



## Legal Alert | Dispute Resolution

### ENFORCEMENT AND SETTING ASIDE OF AN ARBITRAL AWARD IN THAILAND

February 2021

#### What is Arbitration?

**Arbitration is one of the most effective Alternative Dispute Resolution ("ADR") approaches to resolving disputes outside the courts.** Arbitration is often considered for the resolution of disputes, most commonly used in relation to international commercial transactions.

The parties to a contract can mutually agree to settle all or certain disputes arising between them by an arbitral tribunal, known as an arbitration agreement. In essence, the arbitral award rendered by the arbitral tribunal will bind the parties, which will be recognized and enforced by the courts of contracting states under the Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958), commonly known as the "New York Convention". Thailand is one of contracting states to the New York Convention and has also adopted UNCITRAL Model Law as well as the New York Convention as a model for Thai Arbitration Act B.E. 2545 (2002) (the "**Arbitration Act**").

Although all parties are bound to comply with the arbitral award, a party that is not satisfied with the outcome of the arbitral award can apply the following methods to challenge the award;

- (a) wait for the other party to file a application for enforcement of the arbitral award with a competent court and then file an objection to the enforcement; or
- (b) request a competent court to set aside the arbitral award.

In a nutshell, this newsletter will provide an overview on the enforcement and setting aside of an arbitral award with Thai courts under the Arbitration Act.

#### Recognition and Enforcement of an Arbitral Award under the Arbitration Act

#### Get in touch

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Both the Thai arbitral award and the foreign arbitral award made in a country that is a contracting state to the New York Convention can be enforced by the Thai courts under the Arbitration Act. In terms of the enforcement process, the party seeking enforcement of the arbitral award has to file an application with the competent court, i.e. the Central Intellectual Property and International Trade Court or a court where arbitral proceedings are conducted or a court that has jurisdiction over the area in which each party is domiciled (the “**Court of First Instance**”), as the case may be, within three (3) years from the day the award is enforceable. It is important to note that the application requires full Thai translation of the arbitral award and arbitration agreement, and the original or certified original of the award and the arbitration agreement must be filed together with the application requesting to enforce the award, as required by the law.

Once the filing has been accepted, the court’s officer will then serve a copy of the application and relevant documents to the opposing party, and the opposing party is entitled to file its objection with supporting documents to the court. Thereafter, the witness examination session will be held, and the Court of First Instance will render a judgment on whether or not to enforce the award.

**The Arbitration Act sets forth certain legal grounds that the court can refuse the enforcement if the court views that:**

	(a) A party to the arbitration agreement was in some way incapacitated under the laws applicable to that party;
	(b) The arbitration agreement is not binding under the laws of the country agreed to by the parties, or failing any indication thereon, under the laws of Thailand;
	(c) The party submitting the application was not given proper and duly advance notice of the appointment of the arbitral tribunal nor of the arbitral proceedings or was otherwise unable to argue its case in the arbitral proceedings;
	(d) The award deals with a dispute that falls outside of the scope of the arbitration agreement or contains a ruling on matters beyond the scope of the arbitration agreement;
	(e) The composition of the arbitral tribunal or the arbitral proceedings was not as agreed to by the parties or, unless otherwise agreed by the parties;



(f) The arbitral award has not yet become binding nor has been set aside or suspended by a competent court or under the laws of the country where it was made;



(g) The award deals with a dispute not capable of settlement by arbitration under the law; or



(h) The recognition or enforcement of the award would be contrary to public policy.

### **Setting Aside an Arbitral Award under the Arbitration Act**

The opposing party has to file an application to set aside the arbitral award with the Court of First Instance within ninety (90) days after the receipt of the award. Thereafter, the overall process after filing the application will be similar to the enforcement application in terms of court proceedings.

In relation to the legal grounds for the party to request the court to set aside the arbitral award, the considerations are also similar to those on the objection of the enforcement of arbitral award as mentioned earlier, which includes the incapacity of a party and the invalidity of the arbitration agreement, issues related to the notification of the arbitrator's appointment or proceeding, impossibility for a party to present its case, the ruling contained in award beyond the scope of the arbitration agreement, issues concerning the composition of the arbitral tribunal or the arbitral proceeding, the arbitrability of the dispute and the enforcement that is contrary to public policy.

### **The Recent Ruling on Setting Aside Arbitral Award**

According to Section 40 of the Arbitration Act and Article VI of the New York Convention, Thai court is a competent authority for setting aside an arbitral award, which is made in Thailand, or under the law of Thailand. In this regard, the Supreme Court of Thailand recently ruled in the Supreme Court Judgement no. 8539/2560 that the Thai court only has the authority to set aside domestic awards. Based on the latest Supreme Court judgment and interpretation of the Arbitration Act, it is, therefore, considered that the Thai court has no authority to set aside a foreign award.

### **Court's Fee**

The court's fee of enforcement or setting aside of an arbitral award not exceeding THB 50 million is equal to 0.5% (for a domestic award) and 1% (for a foreign award) of the arbitration award up to a maximum of THB 50,000 (for a domestic award) and THB 100,000 (for a foreign award) and

## **About Us**

### **Dispute Resolution, Litigation and Arbitration Practice Group**

#### **Our latest engagement**

Our highly skilled team of business savvy litigation and dispute resolution lawyers are driven by an unwavering determination to achieve the best commercial and strategic outcomes for clients who are involved in business disputes and other contentious matters. Our experienced litigators regularly appear before all levels of the Thai Courts as well as in national and international arbitration proceedings.

We recently assisted our client, Thailand's largest telecommunication operator in a successful dismissal by the Arbitral tribunal on a dispute in the allegation of transferring telecom equipment, which the opposing party claimed THB 13.4 billion and an additional claim for opportunity loss of THB 116 million per month with 7.5 percent interest per year in the Arbitration Institute.

the amount claimed which exceeds THB 50 million will be subject to an additional court charge of 0.1% for both domestic and foreign award.

For ease of reference, a diagram illustrating the key milestones and tentative timeframe associated with enforcement and setting aside the process of an arbitral award in the Court of First Instance is shown in **Appendix 1.**

For more information on issues related to international and domestic arbitration, please do not hesitate to contact our Dispute Resolution, Litigation and Arbitration Practice or alternatively, contact our authors.

## Appendix 1

### Tentative Timeframe - Enforcement and Setting Aside of an Arbitral Award in Thailand

#### *Court of the first instance*



#### **Remark:**

\* Hearings for mediation session may be scheduled by the court upon consent of the parties.

\*\* After the court of first instance renders the judgment, the losing party may entitle to appeal the court's judgment to the Supreme Court within one (1) month from the date of pronouncement of the judgment. The process of the Supreme Court would take approximately 12 – 18 months.

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