



A Changing World: International Arbitration for Commercial Disputes in an Integrated ASEAN

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Commercial Arbitration Laws and Procedures Thailand versus Singapore

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Thailand

New York Convention

Arbitration Act B.E. 2545 (2002)

UNCITRAL Model Law

Singapore

New York Convention

International Arbitration Act

Arbitration Act

UNCITRAL Model Law



Thailand is a Civil Law jurisdiction and interpretation of the Arbitration Act B.E. 2545 (2002) is based on:

- The decisions of the Arbitrators or in the event of a deadlock between the appointed arbitrators then the Chairman of the arbitration tribunal;
- Supreme Court decisions on issues regarding the Arbitration Act brought before the court; and
- Supreme Court decisions that may provide guidance to the Arbitrators but are not binding.



Singapore is a Common Law jurisdiction and interpretation of the Arbitration Act and the International Arbitration Act is much more broad and can include:

- Court decisions and case law governing the issues in dispute;
- Documents providing external evidence of the drafter's intentions regarding the Act in question or the Model Law; and
- Any rules and procedures agreed on by the parties concerning the arbitration.

Thailand

- An arbitration agreement must have been made in writing and signed by the parties (may be in electronic form) or other means to demonstrate the applicability of arbitration; or
- By evidence showing that the parties have not disputed the applicability of arbitration in a statement of claim or defense; and
- The nature of the dispute falls within the purview of the arbitration agreement.

Singapore

- An arbitration agreement must be in writing, which is broadly defined to include both written and oral communication (if recorded); or
- Not disputing the applicability of arbitration following a claim being made or legal proceedings being initiated (which requires a reply from the other party) will be deemed as acceptance of arbitration; and
- The nature of the dispute falls within the purview of the arbitration agreement.

- Both Thailand and Singapore closely follow the Model Law on the requirements for submitting a statement of claim, these include:
 - The facts supporting the claim;
 - The points at the center of the dispute; and
 - The relief or remedy sought.

- However, under the Thai Arbitration Act a statement of claim ceases to be a claim under the Arbitration Act:
 - if the claim does not comply with the submission requirements; or
 - the claim is withdrawn by the claimant and the withdrawal is not disputed by the respondent.

➤ Potential Consequences:

- May affect the ability of the claimant to proceed with arbitration, if the arbitration agreement specifies a time limit for making a claim; and
- Provides the arbitrators with apparent authority to determine the sufficiency of the statement of claim and whether the statement of claim may be modified to perfect the claim if any deficiency is found.

Thailand

- The Arbitration Act B.E. 2545 (2002) specifies that arbitrators may determine what evidence is admissible but that this will be governed by the rules of evidence under the Thai Civil Procedure Code.

Singapore

- The Arbitration Act and the International Arbitration Act both provide that the arbitration tribunal and the arbitrators may determine the rules for procedure where there is no prior agreement between the parties.

What does this mean?

Evidence rules in Singapore:

- provide the arbitrators with broad authority to decide what evidence is acceptable or not acceptable, subject to an agreement between the parties on rules and procedures to be applied.

Evidence rules in Thailand require:

- The party relying on certain evidence must notify the other party of its intention to rely on this evidence.
- The evidence relate to facts that need to be proven by either party in the case.
- That a list of items of evidence to be presented, is submitted to the tribunal at least seven days before presentation of the evidence.

The arbitrators may, however, accept evidence not in accordance with the above requirements, should the arbitrators determine that including this evidence is necessary to serve the interests of justice.

Thailand

- An arbitrator, party, or the arbitration tribunal may request a subpoena for a witness to appear, nonetheless, the arbitrator and any party to the arbitration must obtain consent from the arbitration tribunal before a subpoena may be requested.

Singapore

- Any party may request the relevant court to issue a subpoena to compel the appearance of a witness.



What rights do the parties have to seek interim relief?

- In both Thailand and Singapore, before arbitration begins, a party may file for interim relief at a court of competent jurisdiction.
- In Thailand, if interim relief is granted, the party receiving interim relief must file a statement of claim with the relevant arbitration tribunal within 30 days (or any other period as determined by the court).
- This restriction does not apply under the Arbitration Act or the International Arbitration Act, although a court of competent jurisdiction may set this kind of time limit.

What are some of the practical considerations?

- Both Singapore and Thailand provide opportunities for interim relief.

BUT

- Will the courts or the arbitrators agree to interim relief?



In Singapore this will generally be based on a test with 3 criteria that must be satisfied :

- Claimant to make a prima facie case in its claim;
- Demonstrate the urgency of the claim; and
- Whether the claimant will suffer irreparable harm if the relief is not granted.

In Thailand similar considerations will be made by the court but claimants must also consider:

- Where the court is located (different provinces and local courts will vary widely);
- Whether the harm may be remedied by compensation as a counter to the interim relief request; and
- Whether compensation may be recoverable from the respondent.

Thailand

- Collection from funds or property held in accordance with the interim relief measure;
- Legal Execution Department;
- Asset Investigation;
- Details known to the claimant based upon evidence possessed by the claimant; and
- Collection Agencies.

Singapore

- Enforcement of judgment in the court of competent jurisdiction;
- Orders to compel the debtor or seizure of the debtor's assets; and
- Collection Agencies.

Both Singapore and Thailand are members of the New York Convention. This means that arbitration decisions are enforceable in the court of competent jurisdiction in any member country.



Singapore has a well developed arbitration market with different industry measures putting Singapore in the top 6 arbitration destinations worldwide.

Thailand recognizes the growing trend towards international arbitration with recent expansion of the non-governmental Thai Arbitration Center but this has yet to make a significant impact on the hosting of international arbitration tribunals to date.

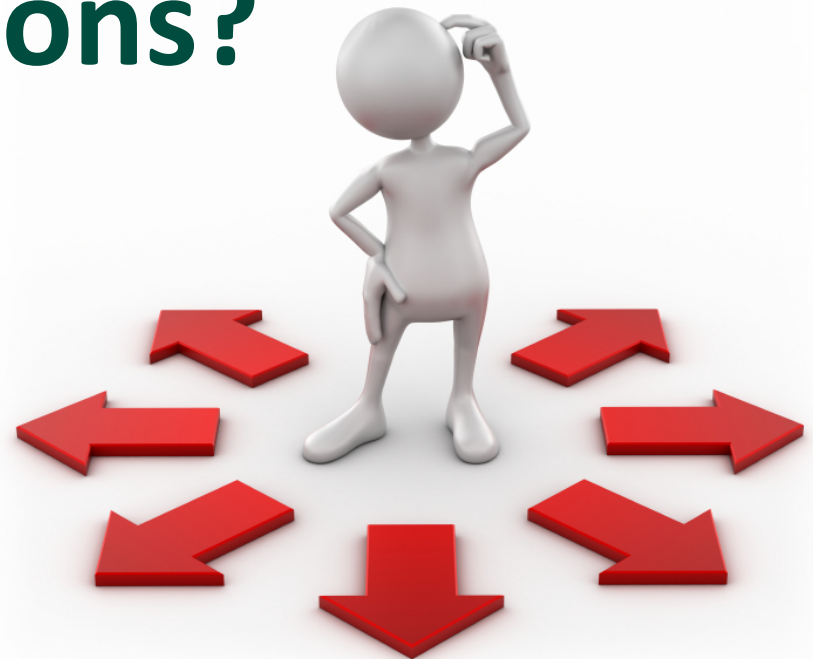
Singapore will continue to be a top destination for international arbitration because:

- The continuing increase of cross border transactions across Asia;
- Reliability of the legal system in Singapore; and
- The availability of experienced arbitrators to handle a variety of disputes.

Thailand will continue to develop its international arbitration capabilities:

- So to become a regional player in the hosting of international arbitration as Thailand strives towards becoming an ASEAN regional services center; but
- Will be limited due to the shortage of experienced arbitrators to handle disputes; and
- Improving international perceptions regarding the rule of law.

Questions?



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