



Arbitration Guide
IBA Arbitration Committee

THAILAND

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration usage has increased significantly in the last 25 years but arbitration is not yet widespread in all business circles. Most commonly, arbitration is chosen in private sector contracts where one party is foreign or internationally-owned; it is less common in a purely domestic context.

The Thai Cabinet resolved in 2009 that arbitration should not be adopted in any public sector contracts without prior case-by-case Cabinet approval (2009 Cabinet Resolution). However, in 2015 the Thai Cabinet issued a further resolution, stipulating that only certain public sector contracts with arbitration clauses will require Cabinet approval (2015 Cabinet Resolution). Notwithstanding the 2015 Cabinet Resolution, public sector entities (including major commercial groups with a majority state shareholding) are still generally reluctant to accept arbitration clauses in commercial contracts.

Arbitration is considered to offer the primary advantage of neutral, independent dispute resolution outside the courts. Confidentiality is also said to be an important factor. Disadvantages may include procedural inefficiency and delay and the fact that a losing party will often challenge the award in court, causing further serious delay.

(ii) Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitration in Thailand is institutional, although *ad hoc* arbitration is also seen. There are three domestic arbitration institutions: the Thai Arbitration Institute, Office of the Judiciary (TAI), the Office of the Arbitration Tribunal of the Board of Trade of Thailand and the Thailand Arbitration Centre (THAC). The TAI is the more frequently used of the three and the Rules of the TAI are commonly used. International institutional rules including those of the International Court of Arbitration of the International Chamber of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC) are also regularly adopted.

There are specialist arbitration schemes for specific sectors of Thai business, for example for disputes under insurance policies; disputes between securities companies and between securities companies and their customers; and disputes relating to intellectual property rights.

(iii) What types of disputes are typically arbitrated?

Most types of commercial disputes can be arbitrated.

(iv) How long do arbitral proceedings usually last in your country?

The TAI's arbitration rules state that an award must be made within 180 days of the tribunal being constituted. The TAI rules were amended in January 2017 and now include a requirement for a preliminary timetable to be prepared within 30

days of the arbitral tribunal being constituted. Any modifications to the timetable can only be made by the tribunal and considered by the TAI. However, in practice, the time limits are regularly extended and cases under TAI rules can still take a long time.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Foreign nationals are permitted to serve as arbitrators in Thailand but must take great care to comply in all respects with Thai immigration and work permit laws when performing services in Thailand, however briefly, in order to avoid potential disruption to the proceedings and/or personal liabilities.

In addition, foreign nationals may only represent clients in arbitration if the law governing the dispute is not Thai law or if the award will not be enforced in Thailand. Foreign counsel appearing in or intending to be present at proceedings in Thailand should be careful to comply in all respects with Thai laws in order to avoid possible disruption to the proceedings and/or personal liabilities.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Arbitration proceedings in Thailand (domestic and international) are governed by the Arbitration Act 2002, which is substantially based on the UNCITRAL Model Law but with some local adaptation.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Arbitration Act does not distinguish between domestic and international arbitrations.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Thailand signed and ratified the New York Convention in 1959 (and previously the Geneva Protocol 1923 and the Geneva Convention 1927). Thailand also has signed the Washington (ICSID) Convention but has not ratified it and appears unlikely to do so. In addition, Thailand is a party to numerous bilateral investment treaties and, as a member of the Association of Southeast Asian Nations (ASEAN), a party to the investor-state arbitration provisions of the ASEAN investment protection agreements.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The Arbitration Act requires tribunals to decide disputes according to the governing law chosen by the parties. Where the parties have not designated the governing law and where there is a conflict of laws, the tribunal is obliged to apply the law determined by whatever principles of conflict of laws the tribunal considers most appropriate.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The Arbitration Act defines an arbitration agreement as an agreement by which the parties submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of a clause in a contract or in the form of a separate arbitration agreement.

The Arbitration Act further provides that an arbitration agreement shall be in writing and signed by the parties. An arbitration agreement is deemed to exist where it is contained in an exchange of letters, faxes, telegrams, telexes, information with electronic signature or other forms of communication which provide a record of the agreement, or where the existence of the agreement is alleged in a claim or defence by one party and not denied by the other.

A reference in a written contract to a document containing an arbitration clause is deemed to constitute an arbitration agreement if the reference is such as to make that document part of the contract.

Thai law places great importance on the formalities of proper contract execution by corporate entities. In order for an agreement to be clearly binding and enforceable, it is necessary to ensure that it is signed by the correct combination of duly authorised representatives, with the company's seal where required.

Signing requirements for Thai corporations are available online (in Thai) from the companies registration authority within the Ministry of Commerce.

In addition to the basic agreement to arbitrate, arbitration agreements should also specify the arbitral rules to be applied, the number of arbitrators, the place of arbitration, the language of the arbitration proceedings (as distinct from the language of the contract) and (if so required) the right of the tribunal to make an award in respect of the parties' legal costs and expenses. The tribunal will otherwise not enjoy the latter right under Thai law, unless the applicable arbitration rules so provide.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Thai courts are increasingly likely to uphold and enforce arbitration agreements and to dismiss litigation brought in breach of such agreements. The applicable test is described in Section IV(ii) below.

- (iii) **Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses appear from time to time in commercial contracts. Most typically, they may provide for negotiation between senior representatives as a necessary preliminary step before arbitration. In the past, certain government contracts have also provided for disputes to be submitted to the governor of the relevant state agency for review and decision before they can be submitted to arbitration.

Failure to comply with any required preliminary steps will often lead to a challenge to the tribunal's jurisdiction.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

There are no specific requirements applicable to multi-party agreements, apart from the provisions that apply to arbitration agreements generally (see Section III.(i) above) and the general law of contract.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

There is no formal law on this issue but in principle, such clauses should be enforceable.

The TAI rules stipulate that the rules will apply to arbitral proceedings where the parties agree or give consent to have their dispute settled by arbitration under the rules.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

There is no formal law on this issue but such arguments are rare in practice in Thailand, and it may be difficult to argue successfully before a Thai tribunal that the ambit of an arbitration agreement should be extended beyond the signatories to the agreement.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

The only provision of Thai law which is relevant to arbitrability is the statutory definition of an arbitration agreement, which requires an agreement governing a dispute concerning ‘a defined legal relationship, whether contractual or not’.

It is generally understood that arbitrable matters include (but are not necessarily limited to) disputes of a commercial nature and those arising out of contractual and business relationships, Criminal matters, divorce, bankruptcy, business rehabilitation and the appointment of the administrator of an estate are not generally capable of being referred to arbitration.

Disputes over arbitrability are jurisdictional and can be resolved by the tribunal (see Section IV.(ii) below). In practice, however, they may also be resolved in court if the claimant initiates action in court and the respondent seeks to dismiss that action on the basis that it should be submitted to arbitration (see below).

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

The Arbitration Act provides that if a party to an arbitration agreement commences court proceedings against another party contrary to their agreement, the party against whom the case is commenced may apply to the court to strike out the case. The application must be made no later than the date of filing the defence or within the period allowed by law for filing a defence; otherwise, the right to arbitrate may be lost. If the court is satisfied that an arbitration agreement exists and that there are no grounds for finding it void or unenforceable or incapable of being performed, the court must issue an order striking out the case.

While the motion is pending before the court, either party may begin arbitration and a tribunal may continue existing proceedings and render its award.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal’s jurisdiction?**

Tribunals can rule on their own jurisdiction. For this purpose, an arbitration clause in a contract is treated as an agreement, which is independent of the main contract. A decision by the tribunal that the main contract is null and void will not affect the validity of the arbitration clause.

A jurisdictional challenge must be raised no later than the date of submission of the defence. Any subsequent claim that the tribunal is exceeding its jurisdiction must be raised as soon as the relevant issue arises, unless the tribunal considers that there are reasonable grounds to delay the challenge.

The tribunal may rule on its jurisdiction as a preliminary issue or in the final award. If the tribunal rules as a preliminary issue that it has jurisdiction, either party may refer that decision to the court within 30 days, but the tribunal may

meanwhile proceed with the arbitration. If the decision on jurisdiction is deferred to the final award, it may then be raised as a basis for challenging the award in court.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The parties to an arbitration agreement are free to agree on the method of appointment. Where they fail to agree, or where the appointment process fails for any reason, the Thai court acts as the default appointing authority.

Where TAI rules have been adopted and where the parties cannot agree on the sole or presiding arbitrator, a list procedure is used to complete the appointment. Each party lists three candidates, the TAI adds three more, and the parties rank all nine candidates in order of preference. The ‘most preferred’ candidate is appointed. A similar procedure is followed where three arbitrators are to be appointed and the party-nominated arbitrators cannot agree on the chairperson of the tribunal.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

The Arbitration Act requires that arbitrators shall be impartial and independent. A prospective arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, and an existing arbitrator must without delay make appropriate disclosure to the parties if any such circumstances arise.

A party may challenge an arbitrator if there are circumstances giving rise to justifiable concerns as to his impartiality or independence, or if he lacks agreed qualifications. A party may not challenge the arbitrator he has appointed, or in whose appointment he has participated, unless he had no knowledge of the grounds for challenge at the time of appointment.

The challenge must be made in writing within 15 days from the date on which the party became aware of the appointment or the grounds for challenge. The tribunal will decide on the challenge unless the arbitrator voluntarily withdraws or the other party agrees with the challenge. If the tribunal rejects the challenge, or where a sole arbitrator is challenged, the challenging party may request the court to decide. That request must be filed within 30 days of receipt of the tribunal’s decision, or of becoming aware of the appointment of the sole arbitrator or of the grounds for the challenge. The tribunal may proceed with the arbitration and make an award while the court challenge is pending, unless the court orders otherwise.

If the Court upholds the challenge, a new arbitrator will be appointed using the same procedure that applied when the arbitrator being replaced was appointed.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

In addition to the statutory requirement for impartiality and independence, the Arbitration Act requires that arbitrators must have the qualifications (if any) specified in the arbitral agreement or any applicable institutional rules. There are no other limitations or restrictions on appointment, and Thai institutions do not operate a 'closed list' system for appointments.

Arbitrators in cases under the TAI's rules must comply with the TAI's Code of Ethics for Arbitrators.

- (iv) **Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?**

Arbitrators in cases under the TAI's rules must comply with the TAI's Code of Ethics for Arbitrators, which include provisions on conflict of interest. There are no other specific rules on conflicts in common use in Thailand; the IBA Guidelines are not well known or commonly referred to in this regard.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Thai law does not empower arbitrators to order interim measures or other forms of preliminary relief. The law only provides that parties may apply to the court for any required provisional measures before or during arbitral proceedings. See Section VI (ii) below.

The TAI rules (as amended in 2017) now enable the arbitral tribunal to grant interim measures as it deems appropriate. However in practice, Thai arbitrators are likely to be influenced by the nature and availability of interim reliefs in Thai litigation under the Civil Procedure Code (CPC). There is no clear formal law or guidance on tribunal orders for interim measures that would be enforced by the Thai court, and such applications are not common in practice.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

The Arbitration Act empowers the Thai court to grant provisional measures in support of arbitration if it considers that it could have done so if the case had been proceeding in the court instead of in arbitration. The provisions of the CPC relating to provisional measures will be applied *mutatis mutandis* in this respect.

Provisional measures under the CPC include orders for deposit of money as security; seizure of property or funds; temporary injunctions to restrain a party from continuing or repeating any act, transferring or disposing of property; and orders directing public officials to register, modify or cancel registrations relating

to property. Emergency applications are permitted where there is a proven emergency requirement for provisional relief.

An application for provisional measures may be made to the court before or after the commencement of arbitration. If a court grants provisional relief prior to the commencement of arbitration, the order will lapse unless the party seeking such relief refers the dispute to arbitration within 30 days of the court's order or such other period as may be prescribed by the Court.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

The tribunal or an individual arbitrator, or the parties with the consent of the majority of the tribunal, may apply to the court to subpoena a witness or for an order for production of documents or other materials. The court will grant the order if it could have done so in the context of court proceedings, having regard to the CPC.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

General discovery/disclosure is unknown in Thai litigation and Thai arbitration. General discovery/disclosure orders are rarely or never made and there is no concept or practice of witness deposition.

Parties will usually attach the documents on which they rely to their statements of claim and defence and witness statements. In arbitration under TAI rules or other "Thai-style" procedures, there may be a separate tribunal direction to exchange lists and copies of all documents on which the parties rely. There is unlikely to be any further requirement for production of other documents in the parties' possession or control, except as described below.

A party can apply to the tribunal or court for an order requiring disclosure of documents held by the other party. However, the requested documents must be clearly and narrowly identified either individually or as a clearly-defined category, and the need for the disclosure must be properly justified. A request for disclosure of a general category of documents is unlikely to be upheld.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

See previous answer.

(iii) Are there special rules for handling electronically stored information?

There are no special rules regarding electronic information.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There are no obligations of confidentiality in arbitration under Thai law.

Article 36 of the TAI's arbitration rules (as now amended) explicitly state that all arbitral proceedings, pleadings, documents, evidences, hearings, orders and award are confidential.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no such provisions.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

Thai law does not directly recognise the concept of legal privilege or 'without prejudice' communication.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The IBA Rules on Taking of Evidence are not at all commonly used in Thai arbitration. On occasions where these rules are adopted (for example, where the tribunal consists of international arbitrators for an international case seated in Bangkok), the tribunal is likely to stipulate that it will be guided by the spirit of the rules but will not be formally bound by them.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

The Arbitration Act requires the tribunal to apply any mandatory provisions of law and to respect any agreement between the parties as to arbitral procedures. Otherwise, the tribunal may conduct the proceedings as it sees fit, subject to the overriding requirement for the tribunal to treat the parties with equality and to give them a full opportunity to present their case according to the circumstances of the dispute.

The tribunal may decide the admissibility and weight of any evidence.

In practice, arbitral tribunals (particularly if the tribunal consists of Thai arbitrators) often apply the CPC with modifications as necessary.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Under the Arbitration Act, the tribunal may decide (unless otherwise agreed by the parties) whether to hold hearings or whether the proceedings will be conducted on a documents-only basis.

The manner of production of witness testimony is a matter for the tribunal's discretion. Increasingly, tribunals direct the advance exchange of written statements of witness evidence, with the statements to stand as evidence-in-chief at the hearing. The hearing will then focus primarily on oral cross-examination.

Thai arbitrators are typically not proactive in questioning witnesses.

- (iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no rules in Thai arbitration law on who may appear as a witness, nor as regards oaths and affirmations.

- (v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative) and the testimony of unrelated witnesses?**

There are no formal differences but the tribunal is authorised to determine the weight to be given to any evidence.

- (vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert evidence is treated the same in procedural terms as other witness evidence. There are no formal legal requirements regarding the independence and impartiality of expert witnesses.

- (vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Tribunals are empowered to appoint experts to give evidence on specific issues, unless otherwise agreed by the parties. However, this is not common in practice.

The Arbitration Act requires the parties to provide documents, information and materials for a tribunal-appointed expert's inspection and review. The expert's report should be submitted in writing and either party may require the expert to attend a hearing for cross-examination.

- (viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is rare in Thai arbitration.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules or requirements as to use of arbitral secretaries. The practice is not common.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The Arbitration Act states that an award must be made in writing and signed by the arbitral tribunal (or if applicable, the majority of the tribunal, stating the reason for any omitted signature). The award must state the date and the place where it is made and, unless the parties have otherwise agreed, the reasons on which it is based.

Thai law does not specify what remedies are available in arbitration. In practice, tribunals are likely to be influenced by the kinds of relief available in Thai litigation under the CPC. Damages are the most common form of remedy.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Thai law bases the right to compensation on the principle of recovery for actual loss, therefore exemplary and punitive damages are not awarded.

Arbitrators are entitled to award interest if this was included in the claim. The default rate of interest under Thai law is 7.5%, non-compoundable.

- (iii) **Are interim or partial awards enforceable?**

The Arbitration Act provides that jurisdictional challenges may be resolved either as preliminary issues or in the award on the merits. With that exception, Thai law and TAI rules do not address interim or partial awards, and in practice, they are not common in Thai arbitration.

- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

There are no specific provisions of law or TAI rules regarding dissenting opinions. Full or partial dissents are sometimes seen in practice.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

The Arbitration Act provides that if the dispute can be settled by agreement between the parties, the tribunal shall terminate the proceedings. The tribunal may issue a consent award according to the parties' agreement, if the parties so request and if the tribunal considers that the settlement agreement is not contrary to law. A consent award must comply with formal requirements for awards generally and will have the same status and effect as an award on the merits.

Aside from settlement and consent awards, arbitration proceedings are terminated by the final award or by an order of the tribunal where the claimant withdraws its case or where the tribunal considers that for some other reason it has become unnecessary or impossible for the case to proceed.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Unless otherwise agreed by the parties, any party may, within 30 days of receipt of the award, ask the tribunal to correct any error of computation or any clerical, typographical or insignificant error in the award. If the parties have so agreed, either party may within the same period ask the tribunal to interpret or explain any specific point in the award.

If the tribunal considers that the request is justified, it must make the correction or provide the interpretation within 30 days from the date of receipt of the application.

The tribunal may also make corrections to the award of its own accord within 30 days from the date of the award.

All 30-day limits may be extended by the tribunal.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The Arbitration Act states only that the fees and expenses of the arbitral proceedings shall be in accordance with the tribunal's award, including the tribunal's own remuneration but excluding lawyers' fees and expenses. There is no formal presumption in Thai law that the losing party pays.

(ii) What are the elements of costs that are typically awarded?

As noted above, the Arbitration Act refers only to the fees and expenses of the arbitral proceedings, including the tribunal's remuneration. The Arbitration Act expressly excludes lawyers' fees and expenses, therefore, if the parties prefer that legal fees and expenses should be recoverable, specific provision should be made for this in the arbitration agreement.

The TAI rules state that the fees and expenses should be specified in the award.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

As noted above, the Arbitration Act authorises the tribunal to fix its remuneration.

For TAI arbitrations, the fees of the arbitrator and expenses of the arbitral proceedings will be at the rate determined by the TAI.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The tribunal has discretion to apportion costs as it sees fit, including between the parties. However, in relation to lawyers' fees and expenses, this discretion only arises if expressly agreed by the parties. Otherwise, the Arbitration Act expressly excludes lawyers' fees and expenses from the tribunal's powers regarding costs.

There is no guidance or presumption in Thai law as to how the discretion should be exercised. In practice, however, the ‘loser pays’ principle may often be applied.

(v) Do courts have the power to review the tribunal’s decision on costs? If so, under what conditions?

The court has no specific power to review the tribunal’s decision with regard to costs, except for its general powers with regard to challenges to awards.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

A party may challenge an award by filing a motion with the competent court within 90 days after receiving the award. The permitted grounds for challenge are as follows:

- A party to the arbitration agreement was under some incapacity according to the law applicable to that party;
- The arbitration agreement was invalid under the law agreed by parties or in default of such agreement, under Thai law;
- The applicant was not given proper advance notice of the appointment of the tribunal or of the proceedings or was otherwise unable to present its case;
- The award deals with a dispute which is not within the scope of the arbitration agreement or contains a decision on a matter outside the scope of the agreement;
- The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the parties’ agreement;
- The award deals with a dispute that is not capable of being settled by arbitration under the law; and

- The recognition or enforcement of the award would be contrary to public order or good morals.

There are no time limitations for completing challenge proceedings. In practice they may take several years to be concluded, in particular at the appellate level. The frequency with which awards are challenged and the time taken to deal with challenges are common grounds for criticism of arbitration in Thailand.

Challenge proceedings do not automatically stay any enforcement proceedings. However, the court may adjourn any enforcement proceedings if a challenge is pending, if it sees fit and (if requested by the enforcing party) on such terms as it sees fit as to the provision of security by the challenging party.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

There is no Thai law addressing this possibility and it is unclear whether such an agreement would be considered to be valid.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

Awards cannot be appealed; they can only be challenged as set out above (see Section XII (i)).

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

Either party may request the court to adjourn the challenge proceedings to allow the tribunal to resume the arbitration or to carry out any act, which would have the effect of eliminating the grounds for challenge. If the court considers this reasonably justified, it may adjourn the challenge proceedings on such terms as it thinks appropriate.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Awards are enforced by means of an application to the competent court (namely, the Intellectual Property and International Trade Court, the court where the arbitral proceedings were conducted, the court with jurisdiction over the place where a party is domiciled, or the Administrative Court) for a judgment recognising and enforcing the award. Once an enforcement judgment has been obtained, it may be

enforced in the same way as any other Thai judgment, through the processes of the Legal Execution Department.

Thai law does not distinguish between domestic and foreign awards for enforcement purposes, except that foreign awards will only be enforced to the extent of Thailand's obligations pursuant to an applicable international convention or treaty (e.g., the New York Convention).

The court is entitled to refuse enforcement of any domestic or foreign award if the opposing party proves one of six grounds set out in the Arbitration Act – which essentially mirror Article V of the New York Convention-- or, additionally, if the court considers that the dispute was not capable of settlement by arbitration under Thai law or that the enforcement would be contrary to public policy or the good morals of the people.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Thai law does not provide for judgment creditors to take or initiate direct enforcement action against the debtor's assets. Enforcement actions are conducted by the Legal Execution Department, at the request of the judgment creditor, once a final judgment has been obtained.

(iii) Are conservatory measures available pending enforcement of the award?

Conservatory measures should in principle be available pending enforcement of an award, although subject to the limitations under Thai law that apply to interim and conservatory measures generally.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The court may refuse to enforce a foreign award if the award has been set aside by a competent court or under the law of the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The party seeking to enforce the award must file an application with the competent court within three years of the date the award became enforceable.

The duration of enforcement proceedings is unpredictable but may be lengthy, especially if (as is often the case) the first instance judgment is appealed to the Supreme Court.

XIV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

State property is immune from judicial execution under section 1307 of the Civil and Commercial Code. This is understood to confer wide immunity on the assets of public sector entities, including assets used for commercial purposes.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

The Regulations of the Office of the Prime Minister on Compliance of Arbitration

Awards 2001 provide that where an arbitration award is made against a state agency, the agency must comply with the award without requiring enforcement proceedings, unless the award is contrary to the law governing the dispute or is the result of an unjust act or process or is outside the scope of the arbitration agreement.

Notwithstanding these Regulations, it is often necessary in practice to follow and exhaust the court procedures for enforcement before any state agency will consider payment.

XV. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Thailand has signed the Washington Convention (the ICSID Convention) but it has not yet ratified it and is unlikely to do so soon.

Thailand is a party to the ASEAN Agreement for the Promotion and Protection of Investments 1987 which came into force on 2 August 1998 and the ASEAN Common Investment Agreement 2009, both of which contain extensive intra-ASEAN investment protections and provide for investor-state arbitration.

(ii) Has your country entered into bilateral investment treaties with other countries?

Thailand has more than 40 bilateral agreements for promotion and protection of investment. Details and full texts are available from the Ministry of Foreign Affairs website (www.mfa.go.th).

XVI. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

Authoritative textbooks on arbitration in Thailand are written in the Thai language by leading professors, arbitrators or judges.

English language resources include the Thailand chapters in Pryles, M (ed), *Dispute Resolution in Asia*, 3rd edn (Kluwer Law International, 2006); Moser, M

(ed), *Arbitration in Asia*, 2nd edn (JurisNet LLC, 2009); and Moser, M and Choong, J (eds), *Asia Arbitration Handbook*, (OUP Oxford, 2011).

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Thai Arbitration Institute and the Alternative Dispute Resolution Office hold regular educational events in the Thai language. The Thailand chapter of the Chartered Institute of Arbitrators, the ICC Thailand Arbitration & ADR Committee and Thailand Arbitration Centre hold English language training courses.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Arbitration is an established alternative to court proceedings in the context of business transactions involving a foreign party or a foreign-owned Thai party. It is less well-established in the context of domestic business, particularly involving public sector parties (see Section I(i) above).

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Mediation and similar methods of informal and consensual dispute resolution have a long tradition in Thai society.

The Thai courts support and promote mediation as an alternative method for resolving disputes. Similarly, the TAI will typically offer parties to pending arbitrations the option of exploring mediation as an alternative method of dispute resolution. THAC also actively promotes mediation in Thailand.

- (iii) **Are there any noteworthy recent developments in arbitration or ADR?**

The TAI rules were amended earlier this year and introduced changes to promote efficiency, speed, transparency and fairness in arbitral proceedings in Thailand. Thailand also hosted the Global Pound Conference for the first time in 2017, advocating the importance of ADR in dispute resolution.