

ARBITRATION ACT, B.E. 2530 (1987)

Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 19th day of July B.E.2530 (1987);

Being the 42nd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is deemed expedient to enact the law governing out-of-court arbitration;

Be it, therefore, enacted by the King, by and with the advice and consent of the House of Parliament as follows:

Section 1

This Act shall be called the "Arbitration Act, B.E. 2530 (1987)".

Section 2

This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3

Whenever a reference is made by any law to the provisions of the Civil Procedure Code relating to out-of-court arbitration, such reference shall be deemed to have been made to this Act.

Section 4

The Minister of Justice shall take charge and control of the execution of this Act.

Chapter 1

Arbitration Agreement

Section 5

Arbitration agreement means an agreement or an arbitration clause in a contract whereby the parties agree to submit present or future civil disputes to arbitration, irrespective of whether there being the designation of an arbitrator.

Section 6

An arbitration agreement shall be binding upon the parties only when there is evidence thereof in writing, or there appears an agreement in an exchange of letters, telegrams, telexes, or other documents of the similar nature.

Section 7

The validity of an arbitration agreement and the appointment of arbitrator shall not be affected even it appears thereafter that any party thereto is dead, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent.

Section 8

When there is a transfer of any claim or liability, the existing arbitration agreement concerning such claim or liability shall accordingly be vested in the transferee.

Section 9

An arbitration agreement may stipulate that a dispute be submitted to arbitration within a period which is shorter than the period of prescription under the law. However, the violation of such stipulation shall only result in the forfeiture of the right to arbitration. It shall not preclude the right of the party concerned to bring an action in court.

When there is an extraordinary circumstance, the party concerned may file an application requesting a competent court to extend the period of time under paragraph one. Such application shall be filed before the expiration of the said period of time, except in case of force majeure.

Section 10

In case where any party commences any legal proceedings in court against any other party to the arbitration agreement in respect of any dispute agreed to be referred to arbitration, the party against whom the legal proceedings are commenced may file with the court a petition prior to the date of taking of evidence, or prior to the passing of the judgment in case where there is no taking of evidence, for an order to stay the legal proceedings, so that the parties may first proceed with the arbitration proceedings. Upon the court having completed the enquiry and it appears that there is nothing that causes the arbitration agreement to be null and void, inoperative or unenforceable by any other reasons or incapable of being performed, the court shall make an order staying the proceedings.

Chapter 2

Arbitrator and Umpire

Section 11

There may be one or several arbitrators. In case where there are several arbitrators, each party shall appoint an equal number.

In case where the arbitration agreement does not specify the number of arbitrator, the parties shall each appoint one arbitrator, and the said arbitrators shall jointly appoint a third person as additional arbitrator.

Section 12

Unless otherwise specified in the arbitration agreement, the appointment of arbitrator shall be carried out within a reasonable time with the consent of the person to be appointed. The appointment shall be made in writing, dated and signed by the person appointing the arbitrator.

Section 13

In case where the person who is to appoint an arbitrator fails to do so within the time stipulated in the arbitration agreement, or within a reasonable time under Section 12, or there is a circumstance indicating that the said person is not willing to appoint an arbitrator, any party may then file a petition with a competent court for an order appointing an arbitrator.

Section 14

No arbitrator who has been duly appointed may have his appointment revoked except with the consent of all the parties.

A duly appointed arbitrator may be challenged in a competent court. An arbitrator appointed by the court or by a third person may be challenged by any party. An arbitrator appointed by one of the parties may be challenged by the other party. No party shall challenge the arbitrator whom he has appointed or whom he has jointly appointed, except where the said party did not know of or could not have known of the grounds for challenge at the time of appointment.

The grounds for challenge under paragraph two shall be the same as for challenging a judge under the Civil Procedure Code or other grounds which are of such serious nature as may prejudice the impartiality of the hearing or the rendering of an award.

In case where an arbitrator is challenged under paragraph two, the provisions governing the challenge of a judge under the Civil Procedure Code shall apply *mutatis mutandis*. If the challenge is sustained, a new arbitrator shall be appointed to replace the challenged arbitrator by the same method of appointment as that of the challenged arbitrator.

Section 15

In case where the arbitration agreement stipulates that there shall be one or more arbitrators, or that a third person shall appoint an arbitrator, and the said person refuses to accept the appointment, or is dead, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent prior to the acceptance of the appointment or prior to the appointment, as the case may be, it shall be deemed as if there were no designations of arbitrator or of the person to appoint such arbitrator.

If an arbitrator who has accepted the appointment dies, against whose property a final receiving order has been made, has been adjudged incompetent or quasi-incompetent, a new arbitrator shall be appointed in lieu thereof, by the same method of appointment as that of the said arbitrator.

In case where an arbitrator who has accepted the appointment is unable, unwilling or ignores to perform his duties within a reasonable time, any party may file with a competent court a petition for an order appointing a new arbitrator in lieu of the said arbitrator.

Section 16

An arbitral award shall be rendered by a majority of votes. If it is not possible to obtain a majority, the arbitrators shall jointly appoint an umpire. In case where the arbitrators fail to appoint an umpire, any arbitrator or any party may petition a competent court for an order appointing an umpire, in which case Section 14 and Section 15 shall be applied *mutatis mutandis*.

Chapter 3

Arbitration Proceedings

Section 17

Before rendering an award, the arbitrator shall hear the case presented by the parties and have the power to make an enquiry into the dispute submitted as he deems appropriate.

Unless otherwise provided by the arbitration agreement or law, an arbitrator shall have the power to conduct any procedure as he deems appropriate taking the principle of natural justice as prime consideration.

Section 18

Where resort to the power of the court is required in regard to the summons of a witness, the administration of oath, the order for submission of any document or material, the application

of provisional measures for the protection of interests of the party during arbitration proceedings, or the giving of a preliminary decision on any question of law, an arbitrator may file a petition requesting a competent court to conduct the said proceedings. If the court is of the opinion that such proceedings could have been carried out by the court if a legal action were brought, it shall proceed in compliance with the petition, provided that the provisions of the Civil Procedure Code in the part relating to such proceedings shall apply mutatis mutandis.

Section 19

In the arbitration proceedings, a party may act on his own behalf or authorize a person or persons or appoint one or more attorneys to act on his behalf.

Chapter 4

Award and Enforcement of Award

Section 20

An award shall be made in writing, signed by the arbitrator or the umpire, as the case may be, and shall clearly state the reasons for all decisions. However, it shall not prescribe or decide on any matters falling beyond the scope of the arbitration agreement or the relief sought by the party, except in fixing the fees, expenses or remuneration of the arbitrator or umpire under Section 27, or in case where the award is rendered in accordance with the agreement or the compromise between the parties.

Section 21

Except where the parties have agreed otherwise, an award shall be rendered within one hundred and eighty days from the day on which the last arbitrator or umpire was appointed.

The parties may agree to extend the period of one hundred and eighty days or the period otherwise agreed upon under paragraph one. If an agreement cannot be reached, either party, an arbitrator or umpire may file a petition with a competent court and the court shall have the power to order the extension of the said period as it deems appropriate.

No party may challenge the execution of an arbitral award on the grounds that the arbitrator or the umpire has failed to render the award within the time prescribed under paragraph one or paragraph two unless he has protested such failure in writing to the arbitrator or the umpire within fifteen days from the expiration of the period under paragraph one or paragraph two and prior to the submission of a copy of the award to the said party.

Copies of the award so rendered shall be sent to all the parties concerned by the arbitrator or the umpire.

Section 22

Subject to Section 23 and the arbitration agreement, the arbitral award shall be final and binding on the parties when a copy thereof has been sent to the parties under Section 21 paragraph four.

When an arbitral award contains an insignificant error or mistake, if the arbitrator or umpire thinks fit or upon the application of any party concerned, the arbitrator or umpire may correct such error or mistake.

Section 23

In case where a party refuses to comply, the arbitral award may not be enforced unless the other party files a request with a competent court for a judgment confirming the award. The

request shall be filed within one year from the date of sending the copy of the award to the parties under Section 21 paragraph four.

Upon receipt of the request under paragraph one, the court shall hold an enquiry and give judgment without delay, provided that the party against whom the award is rendered had an opportunity to challenge the request.

Section 24

In case where the court is of the opinion that an award is contrary to the law governing the dispute, is the result of any unjustified act or procedure or is outside the scope of the binding arbitration agreement or relief sought by the party, the court may deny the enforcement of the award.

In case where an award contains an insignificant error and may be corrected, such as erroneous calculation or erroneous reference to any person or property, the court may correct the error and give judgment for the enforcement of the corrected award.

Section 25

Unless otherwise provided in the arbitration agreement, a competent court under this Act is the court having jurisdiction over the place where the arbitration proceedings take place, having jurisdiction over the domicile of a party or the court which has jurisdiction over the dispute submitted for arbitration.

Section 26

No appeal shall lie against the order or judgment of the court unless:

- (1) There is an allegation that the arbitrator or umpire did not act in good faith or that fraud was committed by any party;
- (2) The order or judgment is contrary to the provisions of law governing public order;
- (3) The order or judgment is not in accordance with the arbitral award;
- (4) The judge who held the enquiry of the case has given a dissenting opinion or has certified that there are reasonable grounds for appeal; or
- (5) It is an order concerning the provisional measures for the protection of interests of the party pending arbitration proceedings under Section 18.

Chapter 5

Fees Expenses and Remuneration

Section 27

Unless otherwise agreed in the arbitration agreement, the fees and expenses incidental to arbitration proceedings and the remuneration for arbitrator umpire, excluding attorney's fees and expenses, shall be in accordance with that stipulated in the award of the arbitrator or umpire, as the case may be. However regardless of what has been agreed in the arbitration agreement or stipulated in the arbitral award, the said fees, expenses or remuneration may be reviewed and adjusted by a competent court, should it deem appropriate, basing upon the principle of reasonableness.

In case where the said fees, expenses or remuneration have not been fixed in the award, any party, the arbitrator or umpire may petition a competent court for a ruling on the arbitration fees, expenses and remuneration for the arbitrator or umpire.

Chapter 6

Recognition and Enforcement of Foreign Arbitral Award

Section 28

Foreign arbitration means an arbitration conducted wholly or mainly outside the Kingdom of Thailand and any party thereto is not of Thai national.

Section 29

A foreign arbitral award shall be recognized and enforced in the Kingdom of Thailand only if it is covered by the treaty, convention or international agreement to which Thailand is a party, and it shall have effect only as far as Thailand accedes to be bound.

A foreign arbitral award which is covered by a treaty, convention or international agreement to which Thailand becomes a party after the date of entry into force of this Act may be recognized and enforced in the Kingdom of Thailand under this Act, subject to the conditions prescribed by the Royal Decree.

Section 30

A party seeking to execute a foreign arbitral award under Section 29 may file a request with a competent court within a period of one year from the date of the sending of a copy of the award to the parties under Section 21 paragraph four.

The provisions of Section 23 paragraph two shall apply mutatis mutandis to the court proceedings.

Section 31

An applicant for a judgment on foreign arbitral award shall produce the following documents:

- (1) Original copy of the award or a certified copy thereof;
- (2) Original copy of the arbitration agreement or a certified copy thereof;
- (3) Translation in Thai of the award and arbitration agreement which must be certified by a sworn translator, an officer of the Ministry of Foreign Affairs, a diplomatic delegate or a Thai consul.

Section 32

An application for the execution of a foreign arbitral award under the auspices of the Convention for the Execution of Foreign Arbitral Awards, signed at Geneva, 26 September 1927, shall be sanctioned by the court if the party applying for the execution can prove that the award fulfills all the following conditions:

- (1) The award has been made in a territory of one of the High Contracting Parties to which the Convention for the Execution of Foreign Arbitral Awards, signed at Geneva, 26th September 1927 applies, and between persons who are subject to the jurisdiction of one of the High Contracting Parties;
- (2) The award has been made by virtue of an arbitration agreement sanctioned by the Protocol on Arbitration Clauses, signed at Geneva, 24th September 1923;
- (3) The award has been made in pursuance of an arbitration agreement which is valid under the law applicable thereto;
- (4) The award has been made by the Arbitral Tribunal provided for in the arbitration agreement or constituted in the manner agreed upon by the parties;

- (5) The award has been made in conformity with the law governing the arbitration procedure;
- (6) The subject matter of the award is capable of settlement by arbitration under Thai law;
- (7) The award is binding and final in the country in which it has been made;
- (8) The recognition or enforcement of the award is not contrary to Thai law or public policy or good morals.

Section 33

The court may refuse recognition and enforcement of the award under Section 32 if it appears to the court that:

- (1) The award has been annulled in the country in which it was made;
- (2) The party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented; or
- (3) The award does not deal with all the differences submitted to arbitration by the parties or contains decisions on matters beyond the scope of the arbitration agreement.

Section 34

An application for the execution of a foreign arbitral award under the auspices of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10th June 1958, may be denied by the court, if the party against whom the execution of the award is sought can prove that:

- (1) Any party to the arbitration agreement was, under the law applicable to him, under some incapacity;
- (2) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
- (3) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- (4) The award contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- (5) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (6) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made. If merely an application for the setting aside or suspension of the award has been made to a competent authority, the court where the enforcement of the award is sought may, if it deems appropriate, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Section 35

The court may refuse recognition and enforcement of the award under Section 34 if it appears before the court that the subject matter of the dispute is not capable of settlement by arbitration under Thai law, or that the recognition or enforcement of the award would be contrary to the public policy or good morals or the principle of international reciprocity.

Transitional Provisions

Section 36

The provisions of this Act shall not prejudice the validity of the arbitration agreements and arbitration proceedings which have been carried out prior to the date of entry into force of this Act.

Countersigned by

General Prem Tinasulanonda

Prime Minister

Disclaimer

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