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Application of Foreign Laws by Thai Courts in Commercial Transaction

Thai courts may apply foreign law in accordance with the Thai Conflict of Law Act B.E. 2481 (“Act”). In this article, we discuss the manner in which the Thai courts may apply foreign laws in certain commercial transactions in Thailand.

Foreign Governing Law in Contracts

Where parties have agreed to elect a foreign law to govern their contract, Thai courts will generally give effect to such intention of the parties.

However, if such intention cannot be ascertained, the courts will examine whether there are connecting factors which demonstrate that the transaction has international characteristics (i.e. the parties or subject of the transaction have links to a foreign jurisdiction). Examples of connecting factors include:

- **Nationality of parties.** Where the parties are of the same nationality, the Thai courts will apply the law of that jurisdiction.
- **Where the contract is made.** If the parties are not of the same nationality, the applicable law is the law of the place where the contract was made. In cases where the contract is entered into by parties at two different locations, the contract is deemed to be made in the place where notice of acceptance reaches the offeror; if such location cannot be ascertained, the contract will be governed by the law of the place where the contract is to be performed.

It should be noted that the valid election of foreign governing law in contracts is subject to Thai laws applicable to the subject matter of the contract. Such laws may prescribe formal requirements for the establishment of a valid contract, e.g. documentary and regulatory registration requirements in land transactions.

Application of Foreign Law over Property

Generally, moveable and immovable property is governed by the law of the place where the property is situated. However, in the case where movable property is exported, the law of the nationality of its owner will govern from the time of exportation.

General Principles

Once it is established that foreign law applies, the Act further requires the party relying on the foreign law to prove the foreign law to the satisfaction of the court. This may be done by presenting documentary evidence or expert witnesses before the court. Failure to do so may lead to the application of Thai law. In light of this, it is advisable to consider from the outset, if your position is significantly more favourable under the foreign law than under Thai Law, and if you will have any difficulties proving the foreign law to the Thai courts.

In addition to the above, it should be noted that under the Act, foreign law may be applied only in so far as it is not contrary to the public order or good morals of Thailand. For example, even if a loan contract stipulates an interest rate of 20% per annum, the Thai courts may choose to cap the interest rate at 15%, as the higher interest rate is against the public order in Thailand.



Conclusion

Foreign law is applied in Thailand very much at the discretion of the Thai courts. When considering whether to elect a foreign governing law to govern your contract, do consider:

- Whether the intention of parties to elect a foreign governing law is evident
- If the intention of the parties is not evident, whether you are able to demonstrate the international characteristics of the transaction
- Whether you will have difficulties proving the foreign law to the satisfaction of the courts

Whether the election of foreign governing law is contrary to public order or good morals of Thailand.

If you have any questions or require any additional information, please contact [Yodwarat Tedkham](#) or the ZICO Law partner you usually deal with.

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