THE NEW ARBITRATION ERA IN THAILAND*

Modern arbitration in Thailand has been instigated by the promulgation of the Arbitration Act, B.E. 2530 (1987). Ever since, arbitration has been practiced extensively in Thailand. Its great potential as an effective means of dispute resolution has been perceived and realized by the legal profession as well as the business community. The government has also joined the feast by promoting the use of arbitration among governmental agencies, and adopted an arbitration clause into various contracts between governmental agencies and private parties. The number of arbitration cases under the auspices of the Thai Arbitration Institute (TAI) increases by leap and bound. It can be fairly said that, during the last fifteen years, those involved in arbitration proceedings in Thailand have gradually gained significant experience and expertise over time. Then came two incidents that everlastingly changed arbitration landscape in Thailand.

The first one is the enactment of the new Arbitration Act, B.E. 2545 (2002). As stated above, arbitration practitioners in Thailand has gained significant experience and expertise since the promulgation of the old act. This same experience has taught that, to bring Thai arbitration standard to meet international expectation, the arbitration law needs to undergo a major reform. The TAI which has long been a main contributor to the development and promotion of arbitration in Thailand conducted an extensive study on the issue, and gathered opinions of various prominent arbitration practitioners, both domestic and oversea. The final analysis has shown that, taken into account all main factors, and for the overall interest of various parties involved in arbitration in Thailand, it is the most suitable to adopt the principles of the Model Law on International Commercial Arbitration prepared by the United Nation Commission on International Trade Law (UNCITRAL). Bearing in mind the fact that the drafters of the Model Law prepared the text with the intention to make the law suitable for international commercial arbitration, the committee responsible for drafting the new Thai arbitration law decided to apply the principles of the Model Law to domestic arbitration as well as international arbitration. In doing so, the committee aimed at bringing the standard for domestic arbitration in line with those for international arbitration. Moreover, the business outlook in Thailand has dramatically changed during the past decade. Domestic business community has been so intertwined with international economic community that, very often, it is

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* Reprinted from the booklet of the Thai Arbitration Institute, The Office of Alternative Dispute Resolution, Office of the Judiciary.

difficult to disentangle domestic transactions from international one. Having two separate arbitration laws, one for domestic and the other for international arbitration, may heal some problems, but will generate probably equal number of new problems, especially those technicality that may be utilized by some recalcitrant parties. Two separate laws may also give undue and unequal treatment to domestic arbitration, and quite likely place parties in domestic arbitration in some inferior standard.

The new arbitration law has very much followed the guidelines given by the UNCITRAL Model Law. It briefly deviates from the Model Law only in some specific issues that really need different treatment. Some of the new facets had actually been practiced or interpreted under the old law, but no one seemed to be certain of its application. The major features of the new law include the principle of "severability of an arbitration clause", "the *competence competence* jurisdiction of the arbitral tribunal", "the principle of *ex aequo et bono* and *amiable compositeur*", the guarantee of due process, the autonomy of arbitration and freedom of the parties, the mechanism for setting aside an arbitral award, the recognition and enforcement of domestic and foreign arbitral awards, so on and so forth. This new law was published in the Government Gazette on the 29th of April 2002, and came into effect on the following day.

The second event is the reformation of the TAI. Previously, the TAI was established under the umbrella of the Ministry of Justice. It was there for more than a decade. The new Thai Constitution, however, demands the separation of the Court of Justice and the Ministry of Justice to guarantee the independence of the Thai judiciary. Therefore, the administration of justice in Thailand has to be restructured as directed by the Constitution. Under the new regime, the TAI has been positioned within the structure of the Court of Justice in order to ensure the neutrality of the institution which handled many arbitral proceedings involving governmental agencies. The new TAI has refurbished and improved its facility and services. A new set of arbitration rules has been enacted to accommodate the demand of the new arbitration law. Such new facility, services and rules together enable the institution to be well-prepared to entertain international parties who wish to enjoy the hospitality of Thai people, extraordinary culture and facility, unique services from experienced staffs with service mind.

All in all, the new arbitration law together with the newly-restructured Thai Arbitration Institute have definitely brought arbitration in Thailand into a new and bright era where arbitration practitioners and business community can truly trust arbitration as an effective and efficient mechanism for dispute resolution.