

## **Arbitration in Thailand: PART 1 – introduction**

Thailand is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. Therefore, Thailand is obligated to recognize foreign arbitration agreements and will enforce foreign arbitration awards pursuant to the Convention. Thailand's current (2002) Arbitration Act closely mirrors the 1985 version of the United Nations' (commonly referred to as, the "UNCITRAL") model law. This Act implements Thailand's obligations under the convention, as well as, regulates both international and domestic arbitrations conducted inside of Thailand.

Accordingly, contractual parties inside Thailand may choose to resolve any dispute arising from or a connection with their contract by means of arbitration rather than going to Thai Court. And, there are several reasons why contractual parties may be well advised to do so. Among those would be the following:

- If one or more of the parties are not Thai, arbitration will provide a "neutral" forum for resolving a dispute;
- the parties will be able to decide how the dispute will resolved: by what rules and procedures; by whom; where; how soon; in what language documents will be submitted and in which the proceedings will be conducted — all of which allows the parties comfort, efficiency and to control the costs of the proceedings; and, perhaps most importantly,
- once the award is obtained, the prevailing party may seek enforcement of the award against the assets of the non-prevailing party in any one of the currently 149 countries, which have signed the New York Convention.

As a result, the ever-growing significance of arbitration in international commerce is undeniable. And, although many of Thailand's neighbors have clearly recognized this

- one cannot say quite the same of Thailand. Singapore, Hong Kong, and Malaysia, for example, have all taken steps to promote the practice of arbitration and have benefited thereby. And one of the first actions the Parliament of the newly “open” Myanmar took was to finally ratify the New York Convent — no doubt in order to encourage foreign investment.

Unfortunately, there are several issues that will need to be addressed before Thailand can be considered a truly “pro-arbitration” jurisdiction. These include: immigration and labor restrictions on arbitrators and parties’ counsel; sections of the Arbitration Act not present in the you UNCITRAL law model law, which allow for appeals of recognition and enforcement of arbitration agreement and awards rulings and enhanced liabilities for arbitrators, as well as, a general lack of understanding among the legal community in Thailand of what arbitration is and its significance. These issues really must be addressed. However, we are confident that the can and will be addressed over the coming years as Thailand continues its current course from a developing to a fully developed jurisdiction.

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