

Civil Litigation in Thailand: PART 6 – damages

As a general rule civil courts in Thailand limit recovery for contractual breaches and wrongful conduct to actual monetary damage caused. The aim is to put the harmed party in the same financial position they would have been in had the wrongful act not occurred. There is no provision for the recovery of “general” or “additional” damages in Thailand such as emotional distress or punitive damages. However, there is a recent exception with regard to the latter case under the 2009 Product Liability Act, which does permit the court to award limited punitive damages based on and in addition to the actual damages.

Contractual parties may provide for a exception to this general rule of “actual damages only” by including a liquidated damages provision in their contract. But it should be noted that Thai courts have discretion to reduce such liquidated damages if they believe such liquidated damages are too high compared to the actual damages caused. Courts may also refuse to enforce such a provision if they believe that it is contrary to public policy and/or contravenes any other relevant applicable laws such as the Unfair Contract Terms Act.

Because Thailand is a “free contract” jurisdiction — where parties can agree to any lawful contractual terms — they may also limits their respective liabilities. However, such limitations of liability will almost certainly receive a greater degree of scrutiny by the courts as to their enforceability. For example, contractual terms pre-exonerating a party from fraud or gross negligence are highly unlikely to be enforceable under the Unfair Contract Terms Act.

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