

Call in for a Coffee

Introduction

Welcome to RSM's August 2005 edition of "Call in for a Coffee". This edition summarises the debt recovery procedures available to suppliers of products or services against recalcitrant debtors in Thailand.

Debt Recovery in Thailand

Under Thai Law it is sometimes difficult, complex and time consuming to recover outstanding debts. This edition highlights some of the recovery enforcement procedures available to creditors. We emphasize however that creditors should always attempt to negotiate with the debtor before pursuing recovery proceedings in the Thai courts.

1. Civil Action

1.1 Pre-Litigation Stage

The Thai Civil and Commercial Law provides the procedures to be performed by creditors prior to commencing debt recovery proceedings in the Courts. For example, to enforce a mortgage, the mortgagee must notify the debtor in writing of his or her obligation and the timeframe to comply. If the debtor fails to comply with such notice, the mortgagee can proceed to the Court for judgment. In practice, the debt collection procedures, prior to filing a claim with the Court, will be:

- Negotiation with debtor;
- First written notice to debtor (demand to pay); and,
- Second written notice to debtor.

Generally, the period for repayment fixed in the notices is between seven and fifteen days, depending on the amount of the claim.

1.2 Court of First Instance Stage

Where the debtor fails to comply with the demand notices, the creditor can file a claim and the following procedures will be applied:

- File a claim with the Court
 - Where the value of the property or the amount in dispute does not exceed 300,000 Baht, the complaint must be lodged at the District or Provincial Court. (In some Provinces there are no District Courts.)
 - If the claim amount exceeds 300,000 Baht the complaint must be filed at the Civil or Provincial Court.
 - A Court fee will be charged at the rate of 2.5 percent of the claim amount. In practice, proceedings in the District Courts are faster than the Civil or Provincial Courts but obtaining hearing dates may be slower due to extensive caseload.
- Mediation by the Courts
 - It is the policy of the Courts to screen unnecessary cases from Court trial. Most Civil Courts have mediation centers for parties to negotiate and compromise. Once a case has been settled amicably, a compromise agreement will be prepared and the Court will pass judgment in accordance with the compromise agreement.
- Proof
 - Each party is responsible for documenting the issues and burden of proof with respect to their case.
- Taking evidence
 - Each party must bring witnesses and present evidence to the Court in accordance with the burden of proof as determined by the Court.
 - The witnesses list must be submitted to the Court not less than seven days before the evidence date.
- Making of judgment
 - Once the Court has considered and weighed the evidence, presented by the parties, the judgment will be made. The time frame at the Court of First instance can take up to between one and three years.

1.3 Appeal Court

- Within one month from the date of pronouncement of the judgment of the Court of First Instance, it is possible for the party with the adverse judgment to file an appeal to the Appeal Court.

- An appeal on questions of fact shall not be allowed if the dispute amount in the Appeal Court does not exceed fifty thousand baht, unless leave is granted by the judge of the Court of First Instance who tried the case or by the Chief Judge of the Court of First Instance or by the Chief Judge of the Region.
- In cases where the appeal relates to questions of law, the appellant may apply for permission to file an appeal directly to the Supreme Court.

1.4 Supreme Court

- The parties are entitled to lodge a dika appeal against the judgment of the Appeal Court within one month from the date of the pronouncement of such judgment.
- In cases where the value of the property or the amount claimed in the dika appeal does not exceed two hundred thousand baht, no dika appeal can be lodged on questions of fact, unless permitted by a Judge of the Appeal Court or a Judge of the Court of First Instance trying the case or by the Chief Judge of the Appeal Court.

1.5 Execution of Judgment

If the judgment debtor fails to comply with the judgment, the creditor is entitled to take action on the execution process as follows:

- Issuance of an execution decree;
- Delivery of an execution decree to the judgment debtor;
- Issuance of a writ of execution;
- Seizure of property belonging to the judgment debtor;
- Sale of property by auction; and,
- Repayment to the debtor.

The judgment creditor is entitled, within ten years from the date of pronouncement of the judgment, to apply for the judgment execution.

2. Criminal Action

Most commercial agreements have no criminal penalties. However, cheque fraud or dishonouring of cheques is considered a criminal offence pursuant to the Use of Cheque Act B.E. 2534 (1991).

Extension of the 7% VAT rate

On Tuesday 9 August 2005, the Cabinet approved a further extension of the reduced 7% VAT rate for two more years from 1 October 2005 to 30 September 2007.

RSM News

Many of our readers would now be aware that our founding partner and the **RSM Nelson Wheeler Corporate Advisory Services Asia Limited Patriarch Mr. Nick Hill** has retired after ten years of building the group to be one of Asia's Foremost Restructuring firms. **RSM Thailand** wish him all the best, for the future.

Furthermore, a number of our readers would be aware that the **Hong Kong RSM Nelson Wheeler Corporate Advisory Arm** has departed from the **RSM International Network** and joined the more specialized Restructuring Network of **Alvarez and Marsal**. This has no impact on the **RSM Thai office** who will remain within the **RSM International Network** as that network's activities are more complimentary to the business conducted here in Thailand.

Upcoming RSM Sponsored Events

<u>Date</u>	<u>Event</u>	<u>Contact Details</u>
24.8.05	South African Chamber Networking Evening – RSM Boardroom	satcc@satcc.net

Free Consultation

If your company has any issues requiring clarification with respect to legal, taxation, accounting, auditing, wealth management or recruitment, please contact the **RSM Team** and "Call In For A Coffee" for a free consultation.

Contact Details

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