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Thailand: Law and Practice

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Weerawong C&P

THAILAND

Law and Practice

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Contents

Weerawong C&P is an independent Thai law firm established on 1 January 2009. Formerly the Bangkok office of White & Case LLP, which commenced business in Thailand in 1993, Weerawong C&P is now one of Thailand's largest independent law firms. The firm has a deep bench of experienced lawyers providing comprehensive dispute resolution services in pre-litigation and litigation before all levels of court and in domestic and international arbitration at the Thai Arbitration Institute, Hong Kong International Arbitration Centre, Singapore International Arbitration Centre, Geneva and UNCITRAL proceedings – as well as in the enforcement of arbitral awards in Thailand. The team acts for clients across all industry sectors in both domestic and cross-border matters and is ranked as top tier by the leading legal directories for commercial and corporate disputes, contentious government, regulatory, employment, and international trade and customs matters.

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1. General

1.1 Prevalence of Arbitration

Litigation remains the preferred method of resolving disputes in Thailand, owing to its cost-effectiveness.

Domestic parties resort to international arbitration predominantly for cross-border conflicts involving foreign entities and their affiliates – and where the respective contracts contain arbitration clauses.

1.2 Key Industries

Based on the authors' experience and observations, an increasing number of disputes arising from sale and purchase agreements were resolved through international arbitration in 2021–22. This increase in activity can potentially be attributed to the post-pandemic recovery period, which resulted in more active markets. However, there was not a direct decline in international arbitration activity during 2021–22 owing to the COVID-19 pandemic.

1.3 Arbitral Institutions

Without consolidated public records, it is difficult to definitively determine which arbitral institution is used for international arbitration proceedings most often in Thailand. However, based on the authors' experience and observations within the field, the Thai Arbitration Institute (TAI) appears to be the preferred choice. This trend can potentially be attributed to a number of factors, including the TAI's longstanding presence in the sector, the expertise of its staff, its well-established procedural framework, and comparatively lower administrative fees.

No new arbitral institutions were established in 2021–22.

1.4 National Courts

The following courts are designated to adjudicate disputes pertaining to both international and domestic arbitration matters under the Arbitration Act BE 2545 (2002) (the "2002 Arbitration Act"):

- the Central Intellectual Property and International Trade Court or the Regional Intellectual Property and International Trade Court;
- a court situated in the jurisdiction where the arbitral proceedings were undertaken;
- a court situated in the jurisdiction where either party has established domicile; and
- a court that has jurisdiction over a dispute submitted to the arbitration process.

2. Governing Legislation

2.1 Governing Legislation

Thai legislation, particularly the 2002 Arbitration Act, governs both international and domestic arbitration within Thailand and makes no distinction between the two. The 2002 Arbitration Act permits foreign parties to participate in arbitration proceedings and provides the parties involved with the freedom to choose the substantive law(s) applicable to their agreement.

The 2002 Arbitration Act incorporates most provisions from the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"). However, there are a few respects in which the 2002 Arbitration Act diverges from the UNCITRAL Model Law, as follows.

- The 2002 Arbitration Act has not been amended to incorporate the provisions on interim measures and preliminary orders granted by the arbitral tribunal that were adopted by the UNCITRAL Model Law in 2006.
- The 2002 Arbitration Act provides arbitrators with immunity from civil liabilities, except in cases where they cause damage to either party wilfully or as a result of gross negligence.
- Lastly, unlike the UNCITRAL Model Law, the 2002 Arbitration Act bestows on the presiding arbitrator the authority to independently issue an award, order, or ruling in situations where a majority vote cannot be secured.

2.2 Changes to National Law

Thai arbitration law has not undergone any significant modifications in the past year. There is currently no prospective legislation in the pipeline that might potentially alter the arbitration landscape in Thailand.

3. The Arbitration Agreement

3.1 Enforceability

To be enforceable, an arbitration agreement must take the form of an arbitration clause within a contract or as a standalone agreement. It must be in writing and signed by all parties involved.

The arbitration agreement can be recognised as such if it has been concluded in an exchange between the parties by means of letters, facsimiles, telegrams, telex, exchange of data with electronic signatures affixed, or other methods that can provide a record of the agreement. This can also be in the form of an exchange of a statement of claim and statement of defence in which the existence of an agreement is not merely alleged by one party and denied by the other.

Additionally, provided they are documented in writing, any references in a contract to a document containing an arbitration clause can be considered as an arbitration agreement. This holds true as long as the reference is such that it makes that clause a part of the contract.

3.2 Arbitrability

The 2002 Arbitration Act does not provide comprehensive guidelines on what constitutes an arbitrable matter. It simply stipulates that courts may dismiss an application for the enforcement of an arbitral award if it finds that the award pertains to a dispute "not capable of settlement by arbitration under the law".

The determination of arbitrability is thus left to the discretion of the courts and is assessed on a case-by-case basis. Nevertheless, it is generally acknowledged that the following types of disputes are not arbitrable:

- criminal disputes;
- civil and commercial disputes involving the violation of public policy or related to a person's legal status (eg, marital status); and
- disputes explicitly required by law to be adjudicated by courts – for example, those involving claims for a company's dissolution.

The general approach to determining arbitrability hinges on whether exclusive jurisdiction for certain matters is vested with the courts. This means that if a specific type of dispute or subject matter is explicitly assigned to be resolved by courts as per the law, then such matters cannot be arbitrated and must be resolved through court proceedings.

3.3 National Courts' Approach

The courts have generally respected the choice made by the parties regarding the governing law of the arbitration agreement. They will enforce and interpret the agreement in accordance with the law chosen by the parties. In cases where the parties have not explicitly designated the governing law for the arbitration agreement, the approach of the courts has been to apply Thai law.

Under Thai law, two forms of arbitration are recognised – namely, in-court arbitration and out-of-court arbitration.

In-court arbitration refers to a process at the court of first instance whereby the parties agree to refer their disputed issues to arbitration before the court. This process is governed by Sections 210–220 and 222 of the Civil Procedure Code, which stipulate:

- the procedures for establishing an arbitral tribunal (either by the parties themselves, the court, or a combination of both);
- the procedural rules the tribunal must adhere to;
- the formulation of an arbitral award; and
- the enforcement of said award.

Despite these provisions, in-court arbitration is seldom utilised in Thailand. This is likely attributable to insufficient public awareness about its availability.

As stipulated in Section 11 of the 2002 Arbitration Act, an arbitration agreement can take the form of an arbitration clause within a contract or exist as a separate agreement altogether. Further reinforcing the distinctness of arbitration clauses, Section 24 of the 2002 Arbitration Act confirms their separability. This provision ensures that any invalidity of the primary contract does not impact the legality of the arbitration clause contained therein.

In instances where a claimant presents a case containing a seemingly legally enforceable arbitration clause before a Thai court, the court does not immediately dismiss the case but gives the defendant the opportunity to raise an objection. Subsequently, the court is mandated to conduct an inquiry hearing to determine the enforceability

of the arbitration clause under the provisions of the 2002 Arbitration Act. Generally, if an arbitration agreement appears to be legally binding and is constructed in accordance with the 2002 Arbitration Act, the Thai court will likely dismiss the case and thereby compel the parties to proceed with the arbitral process.

3.4 Validity

Thailand recognises the rule of separability for arbitration clauses. It is considered an independent agreement separate from the main contract. Consequently, even if the arbitral tribunal determines that the main contract is null and void, this decision does not affect the validity of the arbitration clause.

4. The Arbitral Tribunal

4.1 Limits on Selection

The 2002 Arbitration Act does not limit the parties' autonomy to select arbitrators.

It is furthermore the obligation of the arbitrator to disclose any circumstances that might lead to justifiable doubts regarding their impartiality or independence. It is incumbent upon the arbitrator – from the moment of appointment and throughout the entirety of the arbitral proceedings – to promptly disclose such circumstances to all involved parties, unless the parties had previously been made aware of these by the arbitrator themselves.

4.2 Default Procedures

If the parties are unable to reach a consensus on the number of arbitrators, the arbitration process will proceed with the appointment of a sole arbitrator.

In situations where the tribunal should consist of a sole arbitrator and the parties fail to agree on who this arbitrator should be, either party may petition the competent court to appoint the arbitrator on the parties' behalf.

In cases where the arbitral tribunal should consist of more than one arbitrator, each party is expected to appoint an equal number of arbitrators and the appointed arbitrators are then tasked with appointing an additional arbitrator(s). If a party fails to appoint their arbitrator(s) within 30 days of receiving notification to do so from the other party or if the appointed arbitrators are unable to jointly appoint the chairman of the arbitral tribunal within thirty days from their appointment, either party may petition the competent court for an order appointing the arbitrator or the chair of the arbitral tribunal.

If no other procedures for successful appointment of arbitrators are provided under the first and second points, either party may file a petition with the competent court to appoint the arbitrator as it deems appropriate where:

- a party fails to perform as required under such procedure;
- the parties, or the arbitrators appointed by each party, are unable to reach an agreement under such procedure; or
- a third party, including an institution, fails to fulfil any duty entrusted to it under such procedure.

The default process does not differ for multiparty arbitrations.

4.3 Court Intervention

The court is vested with the authority to appoint arbitrators as stipulated under Section 18 of the

2002 Arbitration Act. Please refer to **4.2 Default Procedures**.

4.4 Challenge and Removal of Arbitrators

The appointment of an arbitrator can be challenged if there are circumstances that lead to justifiable doubts about their impartiality or independence, or if they lack the qualifications agreed upon by the parties. However, a party may not challenge the appointment of an arbitrator they have appointed or in whose appointment they have participated, unless they were not aware – or could not have been aware – of the grounds for such challenge at the time of appointment.

4.5 Arbitrator Requirements

Please refer to **4.1 Limits on Selection**.

5. Jurisdiction

5.1 Matters Excluded From Arbitration

Please refer to **3.2 Arbitrability**.

5.2 Challenges to Jurisdiction

The principle of competence-competence is applicable in Thailand. Under this principle, an arbitral tribunal has the authority to rule on its own jurisdiction. This includes issues related to the existence or validity of the arbitration agreement, the validity of the appointment of the arbitral tribunal, and determining whether the dispute at hand falls within the scope of its authority.

5.3 Circumstances for Court Intervention

If the arbitral tribunal renders a preliminary ruling stating that it has jurisdiction over a case, either party may file a motion requesting the competent court to rule on the matter within 30 days of receiving the preliminary ruling.

Typically, the court treats the motion requesting a ruling on the jurisdictional issue in the same manner as other cases. All procedural submissions exchanged during the proceedings – including rulings from the arbitral tribunal affirming or denying jurisdiction – are usually considered as supporting evidence.

5.4 Timing of Challenge

Any challenge to the jurisdiction of the arbitral tribunal to hear the dispute must be raised no later than the date of the submission of the statement of defence on the merits of the case. A party to the dispute is not precluded from raising such a challenge by the reason that such party has appointed – or participated in the appointment of – an arbitrator. In raising a challenge that the arbitral tribunal is exceeding the scope of its authority, any party to the dispute must raise it immediately upon the occurrence of the incidence during the arbitral proceedings, unless the arbitral tribunal considers the delay justified – in which case, the arbitral tribunal may permit a party to the dispute to make a challenge later than the time limit specified.

In addition to the foregoing, the parties may challenge the jurisdiction only after the rendering of an arbitral award if arbitration proceedings have already been initiated.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

In order to determine the admissibility and jurisdiction of a case, the court will evaluate the existence or validity of the arbitration agreement and other relevant factors under the de novo standard of judicial review. However, if the tribunal issues a preliminary ruling affirming its jurisdiction, it may be accorded a certain level of deference.

The enforcement or refusal of an arbitral award enforcement by a Thai court is determined based on a limited set of grounds as outlined under Section 43 of the 2002 Arbitration Act.

This provision specifies that a court may refuse the enforcement of the arbitral award, irrespective of the country in which it was issued, provided the party against whom the enforcement is sought can prove one of the following.

- A party involved in the arbitration agreement was under some legal incapacity according to the law applicable to that party.
- The arbitration agreement is not binding as per the law of the country agreed upon by the parties (or, in the absence of any indication thereof, under the law of the country where the award is issued).
- The applicant party did not receive proper advance notice of the appointment of the arbitral tribunal or the arbitral proceedings or was otherwise unable to present their defence in the arbitral proceedings.
- The award involves a dispute not falling within the scope of the arbitration agreement or contains a decision on a matter beyond the scope of the arbitration agreement. However, if the award on the matter beyond the scope can be separated from the part within the scope of the arbitration agreement, the court may set aside only the part that exceeds the scope of the arbitration agreement or clause.
- The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties (or, in the absence of any agreement by the parties, in accordance with the law of the country where the award is issued).
- The arbitral award has not yet become binding or it has been set aside or suspended by a competent court (or under the law of the country where it was made). Unless the setting aside or suspension of the award is sought from a competent court, the court may postpone the hearing for the enforcement of the award as it deems appropriate. Furthermore, upon the request of the applicant party, the court may order the party against whom enforcement is sought to provide suitable security.

5.6 Breach of Arbitration Agreement

In 2017, Thailand's Supreme Court ruled on a subcontract agreement arbitration clause, asserting in Judgment No 1115/2560 that such clause does not oblige parties exclusively to submit to arbitration – litigation is also permissible.

However, in 2019, a revised stance was taken. In Judgment No 3427/2562, the Supreme Court ruled that a clause requiring amicable resolution attempts for 60 days before resorting to arbitration indicated the parties' preference for arbitration over court adjudication. Thus, "may" in this context does not give the right to commence court proceedings in light of an arbitration agreement.

The key takeaway from these cases is that the court's preference for mandatory language to be used in arbitration agreements to ensure its binding effect. The judgments sparked debates on the extent to which the court should consider the parties' intentions, as well as the perceived validity and enforceability of the arbitration clause.

5.7 Jurisdiction Over Third Parties

Thai laws only permit a case to be brought to the arbitration process when the parties give their consent to the arbitration proceedings in line with the 2002 Arbitration Act. Therefore, in

the absence of a clear arbitration agreement in writing, there is no circumstance in which Thai laws would allow an arbitral tribunal to assume jurisdiction over those individuals or entities who do not consent to the arbitral proceeding.

6. Preliminary and Interim Relief

6.1 Types of Relief

The 2002 Arbitration Act does not provide the arbitral tribunal with the authority to grant interim relief. Even though some arbitration institutions' rules within Thailand permit arbitrators to grant interim measures, such orders inherently lack enforcement power and rely on the parties' compliance therewith.

Consequently, in a practical context, rather than appealing to the arbitral tribunal, a party should instead submit a request to a competent court to seek the issuance of interim remedies.

6.2 Role of Courts

The courts have the authority to grant interim relief in arbitral proceedings. If a party to an arbitration agreement wishes to protect their interests, they may file a motion requesting the competent court to issue an order imposing provisional measures before or during the arbitral proceedings. If the court determines that it would have been able to issue such an order had the proceedings been conducted in court, it may proceed as requested. The provisions governing provisional measures under the Civil Procedure Code (CPC) willll apply mutatis mutandis; thus, the court can also issue seizure orders, grant injunctions, and even issue orders requiring government authorities to suspend any registration related to the property in dispute.

It is worth noting that Thai courts are generally conservative when granting interim remedies. This is because interim remedies are considered to infringe on the rights of the opposing party prior to the conclusion of the proceedings. As such, when considering an interim remedy, Thai courts typically set a very high threshold in practice. This means they exercise their discretion sparingly and usually require a strong case to be presented before they will grant such remedies.

Thai legislation does not include any provisions for the use of emergency arbitrators.

The 2002 Arbitration Act does not specifically address whether the right to apply for an order of interim relief from the competent Thai court is available when the arbitration is seated in a foreign jurisdiction. Nonetheless, if the interim relief being sought falls within the jurisdiction of the Thai competent court (ie, assets are located in Thailand) and the court determines that the case has sufficient grounds and it would have been able to issue such an order had the proceedings been conducted in court, it may proceed as requested.

6.3 Security for Costs

Thailand incorporates a provision within the CPC analogous to the concept of security for costs. However, this provision only empowers the respondent to seek such a remedy.

If a respondent desires to seek this form of interim relief, they must file an application with the court requesting the claimant to deposit a sum of money or furnish a guarantee to secure the payment of court fees or costs, which the claimant might be liable for should they lose the case. The burden lies with the respondent to demonstrate that either:

- the claimant is not a resident of Thailand and does not possess any assets within the country; or
- there is reasonable cause to believe the claimant would not be able to pay the court fees if they were to lose the case.

7. Procedure

7.1 Governing Rules

In Thailand, parties are at liberty to choose the arbitration rules that would govern the conduct of the proceedings, so as long as they are not contrary to the mandatory provisions of the 2002 Arbitration Act.

Parties may choose institutional rules as they often provide more detailed procedural guidelines compared to the 2002 Arbitration Act. International conventions to which Thailand is a party, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"), may also affect the procedure and enforcement of arbitration in Thailand – particularly with regard to international arbitration.

It is important to note that Thai law also has certain mandatory rules that cannot be overridden by agreement between the parties – for example, the rules concerning public policy and order.

7.2 Procedural Steps

The 2002 Arbitration Act and the rules of both the main arbitral institutes in Thailand, the TAI and the Thailand Arbitration Center (THAC), specify the procedural steps of arbitral proceedings.

7.3 Powers and Duties of Arbitrators

The 2002 Arbitration Act provides that the arbitral tribunal has the power to conduct any proceedings in any manner it deems appropriate. This includes the power to determine the admissibility and weight of the evidence presented by each party, but within limits – the arbitral tribunal must apply the laws of evidence under the CPC to arbitration proceedings mutatis mutandis.

In addition to the foregoing, arbitrators have a duty to uphold impartiality and independence at all times and must possess the qualifications stipulated by the arbitration agreement. If the parties to the contract agree that an agency established for dispute resolution via arbitration is to conduct the proceedings, the arbitrator should also meet the qualifications required by that agency.

In essence, this duty imposes the obligation to disclose any such circumstances that might raise doubts about impartiality or independence. Such disclosure should be made as soon as these circumstances become known and should be consistently updated throughout the arbitral proceedings. If the parties are already aware of these circumstances, the arbitrator need not make any further disclosure. Failure to make these necessary disclosures can lead to the arbitrator's disqualification by the Supreme Court (Judgment No 2231-2233/2553).

Moreover, Section 23 of the 2002 Arbitration Act holds the arbitrator liable for any civil actions that they conduct in their capacity as arbitrator if:

- such actions are carried out with the intention to cause harm; or
- such actions result from gross negligence, thereby causing damage to any party involved in the arbitration.

7.4 Legal Representatives

National legal representatives are not subject to any additional eligibility criteria beyond what is generally expected for practising law within the country.

However, the 2019 amendments to the 2002 Arbitration Act allow for the appointment of foreigners as representatives in arbitration proceedings, provided that such foreign representatives have fulfilled the appropriate visa and/or work permit requirements in order to participate in arbitration proceedings in Thailand. Nevertheless, it is still prohibited for foreign representatives to act as representatives in arbitration proceedings governed by Thai law.

8. Evidence

8.1 Collection and Submission of Evidence

Under the CPC, each of the parties are required to submit to the court a list of evidence they plan to use in their case within the timeline specified by the CPC, unless there are sufficient grounds for such party not being able to submit with the timeline specified.

In essence, a list of evidence is a document itemising witnesses and evidence that a party intends to adduce to the court. This serves the purpose of informing the opposing party in a timely manner about the documentary evidence and witnesses that the presenting party intends to rely on. As per the CPC, parties must submit their initial list of evidence to both the court and the opposing party at least seven days before the date of the evidentiary hearing. Furthermore, any additional lists of evidence should be submitted no later than 15 days from the first hearing date. Any evidence that is not declared as part of an accepted list of evidence can be objected to by the court or challenged by the opposing party.

For evidence in their possession, parties must submit this evidence to the court and provide copies thereof to the opposing parties. For evidence not in their possession, they can request the court to issue a subpoena. This subpoena directs the holder of the desired evidence to submit it to the court within a designated timeframe.

Notably, documents intended to be used in the cross-examination process are exempt from being listed in the list of evidence and they do not need to be submitted to the opposing party in advance. This allows for some degree of flexibility and unpredictability in the cross-examination process.

8.2 Rules of Evidence

The laws of evidence under the CPC must apply to arbitral proceedings mutatis mutandis. Therefore, the CPC applies to arbitral proceedings conducted in Thailand, which are the same rules of evidence that apply to domestic matters.

8.3 Powers of Compulsion

Under the 2002 Arbitration Act, an arbitrator does not have the powers of compulsion to order the production of documents or require the attendance of witnesses. Any document submission is strictly voluntary and there are no penalties for failure to comply.

If a party wishes to request evidence from any third party or summon a third party to the hearing, such party must file an application with the court to issue a summons.

9. Confidentiality

9.1 Extent of Confidentiality

While the 2002 Arbitration Act does not explicitly address confidentiality, it can be assured through agreement between the involved parties, the terms of reference, or the rules of the arbitral institution. By way of an example, Article 36 of the TAI Arbitration Rules maintains that all arbitration proceedings, claims, defences, documents, evidence, orders, and awards must remain confidential. Disclosure is only permitted with the consent of the parties, for protection of legal rights, enforcement of or challenging an award, or under a legal duty to disclose.

Similarly, Article 87 of the THAC Rules 2015 also reinforces confidentiality in arbitration proceedings. Exceptions are made for instances such as enforcing or setting aside an award, complying with a court order or legal provisions, enforcing a legal right, or complying with a regulatory entity's request related to arbitration proceedings. Confidentiality extends to all aspects of the proceedings, including the names of arbitrators, statements, evidence, documents, and the award itself – unless such information is already in the public domain.

10. The Award

10.1 Legal Requirements

The arbitral tribunal in Thailand will make decisions according to the terms of the contract, while also considering the relevant trade usage in the event of a trade dispute.

In terms of decision-making, all awards, orders, and rulings are determined by a majority vote – unless otherwise agreed between the parties. If a majority cannot be reached, the chair of the arbitral tribunal has the authority to make the decision. Procedural questions are also decided by the chair if authorised by the parties or all members of the arbitral tribunal.

The tribunal's award must be in writing and signed by the tribunal members. If there is more than one arbitrator, signatures from the majority will suffice if the reason for any missing signature(s) is given. The award must clearly state the reasons for its decisions, unless the parties agree otherwise. However, it cannot decide on matters beyond the scope of the arbitration agreement or the relief sought by the parties, except for an award made in accordance with a settlement agreement or the fixing of arbitration fees or arbitrator remuneration.

The award must also state the date and place of arbitration and is considered made at that place. After the award is made, a copy is sent to all parties involved without any time limits on delivery specified.

10.2 Types of Remedies

There are no specific limitations imposed on the types of remedies available under Thai law, as long as they comply with the laws of Thailand and do not contravene public order or the good morals of the people of Thailand.

10.3 Recovering Interest and Legal Costs

Successful parties can recover interest and legal costs without significant restrictions. In the event that the enforcement is contested, the Thai courts may take a more conservative stance to reflect amounts more fitting to the local context – although they do not apply a cost-sharing approach. If these remedies align with Thai laws and do not contradict public order or good mor-

als, they can be included in the enforcement of the award.

11. Review of an Award

11.1 Grounds for Appeal

Under the provisions of the 2002 Arbitration Act, an arbitral award is not subject to appeal. Therefore, if a party is dissatisfied with the award, they may seek to challenge it by submitting a motion to set aside the award or refuse its enforcement.

The grounds for setting aside the award and refusing its enforcement are generally similar. These grounds may include situations where the award involves a dispute that is not capable of settlement by arbitration, the enforcement of the award would be contrary to public policy, the award deals with a dispute that falls outside the scope of the arbitration agreement, or the composition of the arbitral tribunal or the conduct of the arbitral proceedings is not in accordance with the agreement of the parties.

After the court of first instance issues a judgment on the request for enforcement of an arbitral award, a dissatisfied party may have the option of appealing the judgment directly to the Supreme Court. However, the grounds for appeal are limited and include the following:

- the recognition or enforcement of the award is contrary to public policy;
- the order or judgment is contrary to provisions of law relating to public policy;
- the order or judgment is not in accordance with the arbitral award;
- the judge who presided over the case provided a dissenting opinion; or
- the order pertains to provisional measures.

11.2 Excluding/Expanding the Scope of Appeal

Under Thai law, the scope of appeal or challenge regarding arbitral awards cannot be limited or expanded by the parties.

11.3 Standard of Judicial Review

The court's review of an arbitral award during the enforcement stage is limited, and it does not include a review of the merits of the case. The court can deny the enforcement of an arbitral award only on specific grounds. Please refer to **11.1 Grounds for Appeal**.

12. Enforcement of an Award

12.1 New York Convention

Thailand has ratified the the New York Convention. Consequently, arbitral awards issued in other countries that are also parties to either the 1927 Geneva Convention or the New York Convention are enforceable in Thailand.

12.2 Enforcement Procedure

A party can apply for the enforcement of an arbitration award at the competent court within three years from the date the award becomes enforceable by filing a motion with the court along with the following documents:

- an original or certified copy of the arbitral award;
- an original or certified copy of the relevant arbitration agreement; and
- a Thai translation of the arbitral award and the arbitration agreement, which must be prepared by a certified translator or by a Thai envoy or consul in the country where the award or agreement was made.

The competent courts for submitting the motion to enforce an arbitral award include the following:

- the Central Intellectual Property and International Trade Court or the Regional Intellectual Property and International Trade Court;
- a court situated in the jurisdiction where the matters in dispute occurred;
- a court situated in the jurisdiction where either party has established domicile; or
- a court that has jurisdiction over the dispute submitted to the arbitration process.

Upon receiving the request, the court will forward the application to the opposing party, so as to give them an opportunity to file an objection. The opposing party has 30 days to file the objection, which can be extended with the court's approval.

Once an objection is filed, the court will schedule one or more hearings to address the issues of the case and set trial dates for examining the evidence.

The court will conduct evidence examination trials, where both parties present their evidence and cross-examine the evidence presented by the opposing party. After reviewing the arbitral award and ensuring its compliance with Thai law, the court will render a judgment on whether or not to enforce the award.

The judgment of the court of first instance is immediately enforceable, unless one party files an appeal with the court of appeal and requests a stay of the execution or enforcement process. If the court of appeal orders a stay, the execution or enforcement process will be suspended until the case is finalised.

The judgment can be appealed to the Supreme Court on limited grounds, such as when:

- the recognition or enforcement of the award would be contrary to public order;
- the judgment contradicts legal provisions related to public order;
- the judgment conflicts with the arbitral award itself; or
- the presiding judge has provided conflicting opinions in the judgment.

The 2002 Arbitration Act does not explicitly specify whether or not the Thai courts have the authority to annul a foreign arbitral award. Supreme Court Ruling (Case No 5511-5512/2552 (2009) ruled that the Thai courts can set aside the foreign arbitral award. However, this ruling was revisited in 2015 by Supreme Court Ruling (Case No 9476/2558), which stated that the Thai courts cannot set aside the foreign arbitral award – given that the 2002 Arbitration Act only bestows on the Thai courts the authority to annul an award that was issued at the seat of arbitration.

Regardless of the country in which the arbitral award was made, the court has the authority to deny enforcement if the party against whom enforcement is sought provides evidence that the award has been set aside by the courts at the seat of arbitration.

In situations where an award is currently undergoing set-aside proceedings at the seat of arbitration, the court has the discretion to delay the enforcement hearing as it deems necessary and appropriate.

According to the 2002 Arbitration Act, the Thai courts cannot raise a defence of sovereign immunity at the enforcement stage, unless the

recognition or enforcement of such award will be against public order or the good morals of the people of Thailand.

12.3 Approach of the Courts

In general, Thai courts have a pro-enforcement approach when it comes to the recognition and enforcement of arbitral awards. There are only limited circumstances where the court has refused to recognise or enforce an arbitral award based on public policy or other grounds.

13. Miscellaneous

13.1 Class Action or Group Arbitration

Class action arbitrations are allowed in Thailand under the Regulation of the Office of the Judiciary Governing Arbitration, Arbitration Institute (No 3) BE 2563. The limitations or requirements for the arbitrability of such claims are similar to those for regular arbitration, with the stipulation that there must be at least three claimants pursuing a claim under the same rights, based on identical facts and legal grounds.

13.2 Ethical Codes

Please refer to **4.1 Limits on Selection**.

13.3 Third-Party Funding

In Thailand, there are no specific laws or regulations that explicitly prohibit third-party funding in arbitration cases. However, Thai courts have historically had a negative view of third-party funding – positing that a party who has no direct interest in a matter, yet still seeks to claim any proceeds, is acting immorally and contravening public policy.

13.4 Consolidation

Under the 2002 Arbitration Act, the power of arbitral tribunals or courts to consolidate separate arbitral proceedings is not explicitly specified. However, it is worth noting that Article 13 of the TAI Rules 2017 grants the TAI the authority to consolidate proceedings – even if the arbitration agreements are not identical – based on the criteria of convenience.

The TAI Rules 2017 provide the TAI with broad discretion in determining whether to consolidate separate arbitral proceedings. This discretion appears to be wider than the powers granted to some other arbitral institutions in relation to consolidation. Nevertheless, it remains to be seen how the discretion will be exercised by the TAI.

In addition, it is important to consider the potential challenges that may arise when consolidating proceedings where the arbitration agreements are not identical. There is a risk that a decision to consolidate – and any subsequent award resulting from the consolidated proceedings – could be subject to a challenge in court, either in Thailand or in other jurisdictions during the enforcement process.

13.5 Binding of Third Parties

Third parties cannot be bound by an arbitration agreement or award.

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