

Commercial Contract Dispute Resolution in Thailand – THE THAI ARBITRATION INSTITUTE – Part 1: Procedure & Timing

The Thai Arbitration Institute (TAI) — currently under the auspices of the Thai government’s judiciary — is the most commonly chosen institutional arbitration service provider by commercial parties to administer their contractual dispute arbitrations seated in Thailand. Unless the parties agree to deviate from the TAI Rules — and somewhat controversially — “with the consent of the Director of the Alternative Dispute Resolution Office”, the TAI Rules will apply to any arbitration proceeding under its administration. In Part 1 of this article we summarize the procedure and timing of a TAI arbitration.

PROCEDURE

- (1) The first step is for the claimant to file a “statement of claim” against the “respondent” together with a payment of preliminary advance on costs to the TAI.
- (2) The TAI will then send the statement of claim to the respondent.
- (3) The respondent may then file a statement of defense (and a counterclaim, if any) to the TAI within fifteen days of receipt of the statement of claim.
- (4) The TAI will then send the statement of defense (and the counterclaim, if any) to the claimant.
- (5) The claimant may file a defense to the counterclaim to the TAI within fifteen days of receipt of the counterclaim.
- (6) Then the TAI will encourage the parties to settle the dispute amicably and offer an opportunity for the parties to meet to discuss such settlement, failing which the

parties will be asked to agree on the place of arbitration, language used, and choice of law — if they have not previously done so.

(7) The parties will then nominate their arbitrator(s). The standard TAI Rules require that the arbitral tribunal be composed of either one or three arbitrators. If the parties choose:

(A) a sole arbitrator: then if the parties cannot agree on the sole arbitrator, each party nominates three names to the TAI. If none of the nominated names are the same, the TAI may list three more names and dispatch all nine names to the parties to arrange in order of preference and send back to the TAI. The TAI contacts the most preferred person agreed by the parties to be the arbitrator

(B) three arbitrators: then each party nominates one arbitrator. The two arbitrators choose the third arbitrator who will act as the chairman of the arbitral tribunal.

Note: if the parties have not chosen the number of arbitrators, the Act dictates that the tribunal shall be composed of a sole arbitrator.

(8) The TAI will then coordinate with the parties to arrange a meeting to: formally appoint the arbitrator(s); settle of issues to be decided; determine procedural and evidentiary issues; and schedule the proceedings.

(9) The parties will then, in accordance with the proceedings schedule, submit any relevant documents in support of their claim or defense — usually within one to three months of the scheduling meeting.

(10) This will be followed by a formal hearing of evidence, if any — usually within four to six months of the scheduling meeting.

(11) The TAI Rules prescribes that the arbitral tribunal must issue the award within 180 days from the day on which the last arbitrator was appointed. However, it should be carefully noted that in practice the TAI usually presents a minutes of meeting template, which includes a waiver of this deadline and grants an open-ended award issuance period to the arbitrator — this is not required and the parties should not agree to it unless they wish to.

(12) Once the award is completed, the TAI sends a copy of the award to each party.

(13) If a party fails to comply with the award, the other party may petition a competent Thai court to enforce the award within three years from the day that the award is enforceable. Alternatively, if the arbitration was not in compliance with the Act, either party may request that court to vacate the award within three months.

TIMING

It generally takes nine to twenty-four months from filing of the statement of claim to issue of the final award. However, if the case is complicated or, if the respondent is dilatory, the arbitral proceedings may take longer to complete.

The enforcement of the arbitration award within Thailand, if necessary, may require anywhere from a few months to several years. It is hoped that the reasons for such enforcement delay will be addressed soon. However, it should be noted that Thailand is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1959), which means that any international arbitration award administered by the TAI in Thailand, is enforceable in any of the more than one hundred fifty countries that have also signed the Convention.

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