



International Arbitration in Thailand, Rules and Enforcement of an Arbitral Award

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The success of international trade depends on several core issues, one of which is the method by which participants can resolve commercial disputes quickly and effectively.

Thailand has become an important player in the world trade with exports accounting for more than two thirds of its GDP in 2013^[1]. Hence, it is not unusual for foreign businessmen to have a Thai partner. In the event of a dispute, one may be reluctant to file a claim in a country where he knows neither the legal system nor the language. *Should the foreign party consider including an arbitration clause in the contract?*

The submission of a dispute to international arbitrators

Arbitration in Thailand is governed by the Arbitration Act BE 2545 (2002) ("Arbitration Act"), which essentially follows the UNCITRAL model law on International Commercial arbitration^[2]. To be valid, an arbitration agreement must be in writing and signed by all parties, whether it is in the form of an arbitration clause in a contract or in the form of a separated arbitration agreement^[3]. It is worth mentioning that an arbitration clause in a contract is independent of the main contract. In the event the contract may be void, the validity of the arbitration clause will not be affected^[4]. Then the question of whether the contract is void or not has to be debated before the arbitral tribunal^[5].

The Arbitration Act confers broad powers on the tribunal to the conduct of arbitral proceedings. As in other jurisdictions, the parties may opt for ad hoc arbitration or institutional arbitration. Ad hoc arbitration allows parties to choose their own rules to govern the process of the arbitration^[6]. In this case, the arbitration agreement has to specify the arbitral rules to be applied, the number of arbitrators, the place of arbitration and so on. The provisions of the Arbitration Act will apply where the parties have failed to agree on rules. If the parties opt for institutional rules, there is a good chance that they select the one from the International Chamber of Commerce (ICC). Established in 1923 at Paris, the ICC International Court of Arbitration provides parties with a flexible and neutral setting for dispute resolution. While the dispute itself is resolved by independent arbitrators, the Court supervises the process from beginning to end, increasing the quality of the process and enforceability of the awards^[7].

To insure that the disputes will be brought before the ICC, the clause has to be unambiguous and issues on the matter which are still current. Notwithstanding, parties to an arbitration agreement usually fail to specify the clause explicitly although the ICC has posted a sample of standard arbitration clause on its website. To avoid any legal uncertainty, parties are advised to include the following clause *"All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules."*

The enforcement of a foreign arbitral award

Every award granted by an arbitral tribunal shall be binding on the parties^[8]. If either party refuses to comply with an arbitration award, such award may be enforced by a court judgement.

Thailand is a signatory to the New York Convention for the recognition and enforcement of foreign arbitral awards (1958), and the Geneva Convention of 1927. In this regard, it is easier to enforce a foreign arbitration award through the Thai courts than a foreign Court judgement. Indeed, Thailand is not a party to any bilateral or multilateral conventions on enforcement of foreign judgments by which a foreign Court judgment may be entitled to recognition and enforcement in Thailand. Consequently, foreign judgments may only be accepted as evidence in a new trial initiated in Thailand.

This contrast sharply with the procedure reserved to arbitral award^[9]. A party who wishes to enforce a foreign arbitral award has a period of three years from the date the award is enforceable to apply to the competent Court. The awardee only has to provide a duly certified copy of both the award and the arbitration agreement with their respective Thai translation^[10].

However, the Arbitration Act still provides a small room for the parties to challenge an award through Thai court proceedings. The grounds for non-enforcement of an arbitral award by the court can be found from Section 40 to 43 of the Arbitration Act. The grounds include the incapacity of one of the parties, the violations of the rules governing the adversarial proceedings, the exceeding of the arbitration scope, the non-compliance of the composition of the tribunal and the absence of a binding award^[11].

Furthermore, the court may also refuse to enforce an arbitral award where such award concerns a dispute that cannot be settled by arbitration in accordance with the law, or where enforcement of the award is against public orders or good moral^[12].

The enforcement proceeding is time-consuming and it usually takes up to 18 months at the Court of First Instance^[13]. To top it off, under certain circumstances listed on Section 45 of the Arbitration Act, the order issued may still be appealed, resulting in further delays.

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^[1] Office of the national economic and social development board
<http://www.nesdb.go.th/Default.aspx?tabid=458>

^[2] The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration.

^[3] Section 11 of the Arbitration Act BE 2545

^[4] Section 24 of the Arbitration Act BE 2545

[5] For a comparison with the French system see the case law Ets Gosset c/Caparelli, Cour de cassation, May 7, 1963

[6] Section 18 of the Arbitration Act BE 2545

[7] ICC, Introduction to Arbitration <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/>

[8] See [Article 34 \(6\) of the ICC Rules of Arbitration](#) for disputes submitted to the ICC rules

[9] Note that the enforcement of a foreign arbitral award under the Arbitration Act is identical to that utilised for the enforcement of domestic arbitration awards

[10] Section 42 of the Arbitration Act BE 2545

[12] Section 44 of the Arbitration Act BE 2545