

Unofficial Translation*

ARBITRATION ACT,
B.E. 2545 (2002)

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 2.¹ 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 The Arbitration Act, B.E. 2530 (1987) shall be repealed.

* Translated by Associate Professor Dr. Pinai Nanakorn, and reviewed by Professor Vichai Ariyanuntaka under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 119, Part 39a, dated 29th April 2002.

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Section 4. Any reference made by any provision of law to provisions of the Civil Procedure Code insofar as they deal with out-of-court arbitration shall be deemed to be the reference to this Act.

Section 5. In this Act:

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators;

“Court” means any organ or institution having the judicial power under the law of the country in which that Court is situated;

“claim” also includes a counter-claim except the claims under section 31 (1) and section 38 paragraph two (1);

“defence” also includes a defence to a counter-claim except a defence to a counter-claim 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 allow a contractual party to make a decision on any matter, such contractual party also has the power to authorise a third party or any agency to make a decision on such matter on his behalf.

In the case where a provision of this Act provides that any particular fact shall be or may be agreed upon by the contractual parties or, in any other way, makes a reference to an agreement of the contractual parties, such agreement shall also include arbitration rules indicated therein.

Section 7. In the case where the contractual parties do not agree otherwise, in delivering a document under this Act, if the document is delivered personally to the addressee indicated therein or delivered to the place of business, domicile or mailing address of the addressee indicated therein or, in the case where none of these addresses is found despite a reasonable inquiry, delivered to his last-known place of business, domicile or mailing address by

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registered post or registered post requiring acknowledgement of receipt thereof in the case of a domestic address or by any other means which provides a record of the attempt to deliver it, it shall be deemed that the addressee indicated therein has received such document.

The provisions of this section do not apply to the delivery of documents in court proceedings.

Section 8. In the case where either party knows that any provision of this Act from which the contractual parties may derogate or any requirement set forth under the arbitration agreement has not yet been complied with by the other contractual party, if such former party yet proceeds with the arbitration without stating his objection to the other party's non-compliance within a reasonable time or within the specified period of time, such party shall be deemed to have waived his right to make an objection thereto.

Section 9. The Central Intellectual Property and International Trade Court or the Regional Intellectual Property and International Trade Court or the Court in whose jurisdiction the arbitral proceedings are conducted or the Court in whose jurisdiction any of contractual parties is domiciled or the Court having jurisdiction to try and adjudicate disputes submitted to arbitration 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.

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CHAPTER I
ARBITRATION AGREEMENT

Section 11. An arbitration agreement means an agreement by the parties to settle by arbitration all or certain disputes which have arisen or which may arise in the future in respect of a legal relationship, whether contractual or not, provided that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate arbitration agreement.

An arbitration agreement must be supported by written evidence and signed by the contractual parties; if a clause is contained in any communications exchanged by the parties by means of letters, facsimile, telegramme, telex or data interchange bearing an electronic signature or by any other means by which such clause is recorded or if a clause is alleged in statements of claim or defence and the other party does not deny the existence thereof, it shall be deemed that an arbitration agreement has duly existed.

The reference, in a contract supported by written evidence, to any document containing an arbitration clause shall be deemed to constitute an arbitration agreement, provided that the reference is such as to make that clause part of the contract.

Section 12. The validity of an arbitration agreement and the appointment of arbitrators is not affected although thereafter any of the contractual parties becomes dead, ceases to become a juristic person, is under absolute receivership or is adjudged by the Court incompetent or quasi-incompetent.

Section 13. When any claim or liability is transferred, an arbitration agreement in relation to such claim or liability is also binding upon the transferee.

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Section 14. In the case where any contractual party institutes an action in relation to a dispute which is the subject of an arbitration agreement without submitting such dispute to the arbitral tribunal under the agreement, the party against whom the action is instituted may, not later than the date of submitting his statement of defence or within the period of time allowed by law for filing a statement of defence, file with the competent Court a motion requesting an order striking the case in order for the parties to proceed with arbitration proceedings and the Court shall, upon conducting an inquiry and finding no ground rendering such arbitration agreement to be void, inoperative or incapable of being performed, issue an order striking the case.

While the request under paragraph one is pending before the Court, any contractual party may commence arbitral proceedings or the arbitral tribunal may continue the proceedings and make an award in such dispute.

Section 15. In a contract between a State agency and a private individual, whether it is an administrative contract or not, the contractual parties may agree to settle disputes by arbitration and such arbitration agreement shall be binding upon the parties.

Section 16. A party having concluded an arbitration agreement may file a motion requesting the competent Court to issue an order imposing a provisional measure for the protection of his interests before or during the arbitration proceedings. If the Court is of the opinion that, should such proceedings be those in the Court itself, it may approve the request, the Court shall proceed as so requested, provided that the provisions of the law governing Court procedures insofar as they deal with such particular matter, shall apply *mutatis mutandis*.

In the case where the Court issues an order allowing the party's request under paragraph one, if the party having filed the request fails to pursue arbitration proceedings within

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thirty days as from the date of the Court's order or within such time as determined by the Court, such order shall be deemed to have lapsed at the expiration of the said time limit.

CHAPTER II ARBITRAL TRIBUNAL

Section 17. An arbitral tribunal shall consist of arbitrators in an odd number.

In the case where the parties to the dispute fix the number of arbitrators in an even number, the arbitrators shall jointly appoint an additional arbitrator as chairman of the arbitral tribunal. The procedure for the appointment of the chairman of the arbitral tribunal shall be in accordance with section 18 paragraph one (2).

In the case where the parties to the dispute are unable to agree upon the number of arbitrators, there shall be a sole arbitrator.

Section 18. In the case where the parties to a dispute do not otherwise determine procedures for the appointment of an arbitral tribunal, the following procedures shall be pursued:

(1) in the case where an arbitral tribunal is determined to consist of a sole arbitrator, if the parties to the dispute are unable to agree, any party to the dispute shall instead file with the competent Court a motion for an order appointing an arbitral tribunal;

(2) in the case where an arbitral tribunal is determined to consist of more than one arbitrator, each party to the dispute shall appoint an equal number of arbitrators and such arbitrators shall jointly appoint one more arbitrator. But, if any party to the dispute fails to appoint the arbitrators within thirty days as from the date of receipt of a request to do so from the other party or if the arbitrators of both parties are unable to jointly appoint chairman of the

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arbitral tribunal within thirty days as from the date of the appointment of such persons as arbitrators, any party to the dispute shall instead file with the competent Court a motion for an order appointing arbitrators or chairman of the arbitral tribunal.

In the case where, in appointing arbitrators under paragraph one, no other procedures are in place so as to secure successful appointment, any party to the dispute may file with the competent Court a motion for taking a measure in appointing arbitrators as the Court deems appropriate, if:

(1) any party to the dispute fails to act as required under the procedure agreed upon;

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

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

Section 19. Arbitrators must be impartial and independent and possess the qualifications required by the arbitration agreement or, in the case where the contractual parties agree that the procedures are to be conducted by an agency established for the purpose of the settlement of disputes by arbitration, must possess the qualifications required by such agency.

The person appointed as an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence and, from the time of his appointment and throughout the arbitral proceedings, such person must without delay disclose any such circumstances to the parties to the dispute unless the parties to the dispute have already been informed of them.

An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence or lack of qualifications agreed to by the parties to the dispute. But, a party to the dispute may not challenge an arbitrator appointed by him or

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in whose appointment he has participated unless such party was not aware or could not have been aware of the ground for the challenge at the time of the appointment of the arbitrator.

Section 20. In the case where the parties to the dispute do not agree otherwise, a party to the dispute who intends to challenge an arbitrator must submit a written statement of the reasons for the challenge to the arbitral tribunal within fifteen days as from the date of the awareness of the appointment of the arbitrator or of the circumstances provided in section 19 paragraph three and, if the challenged arbitrator does not withdraw from his office or the other party does not agree to the challenge, the arbitral tribunal shall decide on the challenge.

If a challenge under any procedure agreed upon by the parties to the dispute or under the procedure provided in paragraph one is not successful or in the case of a sole arbitrator, the challenging party may file with the competent Court a motion objecting it within thirty days as from the date of receipt of written notice of the decision on the challenge or as from the date of the awareness of the appointment of the arbitrator or of the circumstances provided in section 19 paragraph three, as the case may be, and the Court, after having conducted an inquiry into such challenge, shall issue an order accepting or dismissing the challenge; while such motion is pending before the Court, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award, unless otherwise ordered by the Court.

In the case of necessity, the arbitral tribunal may grant an extension of the time limit for a challenge of an arbitrator under paragraph one for a period not exceeding fifteen days.

Section 21. The mandate of an arbitrator terminates upon his death.

In the case where any person to be appointed or already appointed as an arbitrator becomes unable to perform his functions, whether by refusing to accept the

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appointment, being under absolute receivership, being adjudged by the Court as incompetent or quasi-incompetent, or for other reasons fails to act within a reasonable time, his mandate terminates upon such arbitrator withdrawing from his office or the parties agreeing on the termination of the mandate of the arbitrator, but if a controversy remains concerning any of the said grounds, any party to the dispute may file with the competent Court a motion for deciding on the termination of the mandate of the arbitrator.

Subject to paragraph two or section 20 paragraph one, a withdrawal by an arbitrator from his office or an agreement by the parties to the dispute to the termination of the mandate of an arbitrator does not imply acceptance of the ground under paragraph two or section 19 paragraph three.

Section 22. If the mandate of an arbitrator terminates under section 20 or section 21 or because of his withdrawal from office or because the parties agree on the termination of the mandate of the arbitrator or in any other case of termination of his mandate, a substitute arbitrator shall be appointed in accordance with the procedure provided for the appointment of arbitrators.

Section 23. An arbitrator does not bear civil liability for performing his functions as the arbitrator, unless the act in question is performed so wilfully or with such gross negligence as to cause injury to any party to the dispute.

Any arbitrator who unduly demands, accepts or agrees to accept property or any other benefit for himself or for another person for performing or not performing any particular act in the course of his 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 gives, offers or agrees to give property or any other benefit to an arbitrator in order to induce the arbitrator to perform, refrain from performing or delay the

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performance of any act, which is contrary to his 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 THE ARBITRAL TRIBUNAL

Section 24. The arbitral tribunal may rule on its own jurisdiction, including the existence or validity of the arbitration agreement, the validity of the constitution of the arbitral tribunal and disputed issues within its jurisdiction and, for this purpose, an arbitration clause which 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 prejudice *ipso jure* the arbitration clause.

Any challenge of jurisdiction of the arbitral tribunal to hear the dispute must be raised not later than the date of the submission of the statement of defence on the merits and a party to the dispute is not precluded from raising such a challenge by the reason that such party has appointed, or participated in the appointment of, an arbitrator, and in raising a challenge that the arbitral tribunal is exceeding the scope of its authority, any party to the dispute must raise it immediately upon the occurrence of the incidence during the arbitral proceedings, save that, in the case where the arbitral tribunal considers the delay justified, the arbitral tribunal may permit a party to the dispute to make a challenge later than the time limit specified.

The arbitral tribunal may rule on its own jurisdiction either as a preliminary question or in an award on the merits but if the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party to the dispute may file with the competent Court a motion for a decision on the matter within thirty days as from the date of receipt of the notice of that

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preliminary ruling and, while such a motion is pending before the Court, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV ARBITRAL PROCEEDINGS

Section 25. In the arbitral proceedings by the arbitral tribunal, the parties to the dispute shall be treated with equality and be given opportunities of adducing evidence and presenting their arguments and defences in accordance with the circumstances of the dispute.

In the case where the parties to the dispute do not agree otherwise or it is not otherwise provided by this law, the arbitral tribunal shall have the power to conduct arbitral proceedings in such manner as it deems appropriate. This power of the arbitral tribunal shall also include the power to determine admissibility and weight of all evidence.

For the purpose of this Chapter, the arbitral tribunal may apply the Civil Procedure Code on evidence *mutatis mutandis*.

Section 26. The parties to the dispute may agree on the place of arbitration. Failing such agreement, the arbitral tribunal shall determine the place, having regard to the circumstances of the dispute and the convenience of the parties to the dispute.

In the case where the parties to the dispute do not agree otherwise, the arbitral tribunal may determine any place, other than that determined under paragraph one, for consultation, for hearing witnesses, experts or the parties to the disputes or for inspection of any articles, places or documents.

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Section 27. In the settlement of disputes by arbitration, it shall be deemed that a dispute is submitted to arbitration under section 193/14 (4) of the Civil and Commercial Code and that the arbitral proceedings commence upon the occurrence of any of the following:

(1) upon one party to the dispute receiving from the other a written request for the settlement of such dispute by arbitration;

(2) upon one party to the dispute serving on the other party a written request for the appointment of arbitrators or giving consent to the appointment of arbitrators for the settlement of such dispute;

(3) upon any party to the dispute notifying, in writing, the arbitral tribunal of the dispute intended to be settled, in the case where the arbitration agreement provides for the arbitral tribunal;

(4) upon any party to the dispute submitting the dispute to such agency established for the settlement of disputes by arbitration as agreed.

Section 28. The parties to the dispute may agree on the language to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language, and, if it is not specifically provided otherwise, such agreement or determination shall apply to written claims, defences or motions by a party and any taking of evidence, award, decision or other communication by or to the arbitral tribunal.

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

Section 29. Within the period of time agreed by the parties to the dispute or determined by the arbitral tribunal, if the parties have not otherwise agreed, the claimant shall state the facts supporting his claim, the points at issue and the relief sought while the

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respondent shall state his arguments in his defence, provided that the parties may enclose relevant documents or a list of evidence indicating documents or other evidence intended to be adduced.

In the case where the parties to the dispute have not otherwise agreed, either party may amend his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay arising therefrom.

Section 30. In the case where the parties to the dispute have not otherwise agreed, the arbitral tribunal shall decide whether to take evidence or hear statements orally or in writing or conduct the arbitral proceedings merely on the basis of documents and any other evidence.

The arbitral tribunal has the power to take evidence under paragraph one at such stage of the proceedings as it deems appropriate if so requested by any party to the dispute unless the parties have agreed that no taking of evidence shall be held orally or in writing.

The arbitral tribunal shall give the parties to the dispute reasonable advance notice of the taking of evidence and hearings for the purposes of inspection of articles, places or other documents.

All claims, defences, motions, documents or information submitted by any party to the dispute to the arbitral tribunal must also be communicated to the other party, provided that this requirement shall also extend to any expert report or any documents or evidence on which the arbitral tribunal may rely in making its award.

Section 31. In the case where the parties to the dispute have not otherwise agreed, the arbitral tribunal shall take action as follows:

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(1) terminate the proceedings if the claimant fails to submit his statement of claim as provided in section 29 paragraph one;

(2) continue the proceedings if the respondent fails to submit his statement of defence as provided in section 29 paragraph one, provided that such failure to submit the same shall not in itself be treated as an admission of the claimant's allegations therein;

(3) continue the proceedings and make the award if any party to the dispute fails to appear on the date of taking evidence or hearings or fails to produce any evidence.

The arbitral tribunal shall have the power to conduct inquiries as it deems appropriate prior to taking action under paragraph one, provided that this shall include inquiries into reasons for the respondent's failure to submit his statement of defence or failure to appear at hearings, as the case may be.

Section 32. In the case where the parties to the dispute have not otherwise agreed, the arbitral tribunal shall take action as follows:

(1) appoint one or more experts for preparing opinions specifically on any of the issues to be decided by the arbitral tribunal;

(2) require a party to give the expert any information or to prepare or take action for acquiring any documents or articles relevant to the issues of the dispute for inspection by the expert.

In the case where the parties to the dispute have not otherwise agreed, if any party so requests or if the arbitral tribunal deems it appropriate, the expert shall, after providing his written or oral opinions, participate in a hearing in order for the parties to have the opportunity to put questions to him or in order for that party to present expert witnesses in testifying on the points at issue.

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Section 33. The arbitral tribunal or any arbitrator or any party with the approval of the majority of the arbitral tribunal may file with the competent Court a motion for issuing a summons of witnesses or ordering the delivery of any document or article.

In the case where the Court considers that the proceedings to which the motion under paragraph one relates, should they be the proceedings in the Court itself, are permissible, the Court shall approve such motion, provided that the provisions of the law governing Court procedures insofar as they deal with such particular matter shall apply *mutatis mutandis*.

CHAPTER V

AWARD AND TERMINATION OF PROCEEDINGS

Section 34. The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. In the case of any designation of the law or legal system of a given country, it shall be construed, if it is not otherwise provided expressly, as directly referring to the substantive law and not to the conflict of laws rules of that country.

In the case where the parties to the dispute have not made any designation of the law applicable to the substance of the dispute, the arbitral tribunal shall decide the dispute in accordance with the law of Thailand except that, in the case of the conflict of laws, the arbitral tribunal shall decide in accordance with the conflict of laws rules which it considers applicable.

The parties to the dispute may expressly specify that the arbitral tribunal shall have the power to decide *ex aequo et bono*.

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Any decision by the arbitral tribunal shall be in accordance with the terms of the contract and, in case of a trade dispute, usages of the trade applicable to the transaction shall also be taken into account.

Section 35. In the case where the parties to the dispute have not otherwise agreed, an award, order and decision of the arbitral tribunal in respect of any matter shall be by a majority of votes. If a majority of votes cannot be obtained, the chairman of the arbitral tribunal shall make an award, order or decision alone.

The chairman of the arbitral tribunal shall decide questions of procedure if so authorised by the parties to the dispute or all members of the arbitral tribunal.

Section 36. If, during arbitral proceedings, the parties to the dispute make a compromise, the arbitral tribunal shall terminate the proceedings. If the parties to the dispute make a request and the arbitral tribunal considers that the agreement or the compromise in question is not contrary to the law, the arbitral tribunal shall make an award in accordance with the agreed terms of the compromise.

An award on the agreed terms of the compromise shall be subject to section 37 and shall have the same status and effect as any award on the merits of the case.

Section 37. The award shall be made in writing and shall be signed by members of 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 arbitrator's omitted signature is also stated.

In the case where the parties to the dispute have not otherwise agreed, the award shall clearly state the reasons upon which it is based but may not make any determination or decision on any matter beyond the scope of the arbitration agreement or the

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parties' requests, unless it is the award in accordance with the agreed terms of the compromise under section 36 or in respect of the determination of fees and expenses of the arbitration or remuneration of arbitrators under section 46.

The award shall state its date and the place of arbitration under section 26 paragraph one and such award shall be deemed to have been made at that place.

After the award is made, the arbitral tribunal shall deliver a copy of such award to all parties to the dispute.

Section 38. The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph two.

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on the part of the respondent in obtaining a decision on the points at issue in the dispute;

(2) the parties to the dispute agree on the termination of the proceedings;

(3) the arbitral tribunal finds 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 terminates with the termination of the arbitral proceedings.

Section 39. In the case where the parties to the dispute have not otherwise agreed, within thirty days as from the date of receipt of the award:

(1) a party to the dispute may file a motion requesting the arbitral tribunal to correct in the award any errors in numerical computation, any clerical or typographical errors or any minor mistakes, provided that a copy of the request shall also be delivered to the other party; or

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(2) if so agreed, a party to the dispute may file a motion requesting the arbitral tribunal to give an interpretation or clarification of any point or part of the award, provided that a copy of the request shall also be delivered to the other party.

If the arbitral tribunal considers the request under (1) or (2) to be justified, it shall make the correction or give the interpretation within thirty days as from the date of receipt of the request. Such interpretation or clarification shall be deemed to form part of the award as well.

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

Unless otherwise agreed by the parties to the dispute, any party to the dispute, with notice to the other party, may file a motion, within thirty days as from the date of receipt of the award, requesting the arbitral tribunal to make an additional award as to the presented claims omitted from the award. If the arbitral tribunal considers such request to be justified, it shall make the additional award within sixty days as from the date of receipt of the request.

In the case of necessity, the arbitral tribunal may extend the period of time within which it shall make a correction, interpretation or clarification of the award or an additional award as provided in paragraph two and paragraph four.

Section 37 shall apply to a correction, interpretation or clarification of the award or to an additional award under this section.

CHAPTER VI RECOURSE AGAINST AN AWARD

Section 40. Recourse against an arbitral award may be made only by an application to the competent Court for setting aside the award as provided in this section.

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Any party to the dispute may make an application for setting aside an arbitral award by filing a motion with the competent Court within ninety days as from the date of receipt of a copy of the award, or in the case where a request is made to the arbitral tribunal for making a correction or interpretation of the award or for making an additional award, as from the date of the correction or interpretation of the award or the additional award by the arbitral tribunal.

The Court shall set aside the award in in any of the following cases:

(1) the party making the application furnishes proof that:

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

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

(c) the party making the application for setting aside the award was not given proper prior notice of the appointment of the arbitral tribunal or of the arbitral proceedings or was otherwise unable to present his case in the arbitral proceedings;

(d) the award deals with a dispute not falling within the scope of the arbitration agreement or the award contains decisions on matters beyond the scope of the agreement for submission of the dispute to the arbitral tribunal, provided that, if the award which contains decisions on the matters beyond such scope can be separated from the part of the award which contains decisions on matters falling within the scope, the Court may set aside only that part of the award which contains decisions on matters beyond the scope of the arbitration agreement or of such agreement; or

(e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties to the dispute or, in the case where the parties to the dispute have not otherwise agreed, such composition was contrary to this law;

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(2) it is apparent to the Court that:

(a) the award deals with the subject-matter which is not capable of settlement by arbitration under the law; or

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

In considering the application for setting aside the award, if it is so requested by a party to the dispute and the Court considers it justifiable, the Court may adjourn the setting aside proceedings as it deems appropriate in order to for the arbitral tribunal to resume the proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VII

RECOGNITION AND ENFORCEMENT OF AWARDS

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 binding upon the parties to the dispute and, upon application to the competent Court, shall be enforced.

In the case where the arbitral award was made in a foreign country, the competent Court may render judgment for enforcement of the award only when it is governed by a treaty, convention or international agreement to which Thailand is a party and this shall have effect only to the extent that Thailand agrees to be bound thereby.

Section 42. A party to the dispute who seeks enforcement of the arbitral award shall file with the competent Court a motion therefor within the period of three years as from

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the date on which the award is enforceable. Upon receipt of such motion, the Court shall expeditiously conduct an inquiry and render judgment forthwith.

The applicant for enforcement of the arbitral award must supply the Court with the following documents:

- (1) the original award or a certified copy thereof;
- (2) the original arbitration agreement or a certified copy thereof;
- (3) a Thai translation of the award and of the arbitration agreement, as prepared by a translator who has taken an oath or made a pledge before the Court or in the presence of an official or person with the authority to accept an oath or a pledge or as certified by an official with the authority to certify translations or by a Thai diplomatic agent or consul in the country in which such award or arbitration agreement was made.

Section 43. The Court has the power to issue an order refusing enforcement of an arbitral award, irrespective of the country in which it was made, if the party against whom it is invoked furnishes proof that:

- (1) a party to the arbitration agreement was under some incapacity under the law applicable to that party;
- (2) the arbitration agreement is not binding under the law of the country to which the contractual parties have agreed or, in the case of no such agreement, under the law of the country where such award was made;
- (3) the party against whom the award is invoked was not given proper prior notice of the appointment of the arbitral tribunal or of the arbitral proceedings or was otherwise unable to present his case in the arbitral proceedings;
- (4) the award deals with a dispute not falling within the scope of the arbitration agreement or the award contains decisions on matters beyond the scope of the agreement for submission of the dispute to the arbitral tribunal, provided that, if the award which contains

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decisions on the matters beyond such scope can be separated from the part of the award which contains decisions on matters falling within the scope, the Court may enforce that part of the award which contains decisions on matters falling within the scope of the arbitration agreement or of such agreement;

(5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties to the dispute or, in the case where the parties to the dispute have not so agreed, was not in accordance with the law of the country where the award was made; or

(6) the award has not yet become binding or has been set aside or suspended by the competent Court or under the law of the country where the award was made, save that during the pendency of an application made to the competent Court for setting aside or suspending an award, the Court may adjourn its hearings in the case in respect of which enforcement of the award is sought as it deems appropriate and may, upon the application of the party claiming enforcement of the award, order the party against whom the award is invoked to provide appropriate security.

Section 44. The Court has the power to issue an order refusing enforcement of an arbitral award under section 43 if it is apparent to the Court that the award deals with the subject-matter which is not capable of settlement by arbitration under the law or the enforcement of the award shall be contrary to public order or good morals.

Section 45. An order or judgment of the Court under this Act shall be subject to no appeal unless:

(1) the recognition or enforcement of the award shall be contrary to public order or good morals;

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(2) the order or judgment is contrary to provisions of law relating to public order or good morals;

(3) the order or judgment is at variance with the arbitral award;

(4) the judge having tried the case has given a dissenting opinion in the judgment; or

(5) the order is one concerning the imposition of provisional measures for the protection of interests of a party to the dispute under section 16.

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

CHAPTER VIII FEES, EXPENSES AND REMUNERATION

Section 46. In the case where the parties to the dispute have not otherwise agreed, fees and expenses in arbitral proceedings and remuneration of arbitrators, with the exception of lawyers' fees and expenses, shall be as determined in the arbitral award.

In the case where fees and expenses in the arbitral proceedings or remuneration of arbitrators are not determined in the award, any party to the dispute or the arbitral tribunal may file with the competent Court a motion for its issuing an order on fees and expenses in the arbitral proceedings and remuneration of arbitrators as the Court deems appropriate.

Section 47. Agencies established for the settlement of disputes by arbitration may determine fees, expenses and remuneration in arbitral proceedings.

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TRANSITORY PROVISIONS

Section 48. The provisions of this Act shall have no prejudice to the validity of any arbitration agreement and arbitral proceedings concluded or conducted prior to the day on which this Act comes into force.

Any arbitral proceedings which have not yet been conducted shall, provided that the time limit required for conducting the same under the law in force prior to this Act has not yet elapsed, shall be conducted within the time limit prescribed under this Act.

Countersigned by:

Thaksin Shinawatra

Prime Minister

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