

# Arbitration: an alternative to litigation in Thailand

Arbitration has developed significantly over the past decade in Thailand, spurred by economic and political developments, the influx of international investment and other factors. In fact, since promulgation of the first Thai Arbitration Act in 1987 and its subsequent replacement in 2002, there has been a steady rise in the use of arbitration, not just in large-scale construction and infrastructure projects, but increasingly in standard business contracts.

Generally, deciding whether to litigate or seek the resolution of conflicts through arbitration is a decision made by parties to a contract before a dispute exists, where parties can select a specific arbitration mechanism uniquely tailored to their needs. For example, parties may decide how a potential dispute will be resolved by choosing the arbitration rules and institute, the appropriate venue, the number and qualifications of arbitrators and certain discovery mechanisms not otherwise available in Thai courts. But, perhaps of most significance is the fact that Thai courts will enforce most local and foreign arbitral awards.

**Thai Arbitration Act.** Thailand's present arbitration law, the Arbitration Act B.E. 2545, closely follows the United Nations Commission on International Trade Law's (UNCITRAL) model law on international commercial arbitration. This statute has general provisions commonly found in arbitration laws elsewhere, and applies to both domestic and international arbitration:

- ◆ Parties can incorporate an arbitration clause into their main contract or can agree to arbitrate at the time that the dispute arises.
- ◆ Parties are free to decide for themselves where to arbitrate, how many arbitrators to use, the required qualifications of the arbitrators, what procedures to use in the arbitration and the language of the arbitration.
- ◆ Once parties have agreed to arbitrate, they do not have the ability to take their dispute to court, unless all parties agree.
- ◆ Arbitration awards issued in many countries are enforceable in Thailand.

While the Thai Arbitration Act adopts verbatim much of UNCITRAL's model act, there are some distinct differences unique to Thailand. While the model act allows arbitrators to take interim measures related to the subject of the dispute pending outcome of the arbitration, the Thai Arbitration Act requires a party seeking a temporary order to file a petition with the Thai court.

In addition, the Thai Arbitration Act exempts arbitrators from liability in performing their duties, except where they intentionally or with gross negligence injure a party. There are also criminal provisions whereby an arbitrator can be fined and/or imprisoned for up to 10 years for demanding or accepting bribes.

Foreign legal advisers may participate as arbitrators in arbitration proceedings conducted in Thailand. However, they are generally restricted to cases in which the governing law is not Thai law. A further benefit is that, unlike Thai court proceedings, arbitration involving international contracts may be conducted in the language of the contract, with English being the most commonly accepted.

**Arbitration institutes.** There are two main arbitration institutes in Thailand: the Thai Arbitration Institute of the Court of Justice and the Thai Commercial Arbitration Institute of the Board of Trade. Both are well respected and administered, supervised by a diverse advisory board, have standard arbitration rules and maintain a list of qualified and available arbitrators. Parties are also free to nominate outside professionals as arbitrators. They may also choose any language they prefer, but English and Thai are by far the most common.

Administrative costs and arbitrator fees for arbitration conducted through the two Thai arbitration institutes are quite reasonable and less than those charged by many international institutes.

In commercial contracts designating international arbitration institutes, those commonly utilised by parties in Thailand are the International Chamber of Commerce, the Singapore International Arbitration Centre, and the Hong Kong International Arbitration Centre.

**Enforcement of foreign arbitral awards.** Thailand has a single-track system for the enforcement of arbitral awards, with no distinction between the enforcement of arbitration awards rendered in Thailand and those rendered abroad. Foreign arbitral awards rendered in member countries of the New York Convention and Geneva Protocol are recognised and enforced in Thailand, which is a member of both.

A petition for the enforcement of an arbitral award must be filed with the court, under which the jurisdiction lies, within three years from the date that the award first became enforceable. Procedure for the enforcement of arbitral awards follows normal Thai court practice, with the filing of the petition for enforcement, the answer and the submission of relevant evidence at trial. Timelines for enforcement are similar to those of the respective Thai courts, with one year common for a lower court enforcement judgment. The court may refuse the enforcement of the award only on limited grounds. The court is not generally permitted to hear the merits of the underlying case.

**Written by Michael Ramirez, consultant, and Kornkiat Chunhakasikarn, litigator, Dispute Resolution Department, Tilleke & Gibbins International Ltd. Please send comments or suggestions to Marilyn Tinnakul at [marilyn@tillekeandgibbins.com](mailto:marilyn@tillekeandgibbins.com)**