

ARBITRATION ACT, B.E. 2545 (2002)

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Translation

BHUMIBOL ADULYADEJ, REX.

Given on the 23rd Day of April B.E. 2545;

Being the 57th Year of the Present Reign.

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

Whereas it is expedient to revise the law on arbitration;

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

Section 1.

This Act is called the “Arbitration Act, B.E. 2545 (2002)”

Section 2.

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

Section 3.

The Arbitration Act, B.E. 2530 shall be repealed.

Section 4.

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 5.

In this Act:

“Arbitral Tribunal” means a sole arbitrator or a panel of arbitrators;

“Court” means a body or any institution employing judicial power under the law of the state where the Court is located;

“Claim” includes a counterclaim, except the claim under Section 31 (1) and Section 38 paragraph two (1);

“Defense” includes the defense to a counterclaim, except the defense to the counterclaim under Section 31(2) and Section 38 paragraph two (1).

Section 6.

Subject to Section 34, in the case where the provisions of this Act authorize the parties to make any decision, the parties may entrust the third party or any agency to make such decision on their behalf.

In the case where the provisions of this Act refer to the fact that shall be, or may be, agreed upon by the parties, or to an agreement in any matters made by the parties, such agreement shall include the Arbitration Rules stipulated therein.

Section 7.

Unless otherwise agreed by the parties, a document delivered under the provisions of this Act shall be deemed to have been received, if it is delivered to the addressee personally or if it delivered at his or her place of business, domicile, or mailing address; if none of those could be found after making a reasonable inquiry, a document shall be deemed to have been received if it is delivered to the addressee’s last-known place of business, domicile, or mailing address by registered letter or advice of delivery in case of domestic delivery or by any other means which provide a record of the attempt to deliver it.

The provision of this Section shall not apply to the delivery of a document in the Court proceedings.

Section 8.

In the case where a party knows that the provisions of this Act may be derogated by an agreement between the parties, or the requirements under the arbitration agreement has not been complied with

by the others, and continues the arbitral proceedings without stating his or her objection thereto within a reasonable period or within the time-limited, it shall be deemed that such party has waived his right to object.

Section 9.

The Central Intellectual Property and International Trade Court, or the Region Intellectual Property and International Trade Court, the Court having jurisdiction over the place where the arbitration proceedings are being conducted, the Court having jurisdiction over the domicile of the parties, or the Court having jurisdiction to adjudicate the dispute raised to the arbitrator, shall be the competent Court under this Act.

Section 10.

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

Chapter I

Arbitration Agreement

Section 11.

An arbitration agreement means an agreement by which the parties agree to settle all or certain disputes which arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, by arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separated arbitration agreement.

An arbitration agreement shall be in writing and signed by the parties. In the case where an agreement is contained in an exchange of letters, facsimile, telegrams, telex, information with electronic signature, or other forms of communication which provide a record of the agreement, or in the case where the existence of an agreement is alleged in a claim or defense by one party and not denied by another, an arbitration agreement shall be deemed to be existed.

A contract, which refers to a document containing an arbitration clause with the purpose of making that clause, as a part thereof shall be deemed to have an arbitration agreement.

Section 12.

The perfection of an arbitration agreement and the appointment of arbitrators shall not be affected even any party is dead, dissolved, subjected to an absolute receivership order, or incompetent or quasi-incompetent by the Court order.

Section 13.

If any claim or liability has been transferred, the transferee shall be bound by an arbitration agreement related thereto.

Section 14.

In the case where an action in a matter which is the subject of a arbitration agreement is brought to the Court by one party without referring to the arbitral tribunal in accordance with an arbitration agreement, the others may submit, within the date for filing his or her statement or the period for filing his or her statement as prescribed by law, his or her request to dispose of the case and refer to arbitration to the competent Court. The Court shall, after making inquiries, dispose of the case, unless it appears that the arbitration agreement is void, inoperative, or incapable of being performed.

While the request is pending before the Court under paragraph one, the arbitral proceedings may be commenced by any party or may be continued by the arbitral tribunal.

Section 15.

In a contract between a government agency and private party, whether administrative contract or not, the parties thereto may agree to settle their disputes by arbitration. The parties to the contract shall be bound by such arbitration agreement.

Section 16.

The parties to the arbitration agreement may, before or during the arbitral proceedings, request the competent Court to impose a provisional measure in order to protect their interests. If the Court considers that such request, if filed to it, is within its jurisdiction, the Court shall consider the request. In this regards, the provisions of the law on Court proceedings related therewith shall be applied *mutatis mutandis*.

If an order imposing a provisional measure has been given upon request of the party under paragraph one and such party fails to refer to the arbitration within thirty days as from the date in which the Court having an order or within the period as prescribed by the Court, such order of the Court shall be deemed to be terminated upon the lapse of the aforesaid period.

Chapter II

Arbitral Tribunal

Section 17.

The arbitral tribunal shall compose of arbitrators in an odd number.

In the case where the parties determine the number of arbitrators in an even number, those arbitrators shall jointly appoint another arbitrator to be the Chairperson of the arbitral tribunal. The procedure on an appointment of the Chairperson of the arbitral tribunal shall be in accordance with Section 18 paragraph one (2).

If the parties are unable to agree on the number of arbitrators, there shall be a sole arbitrator.

Section 18.

Unless otherwise agreed by the parties, an appointment of the arbitral tribunal shall be made as follows:

(1) if the parties agree to have sole arbitrator but they are unable to agree on the arbitrator, the arbitrator shall be appointed by the competent Court upon request of a party;

(2) if the parties agree to have more than one arbitrator, each party shall appoint the arbitrators in an equal number, and those arbitrators shall then jointly appoint another arbitrator. If a party fails to appoint the arbitrators within thirty days as from the date of receiving a request to appoint the arbitrators from another party, or if the arbitrators appointed by each party fail to jointly appoint the Chairperson of the arbitral tribunal within thirty days as from the date of their appointment, the arbitrators or the Chairperson of the arbitral tribunal shall be appointed by the competent Court upon request of a party.

In the case where the appointment procedure agreed upon by the parties under paragraph one provides no means for securing the appointment, the arbitrator shall be appointed by the competent Court upon request of a party if it appears that:

(1) a party fails to act as required under the agreed procedure;

(2) the parties, or the arbitrators, are unable to reach an agreement under the agreed procedure;

(3) a third party, or any institution, fails to act as required under the agreed procedure.

Section 19.

Arbitrators shall be impartial and independent and shall have qualifications as specified by the arbitral agreement or, in the case where the parties appoint an institution established to settle disputes by arbitration, as specified by such institution.

A person being appointed as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless such circumstances have already been informed to the parties in advance by an arbitrator.

The parties may challenge an arbitrator if there is circumstance that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she has no qualifications as agreed to. A party could not challenge the arbitrator appointed by him or her, or in whose appointment he or she has participated, unless he or she has no knowledge on the grounds for challenge at the time of appointment.

Section 20.

Unless otherwise agreed by the parties, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the appointment of the arbitrator or after becoming aware of circumstances referred to in Section 19 paragraph three, submit a written statement of the reasons for the challenge to the arbitral tribunal. If the challenged arbitrator refuses to withdraw from his or her office, or the other party refuses the challenge, the arbitral tribunal shall decide on the challenge.

If a challenge under any procedure agreed upon by the parties or under the procedure as prescribed in paragraph one is not successful, or in the case of a sole arbitrator, the challenging party may request the competent Court within thirty days as from the date of receiving a written decision on the challenge, or as from the date the appointment of arbitrator, or as from the date the circumstances as prescribed in Section 19 paragraph three has known to him or her, as the case may be. After having inquired the request, the Court shall have an order to allow or dismiss the request. During the Court proceedings, the arbitral tribunal and the challenged arbitrator may continue the arbitral proceedings and make an award, unless the Court otherwise orders.

In the case of necessity, the arbitral tribunal may extend the period for challenging the arbitrator under paragraph one for not more than fifteen days.

Section 21.

The mandate of the arbitrator terminates upon his or her death.

In the case where a person appointed, or will be appointed, to be an arbitrator becomes unable to perform his or her functions, whether he or she rejects the appointment, being under absolute receivership, being incompetent or quasi-incompetent by the Court order, or fails to perform his or her functions within reasonable period of time for other reasons, his or her mandate as an arbitrator shall terminate upon his or her withdrawal from office or upon an agreement between the parties. If there is an argument on these grounds, any party may request the competent Court to decide on the termination of the mandate.

Subject to paragraph two or Section 20 paragraph one, the withdrawal from office of an arbitrator or an agreement between the parties to terminate an arbitrator shall not be deemed as an acceptance of the grounds under paragraph two or under Section 19 paragraph three.

Section 22.

If the mandate of the arbitrator terminates upon the grounds as prescribed in Section 20 or Section 21, or upon the withdrawal from office of an arbitrator, or upon an agreement between the parties to terminate an arbitrator, or upon other grounds, a substitute arbitrator shall be appointed according to the procedure as imposed for the appointment of the arbitrator.

Section 23.

The arbitrator shall not be responsible for any civil liability on the carrying out of his or her functions as the arbitrator, except where he or she acts willfully, or with gross-negligence, and such acts cause damages to any party.

Any arbitrator who demands, receives, or agrees to receive assets or any other benefits for himself or herself or other persons, without any lawful cause, in order to act or refrain from acting his or her functions, shall be liable to imprisonment for a term not exceeding ten years, or to a fine not exceeding one hundred thousand Baht, or to both.

Any person who provides, offers to provide, or promise to provide assets or any other benefits to the arbitrator to induce him or her to act, refrain from acting, or delay any act, which contrary to his or her functions shall be liable to imprisonment for a term not exceeding ten years, or to a fine not exceeding one hundred thousand Baht, or to both.

Chapter III

Jurisdiction of Arbitral Tribunal

Section 24.

The arbitral tribunal may adjudicate its own jurisdiction, including the existence or validity of the arbitration agreement, the validity of the appointment of the arbitral tribunal, and any disputes within its jurisdiction. For this purpose, it shall be deemed that an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is void or invalid shall not affect the invalidity of the arbitration clause.

An objection on the jurisdiction of the arbitral tribunal shall be made no later than the date for submission of the statement of defense. A party shall not be precluded from making an objection by the fact that he or she has appointed, or participated in the appointment of an arbitrator. An objection that the arbitral tribunal performs its functions ultra vires shall be raised forthwith by a party when the ground of such objection occurred during the arbitral proceedings. If there is a reasonable delay in making such objection, the arbitral tribunal may allow the parties to make an objection after the prescribed period.

The arbitral tribunal may adjudicate an objection on its jurisdiction either as a preliminary question or in an award on the merits. If the arbitral tribunal adjudicates as a preliminary question that it has jurisdiction, any party may request, within thirty days as from the date of receiving the notice of such adjudication, the competent Court to decide the matter. While such a request is pending before the Court, the arbitral tribunal may continue the arbitral proceedings and make an award.

Chapter IV

Conduct of Arbitral Proceedings

Section 25.

The parties shall, in the arbitral proceedings, be treated equally and shall be given an opportunity to present witnesses, evidences and defenses as suitable for the circumstances of the case.

If there is no agreement between the parties or there is no provision of this Act to cope with, the arbitral tribunal may conduct the arbitral proceedings as it think fit. The arbitral tribunal, in this case, shall be empowered to determine the admissibility and weight of any evidence.

For the purpose of this chapter, the arbitral tribunal may apply the provisions on witness and evidence of the Civil Procedure Code to the arbitral proceedings *mutatis mutandis*.

Section 26.

The parties may agree upon the place of arbitration. If there is no such agreement, the place of arbitration shall be determined by the arbitral tribunal after having considered the circumstances of the case and convenience of the parties.

Unless otherwise agreed by the parties, the arbitral tribunal may determine any place, other than the place as prescribed in paragraph one, for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, places, or any documents.

Section 27.

In the settlement of dispute by arbitration, it shall be deemed that the dispute has been referred to the arbitral tribunal according to the provision of Section 193/14 (4) of the Civil and Commercial Code. The arbitral proceedings shall commence when:

- (1) a party receives a written request to refer such dispute to arbitration from the others;
- (2) a party informs in writing to the others so as to appoint the arbitrator or to consent to the appointment of arbitrator to settle the dispute;
- (3) in the case where the arbitral tribunal has been appointed by the arbitration agreement, a party informs in writing the dispute to be settled to the arbitral tribunal;
- (4) a party submits the dispute to an institution established to settle the dispute by arbitration as agreed.

Section 28.

The parties may agree on the language to be used in the arbitral proceedings. If there is no such

agreement, the language to be used shall be determined by the arbitral tribunal. Unless otherwise agreed, such agreement or determination shall be applied to any statements, objections, written statements of the parties, hearings, awards, decisions and other communication made by or made to the arbitral tribunal.

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language agreed upon by the parties or as determined by the arbitral tribunal.

Section 29.

Within the period as agreed upon by the parties or as determined by the arbitral tribunal, the claimant shall state the facts supporting his or her claim, the points at issue and the relief or remedy sought, and the respondent shall state his or her defenses in respect of these particulars, unless the parties have otherwise agreed. In this regards, the parties may submit therewith a relevant documents or lists of evidences referring to the documents or other evidences they intend to cite as evidence.

Unless otherwise agreed by the parties, a party may amend his or her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers whether it is inappropriate to allow such amendment with regard to the delay to be incurred.

Section 30.

Unless otherwise agreed by the parties, the arbitral tribunal shall determine whether to hold hearings orally or in writing, or whether the proceedings shall be conducted on the basis of documents or other evidences.

The arbitral tribunal shall have the power to hold hearings under paragraph one at an appropriate stage of the proceedings if so requested by a party, unless the parties agreed that no hearings, whether in oral or in writing shall be held.

The arbitral tribunal shall inform the parties, with sufficient advance notice, the date for hearings and inspecting of any objects, places or other documents.

All statements, defenses, requests, documents, or information submitted to the arbitral tribunal by one party shall be delivered to the others. Any expert reports or evidences on which the arbitral tribunal may rely upon in making its award shall also be delivered to the parties.

Section 31.

Unless otherwise agreed by the parties, the arbitral tribunal shall:

(1) terminate the proceedings if the claimant fails to deliver his or her statement of claim in accordance with Section 29 paragraph one;

(2) continue the arbitral proceedings if the respondent fails to deliver his or her statement of defense in accordance with Section 29 paragraph one. In this regards, the failure to deliver the statement of defense shall not be treated as an admission of the allegations of the claimant;

(3) continue the arbitral proceedings and make the award if any party fails to appear at a hearing or the appointed date or fails to produce any evidence.

The arbitral tribunal shall have the power to inquire any matters as it thinks fit, including the reason why the respondent fails to deliver his or her statement of defense or fails to appear at the hearings or the appointed date, before making decision to get along with the proceedings under paragraph one.

Section 32.

Unless otherwise agreed by the parties, the arbitral tribunal may:

(1) appoint one or more experts to make a report on specific issues to be decided by the arbitral tribunal;

(2) require the parties to give the expert any information or to produce, or to undertake the acquisition of any documents or objects relevant to the dispute for examination.

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written or verbal report, participate in a hearings where the parties have the opportunity to question him or her or to present expert witnesses in order to testify on the points at issue.

Section 33.

The arbitral tribunal, any arbitrator or any party with the consent of the majority of the arbitral tribunal, may request a competent Court to summon witnesses or to order the delivery of any documents or objects.

In the case where the Court considers that such request, if filed to it, is within its jurisdiction, the Court shall consider the request. In this regards, the provisions of the law on Court proceedings related therewith shall be applied *mutatis mutandis*.

Chapter V

Award and Termination of Arbitral Proceedings

Section 34.

The arbitral tribunal shall decide the dispute in accordance with the governing law as designated by the parties. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

If the parties fail to designate the governing law, the arbitral tribunal shall apply Thai law to the dispute, except where there is a conflict of laws, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

The parties may determine that the arbitral tribunal shall decide the dispute in good faith and fair.

The arbitral tribunal shall decide the dispute in accordance with the terms of the contract and, in the case of a commercial dispute, shall take into account the usages of the trade applicable to the transaction.

Section 35.

Unless otherwise agreed by the parties, any award, order and decision of the arbitral tribunal shall be made by a majority of votes. If a majority of vote could not be obtained, the chairperson of the arbitral tribunal shall be a person who makes award, order or decision.

The chairperson of the arbitral tribunal shall decide questions of proceedings if so authorized by the parties or all members of the arbitral tribunal.

Section 36.

If the dispute could be compromised, during the arbitral proceedings, by an agreement between the parties, the arbitral tribunal shall terminate the proceedings. If the parties so request and the arbitral tribunal considers that the agreement to compromise the dispute contrary to laws, the arbitral tribunal shall make an award in accordance with such agreement.

An award made in accordance with an agreement to compromise the dispute shall be subjected to Section 37 and shall have the same status and effect as the award on merits of the case.

Section 37.

The award shall be made in writing and signed by the arbitral tribunal. If the arbitral tribunal consists of more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature shall also be stated.

Unless otherwise agreed by the parties, the award shall state the reasons upon which it is based. Any determination or decision beyond the scope of the arbitration agreement or the request of the parties shall not be stated in the award, except where the award made in accordance with the agreement to compromise the dispute under Section 36 or the determination of fee and expense in the arbitration or the commission for the arbitrator under Section 46.

The award shall state its date and the place of arbitration in accordance with Section 26 paragraph one, and it shall be deemed to have been made at that place.

After the award is made, its copy shall be delivered to the parties.

Section 38.

The arbitral proceedings shall be terminated when the award or an order of the arbitral tribunal under paragraph two is made.

The arbitral tribunal shall have an order to terminate the arbitral proceedings when:

- (1) the claimant withdraws his or her claim, unless the respondent has objected to such withdrawal and the arbitral tribunal considers that legal interest of the respondent shall be recognized by awarding;
- (2) the parties agree to terminate the proceedings;
- (3) the arbitral tribunal considers that the continuation of the proceedings has become unnecessary or impossible.

Subject to Section 39 and Section 40 paragraph four, the mandate of the arbitral tribunal shall terminate upon the termination of the arbitral proceedings.

Section 39.

Unless otherwise agreed by the parties, within thirty days as from the date of receiving the award:

(1) a party, with a copy delivered to the others, may request the arbitral tribunal to correct the award of any computation, clerical or typographical error or any errors of similar nature;

(2) if so agreed by the parties, a party, with a copy delivered to the others, may request the arbitral tribunal to interpret or clarify any sentences or parts of the award.

If the arbitral tribunal considers that the request under (1) and (2) are justified, it shall correct, interpret or clarify the matter under request within thirty days as from the date of receiving such request. The interpretation and clarification shall form part of the award.

The arbitral tribunal may correct any errors under (1) on its own initiative within thirty days as from the date of award.

Unless otherwise agreed by the parties, a party may, within thirty days as from the date of receiving the award and with notice to the others, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days of receipt of the request.

The arbitral tribunal may, if necessary, extend the period for making correction, interpretation or additional award under paragraph two and four.

The provision of Section 37 shall be applied to a making of correction, interpretation, or additional award under this Section.

Chapter VI

Recourse against Award

Section 40.

Recourse against an arbitral award may be made only by an application to the competent Court for setting aside in accordance with this Section.

A party may apply to the competent Court to set aside the award within ninety days as from the date

of receiving a copy of award or, in the case where a party requests the arbitral tribunal to correct or interpret the award or to make an additional award, within ninety days as from the date of correction, interpretation or making of the additional award.

The Court shall set aside the arbitral award if:

(1) a party who make the application is able to prove that:

(a) a party to the arbitration agreement is incapacity under the law applicable to that party;

(b) the arbitration agreement is not legally binding under the law to which the parties have agreed upon or, in the case where there is no such agreement, the law of the Kingdom of Thailand;

(c) a party who make the application was not delivered advance notice of the appointment of the arbitral tribunal or the hearings of the arbitral tribunal, or was otherwise unable to present his or her case;

(d) the award deals with a dispute not falling within the scope of the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters submitted to arbitration could be separated from those not so submitted, only the part of award which contains decisions on matters not submitted to arbitration may be set aside by the Court; or

(e) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, in the case where there is no such agreement, was not in accordance with this Act;

(2) it appears to the Court that:

(a) the award deals with the dispute which shall not be settled by arbitration under the law; or

(b) the recognition or enforcement of the award is contrary to public order or good morals.

In considering a request for setting aside an award, if the parties so requested and the Court thinks fit, the Court may suspend the setting aside proceedings for a period of time as it deems appropriate in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take other actions which, in the opinion of the arbitral tribunal, would eliminate the grounds for setting aside.

Chapter VII

Recognition and Enforcement of Award

Section 41.

Subject to Section 42, Section 43 and Section 44, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application to the competent Court, shall be enforced.

In the case where an award made in a foreign country, the competent Court shall enforce such award only if it is governed by a treaty, convention or international agreement to which Thailand is a party, and it shall have effect only to the extent that Thailand agrees to be bound.

Section 42.

A party who wishes to enforce the arbitral award shall apply to the competent Court within three years as from the date the award is enforceable.

After having received the application, the Court shall, without delay, make an inquiry and render its judgment.

The party applying for enforcement of the arbitral award shall submit the following documents to the Court:

- (1) original arbitral award or its a duly certified copy;
- (2) original arbitration agreement or its duly certified copy;
- (3) translations of the arbitral award and the arbitration agreement in Thai language made by the translator who has sworn or made oath before the Court or official or the person having power to accept the oath, or who has made oath to, or represented by, the official authorized to certify the translation or by a diplomatic delegate or the Thai consul in the country in which the award or the arbitration agreement was made.

Section 43.

The Court may refuse to enforce the arbitral award, irrespective of the country in which it was made, if the party against whom the enforcement is invoked can prove that:

- (1) a party to the arbitration agreement is incapacity under the law applicable to that party;
- (2) the arbitration agreement is not legally binding under the law to which the parties have agreed upon or, in the case where there is no such agreement, under the law of the country where the award was made;
- (3) the enforced party was not given advance notice of the appointment of the arbitral tribunal or of the hearings of the arbitral tribunal or was otherwise unable to present his or her case;
- (4) the award deals with a dispute not falling within the scope of the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be enforced by the Court;
- (5) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement made by the parties or, in the case where there is no such agreement, was not in accordance with the law of the country where the award was made; or
- (6) the award has not yet become binding upon the parties, or it has been set aside or suspended by a competent Court or by the law of the country where it was made, except where the application for setting aside or suspension of the award has been made to the competent Court and the trial is pending, the Court may suspend the proceedings to enforce the award as it thinks fit. If so requested by the party who apply for enforcement of award, the Court may order the enforced party to give security in an amount as it thinks fit.

Section 44.

The Court shall have the power to refuse the application to enforce the award under Section 43 if it appears that the award deals with the dispute which shall not be settled by arbitration under the law or the enforcement of award is contrary to public order or good moral.

Section 45.

An order or judgment of the Court under this Act shall not be appealed, except where:

- (1) the recognition or enforcement of the award is contrary to public order or good morals;
- (2) the order or judgment is contrary to the provisions of law relating to public order or good morals;

- (3) the order or judgment is not in accordance with the arbitral award;
- (4) the judge who has tried the case gave a dissenting opinion in the judgment; or
- (5) it is an order on provisional measure under Section 16.

An appeal against an order or judgment under this Act shall be made to the Supreme Court or the Supreme Administrative Court, as the case may be.

Chapter VIII

Fee, Expense and Commission

Section 46.

Unless otherwise agreed by the parties, any fee and expense incurred in the arbitral proceedings as well as commission of the arbitrator; except lawyer fee and expense, shall be in accordance with those stipulated in the arbitral award.

In the case where the fee and expense in the arbitral proceedings or the commission of the arbitrator were not stipulated in the arbitral award, any party or the arbitral tribunal may request the competent Court for a ruling on fee, expense and commission of the arbitrator as it thinks fit.

Section 47.

The institution established to settle disputes by arbitration may determine fee, expense and commission for the arbitral proceedings.

Transitional Provisions

Section 48.

The provisions of this Act shall not affect the validity of any arbitration agreement and arbitration proceedings made before the day in which this Act comes into force.

Any arbitral proceedings which is not conducted and the period of time for such proceedings as prescribed by the law enforced before this Act comes into force is not expire shall be continued within the period of time as prescribed by this Act.

Countersigned by Pol. Lt. Col. Taksin Shinawatra as Prime Minister

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