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Assignment:

**“Comparative Study of Arbitration Laws in China, Singapore,
Malaysia, Vietnam, Cambodia, Laos and Thailand”**

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TABLE OF CONTENTS

INTRODUCTION.....1

I. DEFINITION OF ARBITRATION.....1

II. ARBITRATION IN ASIA.....2

 1. The People’s Republic of China.....2

 2. Singapore.....2

 3. Malaysia.....3

 4. Vietnam.....3

 5. Cambodia.....4

 5. Laos.....5

 7. Thailand.....5

III. COMPARISON OF ARBITRATION LAWS.....5

 1. The Arbitration Commission.....5

 2. The Arbitration Agreement.....6

 3. The Arbitration Procedure.....8

 4. The International Arbitration Law.....9

IV. CONCLUSION.....10

୧୧୧୧୧ ୮ ୯୯୯୯୯

**Topic: "Comparative Study of Arbitration Laws in
China, Singapore, Malaysia, Vietnam, Cambodia, Laos
and Thailand"**

INTRODUCTION

With the increased economic interaction between Asia and the West, as well as within Asia itself, has come potential for cross-border disputes to arise. Increasingly, businesses are at risk of being sued in foreign jurisdictions where their commercial rights and obligations become subject to unfamiliar laws and procedural processes. Avoiding this situation requires careful thought and attention to the way in which a company conducts its commercial transactions. One of the most effective ways to avoid being sued in a foreign jurisdiction is to ensure that all commercial contracts that the business enters into contain a comprehensive and effective arbitration clause. The benefits from this arbitration will lead to an increased number of foreign companies that undertake business in Asia including arbitration agreements in their contracts. With these developments there has been a concomitant increase in the number of Asian arbitration centers and in the adoption of modernized arbitration laws among Asian countries. As such, arbitration now has a greater level of acceptance and greater enforceability across the Asian region than ever before.

I. DEFINITION OF ARBITRATION

In France, arbitration is traditionally defined along the following lines:

"Arbitration is a device whereby the settlement of a question, which is of interest for two or more persons, is entrusted to one or more other persons- the arbitrator or arbitrators- who derive their powers from a private agreement, not from the authorities of a State, and who are to proceed and decide the case on the basis of such an agreement"

Common law authors have defined arbitration similarly, as involving:

"Two or more parties faced with a dispute which they cannot resolve themselves agreement some private individual will resolve it for them and if the arbitration runs its full course...it will not be settled by a compromise, but by a decision"

Why arbitration?

Few parties to international contracts cherish the idea of suing or being sued in a foreign country, where differences and uncertainty in the law, language, and legal and business culture could present decisive disadvantages. Arbitration, however, provides the advantages of a relatively inexpensive and expeditious dispute resolution process in a neutral locale with proceedings conducted according to familiar and well established arbitration law. Arbitration offers the added flexibility of allowing parties to choose the arbitration tribunal, the arbitrators, and in some cases the arbitration rules and law.

In our view, arbitration should be defined by reference to two constituent elements, which commentators and the courts almost unanimously recognize. First, the arbitrators' task is to resolve a dispute. Second, the source of this judicial role is a

contract: the arbitrators' power to decide a dispute originates in the common intention of the parties. **Thus, arbitration comprises both a judicial and contractual element.**

II. ARBITRATION IN ASIA

The idea of arbitration came from the business communities, so most of the Arbitration Laws focus on commercial activities, based on the contract.

1. The People's Republic of China

The China International Economic and Trade Arbitration Commission (CIETAC), was established in 1956 under the auspices of the China Council for the Promotion of International Trade to handle disputes arising from international or foreign related economic or trade transactions. CIETAC has its headquarters in Beijing, with sub-commissions in Shenzhen and Shanghai. CIETAC maintains a panel of Chinese and foreign arbitrators, from which the parties are required to make their selection, and has its own procedural rules. As recently as September 2000, CIETAC amended its arbitration rules, extending the body's jurisdiction to include the arbitration of domestic disputes.

Arbitration in China is governed by the Arbitration Law, which came into force on 1 September 1995. The legislation provides unified law on the administration of domestic and international arbitration. An important feature of the Arbitration Law is that it discourages ad hoc arbitration, requiring parties to specify a recognized arbitration institution in their arbitration agreement. Although parties are not permitted to specify alternative rules, Chinese parties are not prevented from agreeing to arbitrate outside China.

Article 269 of China's Civil Procedure Law requires a party seeking the enforcement of a foreign related domestic award to apply to the Intermediate People's Court in the province where the relevant assets are situated. The court cannot, however, review the substantive merits of the case. In relation to foreign awards, China has acceded to the New York Convention, though its record of enforcement has been unpredictable.

2. Singapore

The Singapore International Arbitration Center (SIAC) was established in 1991 under the auspices of the Economic Development Board and the Trade Development Board. Since 3 August 1999 SIAC has operated as an independent institution under the auspices of the Singapore Academy of Law. SIAC arbitration rules are based on the UNCITRAL Rules and influenced by the London Court of International Arbitration Rules. SIAC also maintains panels of international and domestically accredited arbitrators.

International arbitration in Singapore is governed by the International Arbitration Act; which came into effect on 27 January 1995 and which substantially adopts the UNCITRAL Model Law. A dual regime for international and domestic arbitration now exists in Singapore; the latter still governed by the 1953 Arbitration Act.

As the New York Convention has been incorporated into Singapore's International Arbitration Act, Convention awards can be enforced in Singapore, subject only to the reciprocity reservations and the standards exceptions in art 5.

3. Malaysia

There is a dual system of international arbitration in Malaysia: those that come under the Malaysian Arbitration Act 1952, and those conducted under the rules of the Kuala Lumpur Regional Center of Arbitration (**KLRCA**). The KLRCA was established in 1978 and has become the principal organization responsible for international commercial arbitrations in Malaysia. The KLRCA rules are based on UNCITRAL Rules, with certain modifications, and allow for significant autonomy to parties in relation to arbitration procedure and the appointment of arbitrators.

Awards made in Malaysia are enforceable in the same manner as judgments. Malaysia is party to the New York Convention and foreign awards are thus enforceable, subject only to the exceptions under art 5. Importantly, Malaysian courts have the power to intervene in international arbitrations governed by the Arbitration Act, but not those held under the KLRCA rules.

4. Vietnam

Vietnam's legal system is undergoing rapid development, making information susceptible to change. The Vietnam International Arbitration Center (**VIAC**) was established in 1993 and replaces the much-maligned State Economic Arbitration Board (SEAB) as the only arbitral organization in Vietnam. Formally attached to the Vietnam Chamber of Commerce, the VIAC has jurisdiction over both domestic and international economic disputes. At present, parties must select arbitrators from an approved panel, all members of which are Vietnamese nationals. Although ad hoc arbitration is possible, it is not recommended because of the relative inexperience of the arbitrators and their lack of confidence to adjudicate pursuant to rules with which they are not familiar. UNCITRAL Arbitration Rules are acceptable, however, and should be preferred to either VIAC's own or ad hoc procedures.

Vietnam ratified the New York Convention in 1995, though subject to its interpretation by Vietnamese Courts or competent bodies in accordance with the Constitution and law of Vietnam. Enforcement of a locally made award in Vietnam requires application to the Economic Court, which may review the merits of the award, thus introducing an element of uncertainty in the enforcement procedure. Ironically, therefore, it appears easier to enforce foreign arbitral awards in Vietnam, than those of VIAC because of the lack of law to regulate the enforcement of VIAC's decisions. This is likely to change in the future with the ongoing development of Vietnam's legal system.

5. Cambodia

There is no arbitration law in Cambodia. Quite recently Cambodia started to draft the arbitration law. However, the concept of arbitration has been practiced since long time ago in the Cambodian society.

- **Natural practice:** Cambodian society has been urged for compromise, harmony, reconciliation and peace. This means that in the daily life, people should avoid dispute and compromise to each other. Practically when people have conflict with each other, they are encouraged to solve the problem among the involved parties by themselves. If they cannot reach the settlement, they should approach the life-long experienced, most trusted and respected persons for intervention in their settlement. Going to court is the last option and not encouraged. There is a saying "Going to the court reduces your resources".
- **Authority structured practice:** On top of natural practice, Cambodian society is advised and encouraged by all levels of competitive authorities to solve their dispute among the involved parties with the facilitation of competitive authorities before preceding the case to the courts.

When people experience disputes minor or serious, they are firstly encouraged to settle the disputes among the involved parties in front of the local authorities at commune level, district level or municipal or provincial level before proceeding to the court. It is the same for national and foreign investment; dispute parties are encouraged to reach amicable settlement first before going to the court or any international practice. The Investment Law also encourages the dispute parties to go through the arbitration. Below is extracted article, from Investment Law in Cambodia that encourages arbitration.

Chapter VIII DISPUTES AND DISSOLUTION

Article 20: Any dispute relating to a promoted investment established in the Kingdom by a Cambodian or a foreign national concerning its rights and obligations set forth in the Law shall be settled amicably as far as possible through consultation between the parties in dispute.

Should the parties failed to reach an amicable settlement within two months from the date of the first written request to enter such consultations, the dispute shall be brought by either party for:

- Conciliation before the Council which shall provide its opinion, or
- Refer the matter to the court of the Kingdom of Cambodia, or
- Refer to any international rules to settle the disputes as agreed by both parties.

So we can conclude that even though there has not been arbitration law in Cambodia, the arbitration concept has been practiced in Cambodia.

6. Laos

There is no developed form of arbitration act in Laos. Every commercial dispute arises in Laos is referred to Article 21 of Law on the promotion and management of foreign investment in the Lao People's Democratic Republic, which is stated as follow:

Article 21: In the event of disputes between foreign parties within a foreign investment, or between foreign investors and Lao parties, the disputants should first seek to settle their differences through consultation or mediation.”

In the event that they fail to resolve the matter, they shall then submit their dispute to the economic arbitration authority of the Lao PDR or to any other mechanism for dispute resolution of the Lao PDR, a foreign country or an appropriate international organization, which the disputants can agree upon.

Under the investment climate and legal system of Laos, it is advised that foreign investors seek arbitration outside Laos, since Laos' domestic forum lacks the ability to enforce its decisions. There is also no copyright or patent law thus piracy is rampant.

7. Thailand

Domestic and international arbitration in Thailand are both governed by the Arbitration Act 1987 with differences arising only in respect of enforcement of domestic and foreign awards. The official arbitration organization in Thailand is the Arbitration Institute, established under Thailand's Ministry of Justice. The Institute has its own procedural rules, though parties have the autonomy to choose different procedures should they wish.

As a party to the New York Convention, foreign awards obtained in Convention countries will generally be enforceable in Thailand. However, arbitration awards obtained within Thailand are subject to review by the Thai courts. The courts also have the power to review foreign awards, though the scope of this review power is essentially limited to grounds outlined in the New York Convention.

III. COMPARISON OF ARBITRATION LAWS

1. The Arbitration Commission

Vietnam, China, and Singapore have institutional arbitrations.

➤ **Vietnam:** The Vietnam International Arbitration Center is a permanent arbitral organization, which was established by the Prime Minister's decision made in 1993 and its certificate of in-corporation is also provided for by the Prime Minister's decision. It is not an independent corporation and is formally attached to the Vietnam Chamber of Commerce and Industry. Although the certificate of incorporation expressly provides for that it is non-governmental, it could be considered to be a kind of national institution indirectly controlled by the government since it is a lower organization annexed to the Chamber and is under the control of the Chamber. The headquarters of the Center is located in the

Chamber's headquarter in Hanoi and the branch is also located in the Chamber's branch in Ho Chi Minh City. It has one Director, two vice-directors and eight arbitrators. Its income from arbitration being small, it totally depends on the Chamber for both its finance and personnel.

➤ **China:** The arbitration commission may be set up in municipalities directly under the central government or in cities where the provincial or autonomous regional people's government is seated. It may also be set up in other cities that are divided into districts. It is not to be set up at all levels of administrative divisions. The arbitration commissions are members of the China Arbitration Association. And they are independent from administrative organs; they are not subordinate to administrative organs. The arbitration commission shall consist of one director, two to four deputy directors and seven to 11 commission members.

➤ **Singapore and Malaysia:** They do not have Central commission, but they have permanent arbitral institutions. The court or authority will be in charge in case of repealing, appointing arbitrators unless both parties agree.

➤ **Thailand:** Thailand has an independent judiciary that generally is effective in enforcing property and contractual rights, but in practice the legal process is slow and litigants or third parties sometimes may affect judgments through extra-legal means. However, there is Arbitration Commission of the Arbitration Office, which is controlled by Ministry of Justice administrators, is appointed by the cabinet.

2. The Arbitration Agreement

➤ **The similarities:** The arbitration agreement, which is an agreement by both parties, decides a mean of dispute settlement (arbitration) referring their disputes. The arbitration agreement may either be contractual or not. In case that it is a clause in the contract; this arbitration clause is independent from the contract validity.

However arbitration agreements among studied nations: China, Singapore, Malaysia, Vietnam, and Thailand, are different in terms of definition, form, content and validity.

➤ **The differences:**

• **China:** Contents of an arbitration agreement must include:

- An expressed interest to request arbitration.
- Items for arbitration
- The chosen arbitration commission.

Invalidity of arbitration agreement:

- Items for arbitration are beyond the scope of arbitration as prescribed by law.
- A party is a person having no capacity.

- Imposed by 1 party on the other party by means of coercion.
 - Not specify clearly the items for arbitration or an arbitration commission and no supplementary agreement.
 - Modification, rescission, termination of the contract or its declared invalid does not affect the arbitration agreements validity.
- **Singapore:** No requirement for the content and well as format of an arbitration agreement. It can be in an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement, or in an exchange of statements of claim and defense, an arbitration clause in a contract.

They haven't specified clearly about the validity. However, Article 34 mentions that "A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State" then other party can have right to repeal.

- **Malaysia:** The arbitration is invalid in case in that it is inconsistent with other written law or with any other rules or procedures authorized or recognized thereby.
- **Vietnam:** The formation of an arbitration agreement shall be subject to the general principles of the contract law under the Civil Code. It therefore could be construed that an arbitration agreement is not required to be in writing or in any particular form as there is no provision requiring them in the Civil Code. Legal effects of an arbitration agreement are not clear, either, as there is no statutory provision on it. But the author was explained by the Vietnamese officials (7) that an arbitration agreement not only has the general legal effects as a contract, but also is admitted to be a demurrer in the court litigation practice. Therefore even if one of the parties to an arbitration agreement takes an action in a court in violation of the arbitration agreement, the action will be rejected by the court if the other party alleges that the dispute should be referred to arbitration according to the arbitration agreement
- **Thailand:** In arbitration agreement, some indications are needed as follows:
 - Setting up a written agreement to arbitrate (a dispute can be set up against other parties).
 - An expressed interest to request arbitration and a scope of the disputes.
 - The parties to a dispute may stipulate the following **arbitration** clause in the contract.
 - Applying an application to Arbitration office of Thai Ministry of Justice administers or to Thai court. The court is bound to render the decision on such written agreement, unless it is against the public order or good morals of the people of Thailand which depends, by and large, on the discretion of the relevant court.

➤ **Other indications:** This agreement becomes invalid, when the contract is signed by a person having no capacity by Law, or, when there are some conditions provided in the contract. 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.

3. The Arbitration Procedure

In general, the procedure of arbitration in China, Vietnam, Singapore, Malaysia and Thailand follow the same track. The procedure starts with:

➤ **Request for arbitration:** To request for arbitration, the conflict parties must have a written arbitration application either before or after the dispute happens.

The application will be submitted to the arbitration commission and the case must be in juridical power of the commission. The language used in some countries like Vietnam can be Vietnamese or English depending on the agreement of the parties.

➤ **Arbitrator and formation of arbitral tribunal:** Basically, there will be one to three arbitrators to form the arbitral tribunal. In Thailand and Singapore, the parties are free to determine the number of arbitrator. In case that the number of arbitrators of both parties is even, one arbitrator from the third party will be selected or in case of not agree on which arbitrator to select, the court or arbitration commission or the related authority will appoint one for them. The period of selection is varied from 5 to 30 days.

Among the five countries, only Vietnam specifies clearly about the nationality of the arbitrators that it should be Vietnamese. For Singapore, the parties can choose the procedure, language and place for the arbitration by themselves or otherwise the court will select for them.

➤ **Hearing:** Firstly, the arbitration commission will conduct a study on the case and he can get access to the information that he deems necessary. The arbitral tribunal will notify the party when the hearing will be. The parties may attend the hearing by themselves or appoint a representative usually an attorney. A written record of the hearing will be made and signed by the arbitrators. Any party fails to appear at a hearing or produce documentary evidence. The arbitral tribunal may continue the proceeding and make an award on the evidence before it. For Vietnam, they have specified about the place that it should be in Hanoi or only within its territory and the language used must be in Vietnamese but the foreign parties can request a translator.

➤ **Award:** In general, the procedure is the same for achieving an award. First the arbitral tribunal will determine the appropriate law subject to the conflict between parties. The award will be made under the vote of majorities in which case there are more than one arbitrators. The day from the request of

arbitration to make an award varies between countries and often depends on the agreement between parties to extend to agreed date. In Thailand, it is 180 days.

An interesting point for Singapore is that if the parties agreed to settle the dispute during the proceeding. The proceeding will be ended. The award will be made in a written form and send to each party within usually 30 days.

➤ **Repeal:** Usually, the party can repeal to another court with the period of 6 months to 1 year and under the stated conditions for example where the dispute to be arbitrated is not within the scope of the arbitration agreement, or one which the arbitration commission has no authority to arbitrate; where the formation of the arbitration tribunal or the arbitration process has violated legal procedure; where the evidence on which the arbitration is based is counterfeited. In china, the repeal has to be in people court. In Singapore and Thailand, they do not specify clearly, which court the repeal should go for. For Vietnam, after the award is finalize. No repeal to any court would be made. For Malaysia, the repeal should go to the high court.

4. The International Arbitration Law

Many countries apply arbitration to both domestic international commercial disputes. However, we still find some common and different points among these different countries.

Among the countries that we are studying in our research paper, except Cambodia and Laos, we can find the similarities and the differences of international arbitration law or act in some aspects.

➤ **Similarities:** In general, international Arbitration Law and act are applied to disputes involving to foreign concerns.

➤ **Differences:**

- **China and Vietnam:** Both countries have extended their Arbitration Laws from the international level to the national level. That is why most articles of domestics can be applied in international arbitration.

- **Thailand:** International Arbitration Law of Thailand is almost based on the domestic Arbitration Acts and Rules. However, significantly, the Acts are broadly based on the New York Convention for Recognition and Enforcement of Foreign Arbitral Awards, this Act is, with an additional defense to enforcement, based on 'good morals' of Thai society and cultures. Also, the new Act on 30 April 2002 extends the previous deadline for enforcement (Act of 1987) of Thai awards in Thai courts from one year to three years.

- **Singapore:** There is only one Act of arbitration. This Act have opted for, or only one regime as under the United Kingdom Arbitration Act 1996.

Annexes

Summary of the Arbitration Law of The People's Republic of China		
Getting into Effect	Date	<ul style="list-style-type: none"> September 1, 1995
General Principles	Objectives	<ul style="list-style-type: none"> To ensure fair over economic matter. To safeguard the legitimate rights & interests of the litigants. To guarantee the sound development of the socialist market economy.
	Uninvolving-disputes	<ul style="list-style-type: none"> Disputes over marriage, adoption custody, support & inheritance. Administrative disputes that should be handled by administrative organs.
Arbitration Commission (Associations)	Creation	<ul style="list-style-type: none"> Set up in municipalities directly under the central government. Register with the judicial & administrative department of the province Qualifications: <ol style="list-style-type: none"> Name, domicile & articles of association. The required property Members Arbitration officers retained by it.
	Members	<ul style="list-style-type: none"> 1 director, 2 to 4 deputy directors 7 to 11 commission members.
	Independence	<ul style="list-style-type: none"> Independent from administrative organs.
	Central Commission	<ul style="list-style-type: none"> China Arbitration Association Enforce self-discipline among the arbitration commission Oversee violations of discipline by the arbitration commissions.
Arbitration Agreement	Form	<ul style="list-style-type: none"> Clauses provided in the contract or other written agreements requesting arbitration.
	Contents	<ul style="list-style-type: none"> An expressed interest to request arbitration. Items for arbitration The chosen arbitration commission.
	Invalidity	<ul style="list-style-type: none"> Items for arbitration are beyond the scope of arbitration as prescribed by law. A party is a person having no capacity. Imposed by 1 party on the other party by means of coercion. Not specify clearly the items for arbitration or an arbitration commission and no supplementary agreement. ❖ Modification, rescission, termination of the contract or its declared invalid does not affect the arbitration agreements validity.

Arbitration Procedure	Application requirements	<ul style="list-style-type: none"> • An arbitration agreement • Specific appeal request, facts & reasons for the appeal. • The case shall be within the jurisdictional power of arbitration commission.
	Acceptance	<ul style="list-style-type: none"> • If the requirements are met, the arbitration commission should: <ul style="list-style-type: none"> - Notify the litigants within 5 days - Send a copy of the arbitration application to the adverse litigant within the period prescribed in the arbitration rules.
	The adverse litigant	<ul style="list-style-type: none"> • Shall furnish a defense to the arbitration commission within the period prescribed in the arbitration rules. • Has the right to submit a counter-request.
	Arbitration tribunal	<ul style="list-style-type: none"> • Composed of 1 or 3 arbitrators, in which 1 is a president arbitration officer.
	Arbitrators	<ul style="list-style-type: none"> • Each party has the right to elect his own arbitrator or request the arbitration commission director to designate an arbitrator for him. • An arbitrators shall be withdrawn if: <ol style="list-style-type: none"> 1. He is one of the litigants in the arbitration, or he is a close relative of anyone litigant or a relative of the attorney. 2. He has a vital interest in the arbitration. 3. He is related to the litigants, or their attorneys, in other respects in the case and the relationship may affect an impartial arbitration. 4. He has had private meetings with the litigants or with their attorneys or when he has accepted the invitation of the litigants or their attorneys, to dine, or accepted their gifts. <p>In this case, a new arbitrator shall be elected.</p>
	Hearing	<ul style="list-style-type: none"> • Arbitration may be held openly, except for cases, which involve state secrets. • The evidence shall be exhibited at the tribunal session.
	Ruling	<ul style="list-style-type: none"> • Either litigant has the right to debate during the arbitration process. When the debate ends, the presiding arbitration officer shall solicit the litigants' final views. • The arbitration tribunal may carry out mediation prior to making ruling. • The ruling shall be made on the basis of the views expressed by the majority of arbitrators. • The legal effects of the ruling letter begin on the day it is written.

Repeal a Ruling	Where?	<ul style="list-style-type: none"> At the intermediate people's court of the place where the arbitration commission is located.
	When?	<ul style="list-style-type: none"> After 6 months after receiving the ruling letter.
	Conditions?	<ul style="list-style-type: none"> When 1 litigant can prove that: <ol style="list-style-type: none"> There is no arbitration agreement. The dispute to be arbitrated is not within the scope of the arbitration agreement, or one, which the arbitration commission has no authority to arbitrate. The formation of the arbitration tribunal or the arbitration process has violated legal procedure. The evidence on which the arbitration is based is counterfeited. One litigant has concealed evidence that could affect an impartial ruling Arbitrators have solicited or accepted bribes, practiced favoritism and bent the law while arbitrating a case or making a ruling.
Execution		<ul style="list-style-type: none"> When one litigant fails to abide by the ruling, the other litigant may, in accordance with provisions in the Law of Civil Procedure, request the people's court execute the ruling.
International Arbitration Law	Involvement	<ul style="list-style-type: none"> Arbitration of economic, trade, transport & maritime disputes, which involve foreign concerns.
	Commission for Arbitration	<ul style="list-style-type: none"> Set up in China International
	Ruling	<ul style="list-style-type: none"> The relevant provisions in this law could be applied. If the adverse litigant's property is not within the PRC, the litigant shall directly request acknowledgment & enforcement from foreign court, which has the jurisdiction over the property.
	Repeal	<ul style="list-style-type: none"> The repeal could be done at the people's court and Based on the Law of Civil Procedure.

International Commercial Arbitration Law of Singapore		
Getting into Effect	Date	27th January 1995.
General Principles	Objectives	Cover international commercial disputes
	Uninvolving-disputes	<p>Any disputes other than international and commercial will not be covered.</p> <ul style="list-style-type: none"> - The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road. - An arbitration is international if: <ul style="list-style-type: none"> (a) the parties to an arbitration agreement have their places of business in different States; (b) one of the following places is situated outside Singapore in which the parties have their places of business: (i) determined in the arbitration agreement; (ii) where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
Arbitration Commission (Associations)	Creation	No Arbitration commission but arbitral tribunal.
	Members	Arbitral tribunal can be one or a panel of arbitrators normally includes 3 arbitrators.

(Associations)	Independence	In case there is only one arbitrator, this one either is agreed by both party or appointed by the court or authority. In case of the panel of arbitration includes three arbitrators. Each party will appoint one arbitrator. The third arbitrator will be agreed by both party or appointed by the court or authority.
	Central Commission	No Central commission. The court or authority will be in charge in case of repealing, appointing arbitrator unless the both parties can agree.
Arbitration Agreement	Form	- "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not . An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. - The arbitration agreement shall be in writing, signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence, an arbitration clause in a contract.
	Contents	No mention
	Invalidity	No mention, however in Article 34 mentions that "A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State" then other party can have right to repeal.
Arbitration Procedure	Application requirements	First the party based on their arbitration agreement will select arbitrator(s), if they fail to such agreement, the court or appointing authority will select base on their request. The parties are free to select procedure, place of arbitration, language, and date of commence for arbitration. If they can not the arbitral tribunal will decide.

	Acceptance	The arbitration procedure first will be agreed by both parties. In case of failing to this agreement, the arbitral tribunal will decide in consideration of both parties' conditions. He will decide on the admissibility, relevance, materiality and weight of any evidence
	The adverse litigant	The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

	<p>Arbitration tribunal</p>	<p>“Arbitral tribunal” means a sole arbitrator or a panel of arbitrators.</p> <p>(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.</p> <p>(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.</p> <p>(3) If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.</p> <p><i>Power of arbitral tribunal to order interim measures (Article 17)</i></p> <p>Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.</p>
	<p>Arbitrators</p>	<p>Once arbitrators are selected, they will be arbitral tribunal.</p>

	Hearing	<ul style="list-style-type: none">- Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.- The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.- All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
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	Ruling	<p>In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.</p> <p>- If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.</p> <p>- An award on agreed terms shall be made and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.</p> <p><i>Termination of proceedings (Article 32)</i></p> <p>(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal.</p> <p>(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:</p> <p>(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;</p> <p>(b) the parties agree on the termination of the proceedings;</p> <p>(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.</p> <p>(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.</p>
	Where?	No mention.

	Where?	No mention.
	Conditions?	<p>(2) An application for setting aside may be made only if after three months have elapsed from the date on which the party making that application (a) the party making the application furnishes proof that: (i) a party to the arbitration agreement made for correction of the award, from the date on which that request had been disposed of by the arbitral tribunal, is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or 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, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or</p> <p>(b) the court finds that: (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the award is in conflict with the public policy of this State.</p>
Execution		<p><i>Recognition and enforcement (Article 35)</i></p> <p>(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding</p>

and, upon application in writing to the competent court, shall be enforced.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

*Grounds for refusing recognition or enforcement
(Article 36)*

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that: (i) a party to the arbitration agreement was under some incapacity; or the said 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; or (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it 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; or (iv) the composition of the arbitral tribunal 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 (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the

		<p>law of which, that award was made; or</p> <p>(b) if the court finds that: (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.</p> <p>(2) If an application for setting aside or suspension of an award has been made to a court, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.</p>
International Arbitration Law	Involvement	CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS CONCLUDED AT NEW YORK ON 10TH JUNE 1958
	Commission for Arbitration	
	Ruling	
	Repeal	

Summary of the Arbitration Law of Malaysia

1. Arbitrators and Umpires (No commission)

It is similar to Singapore, there is not arbitration commission but there is arbitral tribunal.

Arbitral tribunal can be one arbitrator or a panel of arbitrators. A panel of arbitrators can have two arbitrators and one umpire or three arbitrators.

All arbitrators and umpire shall be appointed by all parties. If they fail to appoint them, High Court will do this.

2. Arbitration agreement

In Malaysia, disputes will be solved by arbitration rule if there is, in contract, a written agreement to submit present or future differences to arbitration, whether an arbitrators is named there in or not.

The authority of an arbitrator or umpired appointed by arbitration agreement shall, unless a contrary intention is expressed in agreement, be irrevocable except by leave of High Court.

The arbitration is invalid in case in which it is inconsistent with other written law or with any rules or procedures authorized or recognized thereby.

3. Arbitration procedures

The arbitrator(s) can be named during signing. In case in which an arbitrator or a panel of arbitrators is not named, first both patties need to appoint them, or some case they will be appointed by High Court (in Malaya or in Borneo).

Unless a contrary intention is expressed in a contract, every arbitration agreement shall be deemed to have a single arbitrator.

Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party. The two arbitrators shall appoint an umpire immediately after they are appointed. The umpire, ordered by the High Court, shall enter upon the reference in lieu of arbitrators and as if he were a sole arbitrator.

If arbitration agreement has three arbitrators, one to be appointed by each parties; and the third to be appointed by two arbitrators or both parties.

High court can appoint an arbitrator or umpire in some case: (1) if arbitration agreement has a single arbitrator and when differences have arisen, all the parties do not concur in the appointment of an arbitrator; (2) if an appointed arbitrator refuse to act, is incapable of acting, or dies; (3) when an umpire or third arbitrator is not appointed by two arbitrators or both parties;(4) when appointed umpire or the third arbitrator refuse to act, or is incapable of acting or dies.

Summary of the Arbitration Law of Viet Nam		
Getting into Effect	Date	20 th , August 1993
General Principles	Objectives	<ul style="list-style-type: none"> - Responsible for the hearing of the disputes arising from international economic relations, such as foreign trade contracts and those concerning investment, tourism, international transport and insurance, transfer of technology, services, international credits and payments, etc. - But 16 February 1996 it had an extension of jurisdiction over disputes of Vietnam International Arbitration Centre(12) extended the power of the Centre over disputes arising from domestic business transaction, in case the parties have agreed to submit their dispute to the Centre's arbitration. Consequently the Centre's power covers both international and domestic business disputes in the present circumstances.
Arbitration Commission (Associations)	Members	<ul style="list-style-type: none"> - 1 president - 2 vice presidents - 8 arbitrators
	Independence	It is not an independent corporation and is formally attached to the Vietnam Chamber of Commerce and Industry (hereinafter referred to as "the Chamber"), which is an independent corporation.
	Central Commission	Vietnam International Arbitration Center
Arbitration Agreement	Form	The formation of an arbitration agreement shall be subject to the general principles of the contract law under the Civil Code
	Contents	<p>It therefore could be construed that an arbitration agreement is not required to be in writing or in any particular form as there is no provision requiring them in the Civil Code.</p> <p>Legal effects of an arbitration agreement are not clear, either, as there is no statutory provision on it. But the author was explained by the Vietnamese officials(7) that an arbitration agreement not only has the general legal effects as a contract, but also is admitted to be an demurrer in the court litigation practice. Therefore even if one of the parties to an arbitration agreement takes an action in a court in violation of the arbitration agreement, the action will be rejected by the court if the other party alleges that the dispute should be referred to arbitration according to the arbitration agreement</p>

Arbitration Procedure	Application requirements	<ul style="list-style-type: none"> a. The names and addresses of the plaintiff and the defendant respectively; b. The specific request(s) of the plaintiff, with a statement of relevant facts supported by evidence; c. The legal ground(s) on which the plaintiff proceeds with his Request for arbitration; d. The amount of the claim; e. The name of the arbitrator whom the plaintiff has chosen from among the listed arbitrators of the Center or the request made by the plaintiff that an arbitrator be appointed by the President of the Center on his behalf. <p>The request for arbitration must be written in the Vietnamese language or in a foreign language widely used in international transactions (English, French, Russian).</p> <p>The Request for arbitration and accompanying documents shall be submitted, each in one original, with a sufficient number of copies to be sent to the arbitrators hearing the case and the defendant.</p>
	Acceptance	<ul style="list-style-type: none"> - After receipt of the Request for arbitration, the Registrar of the Center shall notify the defendant thereof and send to the latter a copy of such Request and those of the accompanying documents together with the List of arbitrators. - At the same time, request the defendant to submit to the Center his statement of defense, supported by pieces of evidence, within thirty days from the date of receipt of the copy of the Request for arbitration. At the request of the defendant, this time-limit may be extended but shall not, however, exceed two months.
	The adverse litigant	<ul style="list-style-type: none"> - The statement of defense from the defendant, in principle, must be submitted to the Centre within thirty days from the date of receipt of a copy of the request for arbitration. But at the request of the defendant, this time-limit may be extended up to 2 months

	Arbitration tribunal	<ul style="list-style-type: none"> - If both parties have agreed to a sole arbitrator, the case is heard by the tribunal of the sole arbitrator - But without such an agreement the arbitrators chosen by each party must jointly elect a third arbitrator from the listed arbitrators of the Centre and the case is heard by the tribunal of the three arbitrators. - Should twice the arbitrators chosen by each party fail in the choice of the third arbitrator, the President of the Centre must appoint the Chairman of the arbitral tribunal, within fifteen days from the date on which the second arbitrator is chosen so as to constitute the arbitral tribunal.
	Arbitrators	<ul style="list-style-type: none"> - The arbitrators and the third arbitrator must be chosen or appointed from the listed arbitrators and at present there are only Vietnamese in the list. Therefore, there is a limitation that foreign arbitrators cannot be chosen and appointed, even if it is desired by the parties.
	Hearing	<ul style="list-style-type: none"> - The date of hearing shall be decided by the Chairman of the arbitral tribunal. - The hearing in principle takes place in Hanoi. But at the request of the parties or where it is deemed necessary, the Chairman of the arbitral tribunal can decide nother location in the territory of Vietnam for the hearing - The hearings are conducted in the Vietnamese language, but the parties can request the Centre to provide interpreters at their own expenses. - The parties can attend the hearing either personally or through their authorized representatives with power of attorney issued in due form. Such representatives can be Vietnamese citizens or foreigners. Not only Vietnamese attorneys but also foreign ones are qualified to be the representatives in the Centre's arbitration (- In the absence of one or all of the parties without any legitimate reason, the arbitral tribunal or the sole arbitrator, as the case may be, can proceed with the hearing on the basis of available documents and pieces of evidence

	Ruling	<p>The arbitral tribunal or the sole arbitrator, as the case may be, must settle the dispute on the strength of the terms and conditions of the original contract, if the dispute arises from relations thereunder, in accordance with the law applicable to it and with any related international treaty, taking into account the trade usage and international practice. In the hearing process, the arbitrators must judge the matter in their own interpretation, objectively and honestly (Article 23).</p> <p>Any decision of the arbitral tribunal must be made by a majority vote. When there is no majority, the Chairman of the arbitral tribunal must make the decision as a sole arbitrator. The minority opinion, however, must be duly recorded (Article 25).</p>
	When?	<p>The award of the arbitral tribunal shall be announced immediately after its last sitting, or may be announced later.</p> <p>The full text of the award shall be communicated to the parties at least within 30 days from the date of the last sitting of the arbitral tribunal.</p> <p>In special cases, the arbitral tribunal may decide to communicate the award later than the thirty-day period.</p>
		<ul style="list-style-type: none"> • The name of Vietnam International Arbitration Center; • The place and date of issuance of the award; • The names of the arbitrators or the name of the sole arbitrator, as the case may be; • The object of the dispute and a summary of how the matter evolves; • The decision made on the dispute and on the arbitration fees and other costs involved; • The ground on which the decision is made; and • The signatures of the arbitrators or the signature of the sole arbitrator, as the case may be, and that of the secretary appointed to the hearing of the dispute.
Execution		<p>The arbitral tribunal may issue a decision to end the arbitration proceedings. Any such decision shall be applicable to the following cases:</p> <ul style="list-style-type: none"> • Where the plaintiff withdraws his Request for arbitration; • Where the parties reach a direct agreement,

		<p>without involving a hearing by the arbitral tribunal;</p> <ul style="list-style-type: none">• Where the necessary conditions for consideration and decision on the case are absent, including the inactivity of the plaintiff within the first six months.
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Summary of the Arbitration Law of Thailand

I. Definition of Arbitration

II. Arbitration Law in some countries in Asia (brief presentation)

Most of these Laws focus on commercial activities, based on the contract.

1) Thailand¹

- The action for enforcement of arbitral award (by way of a confirmed judgment)
- Act also states clearly the preconditions for enforcement as well as the reservations made by Thailand under both the Geneva and New York conventions.
- And also available as a means of dispute settlement

III. Comparison Arbitration laws (Thailand):

1) The Arbitration Commission

- **Thailand²**
 - i. Thailand has an independent judiciary that generally is effective in enforcing property and contractual rights, but in practice the legal process is slow and litigants or third parties sometimes may affect judgments through extra-legal means. In addition, companies may establish their own arbitration agreements.
 - ii. At present, Thailand is not a member of the International Center for the Settlement of Investment Disputes. However, Thailand is a member of the New York Convention, and enacted its own rules on conciliation and arbitration in the Arbitration Act of 1987. The Arbitration Office of the Thai Ministry of Justice administers these procedures.
 - iii. **Arbitration Commission of the Arbitration Office**, which is appointed by the cabinet.

2) The Arbitration Agreement

- **Thailand:** based on the arbitration clauses, which are provided in the contract whereby the parties agree to submit present or future civil disputes to arbitration.
- **In case, we need Arbitration Agreement:** we need some indications as:
 - i. Setting up a written agreement to arbitrate (a dispute can be set up against other parties).
 - ii. An expressed interest to request arbitration and a scope of the disputes.
 - iii. The parties to a dispute may stipulate the following **arbitration** clause in the contract.
 - iv. Applying an application to Arbitration office of Thai Ministry of Justice administers or to Thai court. The court is bound to render the decision on such written agreement, unless it is against the public order or good morals of the people of Thailand which depends, by and large, on the discretion of the relevant court.
 - v. **Other indications:**
 - This agreement becomes invalid, when the contract is signed by a person having no capacity by Law, or, when there are some conditions provided in the contract.
 - 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.

3) Arbitration Procedure

¹ Source from: <http://www.thailandlaw.com/bizarbitration.html>.

² Source from: <http://www.usa.or.th/services/docs/reports/ccq00-7.htm>.

The party initiating recourse to **arbitration** may submit a statement of claim in the form provided by the Institute to the Director. The statement shall consist of the following particulars:

- (1) A request to settle the dispute by **arbitration**;
- (2) Name and addresses of the parties;
- (3) Applicable **arbitration** clause or **arbitration** agreement;
- (4) The contract or legal relationship which gives rise to the dispute;
- (5) The facts which form the basis of the claim and the amount claimed;
- (6) The relief or remedy sought;
- (7) The number of arbitrators, if the parties have not previously agreed upon.

When a statement of claim is filed with the Institute and the Director is satisfied that the statement conforms with the requirements set forth, the Institute shall, without delay, serve the other party with the statement at his domicile or place of the business by return post or by any other means as it deems appropriate.

When the other party has been served with the statement of claim, he may file a defence or a counter-claim in writing with the Director within 15 days from the day on which the statement of claim is served on him. The parties may appoint a representative or any other person to assist them in the **arbitration** process. The parties shall notify in writing the name and address of such person to the Director.

i. **ARBITRATORS**

- Unless otherwise agreed upon, there shall be one or three arbitrators.

a. If a sole arbitrator is to be appointed, the following procedure shall apply:

- (1) The Institute shall dispatch, without delay, an identical list containing at least three names from the list of arbitrators to the parties;
- (2) Within 15 days from the date of the receipt of this list, each party may return the list to the Institute after having deleted the name or names to which he objects and numbered the remaining names on the list in order of his preference;
- (3) After the expiration of the above period of time the Director shall appoint the sole arbitrator from among the names approved on the lists returned to him and in accordance with the order of preference indicated by the parties;
- (4) If any party fails to perform his duty under (2), the Director may exercise his discretion in appointing the sole arbitrator. In making the appointment, the Director shall have regard to the independence and impartiality of the arbitrator;
- (5) The parties may, by consensus, appoint a person not registered with the Institute to be the sole arbitrator.

b. If three arbitrators are to be appointed, the following procedure shall apply:

- (1) Each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal;
- (2) Rule 11 shall apply to the appointment of the presiding arbitrator *mutatis mutandis*³;
- (3) The presiding arbitrator and arbitrators shall have equal vote;
- (4) The arbitral award shall be rendered on the majority basis.

- Agreed upon, there shall have following conditions:

³ Mutatis mutandis means a phrase indicating that a document or thing may be changed or amended to reflect non-material matters (like a new address or telephone number) without changing the legal effect thereof. Altered, yet fundamentally the same.

- (1) The appointment of arbitrator shall be made in writing, signed by the party who appoints him, indicating the address, nationality, occupation and other qualifications of the arbitrator.
- (2) The arbitrator must consent to the appointment.
- (3) The Director shall notify the names and addresses of the arbitrators to all parties concerned without delay.

ii. **ARBITRAL PROCEEDINGS**

- The parties may agree upon the language or languages to be used in the arbitral proceedings.
- Subject to these Rules and the agreement between the parties, the arbitral tribunal may conduct the **arbitration** in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
- Unless otherwise agreed upon, the hearings of evidence shall be in the following manner:
 - (1) The parties shall submit all the documents in support of their claim or defence to the arbitral tribunal on the first day of the hearings. In case where the arbitral tribunal deems appropriate, the tribunal may order the parties to submit to it all the relevant documents.
 - (2) The taking of evidence shall be conducted by the arbitral tribunal. The tribunal shall note down the testimony of the witnesses in the memorandum and read it to the witnesses, the witnesses will then sign the memorandum. The memorandum thus signed shall be kept in the dossier of the case.
 - (3) The arbitral tribunal may assign an officer designated by the Institute to record the testimony in the memorandum.
 - (4) The hearings shall be held in Camera.
- Each party shall have the burden of proving the facts relied upon to support his claim or defence.
- The arbitral tribunal may appoint one or more experts to report to it in writing. In such case, the parties shall disclose the facts demanded to the expert.
- The Institute shall communicate the report to the parties. If requested, the office shall send a copy of the report to the parties.
- The parties may file a request to question the expert witness. If the request is granted the rules of the hearings of evidence shall apply *mutatis mutandis*.
- The arbitral tribunal may inquire the parties if they have any further proof to offer or witnesses to be heard and submissions to make and, if there are none, it may declare the hearings closed.

iii. **The Hearing**

Before giving an award, the arbitrators are required to hear all the parties and may make enquiries as they deem appropriate.

- In the absence of a written agreement of the parties concerned or an order of the court, the arbitrators are also empowered to define issues or disputes and to adopt their own rules and procedures for hearings.
 - The parties may present evidence and examine or cross-examine witnesses during the arbitration proceedings.
-

- Through the authority of the court, the arbitrators may summon documents, subpoena witnesses and request witnesses to testify under oath.
 - The rules of evidence and procedure stipulated in the Civil Procedures Code may be made applicable to arbitration mutatis mutandis.
- Arbitrators' fees may be fixed by agreement of the parties or by the courts. Witnesses' fees may be fixed by the arbitrators, taking into consideration the "going rates", which are generally approved by the courts.

iii. **THE AWARD**

- Unless otherwise agreed upon, the award shall be made within 180 days from the day on which the last arbitrator was appointed.
- The award shall be made by a majority of the arbitrators. The award must not exceed the scope of the **arbitration** agreement or the relief sought except in the matters concerning costs, expenses in the arbitral proceedings, the arbitrator's fee or that the award is made in accordance with an agreement or a compromise between the parties.
- The arbitral tribunal shall decide in accordance with legal principle and the rule of justice. In the interpretation of contract, the tribunal shall take into account its enforceability and the usages of trade applicable to the transaction.
- The award shall be made in writing and signed by the arbitrators. It shall contain the date on which and the place where the award was made. In case where an arbitrator fails to sign his name in the award, the tribunal or the Director shall state the reason for such absence.
 - The award shall state clearly the reasons upon which it is based.
 - The arbitrator, Director, Institute and the Office shall not disclose the award to the public, unless with the consent of the parties.
- When the award is made, the Institute shall without delay, deliver a copy of the award to the parties concerned. The award shall be final and binding upon the parties from the day on which it reaches the party.

iv. **Repeal and Execution (enforcement)**

If one party is not agree with the arbitral decision and if they are sure that they have specific evidence to prove, He/She can repeal at the court within specific period mention by the law.

Within 30 days from the day on which a copy of the award reaches the party, if any reasonable doubt and error/mistake arise concerning the contents of the award, a party may request the arbitral tribunal to interpret such contents.

Or the party can request to the competent court⁴ who may correct the error and give judgement for the enforcement of the corrected award. When the losing party refuses to voluntarily comply with the arbitral award, the other party may file a request with a competent court for a judgement confirming the award within one year after the date on which a copy of the award is delivered to the parties concerned.

Conditions of appeal to the court are:

- (1) There is an allegation that the arbitrator or umpire did not act in good faith or that fraud was committed by any party;

⁴ **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.

- (2) The order or judgement is contrary to the provisions of law governing public order;
- (3) The order or judgement 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 18⁵.

Once the court receives the request, it shall hold an inquiry and give judgement without delay. In the case of foreign awards, the request for enforcement shall be accompanied by a certified copy of the award and the arbitration agreement, and translation in Thai of the awards and the agreement. The translation shall be certified by a sworn translator, an officer of the Ministry of Foreign Affairs, a diplomatic delegate or a Thai consul

The Procedure of execution will base on the Arbitration act and rule which are in the Civil Procedure Code, conducted or made decision by Thai competent court.

4) International Arbitration Law

International Arbitration Law of Thailand is almost based on the domestic Arbitration Acts and Rules. However, significantly, the Acts are broadly based on the New York Convention for Recognition and Enforcement of Foreign Arbitral Awards, with an additional defence to enforcement based on 'good morals' of Thai society and cultures.

Also, the new Act on 30 April 2002 extends the previous deadline for enforcement (Act of 1987) of Thai awards in Thai courts from one year to three years.

⁵ **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*.
