

CASE STUDY

SERVICE AGREEMENTS AND CONTINGENCY FEES IN THAILAND

Background: In Thailand, under Section 150 of the Civil and Commercial Code (CCC), agreements that are contrary to public order or good morals are void. This provision has been interpreted by Thai courts to include contingency fee arrangements in legal services, where lawyers' fees are contingent on the outcome of litigation. This interpretation is grounded in the belief that such agreements might incentivize practices against public order.

Case Scenario: Imagine a small law firm in Thailand that specializes in international business disputes. The firm is considering innovative ways to attract clients, including offering contingency fee arrangements. However, the prevailing legal framework, as interpreted by the Supreme Court, holds that such arrangements may be against public order and therefore void.

Task: You are required to analyze the situation in which the law firm finds itself and propose service agreement structures that could potentially allow the firm to align with Section 150 of the CCC while still providing clients with results-based fees.

Questions for Discussion:

1. Why do you think contingency fee agreements may be considered against public order in Thailand?
2. How could a law firm structure its fees to align with Section 150 of the CCC while still offering performance-based incentives?

Answer:

Suggested Answer:

In Thailand, contingency fee arrangements are viewed as against public order because they could potentially encourage litigation for profit rather than for the pursuit of justice. This perception is rooted in the concern that lawyers might be motivated to take on cases with higher monetary stakes for personal gain, or might engage in unethical behavior to win a case, rather than focusing on the merits and justice of the case.

To align service agreements with Section 150 of the Thai Civil and Commercial Code while still incorporating performance-based incentives, a law firm might consider a hybrid fee structure.

This structure could include a nominal flat fee that covers basic costs and ensures that the client is serious about pursuing the case. On top of this, a modest success fee could be added, which is a percentage of the judgment or settlement amount, provided it is reasonable and does not give the appearance of 'buying into' the litigation.