

# Legal Update

## A Practical Guide to Arbitration in Thailand

In an increasingly globalised commercial landscape, resolving disputes efficiently, predictably, and cost-effectively is a priority for businesses. In Thailand, the principal legislation governing arbitral proceedings is the *Arbitration Act*, B.E. 2545 (2002) (the “**Act**”), which repealed and replaced the *Arbitration Act*, B.E. 2530 (1987). The Act draws from internationally recognised arbitration principles, including aspects of the UNCITRAL Model Law on International Commercial Arbitration, but contains important Thai-law features and should not be described as a wholesale adoption of the Model Law.

This guide provides a practical overview of navigating arbitration in Thailand. It explores the unique legal and economic advantages of selecting Thailand as an arbitral seat, outlines the structural and procedural nuances of the country’s two main arbitral institutions and details the mechanisms governing the enforceability of arbitral awards.

### 1. Advantages of arbitration in Thailand

In general, arbitration is often preferred for the following reasons:

- A. its confidentiality;
- B. the parties’ ability to appoint decision-makers (arbitrators) with non-legal expertise; and
- C. the relative ease of enforcing arbitral awards across jurisdictions compared to litigation.

Arbitration in Thailand offers each of these advantages. First, although the Act is silent on confidentiality, the rules of Thailand’s two well-known arbitral institutions, the Thai Arbitration Institute (the “**TAI**”) and the Thailand Arbitration Center (the “**THAC**”), contain confidentiality provisions, subject to the term and exceptions set out in the applicable institutional rule. Second, Section 19 of the Act provides parties with considerable flexibility in the appointment of arbitrators. The provision requires only that an arbitrator “be impartial, independent and possess the qualifications prescribed in the arbitration agreement”. As such, parties are free to stipulate qualifications at the contracting stage, such as requiring technical or industry-specific expertise, rather than purely legal credentials. This flexibility may appeal to commercial parties who believe that a fair and practical resolution requires, not only legal

knowledge, but also a strong understanding of the relevant business context and commercial realities. Third, because Thailand acceded to the 1958 New York Convention, arbitral awards rendered in Thailand are generally capable of international enforcement. This may be particularly advantageous in cross-border disputes, particularly because the international enforcement of judicial judgments often involves substantial procedural and administrative hurdles.

Further, a unique advantage of Thai arbitration is its relative cost effectiveness compared to other jurisdictions in the region. In general, arbitral costs in Thailand are generally lower than those in major Asian arbitral centres such as Singapore and Hong Kong. That said, arbitration in Thailand may still be more expensive than domestic litigation in the context of enforcement. This is largely due to Thailand's "dual court structure", under which parties must pay both arbitral institution fees during the arbitration proceedings (which could become exorbitant due to the length of the proceedings) and court fees when filing for recognition and enforcement of the award before the Thai courts. By contrast, litigation would involve a singular and fixed court-fee structure.

## 2. Thailand's arbitration framework

This section briefly outlines the general requirements and principles governing arbitration in Thailand before examining the specific features and procedural requirements of Thailand's two principal arbitral institutions – the TAI and the THAC.

### A. General principles

Although arbitration is generally flexible and largely shaped by party autonomy, the Act prescribes several foundational requirements and guiding principles. Broadly, there are three main points.

First, Section 11 of the Act requires the existence of an "arbitration agreement" before arbitral proceedings may commence. In essence, an "arbitration agreement" refers to an agreement, whether in the form of a contractual clause or a separate contract, by which parties undertake to submit disputes arising out of a defined legal relationship (whether contractual or otherwise) to arbitration. For an arbitration agreement to be valid under Thai law, it must be evidenced in writing. This requirement may be satisfied by a signed arbitration agreement, an exchange of written or electronic communications recording the agreement, incorporation by reference, or an exchange of pleadings in which the existence of an arbitration agreement is alleged by one party and not denied by the other. Notably, the importance of such an agreement is further reflected in the rules of Thailand's major arbitral institutions, including the TAI and THAC, both of which require a valid arbitration agreement as a prerequisite to commencing proceedings. The absence of such an agreement may also constitute grounds for challenging the validity or enforceability of an arbitral award before the Thai courts.

Second, Section 19 of the Act provides that arbitrators must be “impartial, independent and possess the qualifications prescribed in the arbitration agreement”. This requirement is similarly reflected in the rules of the major arbitral institutions in Thailand. Interestingly, the reference to qualifications “prescribed in the arbitration agreement” grants parties substantial discretion in determining the attributes they consider desirable in an arbitrator. Accordingly, parties may prioritise technical or industry-specific expertise over formal legal qualifications where appropriate.

Third, Section 34 of the Act provides that arbitral tribunals must determine disputes in accordance with the governing law chosen by the parties. If the parties have not designated the governing law, Section 34 of the Act provides that the tribunal shall apply Thai law to the dispute, except where there is a conflict of laws, in which case the tribunal shall apply the law determined by the conflict-of-laws rules it considers applicable. The tribunal may decide the dispute *ex aequo et bono* only where the parties have expressly authorised it to do so.

## B. Procedure under TAI

Arbitral proceedings within the TAI framework commence when a party (the “**Claimant**”) submits a Statement of Claim to the institute. Once the TAI is satisfied that the Statement of Claim complies with the requirements set out in Article 7 of the TAI Arbitration Rules, it will transmit a copy of the Statement of Claim to the opposing party (the “**Respondent**”). The Respondent must then submit a Statement of Defence and any Counterclaim within 15 days from the date of receipt. Where a Counterclaim is filed, the Claimant may submit an Answer to the Counterclaim within 15 days of receipt. If a party fails to submit a required pleading, the consequences will depend on the Act, the applicable TAI Rules and any directions of the tribunal or the TAI. In general, a respondent’s failure to submit a defence does not necessarily suspend the proceedings.

Thereafter, provided that the procedural requirements are complied with, and unless otherwise agreed by the parties to the arbitration, the arbitration will proceed in Bangkok in accordance with a procedural timetable determined by the arbitral tribunal and the parties. In general, following the exchange of the Statement of Defence or the Answer to the Counterclaim, the arbitral proceedings are expected to be completed within 180 days. The arbitral award must then be rendered within 30 days from the date on which the tribunal declares the proceedings closed or the deadline for the submission of written closing statements.

Under TAI’s arbitration rules, the appointment of arbitrators depends on whether the tribunal is to consist of a sole arbitrator or multiple arbitrators. Where a sole arbitrator is to be appointed, the parties may jointly nominate the arbitrator within 15 days either from the receipt of the Statement of Defence, or the receipt of the Answer to the Counterclaim. Where the tribunal consists of more than one arbitrator, each party will nominate an equal number of arbitrators, and the remaining arbitrator will be jointly agreed upon by the parties. If the

parties are unable to agree on the sole arbitrator or the remaining arbitrator, the TAI will make the appointment. In the latter circumstances, each party must nominate three candidates to the TAI, following which the TAI may add a further three candidates before circulating the consolidated list to the parties. Each party must then rank the nominees in order of preference and notify the TAI within 15 days. The TAI will thereafter approach the five highest-ranked nominees and appoint an arbitrator based on the parties' preferences and the nominees' availability and willingness to act.

## C. Procedure under THAC

Arbitral proceedings under the THAC rules commence when the Claimant submits a Notice of Arbitration to the THAC Registrar, together with a Statement of Claim if desired. Once the Registrar is satisfied that the Notice of Arbitration complies with Article 9 of the THAC Arbitration Rules, all parties will be notified of the commencement date of the proceedings. Following confirmation of the Registrar's acceptance, the Claimant must also provide a copy of the Notice of Arbitration to the Respondent and notify the Registrar accordingly. Upon receipt of the Notice of Arbitration, the Respondent must submit its Response to the Claimant within 15 days. The Respondent must then send a copy of the Response to the Registrar and, where applicable, pay the filing fee for any counterclaim.

If the Statement of Claim or Statement of Defence is not submitted together with the Notice of Arbitration or the Response, they must subsequently be filed with the Arbitral Tribunal within the timeline determined by the Tribunal. The same applies to any Counterclaims and Defence to Counterclaims. Further, unless otherwise agreed between the parties, the arbitration will take place in Thailand; and the arbitral award will be rendered within 45 days from the date the proceedings are declared closed.

Lastly, unlike TAI arbitration, THAC arbitrations are generally conducted by a sole arbitrator unless otherwise expressly agreed to by the parties to the arbitration. Under the THAC Rules, the default position is generally a sole arbitrator, unless the parties agree to three arbitrators or the Registrar determines that a three-member tribunal would benefit the proceedings. Any statement on the maximum number of arbitrators should be read together with the exceptions in the applicable THAC Rules. Further, THAC appears to play a more involved role in constituting the arbitral tribunal compared to TAI. For instance, unless expressly provided in the parties' agreement, the THAC President has a central role in constituting the arbitral tribunal under the THAC Rules. To this end, Article 19 of the THAC Arbitration Rules provides that the President must consider factors such as the qualifications agreed upon by the parties, the independence and impartiality of the arbitrator, and the arbitrator's readiness to perform the duties efficiently and expeditiously.

## D. Challenging arbitral awards

Pursuant to Section 40 of the Act, recourse against an arbitral award may be made only by an application to the competent Thai court to set aside the award on limited statutory

grounds. This is not an appeal on the merits. The statutory grounds include incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, inability to present the case, the award dealing with matters beyond the scope of the arbitration agreement or submission to arbitration, irregular composition of the tribunal or procedure, non-arbitrability, and conflict with public order or good morals.

Notably, the court at which the award is challenged depends on the issue at hand. The competent court will be determined under Section 9 of the Act and other applicable jurisdictional rules. Certain matters, including intellectual property or international trade disputes, may fall within the jurisdiction of the Central Intellectual Property and International Trade Court or the relevant Regional Intellectual Property and International Trade Court, where applicable. An application to set aside an arbitral award must be filed with the competent court within 90 days after receipt of a copy of the award or, where applicable, after the correction or interpretation of the award or the making of an additional award.

#### E. Local features of the Thai arbitration framework

The Thai Arbitration Act is influenced to an extent by internationally recognised arbitration principles, including aspects of the UNCITRAL Model Law on International Commercial Arbitration. However, the Act contains important local features.

First, the Act does not establish separate statutory regimes for domestic and international arbitration. Instead, the same Act applies generally to arbitrations in Thailand, subject to the parties' agreement, the applicable institutional rules, and mandatory provisions of Thai law.

Secondly, Thai law permits parties to seek court-ordered provisional measures before or during arbitral proceedings. The availability and scope of tribunal-ordered interim or procedural measures should be assessed by reference to the applicable institutional rules and the law of the seat.

### 3. Enforcement of arbitral awards

#### A. Domestic Enforcement

Section 42 of the Act provides that a party seeking enforcement of an arbitral award must file an application with the competent court within three years from the date on which the award became enforceable. For a valid application, the applicant must submit:

- (1) the original arbitral award or a certified copy;
- (2) the original arbitration agreement or a certified copy; and
- (3) Thai translations of both the award and the arbitration agreement certified in the required manner.

Sections 43 and 44 of the Act set out grounds on which enforcement may be refused, these are distinct from the grounds for setting aside an award under Section 40. Furthermore, court orders or judgments under the Act are subject to the limited appeal grounds set out in Section 45.

## B. International enforcement

Thailand acceded to the 1958 New York Convention on 21 December 1959. As a result, arbitral awards made in Thailand are generally eligible for recognition and enforcement in other New York Convention Contracting States, and foreign arbitral awards may be recognised and enforced in Thailand, subject in each case to the New York Convention, the Act, applicable court procedure, and the relevant grounds for refusal. The procedure to enforce Thai-arbitral awards in foreign jurisdictions depends on the laws and procedures of the relevant enforcing jurisdiction. The procedure for enforcing a foreign arbitral award in Thailand is similar in that an application must be made to the competent Thai court, but foreign awards are subject to the treaty basis under Section 41 of the Act and the specific documentary and refusal grounds applicable to foreign awards.

## 4. Sample arbitration clauses

The TAI provides the following model arbitration clause:

*Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or validity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Thai Arbitration Institute, Office of the Judiciary, applicable at the time of submission of dispute to arbitration, and the conduct of arbitration thereof shall be under the auspices of the Thai Arbitration Institute.*

## 5. Conclusion

Arbitration in Thailand offers a compelling blend of international familiarity and localised efficiency.

By aligning its core legislation with the UNCITRAL Model Law on International Commercial Arbitration and offering robust cross-border enforcement via the 1958 New York Convention, Thailand provides a secure and predictable forum for resolving complex commercial disputes.

Furthermore, the default confidentiality rules and institutional flexibility offered by both the Thai Arbitration Institute and the Thailand Arbitration Center ensure that commercial parties can resolve their grievances discreetly and with the assistance of specialised, industry-specific experts.

## Further information

Should you have any questions on international arbitration in Thailand or other countries in the region, please get in touch with the team at PDLegal.

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