



TERMINATION IN COMMERCIAL CONTRACTS

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Contracts include

- Sale and purchase agreement
- Service agreement
- Loan agreement
- Licensing agreement
- Mortgage agreement
- Guarantee agreement
- Assignment agreement

- International purchase agreement , domestic syndicated loan agreement , international syndicated loan agreement , subscription for domestic bonds, subscription for Euro bonds, local mortgage agreement , domestic guarantee agreement , international guarantee agreement , standby letter of credit and ISDA Master Agreement may be closely connected.
- Occurrence of any event of default may lead to termination of the contract if any dispute could not amicably settled.
- Termination clauses of a contract should be carefully , widely and clearly drafted.
- No doubt and ambiguous wording of termination clauses should exist.
- Consequences of a breach of provisions of an agreement must be certain.

- Consequences of a breach of provisions of an agreement must be certain.
- Cross cultural issues should also be taken into consideration at the time of preparation, revision and finalization of an agreement.
- Difference styles exist in dealing with settlement of disputes in an agreement.
- Enforcement of the contract may be problematic.
- An amount of damages to be claimed is a vexed issue.

Events of default

- non-payment
- non-monetary breach
- breach of representations and warranties
- breach of undertakings
- non-compliance of clauses
- cross default
- potential default
- change of ownership
- change of control
- material adverse change
- material adverse effect
- changes in circumstances
- insolvency and bankruptcy
- any analogous events

- What is a force majeure ?
- Can a force majeure be raised as no event of default ?
- Occurrence of an event of default
- Notice for rectification of a technical event of default
- Default under one agreement may trigger default in related agreements and have dominating consequences on each party.

- Indemnification and exceptions
- Are liquidated damages legal and enforceable ?
- Are liquidated damages regarded as penalty ?
- Liability cannot be excluded for fraud and gross negligence.
- Can limitation of liability be legal and enforceable ?

Termination

- Termination by operation of law
- Termination by clauses of an agreement

Method of termination

- Notice of termination of an agreement must state facts and any breach of an agreement
- Notice of termination of an agreement must be signed by each party or an authorized person of each party.
- A counter notice may be provided by an opponent party.
- Omission for a certain period of time may be deemed to be termination of the agreement.
- Must termination of contract be made in writing, , verbally , any act or any omission ?
- Can termination of the agreement be withdrawn ?

- Can termination of an agreement be made without any breach of the agreement ?
- Exercise of call option or put option after breach of an agreement

Termination

- Governing law may be a foreign law but local law must be taken into consideration.
- Can laws of the third country be the governing law of an agreement ?

Arbitration and litigation

- Does arbitration involve commercial and technical experts than litigation ?
- Is arbitration proceedings faster than litigation proceedings ?
- Are costs and expenses of the arbitration cheaper than costs and expenses of the litigation ?
- Is enforcement of an international contract made by way of arbitration or litigation ?
- Arbitration or litigation is to be chosen

Arbitration

- Process of negotiation for settlement of dispute
- Procedures under clauses of an agreement must be complied with.
- Negotiation at the level of a working team of the parties
- Negotiation at the level of a high ranking executive of the parties
- Negotiation at the level of a shareholder of the parties
- Mediation may be conducted

- Litigation in Thailand
- Ordinary courts -consists of courts of the first instance , courts of appeal and the Supreme Court;
- Administrative court –Central Administrative Court and Supreme Administrative Court.

COURT

Courts of the First Instance

- Ordinary First Courts of Instance
- Special courts such as Intellectual Property and International Trade Court, Central Tax Court, Central Labour Court, Central Bankruptcy Court

Courts of appeal

- Ordinary appeal courts for civil and criminal cases
- specialized appeal court for Intellectual Property and International Trade Cases, for Tax cases, Labour Cases, Bankruptcy Cases and family and juvenile cases.

Supreme court

Plaint & Answer

Plaint

- Breach of the agreement
- No payment
- No deliver of goods or services
- Specific performance
- Claim of damages

Answer

- No breach of the agreement
- Change of the scope of works
- Change of payments
- Delay in delivery of goods or services
- Delay in delivery of site of the project
- Delay in implementation of phases of work
- technical default
- Incurrence of damage
- Amount of damages
- Remedy of damage
- Contributory damage
- Force majeure

Burden of proof

- A plaintiff generally has the burden of proof.
- But the burden of proof may be shifted to a defendant.

Presumption of law is different from assumption of law.

Enforcement of a foreign judgment or a foreign award

- Can a foreign judgment be automatically enforced in Thailand
- To which court in Thailand must a new lawsuit be brought ?
- Within which time must the new lawsuit be brought ?
- For what reasons cannot the foreign judgment or the foreign award be enforced in a court in Thailand ?

Damages

- actual damages
 - consequential damages
 - liquidated damages
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- ❖ Can a breach party demand for contributory damage or for no remedy for damages from the other party ?
 - ❖ Do damages cover costs and expenses incurred by each party ?
 - ❖ Are lawyers fees paid by a losing party ?

Diagram on Arbitration and Litigation



Diagram on Agreements



Thank you very much for your kind attention



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