

7 Legal Disputes

7.1 The Disputes with Expressway Authority of Thailand (EXAT)

Currently, the Company and the subsidiary had a total of 16 disputes with EXAT, which were referred to the consideration of the Panel and to arbitration in accordance with the dispute settlement procedures under the Agreements, divided into the disputes that the Company and the subsidiary referred to the dispute settlement proceedings under the Agreements and demanded for damages with the total amount until the date of submission of the disputes of approximately Baht 13,478.6 million, against which EXAT counterclaimed in the amount of Baht 15,575.4 million; and the disputes that EXAT submitted claims for damages with the total amount until the date of submission of the disputes of approximately Baht 32.2 million, against which the Company counterclaimed in the amount of Baht 5,114 million, the essence of each dispute was as follows:

7.1.1 Disputes submitted by the Company and the subsidiary claiming for damages

1. Revision of toll rates of the Chalem Mahanakorn Expressway and the Si Rat Expressway for the year 1998

The Company requested an increase of the toll rates for vehicles using the urban network by Baht 10 for four-wheeled vehicles and by Baht 20 for six-wheeled to ten-wheeled vehicles and more than ten-wheeled vehicles, and the toll rates for vehicles using the suburban network by Baht 5 for four-wheeled vehicles and by Baht 10 for six-wheeled to ten-wheeled vehicles and more than ten-wheeled vehicles.

The Company increased the toll rates under the Agreement in accordance with the Ministry of Interior Notification dated 27 August 1998 at the rates proposed by the Company.

Subsequently, EXAT announced the new toll rates in accordance with the Notification dated 23 October 1998, whereby the revised toll rates in the year 1998 were increased by merely Baht 10 per vehicle for all categories of vehicles using the urban network, without any revision of the toll rates for vehicles using the suburban network.

The Company therefore referred this dispute to the consideration of the Panel and to arbitration in accordance with the procedures under the Agreement.

Having considered the dispute, the first Arbitral Tribunal was of the view that the Notification dated 23 October 1998 was valid. EXAT then referred the dispute to another arbitration demanding the Company to return such payment received for the period from 1 September 1998 to 23 October 1998. The Company denied and counterclaimed that the calculation of the revision of the toll rates in accordance with the Notification dated 27 August 1998 was valid and the Company was therefore entitled to effect the revision of the toll rates in accordance with the Notification dated 27 August 1998.

The Arbitral Tribunal considered such dispute and then issued its arbitral award that the Company was entitled to effect the revision of the toll rates in accordance with the Notification dated 27 August 1998; that EXAT was therefore required to compensate the Company for damages in an amount equal to the difference of the toll rates as actually collected in accordance with the Notification dated 27 August 1998 and the Notification dated 23 October 1998, starting from 24 October 1998 onwards, whereby such compensation for damages might be calculated from the difference of the toll rates under the two Ministry of Interior Notifications for each category of vehicles on a daily basis, until 15 July 2000, which was the date of submission of the dispute, amounting to Baht 360.9 million plus interest under the Agreement; and to compensate for damages in an amount equal to the difference of the toll rates under the two Notifications, based on the actual volume and categories of vehicles using the Expressway from 16 July 2000 onwards, until the toll rates would be revised in accordance with the Agreement.

EXAT issued a letter refusing to comply with the arbitral award. The Company then filed a petition with the Civil Court of Southern Bangkok requesting a judgment to enforce compliance with the arbitral award.

On 28 December 2004, the Civil Court of Southern Bangkok issued a judgment confirming the arbitral award, thereby requiring EXAT to compensate the Company for damages until the toll rates would be revised in accordance with the Agreement.

EXAT filed an appeal against the order of the Civil Court of Southern Bangkok. On 18 February 2009, the Supreme Court, by resolution of the General Assembly, has issued a judgment reversing the Civil Court of Southern Bangkok's

judgment, whereby the arbitral award shall not be enforced on grounds of violation to the public order or good moral of the people due to the fact that such arbitral award overlapped the previous arbitral award which ruled that the Notification of the Ministry of Interior dated 23 October 1998 was legitimate, which remains binding and final between the Company and EXAT.

2. Priority Component Opening Date under the Second Stage Expressway Agreement

The Company completed the construction of the “Priority Component” of the Si Rat Expressway on 13 November 1992, in respect of which the Agreement specified that the date on which the Construction Completion takes place in respect of the Priority Component shall be deemed as the Priority Component Opening Date, and the Company would then be entitled to receive the toll revenue sharing, but EXAT commenced sharing the toll revenue on 2 September 1993, thereby rendering the Company to lose such revenue which should have been received under the Agreement.

EXAT and the Company had different opinions as to which date should be the commencement date for toll revenue sharing.

On 9 July 2001, the Company then referred such dispute to arbitration requesting an award requiring EXAT to compensate for the deficient revenue plus interest until the date of submission of the dispute in the amount of Baht 3,831.4 million. In this respect, EXAT raised an objection and counterclaimed in the total amount of Baht 15,575.4 million.

On 15 December 2008, the Arbitral Tribunal rendered its arbitral award on the dispute requiring EXAT to pay the toll revenue sharing for urban network which should have been received by the Company for the period from 13 November 1992 to 2 September 1993, amounting to Baht 1,974.6 million, calculated for interest up to 30 June 2001, amounting to Baht 1,856.8 million, totaling Baht 3,831.4 million, including the interest from 1 July 2001 onwards until the payment would be made in full to the Company, and EXAT’s counterclaim was dismissed. EXAT thus had no right to demand the Company to compensate for such toll revenue as per the counterclaim in the amount of Baht 15,575.4 million.

On 2 February 2009, the Company issued a letter to EXAT requiring compliance with the arbitral award. In this regard, EXAT issued a letter dated 3 February 2009 refusing to comply with the arbitral award and a letter dated 24 February 2009 confirming its refusal to comply with the arbitral award.

On 20 April 2009, EXAT submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award or order refusing to enforce compliance with the arbitral award.

At present, the case is pending submission of the answer and the objection.

3. Competing road with the Udon Rattaya Expressway

The Agreement specified that during the term of the Agreement, should EXAT or the Government put into effect any arrangements for the construction or substantial improvement of any road or highway of an expressway standard within the primary catchment area of the Expressway, which has the effect of reducing the actual volume of traffic using the Expressway or the revenue arising therefrom from the projections, EXAT shall compensate the subsidiary for such effect.

Given that the Government granted permission for construction of the Extension of the Don Muang Tollway Project, from the National Memorial to Rangsit Section, which constituted a competing road under the Agreement and affected the financial position of the subsidiary, the subsidiary therefore demanded EXAT to compensate for such effect as per the Independent Certification Engineer’s letter certifying the effect upon the subsidiary.

On 20 December 2004, the subsidiary then referred such dispute to arbitration requesting an award requiring EXAT to compensate for the deficient revenue, thereby rendering such damages until the date of submission of the dispute (excluding interest) to Baht 1,790 million.

On 27 November 2008, the Arbitral Tribunal rendered its arbitral award on the dispute requiring EXAT to compensate for the deficient revenue from the projection to the subsidiary for the year 1999 in the amount of Baht 730.8 million, with interest from 14 June 2000 onwards, until the payment would be made in full, and for the year 2000 in the amount of Baht 1,059.2 million, with interest from 22 March 2001 onwards, until the payment would be made in full.

On 5 January 2009, the subsidiary issued a letter to EXAT requesting compliance with the arbitral award by paying compensation, together with interest; otherwise, the subsidiary would further proceed with the enforcement for compliance with the arbitral award pursuant to the procedures under the laws.

EXAT issued a letter dated 4 February 2009 to the subsidiary, confirming that the arbitral award remained illegitimate; and the enforcement of such arbitral award was considered a violation to the public order and good moral of the people, EXAT was thus unable to comply with such arbitral award.

On 3 March 2009, EXAT submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award.

At present, the case is pending submission of the answer and the objection.

4. Issuance of variation orders by EXAT

EXAT issued variation orders for additional construction work and confirmed that EXAT would be responsible for such costs as actually incurred by such orders. The Independent Certification Engineer then issued a letter certifying the additional costs, thereby rendering such damages until the date of submission of the dispute (excluding interest) to Baht 238 million. Thereafter, EXAT refused to make such payment as certified by the Independent Certification Engineer, thereby resulting in such dispute.

On 3 May 2006, the Panel terminated its consideration since both parties could not reach an agreement. On 9 December 2009, the Company submitted a statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages caused by EXAT's issuance of three variation orders for total construction costs and expenses of Baht 209.1 million together with interest until 30 November 2009 in the amount of Baht 173.1 million thereby bringing the principal with interest to a total of Baht 382.3 million.

5. Delayed opening of Sector D of the Si Rat Expressway and the Udon Rattaya Expressway

According to the Agreements, the Company and the subsidiary were required to complete the construction of the Expressways for opening for service within the specified time. However, when the Company and the subsidiary had completed the construction and the Independent Certification Engineer had issued a letter certifying that the Expressways could be opened for service as a public road, EXAT did not effect the opening of Sector D of the Si Rat Expressway and the Udon Rattaya Expressway for service. Such deferred opening of the Expressways then affected the financial position of the Company and the subsidiary.

On 8 February 1999, the Panel terminated its consideration of the dispute proposed by the subsidiary, and on 10 August 1999, the Panel terminated its consideration of the dispute proposed by the Company since both parties could not reach an agreement. Currently, the Company and the subsidiary are preparing to refer such dispute to arbitration pursuant to the procedures under the Agreements, claiming damages (excluding interest) in the total amount of Baht 85.5 million.

6. Revision of toll rates of the Chalerm Mahanakorn Expressway and the Si Rat Expressway for the year 2003

The Company requested to revise the toll rates under the Second Stage Expressway Agreement which stipulates that the toll rates shall be revised every five year interval. In this regard, EXAT and the Company had different opinions in respect of the rounding up in the calculation of the tolls to be revised, i.e., the Company was of the view that it should be increased to the whole multiple of Baht 5, while EXAT was of the view that if the resultant tolls to be revised were lower than Baht 5, such fraction should be rounded off. As a result, EXAT therefore did not increase the toll rates as proposed by the Company, thereby resulting in such dispute.

On 14 May 2008, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages caused by the revision of toll rates for the year 2003, which was not in accordance with the Agreement, in the amount of Baht 5,980.3 million.

On 27 March 2009, the Company submitted a petition for amendment to the statement of claim in respect of the figures of the toll rates for the year 2003 based on the Ministry of Interior Notification dated 23 October 1998 in accordance with the Supreme Court Judgment.

On 19 June 2009, EXAT submitted its statement of defense/counterclaim to the Thai Arbitration Institute and submitted a letter of appointment of its arbitrator on 14 August 2009.

At present, it is pending scheduling a meeting of both disputing parties.

7. Revision of toll rates of Sector D of the Si Rat Expressway for the year 2003

The Company requested to revise the toll rates under the Agreement for the Extension of the Second Stage Expressway System (Sector D) which stipulates that the toll rates shall be revised every five year interval. In this regard, EXAT and the Company had different opinions in respect of the rounding up in the calculation of the tolls to be revised, i.e., the Company was of the view that it should be increased to the whole multiple of Baht 5, while EXAT was of the view that if the resultant tolls to be revised were lower than Baht 5, such fraction should be rounded off. As a result, EXAT therefore did not increase the toll rates as proposed by the Company, thereby resulting in such dispute.

On 24 July 2008, the Company submitted the statement of claim to the Thai Arbitration Institute, demanding EXAT to compensate the Company for damages caused by the revision of toll rates for the year 2003, which was not in accordance with the Agreement, in the amount of Baht 1,048.2 million.

On 12 March 2009, EXAT submitted its statement of defense/counterclaim to the Thai Arbitration Institute.

At present, it is pending scheduling a meeting of both disputing parties.

8. Revision of toll rates of the Udon Rattaya Expressway for the year 2003

The subsidiary requested to revise the toll rates under the Bang Pa-in - Pak Kret Expressway Agreement which stipulates that the toll rates shall be revised every five year interval.

In this regard, EXAT and the subsidiary had different opinions in respect of the rounding up in the calculation of the tolls to be revised, i.e., the subsidiary was of the view that it should be increased to the whole multiple of Baht 5, while EXAT was of the view that if the resultant tolls to be revised were lower than Baht 5, such fraction should be rounded off. As a result, EXAT therefore did not increase the toll rates as proposed by the subsidiary, thereby resulting in such dispute.

On 20 May 2005, the Panel terminated its consideration since both parties could not reach an agreement. At present, the subsidiary is in the process of concluding damages for preparing to refer such dispute to arbitration pursuant to the procedures under the Agreement.

7.1.2 Disputes submitted by EXAT claiming for damages

1. Construction of the Collection and Distribution Road (CD Road) under the Second Stage Expressway Agreement

EXAT was unable to deliver the Site(s) for construction of the CD Road, Rama VI - Ratchadamri Section, to the Company, but still required the Company to have such an obligation to carry out the construction. EXAT then submitted the matter to the Panel to force the Company to admit that the Company still had such obligation to construct the CD Road without any claim for monetary damages.

On 25 June 2001, the Company raised an objection that its obligation to carry out such construction had already ceased, as well as filed a counterclaim for a loss of benefit from the revenue to be derived from such areas, thereby rendering such damages plus interest until the date of submission of the statement of defense to Baht 5,114 million.

On 17 October 2001, EXAT submitted its answer to the counterclaim that since EXAT had not delivered the Site(s) to the Company and the Company had not commenced such delayed work, the Company in no way sustains any damage and as such, the Company's right of claim for compensation for damages has not yet arisen. In their regard, EXAT was unable to pay for the loss of benefit, together with interest, from the revenue in such areas to the Company.

On 7 June 2002, the Panel terminated its consideration since both parties could not reach an agreement. At present, EXAT has not yet referred this issue to arbitration.

2. Other disputes

EXAT referred seven disputes to the Arbitral Tribunal requiring the Company and its subsidiary to be held liable for costs, in respect of which the Company and its subsidiary were of the view that such costs were not within their scope of responsibility under the Agreements, in the total amount of Baht 32.2 million.

On 25 September 2009, the Arbitral Tribunal issued its arbitral award on one dispute, requiring the Company to reimburse EXAT for the amount advanced by EXAT for mitigation of damage for complainants, in the total amount of Baht 1.4 million plus interest of Baht 0.3 million, totaling Baht 1.7 million.

On 14 January 2010, the Company submitted a petition to the Central Administrative Court requesting the Court to revoke the arbitral award.

Given that the various cases are not yet final, the Company therefore did not record such entries in the financial statements.

7.2 Lawsuit

EXAT and the Company were sued by Expressway user on grounds of wrongful act in relation to traffic management and safety on the Si Rat Expressway System, whereby EXAT was the first defendant and the Company was the second defendant.

On 26 September 2007, the Court of First Instance adjudged to dismiss the plaintiff's claim. On 8 November 2007, the plaintiff filed an appeal with the Appeal Court and the Court issued an order accepting such appeal on 9 November 2007, in respect of which the Company submitted an answer to the appeal on 25 December 2007. Currently, the case is pending the consideration of the Appeal Court.

However, the Company's management believed that there would be no material impact upon the Company, and as a result, the Company did not make any provision for contingent liabilities in its book.

8 Capital Structure

8.1 Company Securities

1. The Company has the registered capital of Baht 8,000 Million, comprising 800 million ordinary shares at the par value of Baht 10 per share, Baht 7,700 Million of which has already been paid up, divided into 770 million ordinary shares at the par value of Baht 10 per share.
2. As at 30 December 2009, the Company issued 25,984,943 ordinary shares in the form of Non-Voting Depositary Receipt or NVDR, representing 3.37 percent of all shares of the Company. Such shares entitle their holders to receive dividends from investment in NVDR in the same amount as such dividend received by Thai NVDR Company Limited from the Company, provided that NVDR holders shall not be entitled to vote at any shareholders' meeting of the Company. Investors may check the number of NVDR from the Stock Exchange of Thailand's website at www.set.or.th/nvdr.
3. The Company proceeded with the issuance and offering of debentures No. 1/2007 in the amount of Baht 7,500 Million, as per the following details:

Type of debentures	: Unsubordinated and unsecured debentures bearing names of the holders with a debenture holder representative.			
Offering amount	: 7,500,000 units (seven million five hundred thousand units)			
Par value per unit	: Baht 1,000 (One Thousand Baht)			
Offering price per unit	: Baht 1,000 (One Thousand Baht)			
Offering value	: Baht 7,500,000,000 (Seven Billion Five Hundred Million Baht)			
Objective	: To increase source of capital and minimize risk from fluctuation of interest rate, whereby the Company will use the proceeds from such sales of debentures to make repayment of loans to the bank.			
Issue date of debentures	: 2 August 2007			
Maturity and interest rate	Maturity	Amount	Interest Rate	Maturity Date
		(Million Baht)	(Percentage per annum)	
	3 years	3,905	4.20	2 August 2010
	5 years	1,895	4.88	2 August 2012
	7 years	1,700	5.20	2 August 2014
Issue rating	: "A-" by TRIS Rating Co., Ltd.			
Lead underwriter, debenture holder representative and registrar	: Kasikorn Bank Public Company Limited			