

Construction Disputes or Administrative Contract:

If a Contractor delays completion, can the Employer impose the full daily penalty or daily fine? What Defences are available to the Contractor?

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Even where the contract expressly provides for a daily penalty, the court may reduce it if the penalty is disproportionately high in light of the actual loss suffered by the government agency.

In one case, the Supreme Administrative Court reduced the contractual penalty to only 5% of the amount originally claimed

Supreme Administrative Court Judgment No. Aor. 553/2568

The court may also take into account the contractor's efforts to complete the works, even where completion was delayed. In another case, the delay affected the government agency's ability to use the building as scheduled. However, the contractor had continued its efforts to perform the works and had not abandoned the project, despite facing labour shortages during the COVID-19 pandemic.

The contractor ultimately completed the works. Although completion was delayed, the circumstances showed that the contractor had continued to perform and was ultimately able to complete the project. The contractual penalty, amounting to 28.10% of the contract price, was therefore considered disproportionately high. The Supreme Administrative Court reduced the penalty by half, to 14.05% of the contract price

Supreme Administrative Court Judgment No. Aor. 708/2568).

The conduct of the government agency may also be relevant.

Where the government agency does not promptly exercise its right to terminate the contract, but instead allows the contract to continue for a prolonged period despite the delay, this may also be a relevant factor for the court when considering whether the contractual penalty should be reduced.

Supreme Administrative Court Judgment No. Aor. 354/2568

These are not the only circumstances that may be relied upon.

Depending on the facts of each case, there may be other grounds on which a contractor can ask the court to reduce a contractual penalty that is considered disproportionately high. These grounds are not discussed in full here.



For further consultation or advice, please contact Weerawong C&P Law Office.



About our Administrative Law Practice:

Weerawong C&P advises and represents businesses in matters involving Thai government entities, including public procurement, government contracts and concessions, licensing, administrative orders and state liability. Our dedicated team combines specialist knowledge of Thai public law with extensive experience in administrative disputes, helping clients assess risks, develop practical legal strategies and protect their rights and commercial interests, from early advice through litigation before the Administrative Courts..

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