

## **Arbitration in Thailand: PART 3 – arbitration offers several advantages to litigation in Thai courts**

Arbitration proceedings offer various important advantages to the normal local court proceedings in Thailand. To resolve business related disputes quickly and with finality is advantageous to the business community. To say the least, normal court proceedings are not known for achieving either of these desired ends, especially in Thailand. Thus, the fixed time frame to achieve an award outlined by the various arbitration service providers is one of the most important advantages of arbitration over litigating the dispute in normal court proceedings. Furthermore, unlike a normal court ruling, arbitration awards cannot be challenged on the “material part” of the case. In other words, the award cannot be appealed on the basis of its determination on factual or legal issues. For example, in Thailand, the court that will need to enforce an arbitration award, whether it is an award in an international or domestic arbitration proceeding, is only allowed to set aside such ruling in the following, very limited, cases outlined in Section 40 of the Arbitration Act (2002)(the “Act”):

- 1) *A party to the arbitration agreement was under some legal incapacity.*
- 2) *The arbitration agreement is not binding under the governing law agreed to by the parties, or in the absence of such agreement, the laws of Thailand.*
- 3) *The applicant was not given proper advance notice of the appointment of the arbitral tribunal, or of the arbitral proceedings, or was otherwise unable to defend the case in the arbitral proceedings.*
- 4) *The award deals with a dispute outside the scope of the arbitration agreement, or contains a decision on a matter outside the scope of the agreement. If the part of the award that lies outside the scope of the agreement can be separated from the balance of the award, then the court will only set aside that part.*
- 5) *The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the arbitration agreement or, unless otherwise agreed by the parties, the Arbitration Act.*
- 6) *The award deals with a dispute not capable of settlement by arbitration under the law.*

7) *The recognition or enforcement of the award would be contrary to public order.*

The enforcement, or rather the “enforceability”, of an arbitration award is itself another very important advantage of arbitration over normal court proceedings. Unlike foreign court judgements, all countries that are part of the 1958 United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) will enforce a “foreign” arbitration award if that award was made in a country that is also a signatory to the New York Convention. There are currently 144 signatories, including Thailand, to the New York Convention. Section 41 of the Act states that “(...) *an arbitral award, irrespective of the country in which it is made, shall be recognized as binding on the parties(...). In case where an arbitral award was made in a foreign country, the award shall be enforced by the competent court (...)*”.

Turning to the proceedings itself, It is not uncommon that disputes between parties require specialized knowledge to understand the nature of the dispute. A local court judge may not have such knowledge. Arbitration proceedings, however, provide the opportunity to the parties to have the dispute settled by a specialist or practitioner who understands the issues surrounding the claim from a practical point of view. In Thailand, this enhanced adjudicatory flexibility is reflected in Section 19 of the Act which defines a qualified arbitrator as one who is “(...) *impartial, independent and possess the qualifications prescribed in the arbitration agreement (...)*”.

Furthermore, the parties in an arbitration proceeding are not only able to select their qualified arbitrator, but they also have the right to choose the place and the language of the arbitration proceedings. For anyone doing business in a foreign country, to select a convenient venue for the proceedings and to be able to understand the proceedings without the necessity of a translator and to be able to submit all documentation without having to translate them into a foreign language are major advantages to settling disputes by arbitration.

Finally, one more procedural advantages of arbitration over normal court proceedings relates to “Service of Process” or how one party or the adjudicator formally notifies the other party of matters in the proceeding, for example, that the case has been filed commencing the proceedings. Service of Process in court proceedings is time consuming and can be quite expensive. In Thailand, this is particularly true in disputes involving a defendant who is located outside of Thailand which requires

lengthy notification process involving the Thai Ministry of foreign affairs. In arbitration proceedings, however, it is not necessary to involve any government agency. The arbitration service provider is able to service the defendant directly.

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