restructuring process.

C. A lead institution should have the following qualifications (in descending order of priority) :
(i) qualified and available expertise to manage the entire process so that all major objectives and deadlines are met whenever possible;
(ii) a professional working relationship with the debtor's senior management;
(iii) a substantive exposure to the debtor.

D. The lead institution may not legally commit other creditors but its opinions and suggestions must be given great weight.

PRINCIPLE 7. IN MAJOR MULTICREDITOR CASES, A STEERING COMMITTEE REPRESENTATIVE OF A BROAD RANGE OF CREDITOR INTERESTS SHOULD BE APPOINTED.

Implementing Policies:

A. Any steering committee should be of a manageable size while representative of all creditors regardless of class and size of exposure. All creditors must feel that their interests are fully taken into account and they have an active and meaningful role in the process.
B. Each steering committee member should be assigned designated creditors, keep such creditors timely informed and actively seek input and support at every stage. Failure to do so will cause great delay, "hold-out" problems and possible break-down of the negotiations at a late stage after considerable expense.
C. The steering committee should serve as both advisor and sounding board for the lead institution conducting the negotiations. The lead institution should be chairman of the steering committee.
D. No member of a steering committee should have any authority to commit any creditor or the lead institution.

PRINCIPLE 8. DECISIONS SHOULD BE MADE ON COMPLETE AND ACCURATE INFORMATION WHICH HAS BEEN INDEPENDENTLY VERIFIED TO ENSURE TRANSPARENCY.

Implementing Policies:

A. The fullest possible information on all relevant matters (including but not limited to all information required under applicable Bank of Thailand regulations) should be promptly gathered and independently confirmed for the analysis as to the current condition of the company. its future viability and therefore the feasibility of restructuring. Information is to be shared amongst the debtor and all creditors to ensure transparency in the process. Such information should include but not be limited to the items specified in Appendix ll.
B. At every meeting of the creditors' committee, the executive (decision making) officers of the debtor should make themselves available and answer all questions.
C. Where the creditors request, the debtor should appoint a qualified independent accountant or other expert to verify the information used in debt restructuring as set forth in Appendix ll.
D. Each individual creditor must take the responsibility to obtain any regulatory or other approvals to release any necessary information in its possession in a timely manner. The debtor must cooperate in any such process including the authorization of such release.

PRINLIPLE 9. IN CASES WHERE ACCOUNTANTS, ATTORNEYS AND PROFESSIONAL ADVISORS ARE TO BE APPOINTED, SUCH ENTITLES MUST HAVE REQUISITE LOCAL KNOWLEDGE, EXPERTISE AND AVAILABLE DEDICATED RESOURCES.

Implementing Policies:

A. All consultants, financial advisors, accountants, attorneys, etc, must have the requisite knowledge of restructuring and local market, culture, practices laws, regulations, etc. It is therefore incumbent on all concerned to ensure that appropriately qualified professional advisors are appointed.
B. All advisors must have adequate resources available to devote to the project and must be fully licensed as required by Thai laws and regulations or by the laws of their country of practice in the case of foreign advisors. The relevant firms must also ensure they have no conflicts of interest in accepting the role.
C. Creditors that wish to use independent advisors (i.e. an advisor not appointed to represent all lenders) should bear the costs thereof without reimbursement from the debtor or other creditors.)

PRINCIPLE 10. WHILE IT IS NORMAL PRACTICE TO REQUEST THE DEBTOR TO ASSUME ALL THE COSTS OF PROFESSIONAL ADVISOR, LEAD INSTITUTIONS AND CREDITORS COMMITTEES, CREDITORS HAVE A DIRECT ECONOMIC ENTEREST, AND HENCE A PROFESSIONAL OBLIGATION, TO HELP CONTROL SUCH COSTS.

Implementing Policies:

A. Where circumstances require an independent accountant or other expert, the debtor cannot unreasonable delay the appointment.
B. The reasonable costs, fees and expenses of the lead institution and members of the creditors' committee should be recovered in the debt restructuring schedule as a priority payment or reimbursed by all creditors on a pro rata basis to their exposures should a restructuring not be viable.

PRINCIPLE 11. THE MINISTRY OF FINANCE (MOF) AND THE BANK OF THAILAND (BOT) SHOULD BE KEPT INFORMED ON THE PROGRESS OF ALL DEBT RESTRUCTURING TO AID THE REVIEW AND REGULATORY AND SUPERVISORY FRAMEWORK AND TO FACILITATE CORPORATE DEBT RESTRUCTURING.

PRINCIPLE 12. THE ROLE OF THE CORPORATE DEBT RESTRUCTURING ADVISORY COMMITTEE

Implementing Policies:
A. The Corporate Debt Restructuring Advisory Committee shall follow-up developments in debt restructuring.
B. The Corporate Debt Restructuring Advisory Committee shall review and implement policies to facilitate debt restructuring for the public good.
C. The Corporate Debt Restructuring Advisory Committee may also act as an independent intermediary in the restructuring process where cases are particularly difficult or where other efforts have failed. The committee may well be a catalyst to activate sluggish negotiations.

PRINCIPLE 13. CREDITORS EXISTING COLLATERAL RIGHTS MUST CONTINUE.

Implementing Policies:
A. Holders of duly created security interests in or on property essential to the continued operations of the debtor's business should not be required involuntarily to surrender such security without adequate compensation. However, holders of security interests in non-essential property may independently negotiate with the debtor for a voluntary liquidation of that asset.
B. By agreement, any cash surplus received from the sale of assets by a debtor, or a secured creditor in excess of its secured claim amount. may be placed in an escrow account and must be distributed among all creditors.
C. Undersecured creditors should participate in the reorganization to the extent of the difference between their total claim and the value of non-essential security held by them.

PRINCIPLE 14. NEW CREDIT EXTENDED DURING THE RESTRUCTURING PROCESS ABOVE EXISTING EXPOSURES AS OF THE STANDSTILL DATE ON REASONABLE TERMS IN ORDER THAT THE DEBTOR MAY CONTINUE OPERATIONS MUST RECEIVE PRIORITY STATUS BASED ON TITLE ORIENTATED SECURITY. INTERCREDITOR AGREEMENTS OR INDEMNITIES.

PRINCIPLE 15. LENDERS SHOULD SEEK TO LOWER THEIR RISK AND HENCE THEIR REQUISITE RETURNS, THROUGH AN IMPROVED SECURITY PACKAGE AND PROFITABILITYBASED BENEFITS RATHER THAN INCREASED INTEREST RATES AND IMPOSITION OF RESTRUCTURING FEES.

Implementing Policies:
A. As compensation for increased risk, unencumbered assets should be made available to participating creditors. Possible benefits of any recovery of the debtor should be equitably shared among all stakeholders.

PRINCIPLE 16. DEBT TRADING IS APPROPRIATE UNDER CERTAIN CONDITIONS BUT THE SELLING CREDITOR HAS THE PROFESSIONAL OBLIGATION TO ENSURE THE BUYER DOES NOT HAVE A DETRIMENTAL EFFECT ON THE RESTRUCTURING PROCESS

Implementing Policies:

A. Potential sellers should make their "sell or stay" decisions as early as possible in the restructuring process. Such selling creditors have a professional obligation to ensure that their buyer does not intend to have a detrimental effect on the restructuring process. In particular, such a seller must fully inform the buyer of the most current status of the restructuring and of their obligations under if and that previously decided issues will not be reopened for further negotiations because of the buyer's recent arrival.

PRINCIPLE 17. RESTRUCTURING LOSSES SHOULD BE APPORTIONED IN AN EQUITABLE MANNER WHICH RECOGNIZES LEGAL PRIORITLIES BETWEEN THE PARTIES INVOLVED.

Implementing Policies:

A. In the restructuring process, the debtor, its shareholders and its creditors must be prepared to co-operate with each other to grant concessions.
B. The debtor itself should be called upon to absorb losses by means of disposals of non-core assets, elimination or postponement of non-essential capital expenditures, bonuses, and other non-essential assets or outflows.
C. In recognition of previously-paid dividends and other benefits obtained. shareholders should next be called upon to eliminate dividends, inter-company payments and other outflows.
D. Creditor losses should be shared amongst creditors of similar status pro rata to their existing exposures, but subject always to Principle 12 concerning secured creditor rights.

PRINCIPLE 18. CREDITORS RETAIN THE RIGHT TO EXERCISE INDEPENDENT COMMERCAIL JUDGMENT AND OBJECTIVES BUT SHOULD CAREFULLY CONSIDER THE IMPACT OF ANY ACTION ON THE THAI ECONOMY, OTHER CREDITORS AND POTENTIALLY VIABLE DEBTORS.

Implementing Policies:

A. Creditors may retain the right to exercise their independent commercial judgment and objectives at all times. However, no creditor should, secretly or otherwise, attempt to improve its security or payment position during a restructuring effort.
B. The restructuring framework is to facilitate an improved business as well as financial restructuring to the mutual benefit of all parties. Therefore participants must not seek to maximize their own gain at the risk of jeopardizing the benefit to others or the restructuring process. Creditors and interested parties must at all times carefully consider at a senior level any potentially negative impact that their independent actions may have on the Thai economy, other creditors and the debtor.

PRINCIPLE 19. ANY OF THE PRINCIPLES OR IMPLEMENTING POLICIES CONTAINED IN THIS FRAMEWORK CAN BE WAIVED, AMENDED OR SUPERCEDED IN ANY PARTICULAR RESTRUCTURING WITH THE CONSENT OF ALL PARTICIPATING CREDITORS.

Framework for Corporate Debt Restructuring in Thailand

	Stage	Time
1 .	Call meeting of debtor, creditors and interested parties	Anytime by debtor or creditor
2 .	First creditors meeting, appointment of Creditors Committee/Lead Bank (see Principles # 6 and 7). Establishment of time-frame	On 7 days notice after # 1
3 .	Creditors submit claims in writing to Creditors Committee/Lead Bank	Within 15 days of # 2
4 .	At any creditors meeting a debtor representative with decision-making authority must appear and answer any and all questions	Continuous
5 .	Debtor's "Management" (i.e. directors or authorized officers) must submit at a minimum the following information: a) Assets, liabilities and obligations the debtor owes to third persons; b) Property given by the Debtor as security to creditors and the date given; c) property of other parties in the Debtor's possession; d) the Debtor's shareholdings in other companies or juristic persons; e) names, business and addresser of all creditors; f) names, businesses and addresses of the Debtor's debtors; g) details of the property including payments which the Debtor expects to receive in the future. h) All written consents for Creditors i) to release to other Creditors all information on the assets and liabilities of the Debtor (See also Principle 8)	Within 7 days of # 2
	Stage	Time
6 .	The appointment of an independent accountant and/or other experts shall be carried out as requested by the creditors based on the agreed terms of reference	Within 7 days of #2
7 .	Debtor submits all further information Requested by creditors or Independent accountant necessary To prepare plan (See also Principle 8)	Within 2 months of #2,extandable up to 1 month maximum

8 .	Plan submission by Creditors Committee, Debtor and independent accountant to all creditors	Within 3 months of # 2, Extendable up to 2 months maximum
9 .	Creditor Meeting on plan	10 days after #8
10.	Creditors propose amendments to plan	Within 7 days of #8
11.	If plan consideration not completed, Meeting adjourned to next business day	Next business day after #9
12.	New creditors meeting if valid request Approved for adjournment of meeting To consider amendments to plan	10 days after adjournment
13.	Decision on whether to privately Reorganize, formally reorganize under Bankruptcy Act or liquidate	At creditors meeting under #9 or #12 within 3 months from #2

Every party (debtor, creditors, auditors, attorneys, advisors) should give the process utmost priority. Creditors should not ask debtors to adhere to fixed schedules and then fail themselves to provide timely input.

Framework for Corporate Debt Restructuring in Thailand

GROUP STRUCTURE

- All subsidiaries and associates and percent age holding in each case
- country of incorporation
- indicate whether dormant

GROUP LIABILITIES

- all liabilities (including contingent and off balance sheet) to be included with current utilisations, original maturities and purpose of each separate utilization
- lists should be reconciled and all discrepancies resolved

RECOURSE STRUCTURE

- specific details of lender, borrower, secured party, guarantors/letter of comfort and any limitations thereon to be provided
- details of any security, negative pledge and subordination arrangements

INTERCOMPANY POSITION

- all current credit, trade, service, royalty or other revenue-earning intercompany agreements and current position
- subordination arrangements
- shareholder and director remunerations and agreements

GROUP ASSETS

- asset registers
- encumbered or unencumbered

BUSINESS PLAN

- market analysis
- competitive analysis
- any existing independent reports on market position or competitiveness of debtor

CASH FLOW ANALYSIS & PROJECTIONS

- historical cash flow statements for in past three years
- cash-flow projections for next 3-5 years and sensitivity analysis
- planned cost cutting and revenue enhancement initiatives
- planned sale of non-strategic assets and anticipated proceeds

MAJOR AGREEMENTS FOR LAST 3 YEARS

- customers
- suppliers
- lenders
- shareholders
- management
- executives

ANY OTHER INFORMATION ON CURRENT CONDITION AND FUTURE VIABILITY

6.13 Mediation Agreement

A. The parties hereby appoint …….(the Mediator) to mediate in the dispute between them and the Mediator (and any Co-Mediator if appointed) accepts such appointment upon the following terms and conditions:

1. As used herein. "Confidential Information" means all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning Creditors and Company, and affairs of Creditors and Company which is not available to the course of the engagement, together with other documents whether Mediator in the course of the engagement, together with other documents whether prepared by the Mediator, which contain or otherwise reflect such information.

In consideration of Creditors and Company providing Mediation with Confidential Information, by the signature of the Mediator hereto, the Mediator agrees that all Confidential Information will be held and treated by the Mediator and the Mediator's agents in confidence and will not, except as provided hereinafter, without the prior written consent of Creditors and Company be disclosed by the Mediator and the Mediator's agents in any manner whatsoever, in whole or in part, and will not be used by the Mediator, or the Mediator's agents other than in connection with the engagement by Creditors and Company.

The written Confidential Information, except for the portion of the Confidential Information that may be founded in analyses, compilations, studies or other documents prepared by the Mediator will be returned to Creditors or Company promptly upon request. The portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by the Mediator, oral Confidential Information and any written Confidential Information not so requested and returned will be held by the Mediator and kept subject to the term of this agreement or destroyed.

In the event that the Mediator is requested or required by any legal or other regulatory authority to disclose (i) any Confidential Information or (ii) any information relating to the Mediators opinion, judgement or recommendations concerning Company and Creditors and their affairs as developed from Confidential Information, it is agreed that the Mediator will provide Company or Creditors with prompt notice of any such request or requirement to the extent permitted by law so that Creditors and Company may seek an appropriate remedy to prevent such disclosure or to assist Creditors and Company to prevent such disclosure or to assist Creditors and Company in seeking such remedy or waive the Mediator's compliance with the provisions of this agreement.

2. There shall not be introduced as evidence or relied on in any arbitral or judicial proceedings or otherwise disclosed :

(a) Exchanges whether oral or documentary passing between any of the parties and the Mediator or between any two or more of the parties within the mediation.

(b) Views expressed or suggestions or proposals made within the mediation by the Mediator or by any party in respect of a possible settlement of the dispute.

(c) Admissions made within the mediation by any party.

(d) The fact that any party has indicated within the mediation willingness to accept any proposal for the settlement made by the Mediator or by any party,

(e) Documents brought into existence for the purpose of the mediation such as position papers or notes made within the mediation by the Mediator or by any party,

Every aspect of every communication within the mediation including communications within (a) to (e) above shall be without prejudice. This clause in no way fetters the legitimate use in enforcement proceedings or otherwise of any written and signed settlement agreement reached in or as a result of this mediation. Any constraints on disclosure included in such settlement agreement will have effect in accordance with their terms.

3. Throughout the whole course of the mediation process the Mediator will be free, at the Mediator's own unfettered discretion, to communicate and discuss the dispute privately with any of the parties or other persons brought within the mediation by them including their legal advisors

PROVIDED ALWAYS that the Mediator will preserve absolute secrecy of the content of any such communications and will not expressly or by implication convey any knowledge or impression of such content to any other party unless specifically authorized to do so.

4. The parties jointly and severally release, discharge and indemnify the Mediator in respect of all liability of any kind whatsoever (Whether involving negligence or not) which may be alleged to arise in connection with or to result from or to relate in any way to this mediation.

B. Each party is urged to enter into this mediation with a view to negotiating in good faith towards achieving a settlement of the dispute.

C. This agreement shall be governed by and construed in accordance with the laws of Thailand. Company and Creditors and the Mediator hereby irrevocably agree that the Courts of Thailand are to have exclusive jurisdiction to settle any disputes arising out of or in connection with this agreement and that accordingly any proceedings arising out of or in connection with this agreement shall be brought in such courts.

D. Each party agrees to be bound by the terms-conditions as detailed earlier, and have signified such acceptance by signing below.

The……Company	Mediator
By : _____	By : _____
(……)	(……..)
Date ……..	Date …….

The……..Bank/Finance Company
By : _____
(……)
Date ……

Chapter Three: Field Research on Alternative Dispute Resolution in Thailand

1. Abstract

The objective of the field research reported in this Chapter is to survey the understanding, attitudes and expectations of judges and lawyers towards conciliation. In this study, the subjects of the analysis are judges and lawyers who are working and practicing in the North Bangkok Kwaeng Court, the Civil Court, the Labor Court and the Central Intellectual Property and International Trade Court. In total 142 subjects are involved in this field research.

As far as awareness of lawyers is concerned, the result shows that most lawyers, 95.4% of which knew of court-annexed conciliation from court's public relations. 83.3 % of lawyers in this sample group used to attend court-annexed conciliation. The reasons given are time and expenses saving. It also shows that cases with high amount in dispute tend to be more disposed to conciliation than cases with lower amount in dispute. More importantly, the decision to engage in conciliation is partly related to the knowledge and understanding of lawyers towards conciliation.

Concerning the attitudes of judges and lawyers, the result shows that both groups acknowledge conciliation and deem that it is as fair as proceedings in Court. They also think that such dispute resolution method is suitable for Thai society. However, both groups agree that conciliation is more complicated than the proceedings of the Court.

As far as the expectations from judges and lawyers are concerned, the study reveals that conciliation can be effective only in certain cases.

The survey suggests that there should be an establishment of tripartite quorum of conciliators. The quorum of conciliators, which consists of a judge, a professional or inter-professional registered with the court and a lawyer or University law professor, is appropriate. The court should impose an exact period of time for conciliation in order to prevent the problem of delay. Conciliation should conduct in the court or in the specific organization. Moreover, conciliators should be trained or pass courses on the conciliation techniques.

2. Rationale and Objectives of the Study

The court of justice is an organization that applies judicial power in the name of the king. Its function is to administer justice in order to maintain the public's rights and liberty according to the law. The affair of the Court of Justice is to manage the wheel of justice under correctness, fairness, and speediness including trust of the public. (The Rationale: Technical Affairs Division, 2000: 13) However, at present, the problem occurs from the number of cases pending in court each year. Judges are unable to adjudicate all cases in a year, so that some cases are in arrears and piled up each year. From judicial statistics, at the beginning of 2001, there were 216,578 cases pending in courts of first instance throughout the country. There were 840,939 new cases arising. Only 843,104 cases (79.72 %) were disposed of. There were, therefore, 214,413 cases pending in court for the next year. (The Office of Information Technology, 2001: 5) Moreover, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) prescribes the proceedings of the court in Section 236 that *"to adjudicate a case in the court, there must be a full quorum of judges. A judge, who does not sit on the hearing in that case, is prohibited from participation in any judgment or ruling of such case, unless there is force majeure or other unavoidable necessity".* Due to the aforesaid provision, after October 11, 2002, the operative date of the above provision, judges are required to sit as a quorum, which normally consists of two or three judges as against one judge sitting alone at present. However, the number of judges is not consistent with the amount of cases pending in court. This situation will lead to inadequate number of judges to sit and adjudicate cases and definitely will create more back lock of cases. Parties will consequently spend more time and expenses when bringing a case to court. This is a main reason causing the party not receiving the proper court service. In the long term, public may be reluctant to enter the mechanism of dispute resolution by the Court of Justice. The Court, therefore, has been trying to find methods to reduce the number of pending cases and the number of the cases entering to the proceedings.

At the moment, the method most favored by the Court is conciliation. The Judicial Administration Commission issued the Regulation of Judicial Administration Commission Governing Conciliation B.E. 2544 of August 23, 2001 by virtue of the provisions of Section 17 (1) of Judicial Administration Act B.E. 2543. (The Office of Judicial Administration Commission, 2001: 1) It reads *"the quorum of judges in court shall be in charge of the conciliation in order to resolve the dispute. This is beneficial to the party and the proceedings of the court at the same time. Because of conciliation, the case can be settled rapidly and save both time and expenses. Moreover, this method satisfies all parties and maintains good relationship between them. Also conciliation is the main alternative that the Court shall apply to dispute resolution before the case enters the proceedings of the court."* (The Office of Judicial Administration Commission, 2001: 2) In fact, the conciliation has been applied in courts for some time. The result of such resolution reflects some reduction of cases pending in courts. For example, in 2000, in the Labor Court, there were 14,772 cases entered conciliation under Section 38 of the Establishment of Labor Court Act. 7,178 cases were settled. (The Central Labor Court, 2000: 1-2) The statistics of the Civil Court in the same year shows that 187 cases were conciliated. 49 cases were settled. Only 82 cases re-entered the proceedings of the court. (The Civil Court, copy document: 1)

The purpose of this field research is to explore whether conciliation is suitable, acceptable and necessary as a means of dispute settlement in Thai society. As a consequence, the Court of Justice could study and develop the standard and effective mechanism of ADR to facilitate efficient dispute resolution mechanism for the public.

Objectives of the Study

1. To explore knowledge and understanding of conciliation of the lawyers who practice in the courts.
2. To study attitudes toward conciliation of judges and lawyers in the courts.
3. To study the expectations toward conciliation of judges and lawyers in the courts.

3. Theoretical Background

On conciliation practice in the Court, the Judicial Administration Commission issued the regulation governing dispute conciliation B.E. 2544 (2001) as general guide lines for the courts.
The details of the regulation are summarized as follows:

"Case" means a civil case or any case that may resolve the dispute by an agreement of the parties.

"Person in Charge of Court's Affairs" means President of the Supreme Court, President of the Court of Appeals, President of the Regional Court of Appeals, and Chief Judge of Court of First Instance, including any person empowered to perform the same function.

"Conciliator" means a judge, an officer in the court, a person or persons appointed to be conciliator assisting the Court to conciliate the dispute according to this Regulation.

3.1 Conciliation of the Court

The court shall be empowered to initiate conciliation according to Civil Procedure Code. Any action under this regulation shall not affect the power of the court on conciliating the case by itself.

3.2 Conciliation of the Conciliator

1. Appointment and Dissolution of Conciliator

When a case enters into court proceedings, the person in charge of court affairs shall appoint a judge who is not active in the quorum, an officer in the court or any person or persons to be the conciliator in order to assist the court on conciliation. In this case, the appointee shall conciliate the dispute according to this regulation.

When the person in charge of court's affairs deems appropriate or be informed by the court, he/she may appoint any judge or judges to be the conciliator. In case the person in charge of court's affairs has assigned a judge or judges to be the conciliator of the court, the court may appoint one of those judges as the conciliator according to the procedure prescribed by the person in charge of court's

affairs. Also the person in charge of court's affairs or the court may appoint a court officer or officers to be the conciliator. However, the judge or officer of the court who is appointed to be the conciliator does not entitle to receive a commission or expenses according to this Regulation.

In order to appoint any person or persons to be the conciliator, the person in charge of court's affairs or the court shall consider, as much as possible, the suitability of conciliator and the satisfaction of all parties. In case of appointing a person who is not registered as the conciliator of the court, the person in charge of court's affairs or the court may appoint such person only when all parties involving in the conciliation grant approval and accept the responsibility for the expenses of such person.

If the case is likely to be delayed from entering into conciliation, the court may order to proceed with the trial at the same time as conciliation.

After being appointed, the conciliator shall inform the parties of any personal interest or relationship between himself and any party, if any.

In the following cases, the conciliator shall be dismissed from the duty:
(1) The conciliator is removed from the register.
(2) The court orders the dismissal of the conciliator when there is following evidence:
    a) The conciliator does any act as the representative or on behalf of any party.
    b) The conciliator has interest or relationship with any party, so that such relationship may affect the neutral role of conciliator.
(3) The court orders to dismiss the conciliator because he/she omits or neglects his/her duties.

After the conciliator has been dismissed from the position, the court may order to terminate the conciliation or appoint a new conciliator.

2. Conciliation Process

After the court orders an appointment of the conciliator, the procedure of submission of document and filing or any other procedure between the court and the conciliator shall be in accordance with the court specification.

The party shall attend the conciliation meeting in person. He/she also may appoint a representative to attend the meeting. In case the party is a juristic entity, the party may appoint an authorized agent to attend the conciliation meeting. The appointment shall be made in writing and submitted to the conciliator.

Prior to conciliation, the conciliator shall request the parties to sign an agreement to enter into conciliation and accept to follow the conciliation regulations.

Prior to the conciliation, the conciliator may discuss with the parties in order to set up the agenda of conciliation.

For the benefit of conciliation, the conciliator may allow the parties to explain the facts or general information of the dispute including proposals to resolve the dispute. The conciliator may also offer to exchange aforesaid information between the parties.

In conciliation meeting, if the conciliator deems necessary for the benefit of conciliation, he/she may allow only the two parties or any party participate in the conciliation meeting.

The conciliation shall be proceeded in secrecy. The details of conciliation shall not be recorded, no matter in writing or electronics media or other information technology media unless the parties have an agreement to record the whole or partial process of conciliation. The parties shall pay for the expenses of the recording.

If the conciliator deems appropriate, he/she may arrange to draft the contract of settlement for the parties. In case there is any expense in the process of contract drafting, which shall be paid by the parties, the conciliator may draft the contract only when all parties grant approval and accept to pay for such expense.

The conciliator must proceed the conciliation within the time specified by the appointer. If the appointer deems appropriate or the conciliator requests, the appointer may expand the period of time for conciliation.

3. Termination of Conciliation

The conciliation is terminated in the following cases:
(1) The parties can resolve the case by withdrawing the charge or the parties request the court to pass the judgment as specified in the conciliation agreement.
(2) Any party withdraws from the conciliation.
(3) The conciliator is unable to finish the conciliation within the specified period of time.
(4) The conciliator considers that the dispute may not be resolved by conciliation.
(5) The Court considers that the dispute may not be conciliated or the conciliation is no longer beneficial to the case.

When the conciliation is terminated, the conciliator shall inform the result of conciliation to the court so that the court will continue with the trial as soon as possible. In case where the parties agree to resolve only some parts of the dispute or to accept certain fact with approval of referring that fact to the proceedings of the court, the conciliator shall prepare the summary of the agreement and inform the matter to the court.

4. Secrecy of Conciliation

Unless otherwise agreed, the parties and relevant persons agree to keep the information acquired during the conciliation as secret. Also they agree not to apply any fact or the procedure of conciliation as the evidence in any procedure of the court proceedings, no matter in the same case or any other cases even in the process of the arbitration.

The information under the above paragraph includes the contact between the parties, any fact on the proceeding of conciliation, content or details of negotiation in the conciliation process, the fact that any party accepts or denies in the conciliation process, opinions or any proposals offered by the opposite party in the conciliation, and opinions or proposals offered by the conciliator.

5. Registration of Conciliator

The Secretary of Office of Court of Justice shall prepare the conciliator register.

Any person applying to register as a conciliator must be a person who has knowledge or experience on the conciliation. Also aforesaid person shall be qualified and not have the forbidden characteristics detailed as follows:
(1) He/she shall have knowledge in certain fields such as science, economics, law, social sciences, etc.
(2) He/she shall be in or over the age of 25.
(3) He/she shall not be the official of the Court of Justice according to the law governing the official regulation.
(4) He/she shall not have improper personal record.
(5) He/she shall not be incompetent or quasi-incompetent person.
(6) He/she has not been imprisoned by the final judgment, unless for negligent or petty offences.

The conciliator register is valid for two years

The conciliator must act as follows:
(1) Prepare the conciliation.
(2) Support the negotiation between the parties. He/she also shall advise the methods of dispute resolution.
(3) Do not express any opinion that forecast the ruling of the dispute, unless allowed by the parties.
(4) Do not oppress, force or influence the parties in any way that may affect the preference of the parties to resolve the dispute.

The conciliator must commit the duties according to the order, notification, rule, morality or other criteria issued under this Regulation, so that the conciliation shall be proceeded efficiently and attribute most benefit to the parties.

The conciliator shall not be liable for any action in the conciliation, unless such action or omission is caused by intent of recklessness.

6. Commission and Expenses

The conciliator who is appointed from the conciliator register has the right to receive commission and expenses according to criteria and procedure prescribed by the Secretary of the Court of Justice with the consent of Judicial Administration Commission.

In case of appointing any person out of the register, The parties shall be responsible for the expenses of the conciliation equally, unless otherwise agreed.

The conciliator may appoint a third person to carry on any function, the expenses of which shall be borne of the parties.

4. Data and Methods

In carryingg out this research, the researchers divide the data into two parts:
1. Documentary Study. It is the data obtained from relevant documents and researches, that is, academic documents, articles, journals, theses, and reports on relevant researches in both Thai and foreign languages.
2. Field Study. That is using questionnaire as a tool to collect the data from study group and then making statistical analysis.

4.1 Subjects and Sample Groups

In this study, the subjects are divided into 2 groups as follows:
1. Sample group from inquiry, that is, lawyers.
2. Sample group from interview, that is, judges.

To select the sample group, it applies systematic random sampling by specified the qualifications of the subjects as following:
1. Sample group from inquiry.
   1.1 Lawyers who are practicing in the courts.
   1.2 Lawyers who have or have no experience of conciliating cases in or out of the court.
2. Sample group from interview.
   2.1 Judges.
   2.2 Judges who have experience of conciliating the case in or out of the court.

In this study, the researchers specify the size of sample group by considering the number of cases which are adjudicated per month in the court. In the period of collecting the data is October 2001. They are as follows:

TABLE 1
The Number of Adjudicated Cases per Month in Each Court

Court	Number of adjudicated cases/month
1. The Civil Court	2,994
2. The Labor Court	1,255
3. The Central Intellectual Property and International Trade Court	1,183
4. The North Bangkok Kwaeng Court	1,198

Total	6,630

Source: The Office of Information Technology (2001); cases statistics.

The researchers apply the criteria to select the sample group comparing with YAMANE TABLE : *sample size for specified confidence limits and precision when sampling attributes in percent* ± 10.

Therefore, the researchers specify the number of sample group in this study at 196 samplers.
1. 98 samplers from inquiry.
2. 98 samplers from interview.

However, when collecting the data from the samplers, some of them cannot be analyzed. As the result, the total of samplers in this study are 142 samplers.
1. 108 samplers from inquiry.
2. 34 samplers from interview.

4.2 Scope of the Study

In this study, the scope is as follows:

1. Scope of Content can be divided into 2 parts as following:
   1.1 Scope of Questionnaire. It is the study of personal data, information of the case which the party or lawyer involve in the courts, information and understanding of conciliation, and samplers' expectation of conciliation process.
   1.2 Scope of Interview. It is the study of personal data, information of the case which is conciliated, information and attitudes toward conciliation, and the expectation of conciliation.
2. Scope of Samplers. In this study, the samplers are judges, lawyers, and parties who work or practice in the Civil Court, the Labor Court, the Central Intellectual Property and International Trade Court and the North Bangkok Kwaeng Court.

4.3 Tools of the Study

The researchers use questionnaires and interviews as the tools of the study. They are built by virtue of relevant ideas and literatures and examined by the relevant professional. Both questionnaire and interview form consists of closed-ended question and opened-ended question.

a. Questionnaire. It is divided in to 4 parts as follows:
   1. Personal Data. It consists of information on sex, age, marital status, highest education, occupation, average salary and relevance of the sampler to the case.
   2. General information of the case. It consists of information on type of case, type of party, amount of the case entering the court, time of case proceeding, including current procedure of the case, expenses of the proceedings and experience in litigation of the lawyers.
   3. Definition of conciliation. It consists of knowledge and understanding of conciliation including the experience of operating conciliation.
   4. Samplers' expectation of conciliation. It consists of the information of attitude toward the acceptance of conciliation, problems of application of conciliation, fairness of conciliation including attitude toward the application of conciliation as the alternative to the proceedings of the court.
b. Interview Form. It is divided into 4 parts as follows:
   1. Personal Data. It consists of information on sex, age, marital status, highest education, occupation, average salary and relevance of the sampler to the case.
   2. General information of the case. It consists of type of case that the sample group successfully settled, together with how much time and expense they has spent in the conciliation.
   3. Information of conciliation. It consists of reasons why the sample group decides to enter to conciliation and the attitude toward conciliation.
   4. Expectation of conciliation. It consists of level of trustworthy to conciliation, samplers' attitude toward the application of conciliation to problem solving, level of fairness and attitude toward the application of conciliation as the alternative to the proceedings of the court.

4.4 Questionnaire and Interview Form Examination

1. Content Validity. The questionnaire is examined and amended by relevant professional or experienced person in such matter.
2. Amendment. Both questionnaire and interview form are amended for correctness and suitability.
3. Reliability. After establishment of the creation, the questionnaire are examined the reliability.

4.5 Methods of Data Collection

Upon collecting the data, the researcher group asks the samplers to fill in the questionnaire. Also in interview form, the researchers interview the samplers structurally. After the data is collected, the researcher then organized and analyzed all data.

4.6 Data Analysis

This study analyze the data with computer program, SPSS : *Statistics Package for Social Science.*

In this study, it applies descriptive statistics. It applies percentage, mean, and standard deviation to explain the data.

4.7 Presentation of Result of the Study

In this study, it presents the result of study in form of table with narration.

5. Result of Information Analysis

5.1 Presentation of Analyzing Result of Personal Data of the Lawyers.

TABLE 2
General Information of Social and Economic Background of the Lawyers.

Personal Data	*Number of Samplers*	*Percentage*
1. Sex		
Male	96	88.9
Female	12	11.1
Total	108	100.0
2. Age		
23-35 years	36	33.4
36-45 years	49	45.4
46-55 years	21	19.4
Over 55 years	1	0.9
Not specified	1	0.9
Total	108	100.0
3. Marital Status		
Single	45	41.7
Married	60	55.6
Divorced	1	0.9
Not specified	1	1.8
Total	108	100.0
4. Level of Education		
Lower than Bachelor Degree	3	2.8
Bachelor Degree	78	72.2
Barrister-at-Law (Thai Bar)	15	13.9
Master Degree	12	11.1
Total	108	100.0
5. Average Salary (Baht/Month)		
Lower than 25,000	36	33.4
25,001-50,000	52	48.1
50,000-75,000	3	2.8
75,001-100,000	4	3.7
More than 100,001	1	0.9
Not specified	12	11.1

Total	108	100.0
6. Case Relevance		
Plaintiff's counsel	63	58.4
Defendant's counsel	44	40.7
Not specified	1	0.9
Total	108	100.0
7. Type of Case		
1. Infringement	8	7.5
2. Selling	4	3.8
3. Loan	20	18.9
4. Embezzlement	2	1.9
5. Defraud	1	0.9
6. Breach of contract	8	7.5
7. Cheques	3	2.8
8. Eviction	10	9.4
9. Criminal case	3	2.8
10. Civil case	3	2.8
11. Hire purchase	1	0.9
12. Hire for work	2	1.9
13. Labor	24	22.6
14. International Transportation	2	1.9
15. Intellectual property	4	3.8
16. Letter of credit	7	6.6
17. Copyright, patent, trademark	3	2.8
18. Suretyship	1	0.9
19. Not specified	2	1.9
Total	108	100.0
8. Amount in Dispute (Baht)		
Lower than 100,000	14	13.0
100,001-1,000,000	16	14.8
1,000,001-5,000,000	14	13.0
5,000,001-15,000,000	14	13.0
More than 15,000,001	11	10.1
Case without amount in dispute	39	36.1
Total	108	100.0

According to the data in Table 2, it deems that the samplers have social and economic background as follows:

1. Sex The sample group is 108 lawyers. The ratio of male and female is approximately 8:1, that is, 88.9 percent is male and 11.1 percent is female.

2. Age Most of samplers are in the middle age, that is the age between 36-45 years (45.4 %). Next group is between 23-35 years (33.4 %). And the following group is the samplers aged between 46-55 years (19.4 %).

3. Marital Status Most of the samplers is married (55.6 %). Next group is single (42.5 %). The least group is divorced (0.9 %). In conclusion, more than a half of samplers are married.

4. Level of Education Most of the lawyers in sample group graduated Bachelor Degree (72.2 %). Next group is the group of the lawyers who obtained Barrister-at-Law (Thai Bar) (13.9 %). Besides, some graduated with Master Degree (11.1 %). In conclusion, most of the lawyers in the sample group (about 2 in 3) graduated with Bachelor Degree.

5. Average Salary The samplers who earn the average salary 25,000-50,000 Bath per month are the majority group (48.1 %). Next is the group that earns the salary lower than 25,000 Bath per month (33.4 %). The minority group is the samplers who earn the salary more than 100,001 Bath (0.9 %).

6. Case Relevance Most of the samplers are plaintiff's counsels (58.4 %). 40.7 percent is Defendant's counsels.

7. Type of Case The majority of lawyers in sample group go to the court in the matter of labor cases (22.6 %). Next is loan cases (20 %).

8. Amount in Dispute The amount in dispute of the cases is mostly ranged between 100,001-1,000,000 Bath (14.8 %). The cases with the amount in dispute of more than 15,000,001 are few in the sample.

5.2 Presentation of Analyzing Result of Personal Data of the Judges.

TABLE 3
General Information of Social and Economic Background of the Judges.

Personal Data	*Number of Samplers*	*Percentage*
1. Sex		
Male	27	79.4
Female	7	20.6
Total	34	100.0
2. Age		
26-35 years	8	23.4
36-45 years	19	56.1
46-55 years	4	11.8
Over 56 years	3	8.7
Total	34	100.0
3. Marital Status		
Single	8	23.5
Married	26	76.5
Total	34	100.0
4. Level of Education		
Barrister-at-Law (Thai Bar)	14	41.2
Master Degree	20	58.8
Total	34	100.0
5. Average Salary (Baht/Month)		
50,000-75,000	8	23.5
75,001-99,999	6	17.6
More than 100,000	19	56.0
Not specified	1	2.9
Total	34	100.0
6. Types of Case Successfully settled by conciliation		
Infringement	3	8.8
Selling	2	5.9
Loan	3	8.8
Cheques	1	2.9
Eviction	2	5.9
Civil	1	2.9
Labor	15	44.4
Copyright, patent, trademark	3	8.8
Not specified	4	11.6
Total	34	100.0
7. Time Spent for Conciliation		
Less than 6 months	23	67.6
6-12 months	1	2.9
More than 12 months	4	11.8
Not specified	6	17.7
Total	34	100.0

According to above table, it deems that the sample group has social and economic background detailed as follows:

1. Sex From 34 samplers, males are more than females at the ratio approximately 4:1, that is, 79.4 percent are male and 20.6 percent are female.

2. Age The 36-45 year-old judge is the majority group (56.1%). Next is the group of 26-35 year-old judges. The least group is over 56 year judges (8.7%). In conclusion, the judges in the sample group are in middle age.

3. Marital Status Most of samplers are married (76.5%). The rest 23.5 percent are single.

4. Level of Education Most of the samplers graduated Master Degree (58.8%). The rest 41.2 percent is the samplers who received Barrister-at-Law (Thai Bar).

5. Average Salary The majority group earns more than 100,000 Bath per month (56 percent). Next is the group that earns 50,000-75,000 Bath per month (23.5%).

6. Type of Case Most of cases successfully conciliated are labor cases (44.4%).

7. Time for Conciliation Most of judges in sample group spend less than 6 months for conciliation (67.6%).

6. Conclusion and Result of Research Analysis

The conclusion of the result of study are divided into 3 parts inclusive of its objectives as follows:

6.1 Knowledge and Understanding of the Lawyers about the Conciliation for Dispute Resolution

According to the result of study, almost of the lawyers in the sample group (95.4%) acquainted with the conciliation through the public relations of the Court. (see Table 4) Most of public relations of courts are by ways of distributing conciliation information through brochure, poster, published document, including the court's seminar in the central and provincial region. The conciliation for dispute resolution is partly the policy on case administration of the courts so that the case is proceeded rapidly and the court can reduce the number of cases pending. Recently, the Judicial Administration Commission issued the regulation governing conciliation for dispute resolution. It was published on August 23, 2001. The courts have applied this regulation, so the information of the conciliation reaches the lawyers more than before. Moreover, it was found that some lawyers acquainted with the conciliation from judges and the Court's officers. Only minority of lawyers received the information of conciliation from other lawyers or other documents. (see Table 4) According to the result of this study, it showed that the conciliation mostly arises in the courts whereby the specific objectives and aims are in order to maintain the most advantages in the proceeding. If judges pay more attention and support the conciliation, this may affect the entering to conciliation by the decision of the parties.

Upon the knowledge and understanding of the sample lawyer about the conciliation, it was found that the knowledge and understanding of the lawyer is relevant to the entering to the conciliation. It is because if the lawyer does not understand the conciliation, the sample group does not agree to enter the conciliation completely. In conclusion, the acceptance of the conciliation is relevant to good knowledge and understanding of lawyers. Moreover, it is found that both plaintiff's counsel and defendant's counsel have experience in conciliation. (see Appendix Table 3) The conciliation is operated due to the agreement of the parties. (see Table 6) When considering the result of conciliation, most of samplers thought that the conciliation spend shorter time than the proceedings in the Court, and they believed that they sufficiently gain fairness from the procedure of conciliation. (see Table 6) According to Thai culture, when the case enters into the proceedings of the Court, such case is not only the matter of right or wrong under the law, but also related to values and belief of judicial proceedings. In preference, when the case enters into the court, the parties firmly believed that the lawyer appointed by him/herself is the person who has ability of law, be able to solve his/her

problems and at the end makes him/her win a case. Sometimes the decision of the case comes from advice of the lawyers, and the parties believed that this advice is the highest benefit for them in the case. Therefore, the conciliation may be an advice of lawyers and suggest the parties to enter into the conciliation process. This is the reason why the agreement to enter into conciliation is the relevant to the knowledge and understanding of lawyers on conciliation. Moreover, the result of knowledge and understanding of such matter may affect two parts of the party and conciliation system for dispute resolution. Positively, the lawyer will advise the party to decide to enter into the conciliation because it saves the time and expense upon mainly considering on the objectives and most advantages of the conciliation. In contrast, the lawyer may exploit the conciliation by using the proceeding to delay the case. He/she will advise the party to enter the conciliation by not considering the settlement of it. He/she may request for more commission from the party. However, the decision to operate the conciliation because of the counsel's suggestion both positive and negative way is not clearly explain since it happens under personal thought of each lawyer. When the case enters the proceedings of the Court, the people expect that the one who is in charge of the adjudication must only be the judge. According to the research on the expectation of the conciliation for dispute resolution, it shows that the person whom the samplers mostly want to be in charge of the conciliator is the judge (43.5% see also Appendix Table 8) in order to confirm that the result of the conciliation is really fair.

From the above result of study, the decision to enter into the conciliation is partly due to the lawyer appointed by the party, who learns the conciliation acknowledgement of information distributed by the Court. According to the study, the case with high amount in dispute tends to enter into the conciliation more than the case with low amount in dispute. (see Table 5) The cases with high amount in dispute are the case of Central Intellectual Property and International Trade Court and Labor Court. (see Appendix Table 2) The cases entering into this court are the cases of medium and large business. The conciliation may provide the opportunity for the party to return to do their business as usual rapidly, which is the most important thing of this group. In contrary, the case with low amount in dispute rarely enters into the conciliation. It may be the result of nature of some Thai people who do not want anyone to disparage. Sometimes the case entering into the court is relevant to the disparagement. The party does not agree to conciliate the dispute, but they require the proceedings of the Court to point out who will win or lose. For the Central Labor Court, it is specified that before the case enters into the Court, it must be conciliated according to Establishment of Labor Court Act. The judge will ask the underlying need of the party, at the same time give information and knowledge, so that the party can reexamine and make up his/her mind. The result of distribution of knowledge and understandings about conciliation to the party with the general information of conciliation of the lawyer, which can be transferred to the party, influences to the decision to settle the dispute eventually.

TABLE 4
The Number of the Lawyers Acquainted with the Conciliation From Various Kinds of Sources.

Information Source	*Number of Samples*	*Percent*
Distributed documents	55	50.9
Judge	31	28.7
Court's officer	6	5.6
Lawyer	4	3.7
Others	7	6.5
Lawyer not acquainted with the conciliation	5	4.6
Total	108	100.0

TABLE 5

The Lawyers Proportion of Entering the Conciliation in Each Type of the Courts

Amount in Dispute (Baht)	*Entering into Conciliation*		*Number of Samplers (Percent)*
	Yes	*No*	*Total*
Lower than 100,000	16 (14.8)	6 (5.6)	22 (20.4)
100,001-1,00,000	19 (17.6)	5 (4.6)	24 (22.2)
1,000,001-5,000,000	17 (15.7)	5 (4.6)	24 (22.2)
5,000,000-15,000,000	20 (18.5)	2 (1.9)	22 (20.4)
More than 15,000,001	18 (16.7)	0 (0.0)	18 (16.7)
Total	90 (83.3)	18 (16.7)	108 (100.0)

TABLE 6
The Number of Reasons Why the Lawyers Decides to enter into Conciliation

Reasons Why Decide to Enter into Conciliation	*Number of Samplers*	*Percent*
Consent of the party	33	30.6
Save time	22	20.4
Belief in the fairness of the conciliation	9	8.3
Save the expense	6	5.6
Suggestion of the judge	4	3.7
Experience in former conciliation	4	3.7
Just try	2	1.8
Do not want to be involved in lawsuit	2	1.8
Tardiness of the proceedings of the Court	2	1.8
Not specified	6	5.6
Number of lawyers never enter the conciliation	18	16.7
Total	108	100.0

6.2 Attitudes of the Judges and Lawyers Towards the Conciliation for Dispute Resolution

According to the result of the research, both sample groups have the same level of positive attitude towards the acceptance of the conciliation. In detail, the judges have the acceptance in higher level (55.8 %). While the lawyers accept the conciliation in moderate level. (61.1% see also Appendix Table 4) Both groups have the same attitude that the conciliation can resolve the dispute of the parties, and the conciliation can solve the problem fairly. The level of acceptance and such attitude shows the level of success of conciliation in Thailand in some degree, and it is also the important sign leading to

higher degree of acceptance. Moreover, it is found that the judges have the attitude that the proceedings of the court is as fair as the conciliation process. (41.2%) The majority of the lawyers (45.4 %) have the attitude that the conciliation is more fair than the proceedings of the court (see Table 7) because they satisfied with the result of the conciliation and thought that the conciliation is more suitable for Thai society than the proceedings of the court. However, the conciliation is more complicated than the proceedings of the Court. (see Table 8) The lawyers thought that if the case fail to be settled and then reentered into the proceedings of the Court, it increases his/her work in trial. In case of the Labor Court which the case concerns the dispute between employer and Labor Union. The procedure is more complicated since it has to satisfy the need of a group of people, not only one party on one side. The result of conciliation or the satisfaction of conciliation may vacillate over the need of the majority. However, the result of study clearly determines that the lawyers deem that the conciliation is more just, more satisfied with the result and more suitable for Thai society than the proceedings of the Court. The result of the conciliation brings about the satisfaction of both parties. At the end, the parties are able to associate, provide support or enter into the business with each other as they were before. Because the lawyer is the group that is more closed to the party than the judge, they learn the satisfaction and level of acceptance in practice from the party better than the judge who only imposes the guidelines and means in the proceeding. In the proceedings of the Court, the judge, finally, must deliver the judgment who will win or lose, so the parties are affected with the bad attitude towards each other and may lead to the other dispute again later.

The judges have the same level of attitude towards fairness of the conciliation and the proceedings of the Court. They are more satisfied with the result of the conciliation than the proceedings of the Court and thought that this method is suitable for Thai society. However, they agree with the lawyers that the procedures of conciliation are more complicated than the proceedings. (see Table 8) The judges deem that to conciliate the case, the conciliator should be the judge who has knowledge in that dispute matter. The judge who acts as the conciliator shall have special qualification. Especially, his/her personality shall be reliable on maturity. He/she shall have rhetoric in speaking and listening. Moreover, he/she shall perfectly know and understand the procedures and methods of conciliation. Most important thing, he/she shall have positive attitude toward conciliation and volunteer to act as the conciliator. If the judge who is in charge of conciliation lacks of those qualification as mentioned above, the conciliation may be not effective. The objectives of the conciliation may not be fulfilled and it may effect the party with bad attitudes towards the conciliation. The result of the research clearly shows that the conciliation is one methods of dispute resolving that is accepted from the lawyers and judges. Moreover, both groups deem that it is suitable for Thai society because Thai people are reconcilable and do not want to involve in lawsuit. It is because the litigation is complicated and waste time and money. Besides the litigation of some Thai is involved with the matter of dignity rather than the consideration on the right and wrong under the law or the regulations. Therefore, both groups have the same attitude that the conciliation is suitable for Thai society.

TABLE 7
The Number of the Judges and Lawyers and Level of Fairness in Dispute Solving by the Conciliation Compared with the Proceedings of the Court.

Level of fairness	***Judge***		***Lawyer***	
	Number	***Percent***	***Number***	***Percent***
More	10	29.4	49	45.4
Equal	14	41.2	36	33.3
Less	3	8.8	8	7.4
Not sure	7	20.6	15	13.9
Total	34	100.0	108	100.0

TABLE 8
The Attitude Toward the Conciliation and the Proceedings of the Courts of the Judges and Lawyers

Attitudes	*Judges*			*Lawyers*		
	Conciliation	*Proceedings of the Court*	*Not specified*	*Conciliation*	*Proceedings of the Court*	*Not specified*
Which method is fairer?	17 (50.0)	17 (50.0)	-	55 (50.9)	38 (35.2)	15 (13.9)
Which method is more reliable?	15 (44.1)	10 (29.4)	9 (26.5)	44 (40.7)	47 (43.5)	17 (15.7)
Which method is expected to solve the problem?	17 (50.0)	17 (50.0)	-	71 (65.7)	22 (20.4)	15 (13.9)
Which method is more complicated?	21 (61.8)	10 (29.4)	3 (8.8)	86 (79.6)	10 (9.3)	12 (11.1)
Which method saves more time?	31 (91.2)	3 (8.8)	-	96 (88.9)	5 (4.6)	7 (6.5)
Which method saves more expense?	28 (82.4)	6 (17.6)	-	92 (88.9)	5 (4.6)	7 (6.5)
Which method is more satisfied with the result?	26 (76.5)	8 (23.5)	-	69 (63.9)	25 (23.1)	14 (13.0)
Which method is more suitable for Thai society?	26 (76.5)	8 (23.5)	-	71 (65.7)	23 (21.3)	14 (13.0)

6.3 The Expectation of the Judges and Lawyers Toward the Conciliation for Dispute Resolution.

The study on the expectation of the sample group is the study about the attitudes of the sample group whether the conciliation can be the alternative of the proceedings of the Court. According to the study, the sample lawyer believed that the conciliation can be the alternative to the proceedings of the court. (see Table 9) The person who is suitable to be in charge of the conciliator is the judge. (see Appendix Table 8) In contrary, the sample group of judges deemed that the conciliation cannot be replaced the proceedings of the court, especially the judge of Civil Court and Central Labor Court. (see Table 10) The result of research shows two parts of attitudes. One is the expectation of the lawyer as the legal professional. They thought that the conciliation can be replaced the proceedings of the court. According to knowledge, understanding and experience in the conciliation, the samplers believed that the conciliation save more time and expenses. Such expectation is a result from the view of person who works as a lawyer. He/she can accelerate the case and increase the case he/she conducts where the result of the case are still based on of fairness and satisfaction of both parties as the proceedings of the court. However, the conciliation can be the negative way for impeding the case in order to request more commission or expand the time to conduct the case. The party shall pay more expenses for the lawyers, especially the cases of labor case in Central Labor Court. (see Table 10) The sample group expects that the conciliation can be replaced the proceedings of the court because at present, the law determines that all cases must enter into the conciliation before filing to the Court. Moreover, the labor case tends to be successfully conciliated as the nature of the problem and the need always involves with the request for increasing of wages and welfare of the employees, which is the duty of the employers under the labor law. The Labor Union only brings the law as a tool to accelerate the employers to provide such welfare more rapid and suitable. In preference, the dispute of labor case sometimes is not necessary to enter the procedures of the court. The employers and the employees can make an agreement through the Labor Union or other relevant government organizations such as Labor Department, Ministry of Labor and Social Welfare or the Government. As a result, the expectation of such lawyer group should not be a key factor in whether the conciliation can be replaced the proceedings of the court or not.

For the expectation of the sample group of judges as the professional in law in order to maintain the social peace, they thought that the conciliation could not be replaced the proceedings of the court. (see Table 10) Because the sample group deems that the conciliation is only the additional procedures for the proceedings of the court. Some disputes cannot be resolved by the conciliation. It is necessary to adjudicate the case and decide who will win or lose. For example, in some simple case, the plaintiff as the debtor is entitled to receive the debt repayment from the defendant in full amount by various means according to the order of the Court, if the case is proceeded in the Court. In contrast, if the defendant decided to initiate the conciliation in order to reduce the amount of debt repayment, the defendant may obtain more benefit than the plaintiff should receive from conciliation. Moreover, the conciliation could be the means to impede the case for the lawyers to request higher commission rate. In conclusion, according to the study the conciliation is the method that is suitable for certain disputes, especially the dispute that the party agrees to enter into conciliation. The conciliation cannot be replace the proceedings of the court in all cases. Although the parties agree to conciliate, the parties or the lawyers still want the judge to be the conciliator in the case. (*see* Appendix Table 8) The reason is to confirm the result of conciliation under the law and to make it look like the proceedings of the court.

TABLE 9
The Number of the Judges and Lawyers Who Give Opinion About the Possibility of the Replacement of the Proceedings of the Court with the Conciliation.

Possibility of the replacement of the proceedings of the court with the conciliation	***Judges***		***Lawyers***	
	Number(s)	***Percent***	***Number(s)***	***Percent***
Yes	13	38.2	81	75.0
No	15	44.1	19	17.6
Not sure	6	17.6	8	7.4
Total	34	100.0	108	100.0

TABLE 10
The Proportion of the Judges and Lawyers Who Give Opinions About the Application of the Conciliation to Replace the Proceedings of the Court

Court	***Application of Conciliation to Replace the Proceedings of the Court***					
	Judges			***Lawyers***		
	Yes	***No***	***Not sure***	***Yes***	***No***	***Not sure***
The North Bangkok Kwaeng Court	1 (2.9)	2 (5.9)	1 (2.9)	17 (15.7)	4 (3.7)	4 (3.7)
The Civil Court	1 (2.9)	2 (5.5)	1 (2.9)	19 (17.6)	5 (4.6)	2 (1.9)
The Central Labor Court	5 (14.7)	9 (26.5)	2 (5.9)	25 (23.1)	2 (1.9)	1 (0.9)
The Central Intellectual Property and International	3	5	2	20	8	1

Trade Court	(8.8)	(14.7)	(5.9)	(18.5)	(7.4)	(0.9)
Total	10	18	6	81	19	8
	(29.5)	(52.9)	(17.6)	(75.0)	(17.6)	(7.4)

6.4 Suggestions from the Study

1. System and the Methods of Conciliation

The study clearly explained that the conciliation for dispute resolution is the methods suitable for certain disputes which the parties agree to operate; therefore, apart from the issuance of reliable and up-to-date rules and regulations governing the justice of conciliation, the Court of Justice shall organize the tripartite quorum. It shall be accepted by all relevant sections. The quorum shall consist of three personnel, that is, the judge, professional representatives and inter-professional entered in the account of the Court of Justice for the benefit of conciliating the dispute in certain specific field, and the lawyers or University law teachers. The reason is for the neutral conciliation under the reliable criteria leading to the ruling that is closed to the justice as much as possible. It should specify the exact period of time for conciliation in order to prevent the case to be impeded. Moreover, the conciliation shall operate in the court or specific purpose organization, so that the party believe that the conciliation for dispute resolution is systematic and reliable.

2. Conciliator

In order to conciliate the dispute, the conciliator shall be qualified with good personalities; he/she shall also pass the training or curriculum on conciliation for dispute resolution, so that he/she has correct knowledge, understanding and attitude towards conciliation. The court of justice shall list the persons who wish to be the conciliator; therefore, the conciliator carries on the duties within the need and ability of himself/herself. The court of justice shall give a chance for the conciliator to have inter-professional together with lawyers and judges. At a result, the conciliation shall be operate neutrally and fairly to satisfy both parties.

7. Reference

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8. Appendix

8.1 The Number of the Lawyers who Acquainted with the Conciliation

Conciliation	*Number of Samplers*	*Percent*
Acquainted	103	95.4
Not acquainted	5	4.6
Total	108	100.0

8.2 The Proportion of the Lawyers Who Enter the Conciliation Separated by the Courts

Lawyer going to the court	**Entering the Conciliation**		*Total*
	Yes	*No*	
North Bangkok Kwaeng Court	19 (17.6)	6 (5.6)	25 (23.1)
Civil Court	21 (19.4)	5 (4.6)	26 (24.1)
Central Labor Court	23 (21.3)	5 (4.6)	28 (25.9)
Central Intellectual Property and International Trade Court	27 (25.0)	2 (1.9)	29 (26.9)
Total	90 (83.3)	18 (16.7)	108 (100.0)

8.3 The Proportion of the Lawyers Who Enters the Conciliation Separated by the Relevance of the Case

Relevance of case	*Entering the Conciliation*		*Total*
	Yes	*No*	
Plaintiff's counsel	49 (45.3)	14 (13.0)	63 (58.3)
Defendant's counsel	41 (38.0)	4 (3.7)	45 (41.7)
Total	90 (83.3)	18 (16.7)	108 (100.0)

8.4 The Number of the Judges and Lawyers Who Give Opinions about the Acceptance of Conciliation

Level of acceptance	**Judges**		*Lawyers*	
	Number	*Percent*	*Number*	*Percent*
Much	19	55.8	36	33.3
Moderate	15	44.2	66	61.1
Less	-	-	6	5.6
Unacceptable	-	-	-	-
Total	34	100.0	108	100.0

8.5 The Number of the Judges and Lawyers Who Give Opinion About the Possibility of Conciliation in Problem Solving

Level of acceptance	**Judges**		*Lawyers*	
	Number	*Percent*	*Number*	*Percent*
Yes	32	94.1	102	94.4
No	2	5.9	6	5.6
Total	34	100.0	108	100.0

8.6 The Number of the Judges and Lawyers Who Give Opinion on Whether the Conciliation Can Solve Problem Fairly

Conciliation can solve the problem fairly.	Judges		*Lawyers*	
	Number	*Percent*	*Number*	*Percent*
Yes	26	76.5	87	80.6
No	7	20.6	18	16.7
Not sure	1	2.9	3	2.8
Total	34	100.0	108	100.0

8.7 The Proportion of Level of Conciliation Acceptance Separated by the Amount in Dispute

Amount in dispute (Baht)	Level of Acceptance			Total
	Much	Moderate	less	
Lower than 100,000	11	10	1	22
	(10.2)	(9.3)	(0.9)	(20.4)
100,001-1,000,000	10	14	0	24
	(9.3)	(13.0)	(0.0)	(22.2)
1,000,001-5,000,000	3	17	2	22
	(2.8)	(15.7)	(1.9)	(20.4)
5,000,001-15,000,000	4	15	3	22
	(3.7)	(13.9)	(2.8)	(20.4)
More than 15,000,000	8	10	0	18
	(7.4)	(9.3)	(0.0)	(16.6)
Total	36	66	6	108
	(33.3)	(61.1)	(5.6)	(100.0)

8.8 The Number of the Lawyers Who Give Opinions on Persons Who is the Best in Charge of Conciliator

Person Who is the Best in Charge of Conciliator	*Number of Samplers*	*Percent*
Judges	47	43.5
Person experienced in that field	29	26.9

Respectful person	4	3.7
General lawyer	1	0.9
Not specified	27	25.0
Total	108	100.0

8.9 Questionnaire for the Study

ID ☐☐-☐☐☐☐

Questionnaire for the Study

Alternative Dispute Resolution Process in Thailand

<u>Instruction</u> Put a ✓ in front of the information you want.

<u>Part I</u> Personal Data

For Researcher

1. Sex

Y 1. Male Y 2. Female ☐1

2. Age …….. years ☐ ☐2-3

3. Marital Status

Y 1. Single Y 2. Married ☐4

Y 3. Divorced Y 4. Widowed

4. Level of Education

Y 1. Below Bachelor Degree Y 2. Bachelor Degree ☐5

Y 3. Barrister-at-Law (Thai Bar) Y 4. Master Degree

Y 5. Doctoral Degree

5. Occupation

Y 1. Government/ state enterprise officer Y 2. Private company officer ☐6

Y 3. Private business operator Y 4. Lawyer

Y 5. Other (Please specify) ……..……

6. Average salary …… Baht ☐☐☐☐☐☐7-12

7. Relevance to the case as:

Y 1. Plaintiff Y 2. Defendant Y 3. Witness ☐13

Y 4. Plaintiff's counsel Y 5. Defendant's counsel

Part II ***General information of the case.***

8. Which type of case you are in contact with the Court? (Please specify types of cases such as infringement, selling, loan, etc.)

   ……..…… ☐ 14

   You are Y Plaintiff Y Defendant

   Does it have amount in dispute? Y Yes Y No

   If yes, how much amount involved? ……..……

9. Now the case is in the process of:

   Y 1. Filing a motion Y 2. Filing a testimony ☐ 15

   Y 3.Conciliation Y 4. Settling an issue in the court

   Y 5. Taking of evidence Y 6. Passing judgment/decision

   Y 7. Execution Y 8. Petition

10. From the beginning to this process, how many years have you spent?

    ……..…… years …….. months ☐☐☐☐ 16-19

11. According to No. 10. How much money you spent?……..Baht ☐☐☐☐☐☐ 20-25

12. According to No. 10. Prior to this case, have you ever been involved in litigation?

    Y 1. Yes …… cases Y 2. No. ☐☐ 26-27

Part III ***Definition of conciliation***

13. Have you ever heard the conciliation before?

    Y 1. Yes Y 2. No (Skip to Part 4) ☐ 28

14. If yes, who has you known from? (Feel free to answer more than 1)

    Y 1. Lawyer Y 2. Judge ☐☐☐ 29-31

    Y3. Court officer Y4. Friend/relative/acquaintance

    Y5. Attorney Y6. Brochure of the court

    Y7. Other (please specify)……

15. Have you ever operate the conciliation?

Y 1. Yes (Continue No. 16) Y 2. No (Skip to No. 17) ☐ 32

16. Reasons you decide to make the conciliation.

(Please pick 1)(Skip to Part 4)

Y 1. Just try. Y 2. Conciliation spend short time. ☐☐ 33-34

Y 3. Save the money. Y 4. Do not want to enter the proceedings.

Y 5. Lawyer suggests. Y 6. Judge suggests.

Y 7. Relative/friend/acquaintance suggests.

Y 8. The proceedings of the court is tardy.

Y 9. The proceedings process is complicated.

Y 10. The parties agree to conciliate

Y 11. Believe in the fairness of conciliation

Y 12. Experience from the former conciliation

Y 13. Other (please specify) ……..

17. Reasons why you do not enter to the conciliation (Pick one)

Y 1. One of the parties does not agree to conciliate ☐ 35

Y 2. Do not believe in the conciliation.

Y 3. Want the judge to proceed the case under the law.

Y 4. Do not know about conciliation. No one suggested.

Y 5. Lawyer suggests.

Y 6. Relative/friend/acquaintance suggests.

Y 7. Experience from the former conciliation.

Y 8. Other (please specify) ……

<u>Part IV</u> Expectation of the people concerning the conciliation.

18. In your opinion, which level does you accept the procedure of conciliation?

Y 1. Much Y 2. Average Y 3. Less ☐ 36

Y 4. Unacceptable. Because ……

19. Do you think the conciliation can solve the problem?

Y 1. Yes. Because……... ☐ 37

Y 2. No. Because ……

Which method, in your opinion, can solve the problem?

Y 2.1 Proceeding the case in the Court as usual. ☐ 38

Y 2.2 Other. (Please specify) ……

20. Do you think the conciliation can solve the problem fairly?

Y 1. Yes Y 2. Not sure. Y 3. No. ☐ 39

21. Compare with the proceedings, what level do you think the conciliation can solve the problem fairly?

Y 1. More. Y 2. Equal. Y 3. Less. Y 4. Not sure. ☐ 40

22. Do you think the conciliation can replace the proceedings of the court?

Y 1. Yes. Because …… ☐ 41

If yes, who is the most effective person you think to be in charge with this matter?

Y Professional of the dispute. Y Court officer. Y Judge.

Y Person you respect. Y General lawyer Y Other……..

Y 2. No. Because ……

Y 3. Not sure. Because…….

Y 4. Do not know. Because ……

<u>Instruction</u> Put a ✓in a table which direct with your opinion.

The Expectation	Conciliation	Proceedings of the Court	
23. Which one do you think is more justice?			☐ 42
24. Which one does you think more reliable?			☐ 43
25. Which system you expect that it is more effective for problem solving?			☐ 44
26. Which system you think is more complicated in operation?			☐ 45
27. Which system you think save more time?			☐ 46
28. Which system you think save more money?			☐ 47
29. Which system you are more satisfied with the result?			☐ 48
30. Which system you think is more suitable to Thai society?			☐ 49

<u>Part V</u> Additional suggestion

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8.10 Interview Form for the study

ID ☐☐-☐☐☐☐

Interview Form for the study

Alternative Dispute Resolution Process in Thailand

Instruction Put a ✓ in front of the information you want.

Part I ***Personal Data***

For Researcher

1. Sex

Y 1. Male Y 2. Female ☐1

2. Age …….. years ☐☐2-3

3. Marital Status

Y 1. Single Y 2. Married ☐4

Y 3. Divorced Y 4. Widowed

4. Level of Education

Y 1. Below Bachelor Degree Y 2. Bachelor Degree ☐5

Y 3. Barrister-at-Law (Thai Bar) Y 4. Master Degree

Y 5. Doctoral Degree

5. Occupation

Y 1. Government/ state enterprise officer Y 2. Private company officer ☐6

Y 3. Private business operator Y 4. Lawyer

Y 5. Judge Y 6. Other (Please specify) ……..…….

6. Average salary …… Bath ☐☐☐☐☐☐7-12

7. Relevance to the case as:

Y 1. Plaintiff Y 2. Defendant ☐13

Y 3. Plaintiff's counsel Y 4. Defendant's counsel

Y 5. Conciliator

<u>Part II</u> General information of the case.

8. Which types of the case you succeed to conciliate? (For example, infringement, selling, loan, etc.)

……..…… ☐ 14

……..……

……..……

9. How much time you have spent for conciliation?

9.1 (For judge and lawyer)…….years…….months (Average from the latest case) ☐☐ 15-16

9.2 (For plaintiff and defendant)…….years…….months ☐☐ 17-18

How much money you have spent?……Bath ☐☐☐☐☐☐ 19-24

<u>Part III</u> Conciliation

10. Reasons you decide to make the conciliation. (For plaintiff and defendant)

(Pick one)

Y 1. Just try. Y 2. Spend short time. ☐☐ 25-26

Y 3. Save the money. Y 4. Do not want to enter the proceedings.

Y 5. Lawyer suggests. Y 6. Judge suggests.

Y 7. Relative/friend/acquaintance suggests.

Y 8. The proceedings of the court is tardy.

Y 9. The proceedings process is complicated.

Y 10. The parties agree to conciliate

Y 11. Believe in the fairness of conciliation

Y 12. Experience from the former conciliation

Y 13. Other (please specify) ……..

11. What do you think are the advantages and disadvantage of conciliation?

11.1 Time

- Advantage …….
- Disadvantage …….

11.2 Expense

- Advantage …….
- Disadvantage …….

11.3 Reliability

- Advantage …….
- Disadvantage …….

11.4 Fairness

- Advantage …….
- Disadvantage …….

11.5 Suitability for Thai Society

- Advantage …….
- Disadvantage …….

<u>Part IV</u> Expectation of the people concerning the conciliation.

12. In your opinion, which level you accept the procedure of conciliation?

Y 1. Much Y 2. Average Y 3. Less ☐ 27

Y 4. Unacceptable. Because ……

13. Do you think the conciliation can solve the problem?

Y 1. Yes. Because……... ☐ 28

Y 2. No. Because ……

Which method, in your opinion, can solve the problem?

Y 2.1 Proceeding the case in the court as usual. ☐ 29

Y 2.2 Other. (Please specify) ……

14. Do you think the conciliation can solve the problem fairly?

Y 1. Yes Y 2. Not sure. Y 3. No. ☐ 30

15. Compare with the proceedings of the court, what level do you think the conciliation can solve the problem fairly?

Y 1. More. Y 2. Equal. ☐ 31

Y 3. Less. Y 4. Not sure.

16. Do you think the conciliation can replace the proceedings of the court?

Y 1. Yes. Because …….. ☐ 32

Y 2. No. Because ……

Y 3. Not sure. Because…….

Y 4. Do not know. Because ……..

Part V ***Additional suggestion.***

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Chapter Four: Dispute Resolution Process in Consumer Protection

1. Historical Background

Since Thailand has a free trade economic system (Laissez-Faire or capitalism), the economic development, therefore, has been rapidly advanced in manufacturing, distribution and service sectors, and thus, has made the distribution and service system become more and more complicated. As a result, consumers who are valuable human resource fall into disadvantageous positions due to the inability to receive sufficient facts of market condition, quality of product and price, which result in the obstacle to the development of living quality of people.

In the past, when being taken advantages, consumers would protect their rights by only exercising their juridical rights although there are specific laws applicable to protect the rights of consumers by fixing product prices and quality of products and services. However, trial process was unnecessarily time and cost consuming process that was not worth proceeding. Thus, a great number of consumers were disadvantaged without any remedy or compensation.

In Thailand, the concept of having an authority in charge of consumer protection was initially pushed by a foreign NGO, the Federation of International Consumer Organization. In 1969, there were several unsuccessful attempts to set up the said consumer protection authority. Finally, the Consumer Protection Act B.E. 2522 (1979) was enacted and effective on 5 May 1979 under which a Consumer Protection Board has been established. In addition to the Consumer Protection Board, the Consumer

Protection Act also set up the Office of the Consumer Protection Board opening on 2 July 1979. Subsequently, the Act was amended again on 24 March 1998.

Although there was the success in establishment of the authority responsible for the consumer protection, the advantages taking over consumers still continue.

2. Outline of Consumer Disputes

2.1. Background of Disputes

1. The basis of disputes in Thailand comes from the reason that manufacturers or business operators want to make high profit, which result in:
   1.1 Reduction of cost;
   1.2 Sale of products and services at the excessive prices or fixing the product prices higher than usual.

2. Sellers try to induce buyers to purchase low quality products by:
   2.1 Exaggerate advertisement, false statement or advertisement which cause buyers' or service users' misunderstanding;
   2.2 Contamination or decoration of products to persuade buyers without regard of hazards or dangers.

3. The basis of disputes arise from financial problems of the business operators and then require buyers to pay down payments and use such down payment as its cost to manufacture and deliver goods or services, for example, in allotted land & house business or condominium business, etc.
4. The basis of disputes comes from breach of contracts due to the failure of manufacturers or sellers in delivering goods within the time specified or with the quality or quantity as ordered by consumers because of production problems or trading problems made by other manufacturers or sellers.

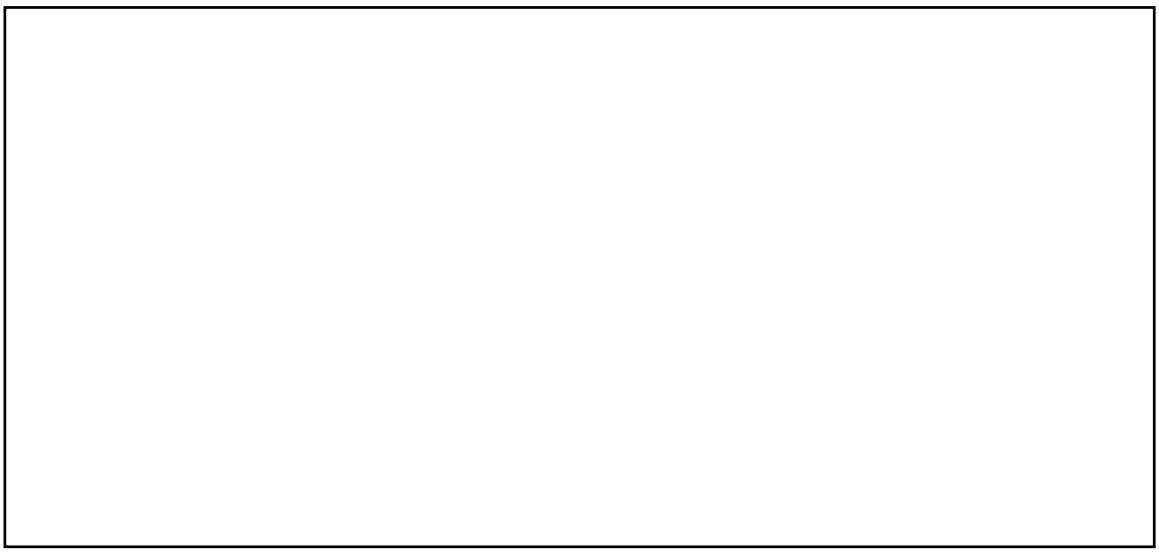
Most of these business operators or manufacturers or service providers are juristic persons having more influence and economic power than consumers or service users, and are always in the advantage positions.

2.2. Types of Disputes

1. Disputes over **low quality** of products or **excessive prices**: the consumer will demand for quality improving or price reducing.
2. Disputes over **breach of contracts**: the consumer will demand for execution of a contract or compensation.
3. Disputes over **exaggerate advertisements**, concealment of fact which cause people's **misunderstanding**; or not receiving safety in using goods or service: the consumer will ask for compensation.

2.3. Number of Cases

The number of complaints concerning sellers, business operators or manufacturers which were submitted to the Office of Consumer Protection Board are as shown in the bar chart as follows:



In courts, there is small number of cases brought by disadvantaged consumers. Instead, there appears to have the greater number of cases that were brought to courts by business operators. This may be because business operators have several supporting factors, for example, having more economic power and knowledge. Therefore, business operators are able to exercise their juridical rights without regard of time consumption and expenditures.
When the cases were submitted to courts by business operators, courts will play an important role to protect the rights of consumers by determining whether and how much consumers have to pay for the price of product or the fees for service or damages as claimed by the business operators.

Specific cases that were submitted to courts basically are brought by business operators or manufacturers who make claims on service users or buyers e.g. hire-purchase of automobile, mobile phone service fees, credit card users.

The quantity of cases in court will be said in the next chapter

3. Organizations or Institutes for Dispute Resolution

1. Court
2. The Office of Consumer Protection Board
3. Other organizations
    - Specific organizations
    - Consumer Association
    - Hotel Association
    - Thai Chamber of Commerce

Generally, associations established by business operators, including Thai Chamber of Commerce does not have much role in protecting the rights of consumers since the objectives of such organizations are to protect the benefits of the members within the group having similar benefits. They have no objective to protect the benefit of consumers.

For consumer associations, it seems that their activities are not widely spread in Thailand and in a few cases, their role in protecting the benefits of consumers remain small.[37] There is only the role of watchdog.

[37] However, it should be noted that the Consumer Protection Act empowers the endorsed consumer associations to take an action to the court on behalf of the injured consumers. The first consumer association was endorsed by the Consumer Protection Board in 2000 to take such action.

It can be mentioned that there are only 2 major organizations that have the role to protect the rights of consumers. there are:

1. The Office of Consumer Protection Board
2. Court of Justice

Fact-Finding of the Relevant Organizations

3.1. The Office of Consumer Protection Board

The Office of Consumer Protection Board was established under the Consumer Protection Act B.E. 2522 (1979) which was amended in 1998. Currently, the Office of Consumer Protection Board is under the Office of Prime Minister and has the following powers and duties:

1. To receive complaints of consumers suffered from or damages caused by an act of a business operator, and refer them to the Consumer Protection Board;

2. To follow up and monitor actions of business operators who act in the manner that violates the rights of consumers and to conduct a test or verifying of any goods or services as it deems appropriate and necessary to protect the rights of consumers;

3. To support or conduct the study and research on the problems concerning consumer protection in conjunction with the educational institutes and other work units;

4. To promote and support the impartation of knowledge to the consumer of every level of education concerning the safety and the possible dangers from goods or services;

5. To disseminate techniques and impart knowledge and education to the consumers in order to create the habit of consumption which is a promotion of health, economic use, and use of natural resources of the country for the most benefit;

6. To coordinate with other governmental bodies or state agencies whose powers and duties concern the control, promotion or establishment of standards of goods or services;

7. To carry out any other acts as assigned by the Board or by the Committees for Specific Affairs.

3.1.1 Protection Instructions

The Office of Consumer Protection Board has the following 5 major areas for the protection of consumers' rights:

1) Consumer protection in respect of advertising:

The Advertising Committee, established by the Consumer Protection Act B.E.2522 (1979) has the power in controlling and monitoring advertisement of goods and services for the fairness to consumers by prohibiting statements which may be detrimental to the society, whether it concerns the origin, condition, quality or description of goods or service, as well as the delivery, the procurement or the use of goods or service.

The statements which are deemed to be unfair to consumers are:

(1) **false or exaggerated** statements;

(2) **misleading** statement in the material part concerning goods or service, whether or not by using or referring to technical report, statistics, or any other thing which is not true or which is exaggerate;
(3) statements which, directly or indirectly, **encourage actions against the law** or moral or which lead to deterioration of the national culture;
(4) statements which will disunite or deteriorate the unity of the public; and
(5) the others statements as stipulated in the ministerial regulations.

If the Advertising Committee considers that any of statement is against the consumer protection law, the Committee is empowered to issue any of the following orders:

(1) To **rectify** the statement or method of advertising;
(2) To **prohibit the use of certain statements** appeared in the advertising;
(3) To **prohibit the advertisement** or the use of such method in advertisement;
(4) To order for an advertising to be made in **order to correct the understanding** of the consumer who might have already been misled, in accordance with the rules and procedures prescribed by the Advertising Committee.

2) Consumer protection in respect of labeling:

Under the Section 14 of the Consumer Protection Act, the Labeling Committee comprising of members not less than 7 persons but not exceeding 13 persons has authority to protect consumers in respect of labeling.

The act prescribes that it is the **duty of business operators** to provide material **facts of goods** for the benefits of consumers in enabling them to know the correct information, news, as well as quality description of the products. The statements shown in labels must contain the true statements and must not contain information that may mislead as to essential element of goods.

1. The Labeling Committee has power to designate the following goods as **controlled goods** for the purpose of labeling:

(1) Goods produced for **sale by factories** in accordance with factory law
(2) Goods **ordered or imported into the Kingdom** for sale
(3) Goods which, by nature or by the use of such goods, **may cause physical or mental or health danger**
(4) Goods which are **regularly used** by the general public and the labeling of which would be beneficial to consumers

2. The Labeling Committee has power to establish the principles and conditions in preparing labels under label control that statements must be true, and there must not contain any statement that may be misleading in the material part in relation to products.

3. The Labeling Committee is empowered to direct the business operator to correct or to discontinue the use of label that is not in accordance with the principles.

3) Consumer protection in respect of contracts:

There are a great number of consumers that suffer from the unfairness in entering into contracts with business operators. In purchasing land with structure, most business operators prepare an unfair standard-contract, but such contract may cause disadvantage to consumers.

Actually, it is accepted that general person may not be treated equally under the principle of equality due to the unequal education, economic power and intelligence, especially, consumers who have less economic bargaining power. Therefore, the Consumer Protection Act as amended in 1998 endorses an additional right of consumers, the **right to receive fairness in respect to contract.**

The substantial matter of the right to receive fairness in respect to contract is to empower the Contract Committee to control and observe the contract made between business operators and consumers.

The committee has authority to determine some business to be **business in under contract-control.**

In the case that the said contract is made in foreign language, a Thai translation of which must be accompanied. Violation of such requirement must be subject to criminal punishment of imprisonment for not more than 1 year or fine not exceeding Baht 100,000, or both of such imprisonment and fine.

D. Consumer protection in respect of hazardous products:

Article 36 of the Consumer Protection Act B.E. 2522 (1979) gives power to the Consumer Protection Board to carry out the following acts to deal with any goods which may cause dangers:

1. When there is a reason to suspect that any goods are **likely to injure the consumer**, the Board may direct the business operator to conduct a **test or verifying** of the said goods. If the business operator fails to carry out the test or verifying of the goods or does it with delay without reasonable ground, the Board may arrange for the verifying at the business operator's expenses;

2. If the result of the test or verifying shows that the goods may be **harmful**, and it is not possible to prevent the danger which will arise from the goods, the Board has the power **to prohibit the sale** of such goods or may direct the business operator to correct the goods under the conditions stipulated by the Board.

   In case the goods could not be changed, the Board has the power to direct the business operator to destroy or the Board may arrange for **destruction** of the goods at business operator's expenses;

3. In case of necessity and urgency, if the Board has a reason to believe that any goods are is likely to cause injury to the consumer, the Board has the power **to prohibit the sale** of such goods **temporarily** until a test or verifying is made;
4. If the business operator sell the goods prohibited by the Board, they will be punished by imprisonment for not more than 6 months, or a fine of not exceeding Baht 50,000, or by both of such imprisonment and fine, and if the business operator or manufacturer for sale imports into the Kingdom the goods for sale, it must be punished by imprisonment for not more than 5 years, or by a fine of not exceeding Baht 500,000, or by both such imprisonment and fine.

E. Consumer protection in respect of taking legal action for consumers:

Article 39 of the Consumer Protection Act B.E. 2522 (1979) provides that the Consumer Protection Board has the power **to appoint** a public prosecutor or an official in the Office of the Consumer Protection Board as the consumer protection **officer.** The officer will have authority to take legal action as assigned by the Board if it deems that the case concerns the violation of the rights of the consumers and that such legal action would be the benefit to the consumers in general.

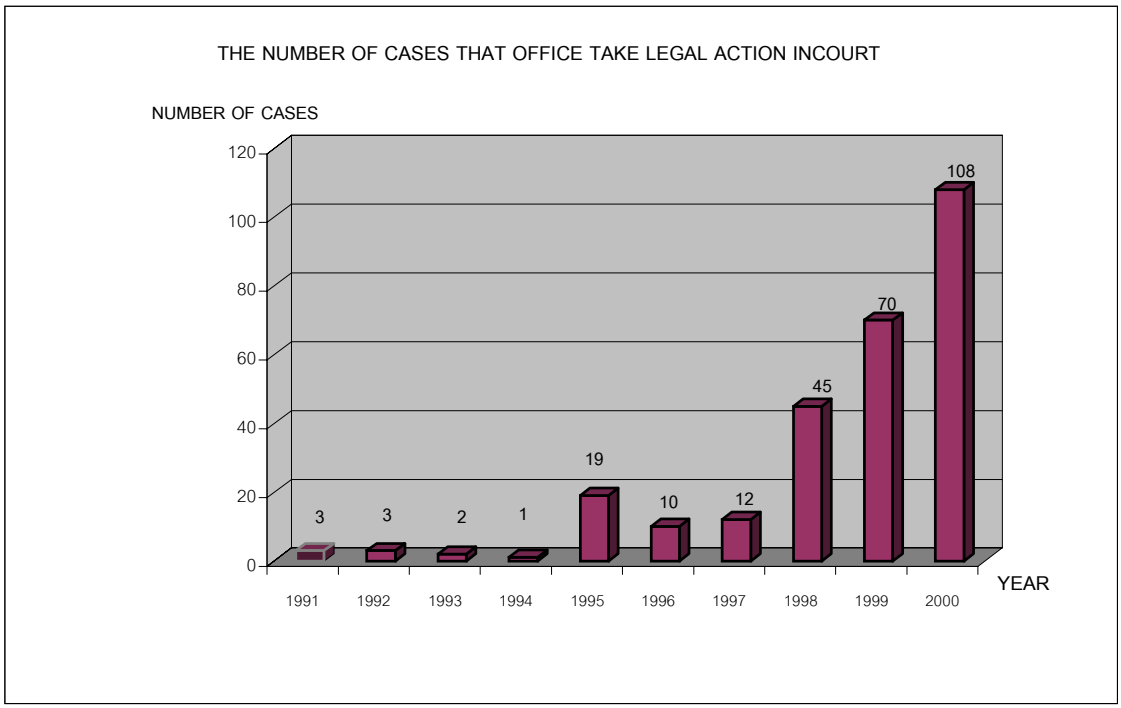
In filing a case in Court, the consumer protection officer will have the power to sue for property or compensation for the consumer, and in this case **shall be exempted from all fees.**

The element grounds in being able to take legal action for consumers are as follows:

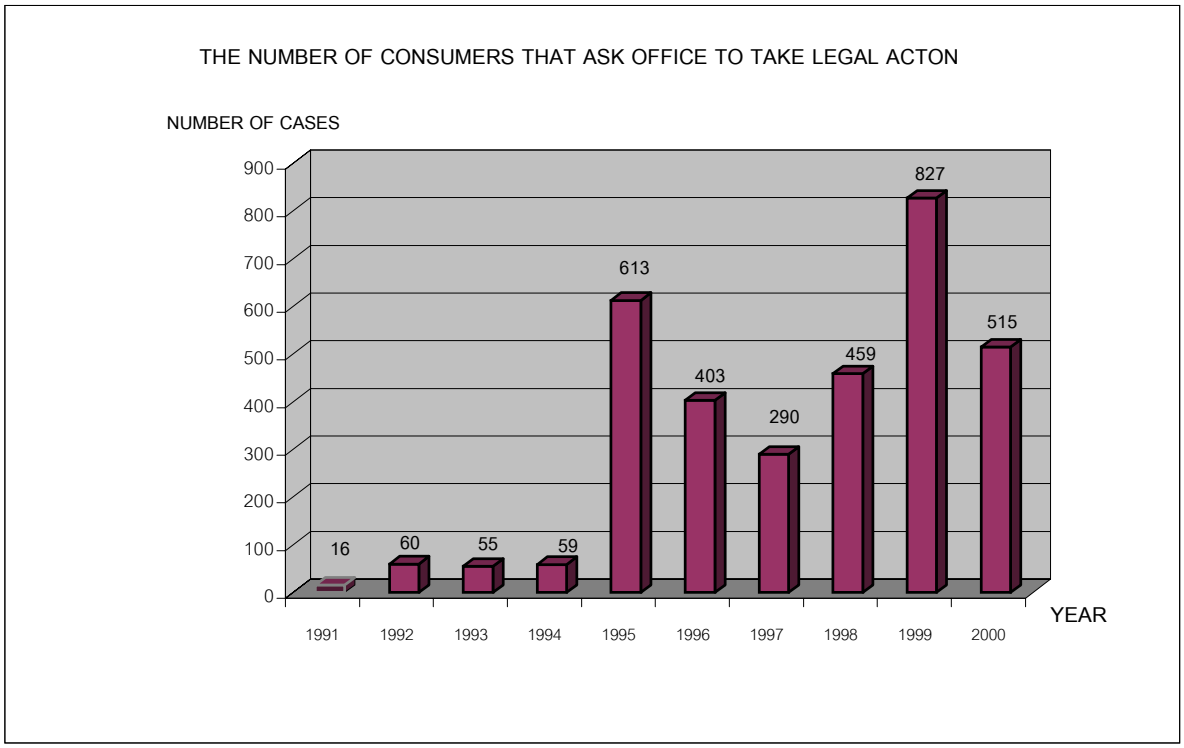
1. **There is a request** from a consumer who is a consumer as defined in Section 3 of the Consumer Protection Act B.E.2522 (1979);

2. There is **a violation of consumer's rights**;

3. Such legal action **will be benefit to the consumers** in general by taking the following into account:
   (1) Nature of Business Operation
   (2) Result of legal action



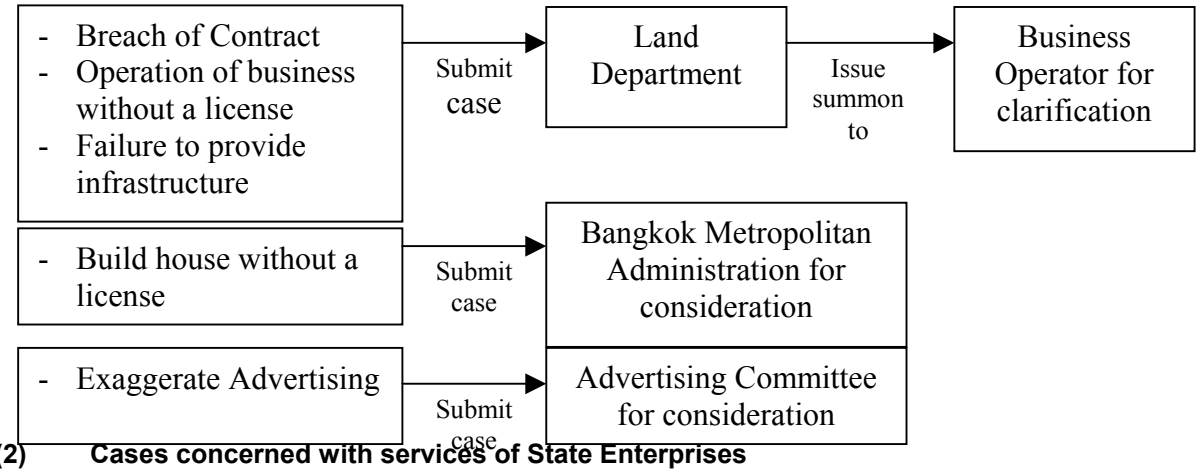
Source: Planning Section Office of Secretary of Department, Office of Consumer Protection Board



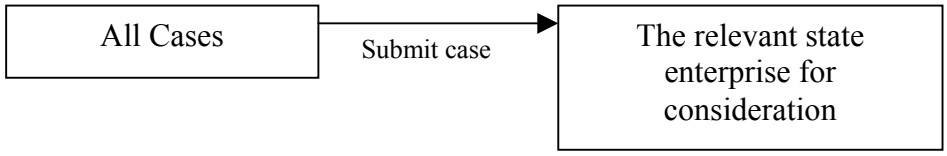
Source: Planning Section Office of Secretary of Department Office of Consumer Protection Board

Charts Showing Actions Taken by the Office of Consumer Protection Board

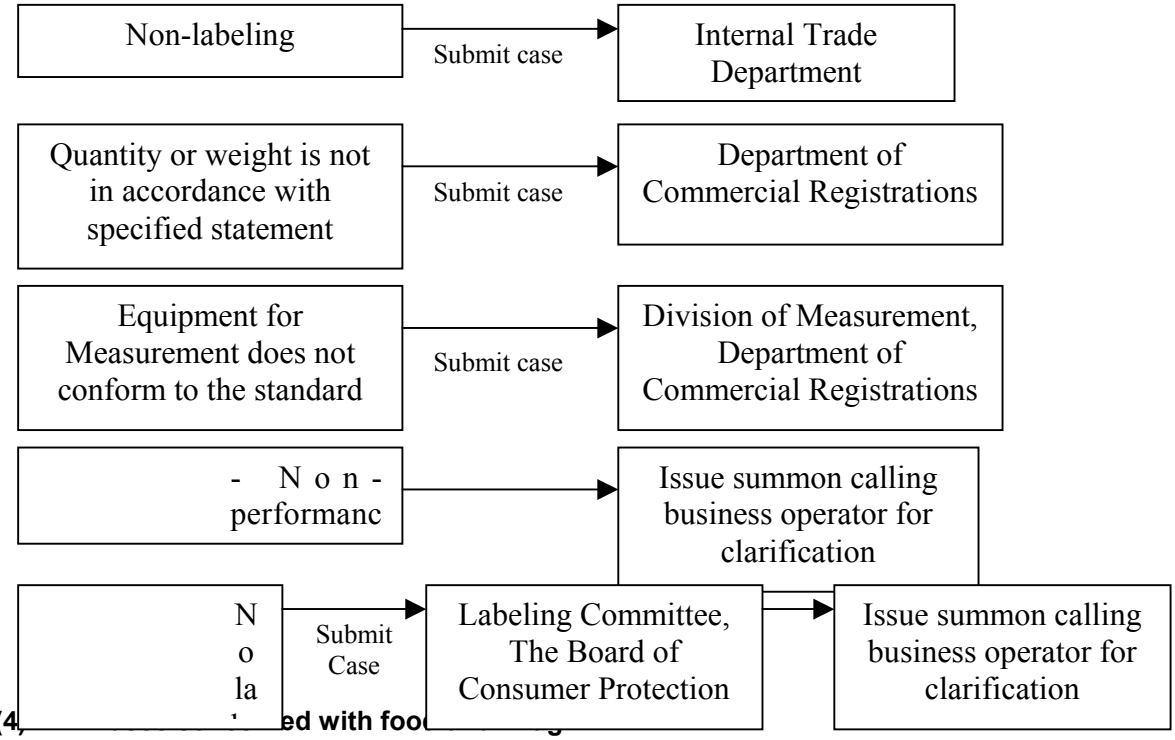
(1) Cases concerned with allotted Houses and Condominium



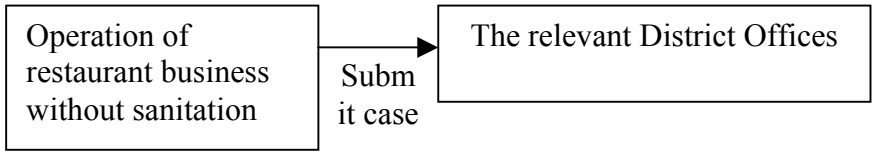
(2) Cases concerned with services of State Enterprises



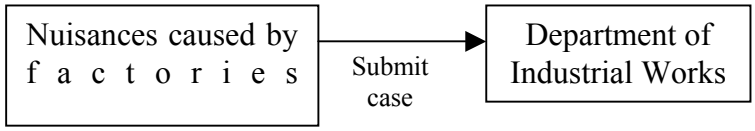
(3) Cases concerned with products



(4) [illegible] with food [illegible]



(5) Consumers are in troubles



3.2. Court

3.2.1. Roles of Protecting the Consumers

As mentioned previously, before the Office of Consumer Protection board was established, in the case where the consumers are taken advantage the consumers are able to exercise their rights to the court. However, the exercising the rights in court is not favored by the consumers because the consumers have to pay expenses, that is, the attorney's fees and the costs of action in the court (court fees); it may moreover spend a long time to do so. Therefore, with the reasons of wasting the times and the expenses the consumers do exercise their rights to the court infrequently.

After the Office of the Consumer Protection Board was established, a number of the consumers who favor to lodge any complaints to the office of the consumer protection board have been increasing. However, it can not help the consumer for not being take advantage. A few of the consumers hence changes their minds to use the court system again.

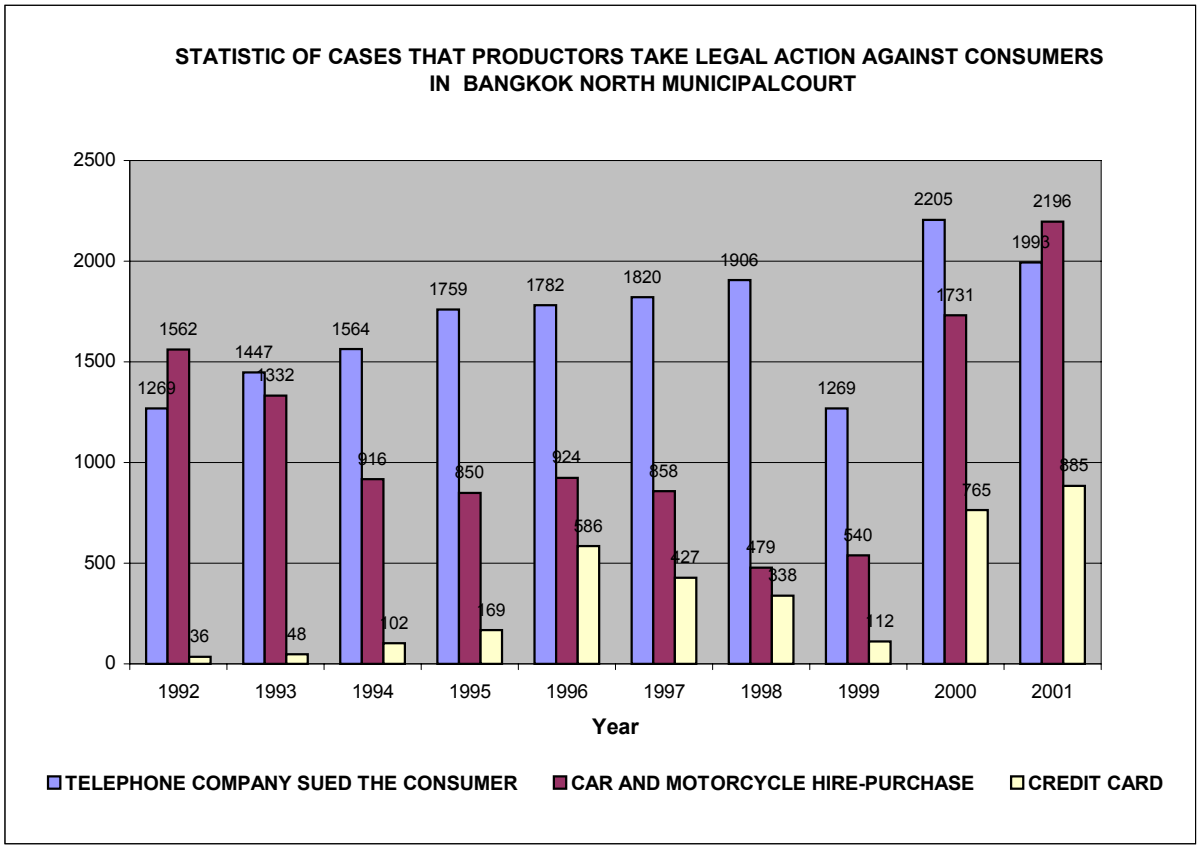
On the other hand, traders often take legal action in court for proceeding with the case against the consumers when the consumers do not perform the obligation of goods costs or service charge, or make performance not completely. It is possible that the traders have more economic status and potentiality than the consumers; so the traders can enter actions against the consumers to the court without being afraid of wasting the expenses and the times. In the case where the consumers are entered actions against by the traders to the court, the court will play the roles of protecting the consumers with the judicial discretion whether the said consumers have to make the compensation to the traders in any extent.

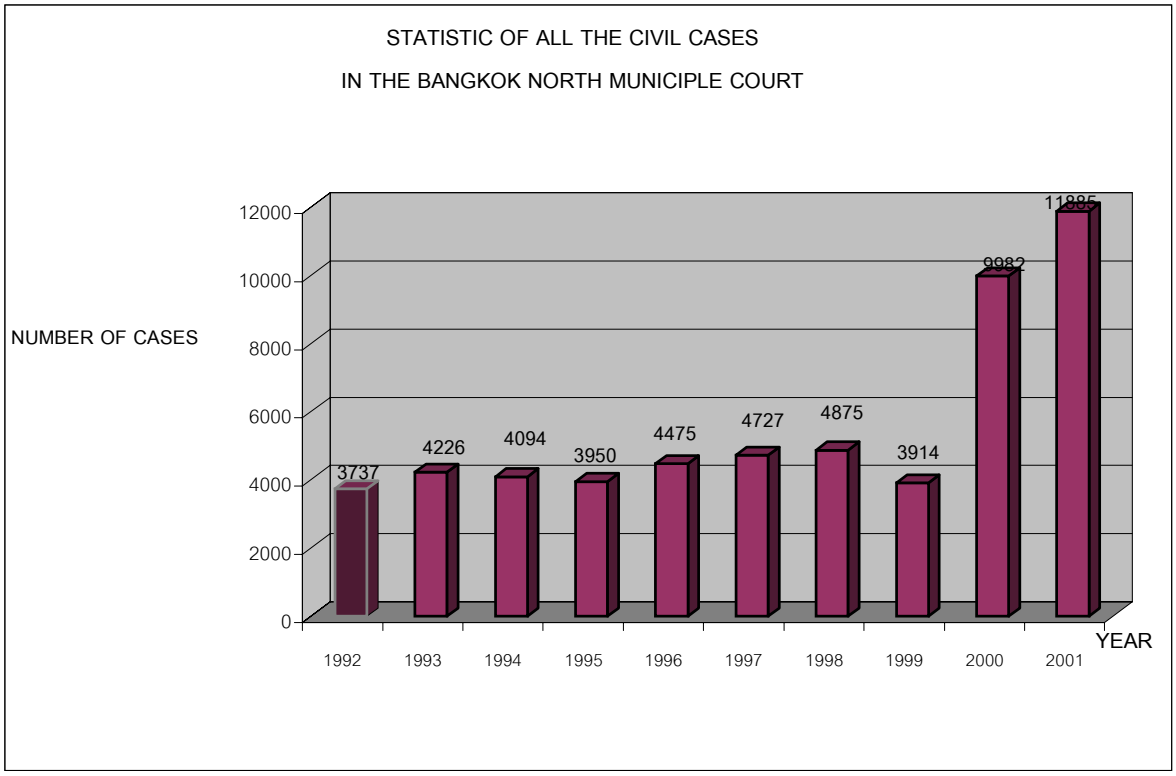
From researching the statistic of quantity of the cases, which the traders take legal actions against the consumers to the court in Thailand, it appears that the most of the traders entered the actions against the consumers to **the municipal or district courts** (small claim courts). Because the most of the amount in dispute was not high under the courts' power and the judicial proceedings in the municipal or district courts is shorter and faster than the normal courts, the consumers exercise their rights in the municipal or district courts in Thailand.

Bangkok North Municipal Court

The Bangkok North Municipal Court is established by the Kwang (Municipal or District) Court Establishment Act B.E.2478 (1935). Afterward there are amendments concerning the power of the Bangkok North Municipal Court for several times until now the Bangkok North Municipal Court has the territorial jurisdiction and competency of the court in twelve districts of Bangkok. The areas are estimated around 252.74 km^2 or 16.11% of the whole areas of Bangkok.

Currently the district court has the power to try and adjudicate civil cases having the amount in dispute not more than 300,000 bath.


STATISTIC OF CASES THAT PRODUCTORS TAKE LEGAL ACTION AGAINST CONSUMERS
IN BANGKOK NORTH MUNICIPALCOURT
2500
2000
1500
1000
500
0
1269
1562
36
1447
1332
48
1564
916
102
1759
850
169
1782
924
586
1820
858
427
1906
479
338
1269
540
112
2205
1731
765
1993
2196
885
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
Year
TELEPHONE COMPANY SUED THE CONSUMER
CAR AND MOTORCYCLE HIRE-PURCHASE
CREDIT CARD


STATISTIC OF ALL THE CIVIL CASES
IN THE BANGKOK NORTH MUNICIPLE COURT
NUMBER OF CASES
12000
10000
8000
6000
4000
2000
0
3737
4226
4094
3950
4475
4727
4875
3914
9982
11885
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
YEAR

Process of Proceeding the Case in the Bangkok North Municipal Court

When a plaintiff enters an action into the court and the court accepts, the civil case shall be divided into 2 categories, as follows:

1. The civil case concerning the financial institution as the plaintiff---the Bangkok North Municipal Court shall transfer the matter of this civil case to the Alternative Dispute Resolution Office, which shall proceed the mediation on behalf of the Bangkok North Municipal Court;

2. The civil case in another issue such as the car hire-purchase case and the case that the telephone server sues the consumer---this case shall be proceeded with the mediation by the Bangkok North Municipal Court firstly in accordance with the following steps:

   (1) The division relating to accept the charge shall seal a rubber stamp in the summons for informing of the defendant and then the defendant will contact the mediation unit if the defendant wishes to mediate;
   (2) The mediation unit shall co-ordinate to the plaintiff for fixing the day in mediation and also provide a writ of the appointment for each party via the registered mail of acceptance;
   (3) The mediation division shall provide a file of the mediation, which separates from a file of the court's trial;
   (4) The Chief Judge shall appoint a mediator from any judges in the court or any competent officials of the general affairs to proceed the mediation;
   (5) The mediation shall be proceeded within 7 days as from the day in court of the mediation. In the conference the parties shall come by themselves or nominate their representatives;
   (6) In the mediation process if the mediation is satisfying, a contract of the compromise shall be drafted for a judgment;
   (7) In the case where the mediation is not satisfying the case shall be entered into the normal proceedings of the court.

When the case is entered into the normal proceedings of the court, the court shall take evidences of both parties before giving the judgment. In this event it may spend a long time uncertainly because in some event the party tries to delay the case. In the past the court spent approximately 9 months.

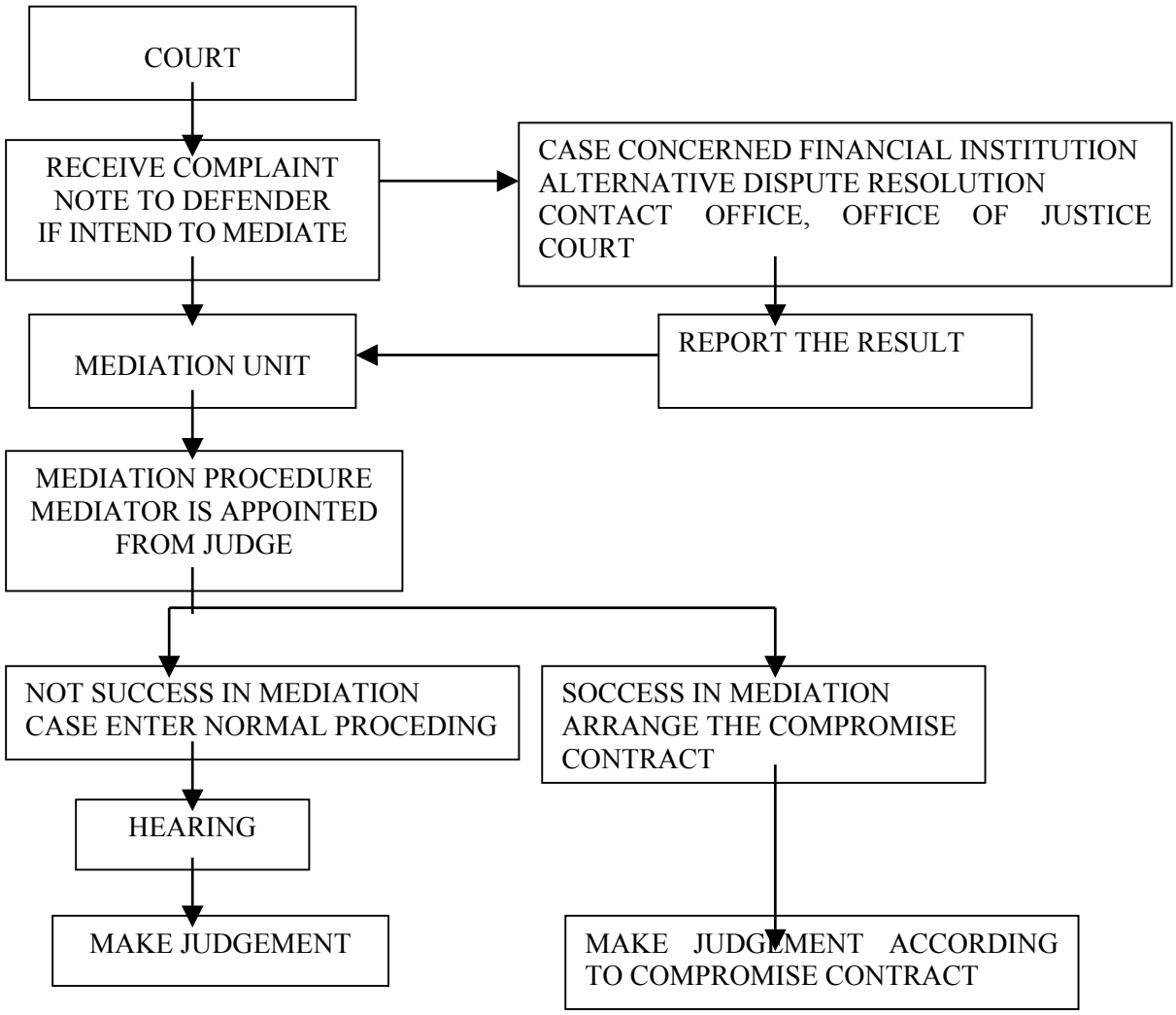
However, the Bangkok North Municipal Court presently has the **fast track** for fast disposal of the case, provided that there are 3 categories, that is, **the petty case**, the **non-complicated** case and the case in **default of defendant's appearance.**

The petty case is the case having the amount in dispute not more than 40,000 baht, and **the non-complicated** case is the case having evidences somewhat clear that make the trial proceed easily.

For the said three categories of the cases if the mediation proceedings is not satisfying, the court shall proceed the trial process only one time. It means that the trial and the judgment shall be made in the same day unless the parties ask for new mediation again, and the court may give a chance to do that.

Subsequently, the general cases are set to have the continuous trial by the Bangkok North Municipal Court. That makes the number of the trials a lot and the parties may wait for their queue around 7-8 months but on the day in court the court will make the continuous trial until the end.

Chart of Proceeding with the Trial in the Court



Normally in the cases where the trader takes legal action against the consumer if it is a petty case, the trader shall pay only 200 bath for court fees. In the other normal cases the fee is 2.5% of amount of dispute.

The attorney's fees will depend on the agreement; in the case where the amount in dispute is not so high the attorney's fees may be high to 10 % of the amount in dispute. But in the case where the amount in dispute is high, the percentage of the amount in dispute may be declined.

4. Comparative Study of the Proceedings of the Office of Consumer Protection Board and the Court

For lodging any complaints with the office of consumer protection there is normally no expense and it is easily to do that. The consumers are able to lodge the complaints in written or by themselves. In addition, the Office of Consumer Protection Board (OCPB) has the competent official for accepting the complaints. In contrary, the attorney is necessary for entering an action into the court except the petty case that no need to have attorney. Furthermore in the case where the amount in dispute is over than the petty case the consumers have to pay 2.5% of the amount in dispute for court fees and also pay the attorney's fees.

Regarding the time of proceedings, if it is the petty case or the case default of defendant's appearance or the non-complicated case, the court will spend a short time for the trial, that is, approximately 3 months including the general affairs. For the other civil cases, the court may spend one year or more than that. Meanwhile it is not certainty for spending the time by the OCPB; it may be more or less than 3 months because the OCPB has to send the matters to the other division relating for proceeding on behalf of the OCPB.

In the proceedings, the court has **the system of execution** better than OCPB when the consumers or the traders take legal action in the court. The OCPB has a weak point in the execution because there is likely no mechanism of the execution.

5. Case Study:

5.1 The case where the court plays the role to protect the consumer

Black Case No. 222/2544
Red Case No. 697/2544
Bangkok North Municipal Court

In this case, an elevator dealer company (seller) sold elevators to a consumer who is the marble and granite trading company. After purchasing the elevators from the elevator dealer, the consumer concluded a contract of the elevator maintenance to the elevator dealer with annual payment of the maintenance.

Then, the said elevators had a problem and the consumer contacted the dealer to send any mechanic to check and fix them. Next, it appeared that after checking and fixing the elevators, the elevator dealer asked 80,624 baht for collection of the service charge including the spare part charge. After checking the spare part costs in the market, the consumer found that the spare part costs are only 9,800 baht. Thus, the consumer paid only the price of spare part and VAT not including the service charge. The consumer did not pay the service charge to the seller because the seller was deemed to have an obligation of maintaining the elevators pursuant to the contract.

Subsequently, the elevator dealer entered an action into the Bangkok North Municipal Court and requested for the remaining payment. In the process of hearing, the elevator dealer referred that the company with service was separated from the company maintaining annually. Then, after taking the evidences, the court believed that such both companies were borne circumstantial evidences to be the same company but the seller registered into two companies for collecting additional remuneration from the consumer. Next, in the fact that the plaintiff changed the spare parts with only 9,800 baht and a fraction but the plaintiff collected from the defendant more than 80,000 baht, it was the profiteering and took the advantage from the consumer. Consequently, the defendant, the consumer, had no obligations to reimburse the remuneration, and the court dismissed this case, and the seller shall reimburse the court fees and the attorney's fees for the consumer, as well.

5.2 The Office of Consumer Protection Board plays the role to protect consumers

1. A woman in Khongan province received an inviting document persuade to be a member of "Tesco Lotus Credit Card". The letter presented and option that she will receive a "hair dyer and iron machine 2 in 1" as the gift if she apply to be a card member. She agreed to the option and applied to be a card member.

After the company approved the application, she asked for the machine but the company did not send it to her. She used the card buying goods from Tesco Lotus store for a few times. And paid money for the goods. Meanwhile she tried to ask the company to send the machine to her. It was useless, the company did not act as promised in the inviting document.

At last she decided not paying for the goods she had shopped in Tesco Lotus store in amount of 1,327 baht and informed to the company by phone and letter that she would paid for the price when she had received the machine. There still was no answer from the company.

Eight months later, she received a notice from the company asking her to pay the price amount of 2,906 bath (included late charge and interest) otherwise she would be sued in court

Receiving the notice made her annoyed and decided to complain in letter to the Office of Consumer Protection Board (OCPB).

After received the complaint the officer called in letter to managing director of the company which concerned to the member card and the Tesco Lotus store. The managing director sent a representative to meet the officer and at last the company decided to sent the hair dyer and iron machine to the consumer as the gift and glad to receive the price amount only 1,327 bath.

2. A house owner in Prachinburi Province signed a contract to heir an anti termite company. According the contract both parties agreed that a house owner would pay amount of 7,000 bath and the company would inspect the house every 4 months for 3 years.

After the house owner paid the price, the company inspected the house only 4 times and did not do theirs job again. After the contract had signed for two years, the house owner inspected his house and found the termites in his house. He called to the company for sending men to inject the chemical material but the company did not do it.

He asked again in letter but there was no answer. So he decide to make a complaint in letter to OCPB.

After received the complaint, the OCPB called both parties to the office and mediated. Finally the house owner asked the company to inspect and inject medical material for 3 times. The company agreed to the request and the case ended.

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Chapter Five: Dispute Resolution Process in Labour Matters

1. The background

Formerly Thai economy was mostly based on agricultural sectors, conflicts in connection with labour matters between workers and employers in manufacturing were, therefore, in small numbers. Such conflicts were basically treated as ordinary civil disputes, an employer or an employee whose rights had been violated by another party might bring the case to the civil court. The plaintiff normally had to hire a lawyer for litigation and pay court fees for filing the case. Accordingly, the litigation by employees was not practical.

After the World War II Thailand is transforming from an agricultural country to a newly industrialized country. Thai national economic development plans since 1961 have constantly aimed to promote industrial and investment growths. As a result of such industrial development, the number of labour conflicts both in manufacturing level and national level have remarkably increased. The valid example is the escalation of labour cases in the Labour Court, arising from 1,214 cases in 1980 to 23,235 cases in 1998.[38]

The problems in connection with labour conflicts seem to be realised by Thai government since the late 1950s. Some mechanisms have been created to promote good relationship between workers and employers in the establishment and to eradicate or resolve labour conflicts where they have occurred.

With regard to settling of industrial disputes, the Labour Act B.E. 2499 (1956) was enacted as the first comprehensive act in respect of labour matters. This act provided minimum floor of rights for employees, such as working hours, holidays and overtime payment etc, together with industrial relations' rights, for example the employee's right to found a labour union and the right to jointly create a collective bargaining agreement with the management. The Industrial Relations Commission was also firstly established under the act, among other things, to adjudicate industrial disputes and unfair labour practice complaints. Unfortunately, the act was repealed in a year after becoming into force. The Industrial Relations Commission was reestablished by the Labour Relations Act B.E. 2518 (1975). This act also provided others significant mechanisms in preventing and resolving labour disputes arising in the establishment *i.e.* workers committees and labour disputes conciliation officials.

As far as the adjudication of courts is concerned, it is widely recognised that characteristics of labour disputes are different from ordinary civil disputes in many aspects and labour disputes should be coped with by one who possesses good knowledge and deep understanding of labour matters under specific and appropriate procedures.

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[38] Information Division, the Central Labour Court.

In 1980 the Central Labour Court was set up under the Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), being as the first special court dealing with labour disputes.[39] It was created on the basis of being accessible, inexpensive, fast and informal. A panel of labour court is made up of a career judge, an associate judge representing employers and an associate judge representing employees. The labour court has been widely and rapidly recognised by the parties concerned. This reflects from the considerable growth of labour cases in the labour court by beyond 250% in a year and by 640 % in a decade (from around 1,200 cases in 1980 to around 4,100 cases in 1981 and to 8,600 cases in 1990).

Because of the outbreak of labour cases to the labour court, apart from expansion of the Central Labour Court's branches in regions, in 1998 the government created a quasi-judiciary mechanism to reduce numerous labour court's cases. Labour inspection officials, normally civil servant of the Ministry of Labour Protection and Social Welfare, have been empowered of quasi-judiciary in the sense that an employee whose any right to receive some of money according to the Labour Protection Act B.E. 2541 (1998) is infringed may file a complaint to the officials for adjudication. Since 1998, apart from filing the case directly to the labour court, the employee may file a complaint to the labour inspection official for resolving the disputes.

In respect of the law on workers compensation and the law on social security, in 1972 the Workers Compensation Fund was founded by the Notification of the National Executive Council No 103 dated 16 March B.E. 2515 (1972). This fund is now governed by the Workers Compensation Act B.E. 2537 (1994) and supervised by the Office of Social Security, the Ministry of Labour Protection and Social Welfare. According to the act any employer in the establishment which has 10 employees and upwards has to contribute to the fund. Workers who are injured or become ill as a result of their performance according to the employment contract are entitled to obtain compensation and benefits provided by the law.

In addition, since 1990 apart from having been entitled under the law on workers compensation, employees have been protected under the Workers Compensation Act B.E. 2537 (1994). An employee who is suffered, for example, from injury or illness without caused by the work, being incompetent, giving childbirth or unemployment is eligible for obtaining compensation and benefits according to the law from the Social Security Fund.

2. Outline of Labour dispute cases

Types of labour disputes cases are not specifically categorised by the law. However, they may be divided into five following categories:

1) Cases of dispute concerning rights and duty under employment contracts or collective bargaining agreements. These cases result from conflicts of rights and duty between an employer and an employee in respect of terms and conditions of an employment or a collective bargaining agreement. An employee, for example, files a complaint against his employer for paying remuneration according to employment contract or bonus as stated by the collective bargaining agreement. During 1996-2000 around 90% of total labour cases submitted to the Central Labour Court were cases of dispute concerning rights and duty according to employment contracts or collective bargaining agreements.[40]

2) Cases of dispute concerning rights and duty under the law on labour protection or the law on labour relations. These cases cause from violation of statutory rights, mostly employee statutory rights, as stated by labour protection law and labour relations law. For instance, an employer is sued by his employee because of paying wages at the rate below minimum wages rate or not paying severance pay for a dismissed employee according to the Labour Protection Act B.E. 2541 (1998). In terms of

[39] Government Gazette, Volume 96, Part 76 date 11 November BE 2522 (1979).

[40] Government Gazette, Volume 96, Part 76 date 11 November BE 2522 (1979).

statistical data, in 1997 around 16% of the Central Labour Court's total cases were cases of dispute in this topic.[41]

3) Cases in which rights must be exercised through the court under the law on labour protection or the law on labour relations. These cases mostly are cases where employers submit requests to the labour court for approval of taking disciplinary sanctions against or dismissing their employees who are members of worker committees. In 1997 around 270 cases from 17,000 total labour cases filed in the Central Labour Court were cases that employers requested the labour court for exercising their rights according to this issue.[42]

4) Cases of appeal against decisions of the competent officer under the law on labour protection or the law on labour relations. In many cases required by the labour law that an employer or an employee has to exercise his/her statutory right through the competent official. If the official's decision is not satisfied by the employer or the employee concerned, such employer or employee may bring the case to the labour court. According to the Social Security Act B.E. 2533 (1990), for example, an employee who injures without cause of performing employment duty submits a request to the social security official for being paid compensation. If the request is dismissed by the official, the employee may appeal to the social security board of appeal. Where the board dismisses the appeal, the appellant may filed a complaint to the labour court for repealing the competent official's decision. During 1996-2000 around 17% of total labour cases in the Central Labour Court were cases in accordance with this topic.[43]

5) Cases arising from cause of infringement between the employers and the employees due to labour disputes or in connection with work performance under the employment contracts. These cases normally are tort cases resulting from the contravention of employee or employer's rights done by another party. Employees, for example, take an unlawful strike causing damages to their employer. The employer may file a complaint to the labour court for being paid compensation. The number of these labour cases submitted to the Central Labour Court during 1996-2000 is small number, only around 4.07% of total labour cases in each year.[44]

The proportion of labour cases filed at the Central Labour Court in 2000 is being as follows:

Table 1: Number of labour cases filed and examined at the Central Labour Court by types of issues during 1996-2000.

Types of labour cases	Year				
	1996	1997	1998	1999	2000
1. Cases of dispute concerning rights and duty as stated by the employment contract or collective bargaining agreement.	9,190	13,532	21,352	10,342	9,352

[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*

2. Cases of dispute concerning rights and duty under labour protection law or labour relations law.	969	2,814	873	7,470	4,296
3. Cases in which rights must be exercised through the labour court under labour protection law or labour relations law.	133	267	347	152	711
4. Cases of appeal against the ruling of the officials who enforce labour protection law or labour relations law.	30	37	46	198	1,127
5. Cases of commission of tort resulting from labour disputes or work performance.	5	490	617	1,347	1,074
Total	10,327	17,140	23,235	19,509	16,533

Source: Information Division, the Central Labour Court.

3. Organizations or Institutes for dispute resolution

Nowadays, the significant organizations, institutions and persons being responsible for labour dispute resolutions can be stated as follows:

- Workers Committee
- Labour Union
- Labour Dispute Conciliation Official
- Industrial Relations Commission
- Labour Inspection Official
- Labour Court

3.1 Workers Committee

According to the Labour Relations Act B.E. 2518 (1975), employees who work in the establishment having got 50 employees and upwards may set up their representatives namely a "Workers Committee". The amount of workers committee's members is from 5 persons to 21 persons, depending on the number of the employees in such establishment.[45]

Table 2: Proportion of number of workers committee' s members and workers in the establishment.

Number of employees in the establishment	Number of members of the workers committee
50-100	5
101-200	7
201-400	9
401-800	11
801-1,500	13
1,501-2500	15
2,501 and upwards	17-21

The workers committee may be set up through the following three methods:

A. All its members are elected by the employees. This method is used where the establishment has no labour unions or has a labour union but its members are not beyond by one-fifth of all employees.

B. Some members of workers committee are elected by the employees and others are appointed by the labour union. Where the labour union in the establishment has its members beyond by one-fifth of all employees but not beyond by a half of all employees, the workers committee's members are appointed by the labour union in amount of a half of all members plus one person. Other remaining members are elected by the employees.

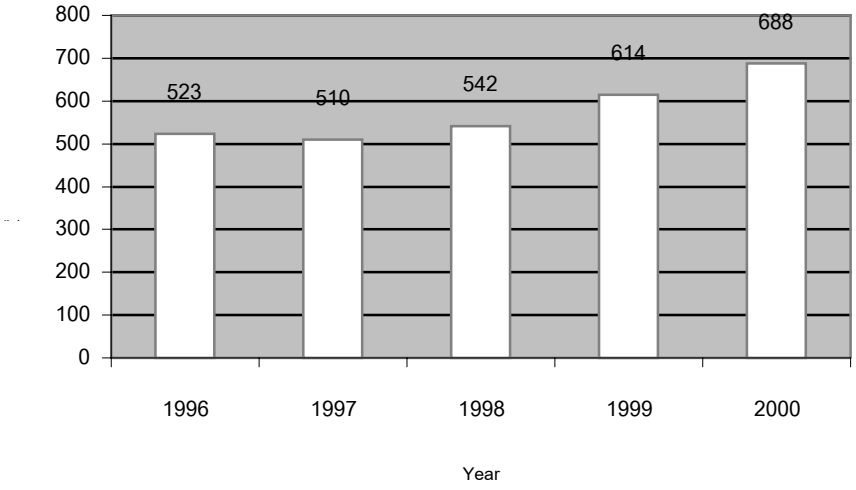
C. All its members are appointed by the labour union. In the event that the labour union has its members beyond by a half of all employees, all members of the workers committee are appointed by the labour union.

[45] The Labour Relations Act B.E. 2518 (1975), Section 46.

The workers committee's members hold a term of office of three years.

The establishment of the workers committee is based on voluntary system. It is found that the amount of workers committees has been slightly increased. By the year 2000 around 688 workers committees were set up in privates enterprises in the whole kingdom.

Bar Chart: Number of workers committees established in private enterprises during 1996-2000.



Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

Its substantial function is to act as the employees' representative in convening with the management to find out cooperation between the labour force and the management of the enterprise. It is required by the Labour Relations Act B.E. 2518 (1975) that the employer must hold the convention between the management and the workers committee in every three months or where being requested by majority of workers committee members or by the labour union. The convention is held for discussing the following issues:

- Supplying of welfare or benefits to the employees.
- Setting up working rules.
- Considering an employee's grievance.
- Settling labour disputes in the establishment.[46]

With regard to the last one, even through statistic concerned is far from clear that how many Labour disputes can be resolved by workers committees, it is sufficient to say that workers committees have played significant role in settling labour conflicts through negotiation with the management.

It should be noted that in performing their duty, workers committees are safeguarded by the act. Employers, for example, may take disciplinary sanctions against or dismiss employees who are members of workers committees only with approval of the labour court.[47] In the year 2000 around 250 requests were submitted by the employers to the Central Labour Court for approval of taking disciplinary sanctions against or dismissing members of workers committee.

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[46] The Labour Relations Act B.E. 2518 (1975), Section 50.

[47] Department of Labour Protection and Welfare, *Analytical Report on Statistical Labour B.E. 2543*. (2000), p 39.

Table 3: Number of requests for approval of taking disciplinary sanctions against or dismissing members of workers committees submitted to the Central Labour Court during 1993-2000.

Year	Total labour cases	Number of requests
1993	11,384	216
1994	9,833	155
1995	11,202	228
1996	10,327	140
1997	17,140	275
1998	23,235	212
1999	19,509	161
2000	16,533	254

Source: Information Division of the Central Labour Court.

3.2 Labour Unions

Apart from setting up a workers committee, employees are entitled to set up a labour union to act as their organized labour. Under the Labour Relations Act B.E. 2518 (1975) the labour union's objectives are to discover and protect all employees' benefits regarding conditions of employment and to promote good relationships between employers and employees and among employees themselves. After being registered, the labour union becomes a juristic person.

There are two types of labour unions in Thailand *i.e.* industrial unions and enterprise unions. The former are unions whose members are the employees working in the same industrials while the latter are unions whose members are the employees of the same employer. In year 2000, 588 industrial unions and 496 enterprise unions performed their duties as organised labour in Thailand.[48]

The establishment of labour unions is on voluntary basis. The procedures of setting up a labour union may be summarized as follows;[49]

1). Any ten or more employees being Thai nationals, being of legal age and working in the same industry or the same employer may act as the promoter by lodging an application for establishment of a labour union to the registration official. The application must be stated names, surnames, ages, occupations and addresses of the founder and attached with three copies of drafts of labour union's regulations.

2). The registration official examines the application and the drafts. If qualifications of the promoters and drafts of labour union's regulation are complied with the law and the labour union's objective is not against the public orders, registration of the labour union will be made and its license will be issued.

3). In the case that the registration has declined, the promoter may appeal against the registration official's decision to the Minister of the Ministry of Labour Protection and Social Welfare within 60 days from the day of receiving the decision. The Minister examines the appeal and notifies

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[48] *Ibid.*

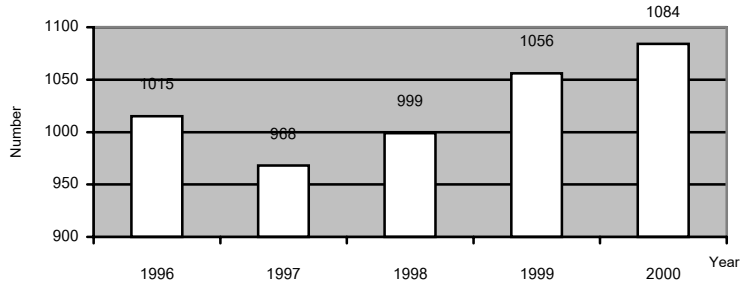
[49] The Labour Relations Act B.E. 2518 (1975), Sections 88-95.

his/her decision to the appellant within 30 days from the day of receiving such appeal. If the Minister's decision has not been satisfied, the appellant may refer the case to the labour court.

4). After the labour union is registered, the promoter must conduct the first ordinary general meeting within 120 days after registration in order to elect its committee, to hand over the business to the committee and to approve its regulations. Then the labour union committee may act on behalf of the labour union.

According to statistical data organized by Labour Studies and Planning Division, Department of Labour Protection and Welfare, by December .2000, 1,084 private enterprise labour unions were set up and around 80 % of them are situated in regions.

Bar Chart: Number of trade unions set up during 1996-2000



Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

Labour unions not only have the duty to protect employees' rights and benefit but also the duty to bargain in good faith with employer. Thus, where a labour dispute occurs in the establishment the labour union shall act on behalf of employees to find out settlement with the management. The statistic shows that during 1995-2000 around 11.3% of labour all labour disputes led to strikes and lockouts.

Table 4: Number of labour disputes, strikes and lockout during 1991-2000.

Year	Labour disputes		Strike				Lockout			
	Number	Workers involved	Number of strike	Workers involved	Dura-tion	Mandays losts	Number	Workers involved	Dura-tion	Mandays losts
1991	135	37,819	7	5,316	240	142,131	7	4,729	148	93,898
1992	195	52,318	20	6,614	576	215,186	14	1,765	268	23,156
1993	184	46,771	14	4,817	437	214,029	9	1,387	280	28,774

1994	165	41,353	8	4,186	94	42,933	7	3,944	100	38,270
1995	236	56,573	22	8,950	270	117,196	17	7,832	297	102,738
1996	175	51,394	17	7,792	109	44,911	1	890	53	47,170
1997	187	56,603	15	8,850	248	71,896	8	3,059	290	78,624
1998	121	35,897	4	1,209	249	128,872	4	935	307	84,688
1999	183	74,788	4	909	25	8,422	13	6,958	226	134,491
2000	140	50,768	3	2,165	189	192,845	10	3,804	140	57,403

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

It should be noted that where the negotiation fails, the labour union may file complaint on behalf of employees against the employers at the labour court. It is found that around 300 cases were brought to the Central Labour Court by the trade unions in 2000.

Table 5: Number of labour cases brought by labour unions to the Central Labour Court during 1991-2000.

Year	Total labour cases	Labour cases brought by labour unions.
1991	9,173	6
1992	9,329	10
1993	11,384	9
1994	9,833	7
1995	11,202	6
1996	10,327	2
1997	17,140	2
1998	23,235	1
1999	19,509	8
2000	16,533	310

Source: Information Division of the Central Labour Court

3.3. Labour Dispute Conciliation Officials

Labour dispute conciliation officials are the persons appointed by the Minister of Ministry of Labour and Social Welfare.[50] They are civil servants attached to the Ministry of Labour and Social Welfare.

[50] The Labour Relations Act B.E. 2518 (1975), Section 5.

Labour dispute conciliation officials' qualifications in respect of legal education, specific knowledge and experience in settling labour disputes are not specifically required by the law.

The Minister may appoint labour dispute conciliation officials from the following civil servants:[51]

- Civil servants no less than level 3 working in the center and the Permanent Secretary Office of the Ministry of Labour Protection and Welfare.
- Directors and Deputy Directors of districts of the Bangkok Metropolis.
- Provincial Governors, Deputy Provincial Governors, Provincial Secretaries, District Governors and District Secretaries.

The main function of labour dispute conciliation officials is to conciliate the party who confronts with a "labour dispute". According to the Labour Relations Act B.E. 2518 (1975), in order to vary or settle a collective bargaining agreement, employees or a trade union and an employer or an employer's association may notify of the written allegation to another party. Each party possesses the right to appoint its representatives not exceeding 7 persons to negotiate with another. Negotiation must be held within 3 days from the date of receiving the written allegation.[52]

In the case that negotiation has neither been convened on the period of time nor has reached the party the settlement, the initiated party must notify such labour dispute in writing to the labour dispute conciliation official within 24 hours from the time occurring the labour dispute.[53]

After receiving such written notification, the labour dispute conciliation official must conciliate and persuade the party to reach an agreement within 5 days from the date of receiving the written notification.[54]

A labour dispute occurring in Kawasaki Enterprise Co Ltd which is situated in Rayong Province, for example, on November, 27, 2000 the Kawasaki Motors Thailand Labour Union submitted a request to the management for varying collective bargaining agreement in connection with increasing annual wages. After twice of negotiation between the union and the employers, the parties could not reach the settlement. On December, 14, 2000 the labour conciliation official of Rayong Provincial Office of Labour Protection and Welfare was informed such labour dispute. The conciliation was held on December, 19, 2000 but the parties were unable to reach a compromise and industrial actions by the labour union seemed to be taken place. However, the second conciliation was then organised, the labour union and the employers reached settlement on November, 27, 2000.[55]

In term of statistical data, in 1999 labour disputes occurred in 159 establishments with 60,174 workers involved. Such disputes in 124 establishments (77.98%) with 50,174 workers involved (83.28%) were reached the settlement by conciliation of the labour dispute conciliation officials.[56]

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[51] Ministerial Orders No 145/2537 Re: appointment of Labour Dispute Conciliation Officials dated 1 August B.E.2537 (1994)

[52] The Labour Relations Act B.E. 2518 (1975), Section 13 and 16.

[53] The Labour Relations Act B.E. 2518 (1975), Section 21.

[54] The Labour Relations Act B.E. 2518 (1975), Section 22.

[55] Department of Labour Protection and Welfare, *Labour Relations Situations*, Volume 2/2543, pp 44-45.

[56] The Ministry of Labour Protection and Social Welfare's Annual Report of B.E. 2542 (1999), p 91.

Table 6: Number of labour disputes, strikes and lockouts in the whole kingdom during 1995-2000.

Year	Labour disputes		Strike				Lockout			
	Time	Workers involved	Num-ber	Workers involved	Dura-tion	Manday lost	Num-ber	Workers involved	Dura-tion	Manday lost
1995	236	56,573	22	8,950	270	117,196	17	7,832	897	102,738
1996	175	51,394	17	7,792	108.5	44,910	1	890	53	47,170
1997	187	56,603	15	8,850	248	71,986	8	3,059	290	78,624
1998	121	35,879	4	1,209	249	128,872	4	935	307	84,688
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2000	140	50,768	3	2,165	189	192,845	10	3,804	140	57,403

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare.

3.4. Industrial Relations Commission

The industrial relations commission is a national committee in respect of labour relations, set up under the Labour Relations Act B.E. 2518 (1975), consisting of a chairperson and 8 –14 members. It is presently made up of the Permanent Secretary of the Ministry of Labour Protection and Social Welfare being as the chairperson, 4 governmental agencies, 5 employers' representatives and 5 employees' representatives. They are appointed by the Minister of the Ministry of Labour Protection and Social Welfare with a term of three years in office.

It should be noted that specific knowledge or experience of the industrial relations commission's members is not required by the law.

The industrial relations commission has power and duty as follows:[57]

- To adjudicate irreconcilable labour disputes in specific enterprises, *i.e.* railway, port, telephone or communication, generating or supplying energy or electricity to the public, waterworks, producing or refining petroleum, hospital and other enterprises as stated by Ministerial Regulations.
- To adjudicate labour disputes submitted by the Minister of the Ministry of Labour Protection and Social Welfare.
- To adjudicate labour disputes as being appointed or assigned.
- To adjudicate unfair labour practice's complaints.
- To give recommendation with respect to allegations, negotiations, labour dispute resolutions, strikes and lock-outs assigned by Minister of the Ministry of Labour Protection and Social Welfare.

In respect of adjudicating labour disputes, as mentioned above, where the labour dispute conciliation official has failed to persuade the party to reach a settlement within five days from the date of receiving written notification, the labour dispute is treated as an "unsettled labour

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[57] The Labour Relations Act B.E. 2518 (1975) Section 41.

dispute."[58] Then, after giving an advance notice of at least 24 hours to another and to the labour dispute conciliation official, the party may take industrial actions, such as strikes or lock-outs, against another.[59]

However, the party is not entitled to take such industrial actions if the unsettled labour dispute has occurred in some specific enterprises including railway, communication, generating or supplying electricity, waterworks etc. In this circumstance, the labour dispute conciliation official must refer such unsettled labour dispute to the industrial relations commission for adjudication. The industrial relations commission shall determine the dispute and notify its decision to the party within 30 days from the day of receiving the dispute. In practice, a sub-commission is appointed by the Industrial Relations Commission in order to investigate and gather evidence involved together with presenting its recommendation to the commission. In the year 2000, for example, 6 labour disputes with 5,972 workers concerned were examined by the commission.[60]

The party may appeal against such decision to Minister of the Ministry of Labour Protection and Social Welfare within 7 days from the day of receiving the decision. The Minister's decision is final and binding the parties concerned.

With regard to ruling of unfair labour practice complaints, the employee who thinks that he/she is a victim of an unfair labour practice under the Labour Relations Act B.E. 2518 (1975) may lodges an unfair labour practice complaint against the employer at the Office of the Industrial Relations Commission. The complaint must be lodged within 60 days from the day of violation.[61] It was found that in the year 2000 around 1,500 unfair labour practice's complaints were adjudicate by the commission.[62] After receiving the complaint the industrial relations committee must determine it and issue its decision within 90 days from the day of receiving the complaint.[63] The period of 90 days may be extended by the Minister of the Ministry of Labour Protection and Social Welfare. In the case that the industrial relations committee finds the arising of unfair labour practice, it may issue an order of reinstatement, paying of compensation or doing or not doing something as it thinks fit.

Table 7: Orders of the Labour Relations Commission on unsettled labour disputes and unfair labour practice complaints in the whole kingdom during 1995-2000.

Year	Labour disputes		Unfair labour practices	
	Number of cases	Workers involved	Number of cases	Workers involved
1995	2	11,100	105	1,225
1996	2	1,815	350	921
1997	3	4,250	430	430

58 The Labour Relations Act B.E. 2518 (1975) Section 22.

59 The Labour Relations Act B.E. 2518 (1975) Section 35.

60 Labour Statistics Branch, Department of Labour Protection and Welfare, *Yearbook of Labour Statistics 2000*, Bangkok: Borpit Printing Co Ltd, 2543 (2000), p 73.

61 The Labour Relations Act B.E. 2518 (1975) Section 124.

62 Labour Statistics Branch, Department of Labour Protection and Welfare, *Year Book of Labour Statistics 2000*, Bangkok: Borpit Printing Co Ltd, B.E. 2543 (2000), p 73.

63 The Labour Relations Act B.E. 2518 (1975) Section 125.

1998	1	53	982	982
1999	3	547	391	391
2000	6	5,972	1,494	1,494

Source: Office of the Labour Relations Committee.

3.5. Labour Inspection Officials

Labour inspection officials are the persons, normally civil servants, appointed by the Minister of Ministry of Labour and Social Welfare for execution of the Labour Protection Act B.E. 2541 (1998). They were firstly created by the Notification of the National Executive Council No 103 dated 16 March B.E. 2515 (1972) and are presently governed by the Labour Protection Act B.E. 2541 (1998).

The Minister may appoint labour inspection officials from persons as stated by the Ministerial Orders No 158/2541 Re: Appointment of Labour Inspection Officials dated 19 August B.E. 2541 (1998) including:

- Civil Servants not less than level 3 working in the center or the Permanent Secretary Office of Ministry of Labour Protection and Social Welfare.
- Civil Servants not less than level 3 working in Provincial Offices of Labour Protection and Social Welfare.
- Police Officials having rank of police sub-lieutenant or its equivalent upwards.
- Director of Occupational Health Division, doctors, environmentalists and scientists level 3 working in Occupational Health Division Department of Health the Ministry of Public Health
- Civil Servants not less than level 3 working in the Office of Provincial and District Public Health etc.

It should be noted that labour inspection officials' qualifications with regard to level of education, major area of study, or experience in settling labour disputes etc are not required by the law.

Labour inspection officials possess authority to take legal actions to employers who do not comply with labour protection laws. In carrying out their duties they have power as follows:[64]

- To enter into the place of business or office of the employer and working place of the employees during business hours so as to inspect the working condition of the employees and conditions of employment, payment of wages and remuneration, safety at work etc.
- To send notice of inquiry or summons to the employer, the employees or person concerned to clarify facts or to send relevant items or documents to support their consideration.
- To issue written orders requiring the employer or the employee to comply with the Labour Protection Act B.E. 2541 (1998)
- To adjudicate a complaint submitted by an employee in the case where the employer violates or fails to comply with the provisions concerning the right to receive any sum of money under the Labour Protection Act B.E. 2541 (1998).

With regard to proceeding for settling labour disputes conducted by labour inspection officials, it may be summarized as follows: [65]

[64] The Labour Protection Act 2541 (1998) Section 123 and 139.
[65] The Labour Protection Act 2541 (1998) Sections 122-125.

1). An employee, who thinks his/her statutory rights to receive any sum of money according to the Labour Protection Act B.E. 2541 (1998) has been violated, may lodge a grievance to the labour inspection official of locality in which the employee works or the employer is domiciled.

2). When the grievance is submitted, the labour inspection official shall investigate the facts and issue an order within 60 days from the date of receiving such grievance.

In order to obtain the facts, the labour inspection official shall gather all evidence concerned, enter into working place of employment, hear witnesses and examine documentary evidence and direct evidence presented by the employee, the employer and persons concerned. It should be noted that in practice the labour inspection official may also conciliate the party to reach the settlement.

The period of 60 days may be extended as necessary not exceeding 30 days by the approval of the Director-General of the Department of Labour Protection and Welfare or his/her delegate.

3). When the labour inspection official finds the employee is entitled to any sum of money which the employer is obligated to pay under the Act, the labour inspection official shall issue an order requiring the employer to pay such money to the employee within 15 days from the date such order is acknowledged or deem to be acknowledged.

4). The employer may pay money according to the order at the work place of the employee, office of the labour inspection official or other place as agreed upon between the employer and the employer.

5). If the employer or the employee is not satisfied with the order, a lawsuit may be brought to the labour court within 30 days from the date of the order became known.

In case that the lawsuit is brought to the court by the employer, in order to proceed with the case, the employer must place a deposit with the court equal to the amount under the said order. When the labour court passes the final decision that the employer is obliged to pay any money to the employee, it has the power to pay such deposit to the employee or statutory heir of the employee who died.

In terms of statistical data, it was found that during 1996 to 2000 more than 6,000 grievances were submitted to labour inspection officials and more than 30,000 employees were concerned in each year. Major issues of the grievances were severance pay, wages and damage deposit. In the year 2000 around 74.2% of all grievances were held that the complainants had statutory rights to be paid. It is not clear in terms of the number of grievances being withdrawn or reached the settlement by conciliation of the labour inspection officials.

Flow Chart: Proceeding in settling labour disputes by labour inspection officials

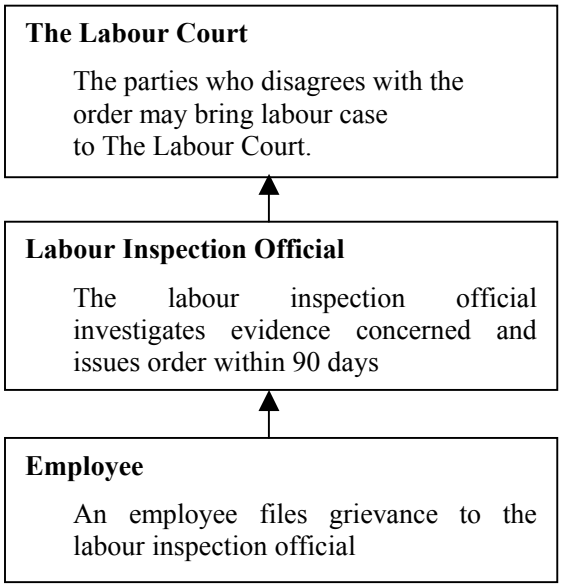


Table 9: Number of grievances filed and examined by labour inspection officials during 1996-2000.

Year	Grievances received		Grievances examined that workers were entitled to receive money.		
	Number	Workers involved	Number	Workers involved	Money (bath)
1996	6,488	56,787	4,446	42,376	252,443,087
1997	8,252	75,815	5,187	52,510	483,524,510
1998	9,081	64,707	5,716	49,930	613,267,088
1999	7,708	40,555	5,561	32,406	264,283,537
2000	7,070	31,380	5,247	24,551	233,072,047

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

Table10: Types of grievances filed and examined by the labour inspection officials.

Issues of grievances	Grievances received		Grievances examined that workers were entitled to be paid money		
	Number	Workers involved	Number	Workers involved	Money (bath)
Wages	3,085	17,763	2,416	15,102	67,836,180
Minimum wages	16	148	16	74	107,046
Overtime pay	40	54	25	30	144,680
Holiday work pay	13	16	10	12	69,767
Accumulative fund	44	70	31	57	1,187,375
Damage deposit	322	921	284	902	2,255,333
Wages on delivered day	19	19	17	17	95,894
Wages on sick leave	29	29	28	32	72,562
Severance pay	1,282	4,090	771	2,184	54,835,765
Others	163	393	159	272	2,306,270

Total	7,070	31,398	5,247	24,551	233,071,047

Source: Labour Studies and Planning Division, Department of Labour Protection and Welfare

3.6. The Central Labour Court

As mentioned above, formerly labour disputes had been treated as ordinary civil cases and determined by the civil courts with a few numbers of cases. Since 23 April 1980 the Central labour Court, headed by the Chief Judge of the Central Labour Court, has been in charge of settling all labour disputes cases. It was set up under the Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979).

According to the Act, there are three kinds of labour courts i.e. the Central Labour Court, Regional Labour Court and Provincial Labour Court. However, Regional Labour Courts and Provincial Labour Courts have not been established yet. The Central Labour Court has, therefore, jurisdiction cover all labour cases in the realm. In order to facilitate more accessible of the litigant 13 branches of the Central Labour Court were found in regions of Thailand.

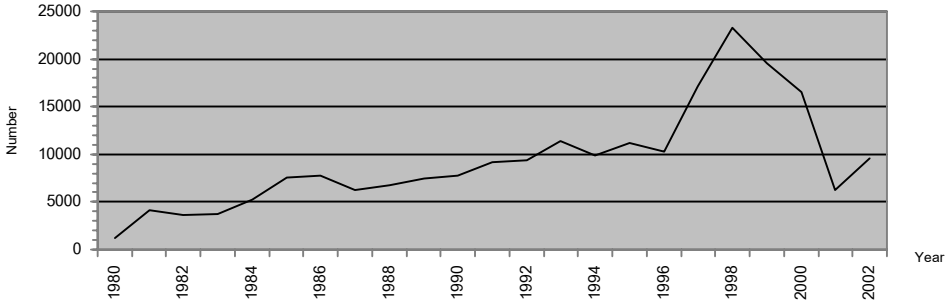
It has the authority to consider, decide or issue orders on the following matters:[66]

- Cases of dispute concerning rights or duty under employment contracts or collective bargaining agreements;
- Cases of dispute concerning rights and duty under the law on labour protection or the law on labour relations;
- Cases in which rights must be exercised through the court under the law on labour protection or the law on labour relations;
- Cases of appeal against decisions of the competent officer under the labour protection or of the Labour Relations Committee or the Minister under the law on labour relations;
- Cases arising from cause of infringement between the employers and the employees due to labour disputes or in connection with work performance under the employment contract;
- Labour disputes that the labour courts are requested by the Minister of Labour Protection and Social Welfare to decide under the law on labour relations.

In the event a question as to whether any case being within the jurisdiction of labour courts or not arises, it is decided by the Chief Judge of the Central Labour Court

Line Chart: Number of labour cases filed at the Central Labour Court since its establishment.

[66] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979) , Section 8.



Source: Information Division, the Central Labour Court.

In respect of labour courts' judges, labour courts must have judges, associate judges on the employers' party and associate judges on the employees' party each in equal number for a quorum to be present for proceedings. The career judges are appointed from judicial officials under the law of judicial service who are knowledgeable and have good understanding of labour problems. Due to the fact that an appeal against judgment or order of the labour court may be made only in the point of law, in practice, labour courts' career judges are, therefore, normally senior judges with strong experience in deciding cases. Labour court professional judges are made up of a chief judge, deputy chief judges, senior labour court judges, labour court judges and a secretary of the Central Labour Court.

Associate judges are directly elected by the employers associations and the trade unions having duly registered their offices located within the territorial jurisdiction of the labour court. They must have the qualifications and not have the forbidden characteristics as follows:[67]

1) Being Thai nationals;
2) Being of legal age;
3) Having domicile or office situated in the territorial jurisdiction of such labour court;
4) Not being bankrupt, incompetent or quasi-incompetent persons;
5) Having never been penalised by imprisonment by final judgment to imprisonment, except for an offence committed through negligence or petty offence;
6) Being persons who have good faith in democratic government under the King;
7) Having never been convicted of an offence under the law on labour protection or the law on labour relations, or otherwise having been released from punishment for a period not less than two years or the period of suspended execution of sentence having expired;
8) Not being political officials, members of political parties or officials in political parties parliamentary members or members of Bangkok Metropolis Council or members of local councils from election or lawyers.

After being appointed, associate judges must receive training on the matters of labour courts, authority and duties of associate judges and relevant procedures as well as how to conduct oneself as associate judges in accordance with the training rules set forth by the Ministry of Justice.[68] In addition, before assuming office, they must make a vow to the Chief Judge of the Central Labour Court. They shall hold a term of office of two years and may be reappointed to the office after expiration of the office term. Currently, 150 associate judges representing employers and 150 associate judges representing employees perform their duties in the Central Labour Court.

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[67] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979) , Section 14.

[68] See Regulation of Ministry of Justice relating to orientation of Associate Judges of the Labour Court B.E. 2522 (1979).

Procedures of the labour court are on the basis of an inquisitorial system. In other words, the labour court obviously plays an active role in finding out real facts of the case and passes its decision based on the finding facts rather than acting as a referee of the contest as being in ordinary civil cases. The labour court, for example, has power to call for evidences as necessary before passing its decision[69], may summon witnesses and take evidence itself as deemed appropriate and the party or the lawyer can examine the witnesses only with approval of the court.[70]

The procedures also provide duty of the court to persuade the party to reach an agreement in order to maintain good relations of the party rather than to adjudicate the party's disputes. The labour court, for instance, must mediate the parties at the first hearing[71] and notwithstanding how far the trial has developed it always has power to mediate both parties for compromise or settlement.[72]

The labour court procedures may be summarized as follows:

1). A plaintiff may file a charge in writing or make verbal allegations in the presence of the labour court. If the plaintiff makes allegation verbally, the court has the power to make investigation as necessary for the purpose of justice and then make a record of the allegation and read it out to the plaintiff and have the plaintiff append his signature thereon.

The employers and the employees may give power of attorney to the employers association or the labour union of which they are members. Furthermore, the employees may ask for legal officials of the Ministry of Labour Protection and Social welfare to take legal action or to make prosecution under the law on labour protection or the law on labour relations on their behalf.[73]
The labour charge shall be filed with the labour court within whose territorial jurisdiction the cause of the case arises. It is generally assumed that the place of employees' work is the place where the cause of the case arises.[74]

It is important to be noted that the submitting of charges including the execution of any proceedings in labour court shall be excepted from the requirement to pay court fees and costs.[75]

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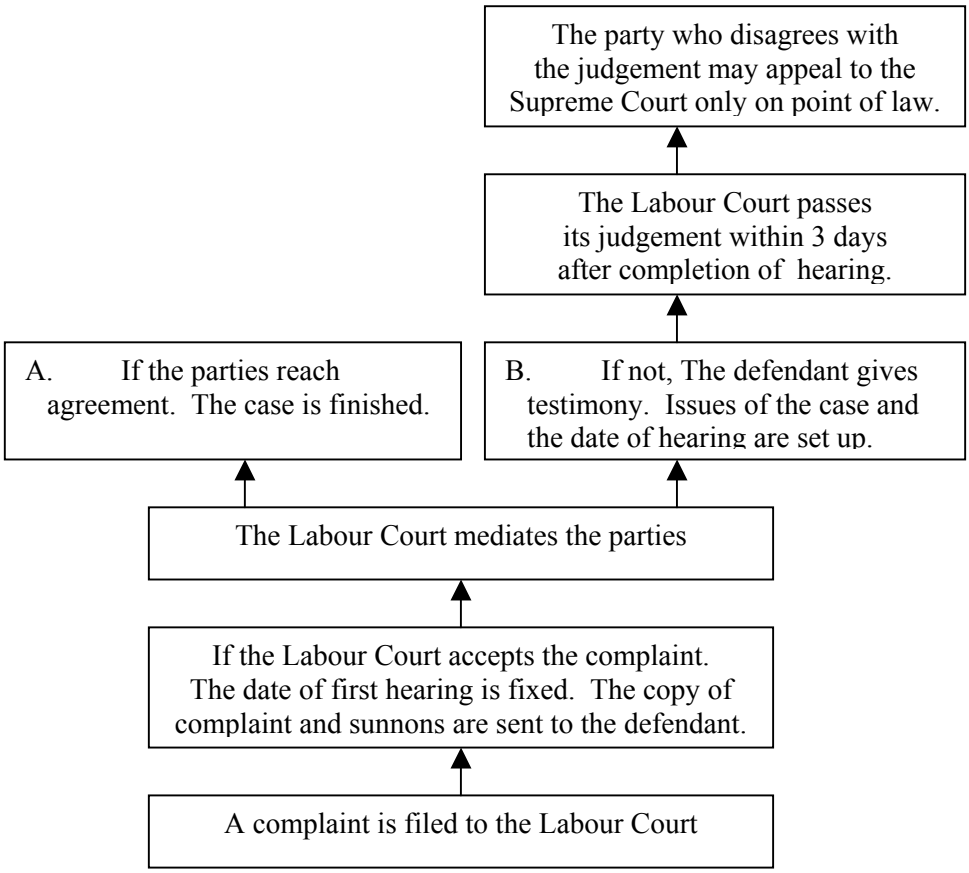
[69] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 42.
[70] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45.
[71] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 38.
[72] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 43.

[73] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 36.
[74] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 33.
[75] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 27.

Flow chart of Labour Court Procedures



2) Where the labour court orders the acceptance of a case for adjudication, it shall prescribe the date and time for the first hearing and issue summons ordering the defendant to come to the court by the time fixed. In practice the first hearing is normally fixed within 20 days from the day accepting the complaint.

3) If the plaintiff fails to appear in the court of the first hearing without a notice of such failure, it shall regarded that he/she does not wish to proceed with the case any further and the labour court shall order the disposal of such case from the file.

If the defendant fails to be present at the court without any notice of the reason of such failure, the labour court shall order that the defendant is in default and the trial shall proceed one-sided.[76]

When the plaintiff and the defendant are both present, the labour court shall mediate the parties to come to terms or to reach a compromise.[77] In such reconciliation, where any party make a request or the court deems it appropriate, the labour court may order the execution of secret proceedings in the presence of the parties only.

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[76] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 40.

[77] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 38.

4) If the parties can reach the settlement, the plaintiff, normally after receiving some money from the defendant, may withdraw the case, or the labour court may pass its judgment according to the parties' settlement. It was found that in 1998 around 55.7% of all cases in the Central Labour Court were finished by the compromise of the parties or case withdrawal of the plaintiffs as a result of the labour courts' mediation.

Table 11: Types of cases finished in the Central Labour Court.

Year	By Judgment	By compromise	By withdrawal	By disposal	By others	Total cases
1995	4,739	3,407	2,473	383	147	11,149
1996	5,525	2,668	2,410	277	620	10,500
1997	5,114	4,738	3,064	684	61	13,661
1998	8,555	8,330	3,964	1,034	173	22,056
1999	7,493	6,316	3,734	883	437	18,863
2000	8,278	6,092	3,739	851	206	19,166

Source: Information Division of the Central Labour Court.

5) In case the labour court has carried out reconciliation but the parties cannot come to terms nor reach a compromise, the labour court shall order the defendant to make a verbal or written testimony. Then, issue of disputes, priority and the date of hearing are fixed by the labour court.

6) Because Thai labour court procedures rely on inquisitorial basis, the court plays an active role in examination witnesses and investigation real facts of the case. The witnesses, whether they are the witnesses of any party, are directly examined by the court. The plaintiff, defendant and their lawyers are enable to ask questions to the witnesses only when allowed by the court.[78] For purposes of justice in order to acquire the facts of the case, the court has the power to summon witnesses and take evidence as deemed appropriate and may invite the qualified persons or expert give opinion to the court.[79]

According to the act, for speedy proceedings, the labour court shall sit for the hearing continuously with no adjournment except in case of necessity and it shall not make adjournment for more than seven days at a time. However, because of the numerous labour cases submitted in each year and the lack of labour courts' judges, the adjournment, in practice, is often made more than as stated by the law.

7) After having examined witnesses as deemed necessary, the labour court shall read its judgment or order within three days from the completion of the adjudication.[80] The judgment or order is based on majority vote. It must be made in writing and must mention or show the facts in brief and the

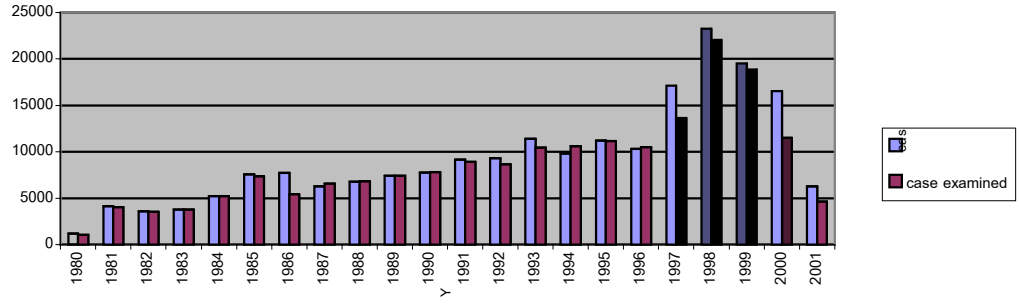
[78] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45.

[79] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 45, 47.

[80] The Act on Establishment of Labour Courts and Labour Court Procedures B.E. 2522 (1979), Section 50.

determination on the point of the case together with the reasons of such decision. In terms of statistical data, in 1998 around 38.7% of all labour cases filed at the Central Labour Court were adjudicated by the court.

Bar chart: Labour cases filed and already examined by the Central Labour Court in each year since its establishment.



Source: Information Division of the Central Labour Court.

8) The party who does not satisfy with the labour court's decision may appeal against the judgment or order only on the point of law to the Supreme Court within fifteen days from the date of the judgment or order reading. In 1998 around 20.1% of labour cases adjudicated by the Central Labour Court were appealed to the Supreme Court.

Table 12: Number of appeal against judgment of the Central Labour Court during 1995-2000.

Year	Total cases	Cases adjudicated by the CLC	Number of appeals
1995	11,202	4,739	414
1996	10,327	5,525	2,879
1997	17,140	5,114	730
1998	23,236	8,555	1,724
1999	19,509	7,493	2,966
2000	16,533	8,278	3,280

Source: Information Division of the Central Labour Court.

The labour division of the Supreme Court considers the case from the facts determined by the labour court and give its judgment or order of the case without delay. In the case the facts heard by the labour court are insufficient to determine in the question of law, it shall order the labour court to hear additional facts and send the file back to the Supreme Court without delay. The Supreme Court's decision is final and binding the parties involved.

4. Case study

This section provides case study that illustrates mechanism of labour disputes settlement in respect of labour contracts, industrial accident and labour unions.

4.1 Labour contract

Labour disputes regarding overtime pay between The Domon (1987) Company Limited and the Labour Inspection Official.

A female employee had worked as retailer and cashier with the employer since February 1999. Her monthly wages was 5,000 bath and her regular working times were 6 days a week during 10.a m – 8 p m with one hour of daily rest period. During October 1999 to February 2000 the employee was sent to perform her duty at various employers' branches in Bangkok Metropolis. She thought that she was entitled to be paid overtime pay as a result of her performance. Then, on June 7, 2000 the employee filed a grievance to the labour inspection official at the Office of Labour Protection and Welfare (Patum Wan Area) for being paid overtime by her employers.

After receiving the grievance the official endeavoured to conciliate the parties but the parties could not reach settlement. The employer insisted that the employee was not entitled to be paid overtime pay. The labour inspection official investigated evidence concerned and then issued an ordinance of labour inspection official No 25/2544 dated 3 August 2000 commanding the employer to pay 11,515 bath of overtime pay to the employee within 15 day from the date of receiving the order.

The employer disagreed with the labour inspection official's order. On September, 26, 2000 the complaint for order's revocation was submitted to the Central Labour Court by the employer. The Central Labour Court examined the complaint and accepted it. The copy of complaint and summons were sent to the labour inspection official and the date of first hearing was fixed on October, 15, 2000. At the first hearing the parties could not reach the compromise and the case was postponed due to the defendant wished to appoint an attorney. The next hearing in November 2000 the employee appeared at the court as co-defendant and the parties were able to reach the settlement. The Central Labour Court passed the judgment according to the parties' agreement.[81]

4.2 Workers' compensation

Labour disputes in respect of workers' compensation between Mr Pan Santikul and The Commission of Workers Compensation Fund.

The employee, Mr Pan Santikul, worked as a branch manager of The Thai Samut Commerce and Insurance Limited Company at KhonKhan Provice. On November, 12, 1997 after finish his regular work the employee visited employer sale representatives and was injured during his return to the branch office. The employee, on August, 11, 1998, submitted a request to Khon Khan Social Security Office for receiving workers compensation as stated by the Workers Compensation Act B.E. 2537 (1994). The workers compensation official refused to pay workers compensation by the reason that the accident occurred after the end of employee's working time.

The employee filed an appeal against the order of workers compensation official to the Commission of Workers Compensation Fund. After that on June, 4, 1999 the commission issued the decision that the employee's injury did not cause from performing his duty due to the accident arose after the end of daily working time.[82] The employee submitted the complaint against the commission to the Central Labour Court on July ,20, 1999 for repeal the commission's decision.

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[81] The Central Labour Court's Judgment Red cases No 7803/2544.

The complaint was accepted by the Central Labour Court and the first hearing was fixed on October, 15, 1999. However, the first hearing was postponed because the defendant did not receive summons. In the next hearing, November, 18, 1999, the court mediated the parties concerned but they could reach a compromise. The defendant gave a written testimony. Issues of the case were established by the court. The major issue of the case was whether the employee was injured in cause of employment. After examining all evidence involved in three hearings, the Central Labour Court passed the judgment on March, 17, 2000 that the employee was injured in cause of employment and entitled to be paid workers compensation by the Workers Compensation Fund.[83] The judgment was appealed against by the defendant on the question of law to the Supreme Court. The Labour Division of Supreme Court upheld the lower court' decision. The employee was then paid workers compensation by the Workers Compensation Fund.

4.3 Labour union and collective bargaining agreement

Labour disputes between Thai Durable Textile Workers Union and Thai Durable Textile Public Company Limited.

Thai Durable Textile Public Company Limited is a garment factory undertaking spinning thread and weaving fabric, situated in Samut Prakarn Province with 1,800 employees mostly female. On February, 15, 2000 its union submitted an allegation demanding the employers to vary the collective bargaining agreement in respect of, among other things, the increase of annual wages and bonus. A week later the employers submitted their request against the union for altering the collective bargaining including the increase of wages and bonus by employers' discretion. Twice negotiations were convened but the parties could not reach a compromise.

The union informed the arising of labour dispute to the labour dispute conciliation official at Samut Prakarn Labour Protection and Welfare Provincial Office. The official was unable to persuade the parties to reach settlement within 5 days from the date of being informed. Since May, 30, 2000 the union had taken an industrial strike against the employers while the employers had carried out layoff against their employees taking part in the strike since May, 31, 2000. During the strike, union's members were injured by unidentified persons. The industrial strikes were carried out both in the employers' establishment and in public, including at the government house and the Ministry of Labour Protection and Social Welfare. Although the employers revoked the layoff on June, 9, 2000 the labour disputes continued and trended to be harmful to the public. After 6 times of mediation conducted by labour dispute conciliation officials and 12 times of conciliation organised by Department of Labour Protection and Welfare the labour dispute was still unable to be resolved.[84]

For the purpose of public interest, on October, 26, 2000 the Minister of Ministry of Labour Protection and Social Welfare issued an order, according to Section 35 of the Labour Relations Act B.E.2518 (1975), commanding the union to finish its strike and the employer to take their employees back to work together with referring the labour dispute to the Labour Relations Commission for compulsory arbitration.[85] The commission held on 12 January 2000 that the employers had to increase 3 bath of daily wages to the employees and had not to pay bonus due to economic reason.[86] This case reflects framework of labour dispute resolutions in terms of compulsory arbitration for the purpose of public interest.

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[82] Report of the Commission of Workers Compensation Fund No 11/2542 dated 4 June B.E.2542.

[83] The Central Labour Court Judgment Red cases No 2728/2543.

[84] Department of Labour Protection and Welfare, *Labour Review in Thailand*, Vol.19 No 3 (July-September 2000) pp. 25-26.

[85] Ordinance of Ministry of Labour Protection and Social Welfare No233/2543 dated 26 October B.E.2543 (2000)

[86] Award of the Labour Relations Commission No 1/2544 dated 12 January 2000.

Chapter Six: Dispute Resolution Process in Environmental Problems

1. Introduction

Under the Thai laws, a dispute could be resolved in various ways. More specifically to environmental issues, there are a number of methods that the disputes could be resolved. These include negotiation, mediation, arbitration, and litigation.[87] This chapter is intended to find out the method that is most suitable for resolving environmental disputes in the case of Thailand. It begins with the examination of the background and types of environmental disputes. The Chapter then investigates the availability of the Thai statutes on which these resolutions are based before examining how these methods work. Lastly, the strengths and weaknesses of each scheme are discussed.

2. Background of the disputes: Overview of environmental situation in Thailand

Environmental problems, which include air, water, and noise pollution, the inappropriate disposal of hazardous waste, and deforestation, have been intensifying in Thailand over a few last decades. The problems result from the country's pursuit of economic growth by means of industrialization without proper planning. Increasingly, these problems pose a major threat to a well-being of Thai people.[88] For this reason, disputes between the affected people and those who have caused the problems have been escalating incessantly.

Indeed, there are a number of measures being suggested to deal with environmental issues in Thailand. These include domestic approaches such as environmental education and training, disclosure of environmental information, economic instruments, and self-regulation; and international approaches such as international environmental law, international trade agreements, and ISO 14000. However, research has found that most of the causes leading to environmental law failure in Thailand emanate from human behavior such as culture and corruption. This paper suggests the change of human behavior towards sound environment be considered as a prerequisite. This can be achieved by two approaches: environmental education, and good governance.

After the law is enacted, it must be implemented in order to translate what is stipulated in the law into action.[89] Scholars point out that enforcement process is a crucial determinant in explaining the success or failure of social regulation.[90] In the case of Thailand, environmental offences are however ubiquitous despite the existence of legislation. Essentially, extensive research has found that environmental problems in Thailand remain unsolved not because of the lack of legislation, but because the country has not been able to enforce the applicable laws.[91]

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[87] The Group of Natural Resources and Environmental Law, *Brainstorming Meeting on 'Environmental Dispute Resolution*, a paper distributed in the 2nd National Congress of Law, organized by Board of the National Research Council, at the United Nation Conference Center, Bangkok, on 27-28 September 2001.

[88] Chatchom Akapin, *'Beyond Law Reform: Revitalising Thai Environmental Regulation'*, Ph.D. thesis, The Australian National University, 2000, at 1.

[89] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, 1992, at 101-32.

[90] Neil Gunningham, 'Negotiated Non-Compliance: A Case Study of Regulatory Failure', *Law & Policy*, 1987, at 69. *See* also Christen White, 'Regulation of Leaky Underground Fuel Tanks: An Anatomy of Regulation Failure, *UCLA Journal of Environmental Law*, Vol. 14: 105, at 109.

Indeed, Thailand relies heavily on export and foreign investment as these international factors have strong potential to help boost Thailand's economic growth. However, the issues of trade and the environment are interrelated. Failure of environmental law enforcement could therefore hamper Thailand's economic recovery, details of which are discussed below.

The provisions as to environmental protection have been included in a number of international trade agreements such as the World Trade Organization (WTO); and the North American Free Trade Agreement (NAFTA). Under WTO, for example, environmental provision is written as an exemption of the liberal trade regime. It allows member countries to adopt any measures which they think necessary to protect human, animal or plant life or health or that related to the conservation of exhaustible natural resources.[92] However, given that there was a concern that such an environment-related statement might be manipulated as a disguised restriction to the free trade regime, WTO therefore sets out a condition in the same provision that the word "necessary" stated earlier must not be interpreted in a manner of arbitrary or unjustifiable discrimination between countries.[93]

Thailand is a member of WTO. The country has so far been involved with incidents concerning environmental issues under WTO. In one case, the U.S. government imposed a ban against over fifty shrimp exporting countries, including Thailand. It claimed that the shrimp farming techniques from the banned countries were deemed to pose a threat to the dwindling sea turtle population. Such techniques were illegal under the U.S. law, the Marine Mammal Protection Act (MMPA) (Bangkok Post, 1996).

Thailand and three other Asian countries, *i.e.*, Malaysia, India, and Pakistan brought the case to WTO, claiming that the U.S. government had raised environmental issue in banning their exported shrimps as a disguised trade barrier. WTO subsequently made its decision in favour of Thailand and the three other countries.[94] However, the case continued as the U.S. appealed to the WTO for its final and binding decision. Most recently, the WTO panel has rejected the U.S. appeal.[95]

Despite the defeat in the above case, some U.S. environmental groups have threatened to push the American government to ban imports from countries where shrimp farming has destroyed mangrove forests. Not only does this threat show that more innovative attempts will be made to use trade sanction as a tool to deal with environmental issue, but it will directly affect the Thai shrimp exports if such a ban is imposed. The reason is because it has long been evident that shrimp farming has destroyed much of the Thai mangrove forests[96].

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[91] Somrudee Nicro, 'A New Road for Industry and the Environment', *State of the Thai Environment*, 1995, at 175. *See* also Chatchom Akapin, 'Law Enforcement: An Issue to be Improved to Protect the Thai Environment', *Dullapaha*, 1996, at 83-7; Panas Tasneeyanond, 'Laws Related to the Protection and Conservation of Natural Resources', A paper delivered in the seminar *Current State Problems and Suggestions in Improving the Law and Regulation Overiding the Allocation and Use of Natural Resources for Rural Development*, Chonburi, April 1996, 56-7; and Amnat Wongbandit, 'Laws Related to Industrial Wastewater Treatment', *Dullapaha*, 1996, at 116-8.

[92] David Parks, 'GATT and the Environment: Reconciling Liberal Trade Policies with Environmental Preservation', *Journal of Environmental Law, UCLA International Law and Policy*, Vol. 15, No. 2, 1996/97, at 156-7.

[93] *Ibid.*

[94] 'Thailand has won on shrimp battle', *Bangkok Post*, 15 July 1998.

[95] Wasant Techawongtham, 'What's good enough for importers', Commentary, *Bangkok Post*, 16 October 1998.

[96] In fact, shrimp farmers have been trying to move their farm locations from mangrove areas to inland to avoid accusation that they have destroyed the mangroves. However, their attempts have been strongly opposed by the government, who justifies its decision that

Given that many industrial businesses in Thailand are exported-oriented, relentless attempts to raise environmental issues as a cause of trade sanction should prompt the Thai exporters as well as authorities concerned to ensure that the exported products are not harmful to the environment at any rate. Failure to do so could result in a ban of importation.

3. Types of environmental disputes and their alternative resolutions

Research has found that there are three main types of environmental disputes, *i.e.*, a dispute over compensation; a dispute over a halt of an ongoing project; and a dispute over rehabilitation of the environment and natural resources.[97] What are the methods used for resolving such disputes? As discussed at the outset of this paper, there are four main approaches for environmental dispute resolution, *i.e.*, negotiation, mediation (and conciliation), arbitration, and court system. Detailed discussion on how each scheme works, as well as its advantages and shortcomings is provided below.

3.1 Negotiation

3.1.1 Availability of negotiation in Thailand

The Thai Civil and Commercial Code allows the parties involved to negotiate with an aim to settling a dispute voluntarily. Once the dispute is settled, the parties can no longer bring the case to the court, providing such a settlement has been done in writing, and equipped with signatures of all the parties concerned.[98]

3.1.2 Strengths and weaknesses of negotiation

Settling the dispute through negotiation has a number of advantages. First, the parties will not at all feel hostile towards each other after the case is settled. The reason is because they are the ones who have decided to do so at their own free will. Another advantage of negotiation is that the settlement could be done without any cost. Needless to say, if the parties bring the case to the court, they have to bear a lot of expenses. These include lawyer fees and court fees.
Also importantly, the settlement of dispute through the negotiation saves a lot of time when compared to other means. Not least, negotiation fits the Thai's lifestyle very well. According to Eugene Clark and Suwit Laohasiriwong, the Thai are modest, considerate, and reluctant to hurt others' feelings by decisive acts.[99] Rather, they prefer to avoid conflict and confrontation as a result of their culture of compromise.[100]

Take the water pollution case at Klity Mine as an example. In April 1998, residents of the Lower Klity village situated downstream of the Klity stream in Kanchanaburi, a western province of Thailand lodged a complaint to the government that the Klity mine dumped toxic waste into the stream, as well as discharged lead-contaminated water without proper treatment. This caused hundreds of their

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inland shrimp farming will cause environmental degradation to where the farms are located, as well as their vicinity.

[97] Ladda Kiatkongkhajorn, *A Model and Structure of Environmental Dispute Resolution Committee*, LL.M. thesis, Chulalongkorn University, 1996, at 20-23.

[98] *See* Thai Civil and Commercial Code, Sections 850-852.

[99] Eugene Clark and Suwit Laohasiriwong, 'Thailand's Quest for Sustainable Development', *The Australian Journal of Natural Resources Law and Policy*, Vol. 3. No. 1, 1996, at 67.

[100] Thinapan Nakata and Likhit Dhiravegin, 'Social and Cultural Aspects of Thai Polity', in Suchart Prasith-Rathsin, ed., *Thailand National Development: Social and Economic Background*, 1989, at 185-6.

livestock to die, or fall ill after drinking water from the contaminated stream.[101] The villagers themselves also suffered severe diarrhoea and dizziness, and rashes.[102]

In early 1999, the Environmental Health Bureau, Ministry of Public Health carried out a health examination on villagers in the Lower Klity village. It was alarming that the blood tests on 119 out of 150 people in the polluted area showed that they have usually high amount of lead in their bloodstream.[103]

After inspection, a Mineral Resources provincial officer found that the mine's tailings pond, which was used for storing toxic sediments, had broken, resulting in the discharge of overflow into the stream. To rectify the problem, the mine was ordered to suspend its operations. The plant could not be reopened unless its wastewater pond was improved to meet the safety standards.[104]

Alongside the administrative measures, those affected by the mine's activities were also entitled to claim for compensation. In essence, before these people brought the case to the court, the mine had agreed to spend 1 million baht on setting up a 'village fund', as well as offered to pay for their medical treatment. In the light of the negotiation, the civil claim ended up with a compromise.[105]

However, negotiation is not without shortcomings. As far as environmental damages are concerned, it is difficult to find just compensation upon the negotiation. More specifically, one must bear in mind that environmental damages are unique. Consequences of environmental harm in many cases are usually manifest long after the incident occurred.[106] As a result, it is not an easy task to find the right remedy that satisfies all the parties involved.
Furthermore, environmental disputes usually involve many people. Put it simply, when environment-related harm occurs, it usually affects more than one person. Take the Mab Ta Phut air pollution case as an example. There were many affected parties in the case as a lot of students and teachers in Mab Ta Phut Pan Pittayakan School located near the Industrial Estate Authority of Thailand (IEAT) have been suffering from the stench emitted by factories in the industrial estate for years. In June 1997, two students were admitted to a local hospital because the high content of toxic substances in their blood caused headache and stomachache.[107]

It is conceivable that the negotiation to determine compensation in this case could not reach an agreement easily. The equation is simple. The more the number of those affected in this case are, the more variety of the desire among them will be. This will bring about complication and difficulties in the negotiation, which as a result will deter the success of the dispute settlement.

3.2 Mediation and Conciliation

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101 'Mine accused of lead contamination', *Bangkok Post*, 23 April 1998.

102 Supawadee Susanpoolthong, 'Groups unite to block lead threat', *Bangkok Post*, 22 May 1999.

103 Anchalee Kongrut, 'High level of contamination seen in Klity', *Bangkok Post*, 11 May 1999.

104 Vasana Chinvarakorn and Atiya Achakulwisut, 'Lead mine shut down', *Bangkok Post*, 24 April 1998.

105 Paswajee Srisuwan, 'Contaminated Lead in Clity Creek', in Apinya Tantaweewong (ed.), *Pai Pit* (Loss to Toxic Pollution), 2001, at 69-70.

106 Peter Wetterstein, 'A Proprietary or Possessory Interest: A Conditio Sine Qua Non for Claiming Damages for Environmental Impairment?' in Peter Wetterstein, ed., *Harm to the Environment: The Right to Compensation and the Assessment of Damages*, 1997, at 29-30.

107 Panomporn Chomchuen, 'Taxic Gas Problem must be dealt with as soon as possible', *Bangkok Post*, 28 June 1997.

Although mediation and conciliation is based on negotiation, they are not conducted by the parties concerned alone. Rather, they involve a third party who plays a crucial role in persuading all the parties to settle the dispute with a compromise. How does a mediator do his or her job? Indeed, a mediator and a conciliator do not make a decision. Their main responsibility is to induce the parties to come to a settlement by themselves.[108]

What is the difference between mediation and conciliation? In fact, both methods share the same characteristic, *i.e.*, there must be a third party involved in the process of dispute settlement. However, mediation is relatively casual while conciliation has more formal characteristic. Such a difference can be seen from those who act as mediators and conciliators. As for the mediation, research has found that most mediators are drawn from the people in a community whom the parties, as well as others respect. These include headman of the villages, senior citizens, teachers, and monks.[109]

Why is this the case? In the Thai context, the Thai, especially those in the provinces, prefer to live together in the form of community. Also importantly, Thai culture teaches people to respect those who are senior to them in terms of ages, knowledge, and social positions. As a result, whenever people strike any problems, they usually seek advice from village headmen, senior teachers, and monks. Not surprisingly, when the Thai have disputes, they also prefer to ask this group of people to help settle the dispute as well. [110]

On the other side of the coin, the appointment of a conciliator is relatively formal. However, there are two kinds of conciliation in Thailand, *i.e.*, in-court conciliation, and out-of-court conciliation, details of which are discussed below.

3.2.1 Availability of conciliation in Thailand

In-Court Conciliation

Under the Thai Civil Procedural Code, judges are empowered to conciliate the case regardless of how far the progress of the case has been made.[111] In doing so, the judges may either conciliate the cases by themselves or appoint any person or a group of people as conciliators with an aim to achieving the goal of dispute settlement.[112]

Does the in-court conciliation work? Evidence shows that this strategy of dispute settlement is quite satisfactory, particularly in the light of Thai culture of compromise. More specifically to environmental issues, there is a classic case showing the success of in-court conciliation. This is the air and noise pollution case between Khunying Chodchoy Soponpanich, et al., the plaintiffs versus the Bangkok Metropolitan Administration (hereinafter BMA) and the Bangkok Governor, the defendants. The parties quarreled over an issue of information disclosure. In this case, BMA granted a concession to construct an elevated trainline for transporting commuters in Bangkok to Thanayong Co. Ltd. The

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108 Surinder Kaur Verma, *Alternative Dispute Resolution System: Problems and Prospects*, A paper presented in the Roundtable Meeting on Law Development and Socio-Economic Change in Asia (II)' organized by Central Intellectual Property and International Trade Court (Thailand), Faculty of Law, Thammasat University (Thailand), and Institute of Developing Economics, IDE-JETRO (Japan) on 19-20 November 2001, Bangkok, Thailand.

109 Ladda, *supra*, at 25.

110 *Ibid.*

111 Udom Suppakit, *Disputes and Resolution of Disputes* (Through Litigation and Non-litigation), A Paper presented in the seminar, Environmental Law and Dispute Resolution, organized by The Federation of Thailand's Industry and Faculty of Law, Chulalongkorn University, on 17 August 1995, at Sirikit National Convention Center, at 48. *See* also Thailand's Civil Procedural Code, Section 20.

112 Civil Procedural Code, Section 21.

construction of the railways and many stations were likely to affect the public with respect to environment and scenery.

In March 1994, Khunying Chodchoy Soponpanich, president of the Thai Environmental and Community Development Association, an environmental NGO, requested the Governor of BMA to disclose information on this project according to Section 6 of the Enhancement and Conservation of the National Environmental Quality Act 1992. The Governor somehow ignored her request. As a result, Khunying Chodchoy, along with another 74 citizens jointly brought this case to the Bangkok Civil Court in March 1995. The defendant accordingly contended the case.

During the trial, the presiding judges always attempted to conciliate the case. And it worked. After a few trial sessions, the case ended up with a compromise as a result of the in-court conciliation. The defendant agreed to disclose such information to the public and the plaintiffs then withdrew the case from the court.[113]

Out-of-Court Conciliation

Along with the in-court conciliation discussed above, there is also the out-of-court conciliation. Under this scheme, the conciliators are usually appointed in the form of a committee. As discussed earlier, the conciliation has relatively formal characteristic. Such formality is evidenced by the availability of the laws that empower the appointment of conciliators. At present, Thailand's Local Administration Act 1914 empowers sub-district and village headmen to persuade and convince those who have disputes to compromise with each other.

Furthermore, the Ministry of Interior in 1987 issued a regulation on Dispute Conciliation by Village Committee. This Regulation sets up a village committee comprising those who are in this position *ex efficio* such as village headmen and their assistants, and those elected from people in the village, most of whom are senior people.[114]

Despite the committee appointed from government officials discussed above, there has been an attempt to set up the committee on environmental dispute resolution the members of which also comprise those who are not government officials. As Ladda Kiatkongkhajorn argues, the parties concerned should be able to participate in the conciliation process. She therefore suggests the Committee on Environmental Dispute Resolution be established. Most importantly, the committee must have a tripartite characteristic, *i.e.*, members of the committee must draw from affected parties, those whose activities have caused environmental damages, and a third party. The committee is appointed by a provincial governor.[115]

3.2.2 Strengths and weaknesses of Mediation and Conciliation

Settlement of dispute through mediation and conciliation has a myriad of advantages. First, similar to negotiation, mediation and conciliation create the atmosphere of 'win-win' solution, *i.e.*, none of the parties concerned feels that they lose anything. The reason is because it is the parties who make decision, not the mediators or conciliators who merely persuade and convince the parties to have the disputes settled.

Mediation and conciliation also suits Thai culture very well. As scholars suggest, the Thai tend to avoid confrontation and as a result prefer to have the dispute settled in a peaceful way. Furthermore,

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113 Chatchom Akapin, 'Beyond Law Reform: Revitalising Thai Environmental Regulation', A Ph.D. thesis, the Australian National University, 2000, at 37-38.

114 Damri Soodteimee, The Role of Village Committee in the Settlement of Dispute: A Case Study on Village Conciliation Project, Supanburi Province, a Master of Political Science Comprehensive Paper, Thammasat University, 1992, at 79-86.

115 Ladda Kiatkongkhajorn, *supra*, at 80-84.

given that they respect the senior as discussed above, they are likely to ask this group of people to mediate. Alternatively, in the case of conciliation, the people whom they respect always get involved as conciliators as discussed earlier.

Another advantage of mediation and conciliation is that they are not time-consuming like litigation. One should bear in mind that the courts do not have only environmental cases to work on. Rather, they try all sorts of cases. Furthermore, the problem of delay may be worsened in Thailand as the Court of Justice has just introduced the new system of trial. Under this system, a case is tried continuously from the beginning until the end. This system replaces the old one where a case is, on average, tried once a month due to the dense of the cases pending for trial in courts.

To fulfil the new system is nevertheless challenging. Clearly, it is not possible to embark the new system immediately as there are tens of thousands of cases the trial of which are on-going in courts when the new system begins. As a result, it takes some time before the 'continual trial' can start off. In some courts, the first continual trial will not start until the year 2003.[116] Given this, it is therefore obvious that settling environmental disputes through mediation and conciliation certainly saves a lot of time.

Along with the time-saving advantage lies the cost-saving one. As we are aware, to bring the case to the court requires expenses such as court fees, and lawyer fees, etc., while most mediation and conciliation are free of charge.

Mediation and conciliation however have some weaknesses. As discussed above, mediators and conciliators do not have decisive power. They just merely attempt to persuade all the parties concerned to settle the case with a compromise. For this reason, if the parties refuse to come to an agreement suggested by mediators and conciliators, the case will not be settled. It is therefore clear that there is a possibility that the case may end up with no settlement despite a lot of time and energy spent on mediation and conciliation.

Another shortcoming is that some environmental disputes may not be settled with the parties' willingness. Rather, the success of mediation and conciliation may result from the parties' respect or consideration toward the mediators or conciliators. Why is this the case? As far as the Thai culture of *kreng jai* (consideration) is concerned, the parties may do as the mediators or conciliators have suggested just to show their respect to them although they do not really agree with the suggestions.

3.2.3 Mediation and Conciliation in Environmental Disputes

As discussed earlier, mediation and conciliation is suitable for Thai culture. Take the case of air pollution at Mae Moh as an example. In October 1992, hundred of villagers in Mae Moh, a district in Lampang, a northern province of Thailand in which power plants of the Electricity Generation Authority of Thailand (EGAT) are located, had to be hospitalised after exposure to toxic fumes emitted by a lignite-fired power plant. The late Mr. Phisan Moolasartsathorn, the Minister of Science, Technology and Environment at the time, visited the polluted site and mediated the case. In doing so, he demanded that EGAT pay compensation to those suffered from the incident. Simultaneously, he informed the public that the power plant would not continue to operate unless pollution control measures were installed under the supervision of his Ministry.[117]

Despite the Minister's involvement, the incident recurred two weeks later when the plant continued to operate at full power. As a consequence, several hundreds of more villagers fell sick, 8 cows and 20

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116 Case Appointment Book, Nonthaburi Provincial State Attorney Office.

117 John Baker, *Formation, Maintenance, and Operation of Environmental NGOs in Thailand*, Ph. D. thesis, Department of Political Science, Northern Illinois University, 1995, at 152-153.

buffaloes died, and many agricultural products were damaged.[118] Against this background, EGAT negotiated to pay the sum of 8.14 million bath to affected villagers as compensation, as well as spending 7.02 billion bath on the installation of dust scrubbers at the plants, and on lengthening the power plants' chimneys to minimize air pollution at Mae Moh. As a result of negotiation and mediation, the disputes ended up with a compromise.

3.3 Arbitration

Arbitration is a well-established form of ADR.[119] It is on the one hand like mediation and conciliation as there is a third party involved in settling the case. On the other hand, it inherits a vital characteristic of the court of justice, *i.e.*, power to make decision.[120]

Increasingly, arbitration has become the popular means of resolving many kinds of disputes, most of which involve technical and commercial issues. It should be noted that arbitration is well recognized internationally as an efficient tool that helps settle the disputes. In 1985, the United Nations Commission on Trade Law (UNCITRAL) adopted the UNCITRAL Model on International Commercial Arbitration.

3.3.1 Availability of Arbitration in Thailand

In Thailand, arbitration has been in place for more than a decade. The country passed the Arbitration Act in 1987. According to the Thai Arbitration Act, arbitration must be mutually agreed upon by both parties.[121] In addition, such mutual agreement is to be done in writing.[122]

To fulfil the Arbitration Act 1987, the Thai Arbitration Institute (TAI) has been established in 1990. The institute is however under supervision of the Ministry of Justice. Although arbitration is gaining momentum as an alternative method in settling disputes with regard to business transactions in Thailand, evidence shows that such popularity has so far been limited to the business whose structures involve foreign investment in one way or another. Examples include the contracts on the construction of the expressways between the Government of Thailand and Chor Karnchang and partners, which include those from aboard. The contracts state that should any dispute related to the contract occur, both parties have to appoint arbitrators to settle the dispute.

3.3.2 Strengths and weaknesses of Arbitration

Use of arbitration in dispute settlement has a number of advantages. First, it suits the business culture very well as arbitration's process is less time-consuming than that of the court system. Under the Thai Arbitration Act 1987, arbitrators normally have to award their decision within 180 days as from the day the last arbitrator or the umpire has been appointed.[123] For this reason, it is senseless for most business executives to spend time and energy on fighting the case in the court as it takes much more time than arbitration.

Furthermore, as the types of businesses have become more diverse, problems associated with such diversity develop accordingly. It is apparent that the business community needs more than laws and regulations for determining business disputes nowadays. Rather, understanding in business cultures,

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118 Sunee Mallikamarl, *Environmental Law Enforcement*, 1997, at 126-129.

119 Surinder Kaur Verma, *supra*, at 4.

120 Sunee Mallikamarl, 'New Dimension for Environmental Dispute Resolution', *Chulalongkorn Law Journal*, January 1997, at 68.

121 See Thailand's Arbitration Act 1987, Section 5.

122 See Thailand's Arbitration Act 1987, Section 6.

123 See Thailand's Arbitration Act 1987, Section 21.

finance and administration is also indispensable. As a result, the people who have genuine interest and specialty in business transaction are the better choice for settling business dispute at present rather than the court of justice who are mainly trained to be generalists.

However, arbitration has some weaknesses. In the case of Thailand, although arbitrators have decisive power to make decision on the dispute settlement, they lack power to enforce their decision. Under the Thai Arbitration Act 1987, if the party who has lost in the arbitration refuses to comply with the arbitral awards, the party of whom the arbitrators are in favour must seek an order from the court of justice.[124] This makes arbitration less powerful as it lacks the final say.

Another disadvantage of arbitration is that the parties concerned are likely to bear remuneration for arbitrators and umpire. According to the Thai Arbitration Act 1987, disputing parties are required to appoint arbitrators. In doing so, both parties are entitled to jointly appoint one single arbitrator. Alternatively, the parties may opt to separately appoint an arbitrator for one each before the two arbitrators will jointly appoint an umpire.[125] Unlike the court system whereby the parties are not required to pay for the judges as their work is considered as public service, most arbitrators charge for fees.[126] Furthermore, the attorney fees could be huge if the arbitration trial lasts very long.[127]

3.3.3 Arbitration in Environmental Disputes

It appears that the use of arbitration as a means of settling environmental disputes are not as popular as negotiation, and mediation. More specifically to the case of Thailand, none of environmental issues has been determined by arbitration at the time of writing. Why is this the case? As discussed above, arbitration involves expenses, which could be a large sum of money, while most of environmental disputes are the disputes between industry and the public. As we are aware, many of the Thai are still poor. Thus, how can they afford to pay for arbitrators and umpire?

Moreover, arbitration is in its infancy in Thailand. At present, most people still do not really understand what it is and how it works. Given that arbitration has to be established by mutual agreement by all the parties concerned, it is therefore likely that the public may hesitate to enter into this kind of agreement with industry unless they have better understanding of arbitration.

3.4 Court System

In Thailand, the judiciary is one of the three authorities that guarantee the country's democracy, apart from legislative and administrative power. At present, judiciary in Thailand could be divided into two parallel categories of courts, *i.e.*, the court of justice, and the administrative court,[128] each of which is involved with environmental disputes in different ways. While the court of justice deals with compensation and injunction in civil cases,[129] and criminal offences in criminal cases[130], the

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124 *See* Thailand's Arbitration Act 1987, Sections 23, 24. *See also*, Vichai Ariyanuntaka, *Alternative Dispute Resolution in Thailand*, A paper presented at the Roundtable Meeting on Law Development and Socio-Economic Change in Asia (II)' organized by Central Intellectual Property and International Trade Court (Thailand), Faculty of Law, Thammasat University (Thailand), and Institute of Developing Economics, IDE-JETRO (Japan) on 19-20 November 2001, Bangkok, Thailand, at 7 (footnote 6).

125 *See* Thailand's Arbitration Act 1987, Section 11.

126 *See* Vichai, *supra*.

127 *Ibid*.

128 See the Constitution of Thailand 1997, Sections 271, 276.

129 The laws and regulations empowering the court of justice to determine compensation and conjunction include the Enhancement and Conservation of the National Environmental Quality Act 1992, Civil and Commercial Code, and Civil Procedural Code.

administrative court is responsible for environmental cases where government agencies and/or public officials are accused of either misusing their power, delaying in doing their job, or failing to perform their duties.[131]

3.4.1 Strengths and Weaknesses of the Court System

The court system has existed in Thailand for hundred years. This is long before the introduction of democratic regime to the country in 1932. Therefore, people are familiar with the use of court system as the last resort to seek justice. This inevitably has an impact on the studies of law. Currently, Thai law students are trained to rely heavily on court system. This is evident from most of law school curriculum that mainly focus on both substantive and procedural laws. Little has been offered to develop the students' skill in negotiation, mediation, and arbitration. As a result, most of law graduates perceive the use of court system as a mainstream method of dispute resolution.

Another advantage of the court system is that it has a final say. After the case starts in the court, it will end in this institution too although the case may not end in the court of first instance, *i.e.*, the parties may appeal to the court of appeals, and the supreme court. Unlike the arbitration where a court order must be sought if the party who has lost the case ignores to comply with the arbitral award, the parties in the court cases do not have to move to any other authority for the final say.

Moreover, there is legal aid service available in the court system. As discussed earlier, the court system is a public service in Thailand. Therefore, to make sure that everyone in the country has access to justice, many pieces of laws provide legal aid for those who are not able to afford the court fees. According to the civil procedural code, if any party can prove that he or she is too poor to pay for the court fees, he or she will be exempted from the fees. This system is called 'legal proceedings for the poor'.[132] Importantly, the exemption of court fees is not available in similar measures such as arbitration.

Apart from the legal provision allowing exemption from the court fees, those who are not able to afford lawyers fees can also seek legal aid from Office of the Attorney General, as well as the Lawyers Association of Thailand. In the case of Office of the Attorney General, if a state attorney is convinced that a person has to seek justice from the court, but he or she cannot afford to hire a lawyer, a state attorney will provide the party with a volunteered lawyer registered with any branches of the Office across the country.

Alternatively, in order to seek the legal aid from the Lawyer Association of Thailand, a person also has to prove that he or she is too poor to afford to hire a private lawyer. If the Association is so convinced, they will provide a volunteered lawyer to represent that person in doing the trial.

As many scholars argue, however, court system is not without shortcomings. A prominent weakness of the court system is that it is a time-consuming process. In one case, it could take years to finish in any court of the Court of First Instance such as the Bangkok Civil Court, a provincial court, or a even in a district court, not to mention much more time spent in the Court of Appeals and the Supreme Court. As discussed earlier, a judge is presently overwhelmed with a large number of cases. Hence, it is not surprising for a case to take years to finish.

Take the toxic air pollution case in Klong Tuey. On March 2, 1991, a fire took place in a warehouse of the Port Authority of Thailand located in Klong Tuey (Klong Tuey is the name of an area near the Port of Bangkok. It is also home to thousands of poor people living in slum areas inside Klong Tuey). The

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130 Many pieces of Thai laws criminalize some certain activities as criminal offences. These include the Enhancement and Conservation of the National Environmental Quality Act 1992, the Factory Act 1992, the Public Health Act 1992, and the Hazardous Substances Act 1992.

131 *See* the Act for the Establishment of Administrative Court and Administrative Procedures 1999.

132 *See* Civil Procedural Code, Sections 149-160.

warehouse that caught fire was used for storing many kinds of chemicals. Importantly, the fire broke out to the Koh Lao Community adjacent to the warehouse. Along with the fire, there was a huge chemical smoke. The fire and smoke covered the warehouses and the community for two days. Hence, when Ms. Usa Rojpongkasem, the plaintiff entered into the fired areas to help her relatives to evacuate, she unavoidably inhaled the toxic smoke.[133]

Later on, the plaintiff got a fever, coughed, vomited, became dizzy, and lost her hair as well as weigh. After the plaintiff underwent a blood test, the doctor diagnosed that she had toxic in her blood. Her sight and hearing then became impaired. Moreover, she was later diagnosed with a tumor in her brain.[134]

The plaintiff claimed that her exposure to the chemical smoke was a cause of her sickness. As a result of such sickness, she could not work as she had been able to. She then brought the case to the Southern Bangkok Civil Court, asking the Port Authority of Thailand and its director, the first and second defendants to pay her 3,323,000 baht as compensation. She claimed that it was the defendants' fault to have the stored in their warehouse without proper management, *i.e.*, the defendants did not classify each kind of hazardous chemical, but kept various kinds of them in the same warehouse. This was against the rules of chemicals storage under the Hazardous Substance Act 1992. As a result of such wrongdoing, the different kinds of chemicals, when stored together improperly, had an reaction which caused fire. The two defendants denied the claim, justifying that they had provided a proper management.[135]
In late 2001, the Southern Bangkok Civil Court rendered its verdict, ordering the defendant to pay the sum of 3,224, 000 bath to the plaintiff.[136] Astonishingly, the case took ***five years*** to come to an end in just one level of court (Thailand has three levels of courts *i.e.*, the court of first instance; the court of appeals; and the supreme court). It is quite fortunate for the plaintiff that the defendants did not appeal the case further. How long would the case last if the parties appeal to the Court of Appeals, and the Supreme Court consecutively?

Although the plaintiff has won the case, a question arises: how can the compensation help retrieve the health of the plaintiff? Given the hazard of the burnt chemical was so severe, the plaintiff can by no means have a proper treatment after spending five years on the trial. In other words, had she received the compensation much earlier, she might have been able to survive. Obviously, as scholars argue, justice delayed is justice denied.[137]

Research has also found that the use of court system does not provide the 'win-win solution'. It is clear that the court system is more like a fighting between both parties. Eventually, when the case comes to and end, the party of whom the judgement is in favour is considered the winner, while the other party is the loser. This adversarial atmosphere inevitably creates hostility between both parties as the judgement resulted from their fighting, not from their mutual agreement like negotiation, or mediation.[138]

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133 Southern Bangkok Civil Court, Judgement, Black Case No. 5579/B.E. 2539 (1996), Red Case No. 8918/B.E.2544 (2001).

134 *Ibid*.

135 *Ibid*.

136 *Ibid*.

137 *See* Vichai, *supra*.

138 Yoshitaka Wada, *Globalism and Localism in Dispute Resolution*, A paper presented in the Roundtable Meeting on Law Development and Socio-Economic Change in Asia (II)' organized by Central Intellectual Property and International Trade Court (Thailand), Faculty of Law, Thammasat University (Thailand), and Institute of Developing Economics, IDE-JETRO (Japan) on 19-20 November 2001, Bangkok, Thailand, at 5-6. See also, Kraisorn Liangsomboon, *Environmental Dispute Resolution by Arbitration*, a Master of Laws thesis, Chulalongkorn University, at 138-149.

Another disadvantage of court system is its lack of certain specialty such as highly developed technological or scientific issues. More specifically to environmental issue, it is quite difficult for the plaintiff to prove the wrongdoing of the defendant as it usually takes time for the environmental harm to manifest. Also importantly, it is quite demanding for the plaintiff to prove the defendants' wrongdoing. This is especially the case when scientific evidence is involved because even different experts in particular area have different opinion. For more insight, take the alumina case in Lampoon, a northern province of Thailand as a case study.

In 1993, Mrs. Mayuree Teiviya filed a lawsuit to the Central Labour Court, claiming compensation of six million baht from Electro Ceramics (Thailand) Co., Ltd., the second defendant, her former employer. She claimed that she had been exposed to aluminum dust for five years during her work at the defendant's plant in Lampoon. As a result, she later suffered severe body pain and headaches. During the trial, she produced a hospital's test results diagnosing that she had been exposed to chemical poisoning as supporting evidence. In 1996, the court handed down its verdict, saying that the plaintiff had failed to prove that aluminum dust in the defendant's plant was the cause of her illness. For this reason, the plaintiff was not awarded any compensation.[139]

Indeed, the plaintiff did not have a problem in establishing that she had been exposed to the aluminium dust in her work environment. However, she could not convince the court that there was a causal link between her exposure to the aluminium dust and her illness, because it was extremely demanding to prove that it was the dust in her workplace that was responsible for her illness. Both parties had medical doctors as their witnesses. Essentially, these doctors had different opinion. Those who had treated the plaintiff testified that her sickness stemmed from the aluminium dust in her workplace, while others who conducted the plaintiff's blood test, as well as examined her hair and urine testified that her sickness did not result from the aluminium dust in the defendant's plant.[140]

What do we learn from this case? Given that the laws require the plaintiff to prove the defendant's wrongdoing, the use of court system has become a challenging process for those who rely on this system as a dispute resolution. One may argue that the Enhancement and Conservation of the National Environmental Quality 1992 has introduced the 'strict civil liability'.[141] Under this scheme, the defendant is liable for all injuries caused by his or her activity, even without showing negligence. In theory, the plaintiff merely has to prove that it was the defendant who conducted the damaging action, regardless of his or her intention or negligence. If the court is so convinced, the plaintiff will be awarded compensation.[142]

Unfortunately, the strict civil liability provision mentioned above has not proved effective in Thailand at present. Despite the scheme, the plaintiff still has to prove that it was the defendant who caused the incident. This burden of proof discourages those who want to bring the cases to the court as it is hard

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139 Chatchom Akapin, *Beyond Law Reform: Revitalising Thai Environmental Regulation*, at 152-153. *See* also, Thaksina Khaikaew and Chakrit Ridmontri, 'Toxic law case ends in defeat', *Bangkok Post*, 29 October 1996.

140 'Complaint and Judgement in the case between Mrs. Mayuree Teiviya the plaintiff versus The Social Security Office et al. Defendants', in the Group of Natural Resources and Environmental Law, *Brainstorming Meeting on 'Environmental Dispute Resolution*, a paper distributed in the 2nd National Congress of Law, organized by Board of the National Research Council, at the United Nation Conference Center, Bangkok, on 27-28 September 2001.

141 *See* the Enhancement and Conservation of the National Environmental Quality Act 1992, Section 96.

142 Paul Clements-Hunt, *Thailand's Status as an Emerging Environmental Market: A Comparative Analysis of Six Asian Countries*, A Paper presented at the Conference: Industry & Environment, 29 May 1995, at Queen Sirikit National Convention Center, Bangkok.

to prove.[143] For example, if the water in a river has been polluted while there are ten factories located along the river, it is an onerous task for the plaintiff to prove as to which factory has caused the pollution.

Given such burden of proof, which is a mandatory procedure in the court system, this paper suggests that the use of the court system not be the only one method to resolve the disputes in environmental issues. [144]

Alongside, many scholars also argue that court system is costly,[145] especially when compared to negotiation and mediation. According to the Thai legal system, the plaintiff in a civil case is required to pay a court fee at the rate of 2.5 percent of the amount he or she has asked a defendant to pay. Although the amount of such a court fee is limited to 200,000 baht[146], this could be a huge burden for those who are not rich.
As far as environmental disputes are concerned, records show that most cases are disputes between industry and the public, or government agencies and the public. Examples include Mae Moh air pollution case between the Electricity Generation Authority of Thailand (EGAT) and the people who live in Mae Moh area discussed earlier[147], and a water pollution case between Phoenix Pulp and Paper Co. Ltd. and those living along the Nam Phong river, into which the factory released untreated wastewater, causing the death of tens of thousands of fish.[148] As we have seen, the public are usually involved as one of the parties in environmental disputes, especially as those who have suffered from government agencies or industry's activities. How can the public, most of which are not rich, afford to pay the court fees if they have to bring the case to the court?

4. Conclusion

Against the background of increasing environmental problems in Thailand, this paper has argued that an efficient strategy for environmental dispute resolution is required. As we have seen, however, there are a number of choices that environmental disputes could be resolved. These range from negotiation, mediation and conciliation, arbitration, and litigation. More importantly, each alternative method has its own strengths and weaknesses. For example, although negotiation brings about 'win-win' situation, it is difficult for both parties to determine just compensation as environmental damages are unique. In many cases, consequences of environmental harm are manifest long after the incident occurred.

We have also found that mediation and conciliation fits Thai culture as the Thai respect those who are senior to them. Apparently, mediators and conciliators are usually selected from senior citizens, village headmen, senior teachers, and monks. Given this, disputes tend to be resolved easily. However, mediators and conciliators do not have decisive power, *i.e.*, they can merely provide suggestions to the parties concerned. It is therefore conceivable that mediation and conciliation may not be the efficient method of environmental dispute resolution as it is supposed to be.

Turning to arbitration, although this approach is gaining momentum as an alternative for resolving disputes, we have found that it has some limitations. The most important obstacle to the popularity of arbitration is the fact that there are relatively a lot of expenses incurred. As this paper has argued, arbitration usually involves fees for arbitrators, an umpire, and lawyers. Given that many environmental disputes often involve those who are not well-off, it would be naïve to expect that the arbitration will become popular as far as environmental disputes resolution is concerned.

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143 Chatchom Akapin, Beyond Law Reform: Revitalising Thai Environmental Regulation, at 152.

144 Wada, *supra*, at 5-6.

145 *Ibid*, at 5.

146 *See* Civil Procedural Code.

147 Somsak Suksai, 'Toxic follout haunts Mae Moh villages', *Bangkok Post*, 30 June 1997.

148 'Phoenix paper mill to be closed', *The Nation*, 21 July 1998.

As regards litigation, we have found that the Thai are familiar with the court system as it has existed in the country for many centuries. Also importantly, the court system is seen as a 'one-stop service' as it begins and ends in one institution, *i.e.*, the court. To have such a final say makes the use of the court system pervasive in Thailand. However, we have also found that the court system has a number of disadvantages. These include its time-consuming process, considerable amount of expenses for court fees and lawyer fees, lack of specialty in environmental matters, and lack of 'win-win' solution.

Clearly, there is not a 'one-fit-all' method that could serve as a tool to resolve environmental disputes perfectly in all circumstances. This paper argues further that to determine the most efficient method in resolving environmental disputes depends on each situation. For instance, in a minor nuisance such as bad odour in the neighbourhood in which a few people are involved, negotiation or mediation is most suitable. In a formal situation such as a contract on establishment of a factory in an industrial site, this paper suggests the factory's owner and the site manager choose arbitration as the alternative method for resolving environment-related disputes.

Not least, despite the availability of other alternatives, *i.e.*, negotiation, mediation and conciliation, and arbitration, we should not leave court system out of the picture. One should bear in mind that negotiation, mediation and conciliation, and arbitration lack the power of sanction like the court system. As a result, if non-compliance with the said three methods takes place, the parties involved should resort to harness the most strength of the court system, *i.e.*, power of sanction.

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