

Enforcement of Arbitral Awards in Thailand

Introduction

Arbitration is an alternative dispute resolution whereby parties to a dispute settle the dispute by an arbitral tribunal without proceeding to a court trial, provided that the parties have made an arbitration agreement under Section 11 of the Arbitration Act B.E. 2562 (“AA”).

Arbitral Awards

An arbitral award is made by an arbitral tribunal. It is similar to a court judgment. Therefore, it is binding on and enforceable against the parties.

Form of Awards

An arbitral award must be made in writing and signed by members of the arbitral tribunal. The award must contain a clear statement of the reasons for making each of the decisions in the award unless otherwise agreed by the parties (Section 37, the AA).

Recognition and Enforcement of Awards

If the arbitral tribunal issues an award, the award is binding on the parties to the dispute. They must abide by the terms and conditions of the award in order to settle the dispute (Section 41, the AA).

Thailand is a member state of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“**New York Convention**”). An arbitral award made in a member state of the New York Convention is recognized and enforceable in Thailand.

If the losing party refuses to comply with the award, the arbitral tribunal and the winning party to the dispute cannot enforce the award. The winning party need to submit the award to the court for enforcement.

Courts of Jurisdiction

Under Section 9 of the AA, the competent courts for enforcement of arbitral awards are the Central Intellectual Property and International Trade Court in Bangkok, the Regional Intellectual Property and International Trade Courts, the court of the jurisdiction in which the arbitral proceedings are conducted, the court of the jurisdiction in which either party is domiciled, and the court which has jurisdiction over the dispute submitted to the arbitration.

If the dispute is related to an administrative contract, the court of jurisdiction is the relevant Administrative Court.

Application for Enforcement of Awards

Under Section 42 of the AA, the party who would like to enforce an arbitral award must file an application with the competent court within three years from the date on which the award is

enforceable. The application must be accompanied by the following documents:

1. Original or certified copy of the arbitral award and a Thai translation.
2. Original or certified copy of the arbitration agreement and a Thai translation.

The date on which the award is enforceable is the date on which all the parties start to have duties to comply with the award.

Refusal of Enforcement of Awards

Under Section 43 of the AA, the court may refuse enforcement of an arbitral award, irrespective of the country in which it was made, if the losing party can submit to the court a proof showing any of the followings;

1. A party to the arbitration agreement was under some incapacity under the law applicable to the party.
2. The arbitration agreement is not binding under the governing law agreed to by the parties or the law of the country where the arbitration was conducted.
3. The losing party was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings or if the losing party was otherwise unable to defend the case in the arbitral proceedings.
4. The award deals with a dispute not falling within the scope of the arbitration agreement or contains a decision on matter beyond the scope of the arbitration agreement.
5. The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, if not agreed otherwise by the parties, in accordance with the law of the country where the arbitral award was made.
6. The arbitral award has not yet become binding or has been set aside or suspended by a competent court or under the law of the country where the award was made.



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AUTHOR



Kowit Somwaiya
Managing Partner | **Bangkok**
kowit.somwaiya@lawplusltd.com



Thatchaya Bunnithithanakit
Associate | **Bangkok**
thatchaya.bunnithithanakit@lawplusltd.com

LawPlus Ltd.
Unit 1401, 14th Floor, Abdulrahim Place 990
Rama IV Road, Bangkok 10500, Thailand
Tel: +662 636 0662
Fax: +662 636 0663

LawPlus Myanmar Ltd.
Unit No. 520, 5th Floor, Hledan Centre
Corner of Pyay Road and Hledan Road, Kamayut Township,
Yangon, Myanmar
Tel: +95 (0)92 6111 7006
and +95 (0)92 6098 9752