
Avoiding Court Disputes with Arbitration in Phuket

**BCCT Multi-Chamber Briefing
Phuket, 14 November 2019**

Summary of Presentation

- Overview of litigation and arbitration
- Is it best to refer a dispute to the Thai courts or arbitration?
- Can an arbitration take place in Phuket?
- What are the advantages and disadvantages of arbitration?
- How can you avoid having a dispute being referred to the Thai courts?
- What practical measures should be taken into consideration to maximise the benefits of arbitration?
- What are the practicalities of arbitration in Phuket?
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Overview of litigation and arbitration

- Litigation and Arbitration are final dispute resolution procedures enforceable at law
- Many types of disputes are referred to the courts, generally only commercial disputes are referred to arbitration
- Judges are appointed and paid for by the State, arbitrators are appointed and paid for by the parties
- Litigation is governed by rigid court procedures, arbitration is consensual and flexible
- Court procedures are not private, arbitration is private
- The procedures for an arbitration are usually agreed to by the parties and recorded in the arbitration agreement
- Court annexed arbitration

Is it best to refer a dispute to the Thai courts or arbitration?

- It all depends
- What are your expectations of the procedure?
- Are there multiple parties involved in the dispute?
- Do you want to have any control over the procedure?
- Is the subject matter of the dispute a technical matter?
- Is time and cost an important consideration?
- Where does the other party have its assets?
- What are you considering to include in your arbitration agreement?
- Are there any other matters to consider?

Can an arbitration take place in Phuket?

- The place or venue of an arbitration is commonly understood to be the place where the hearing takes place
- An international arbitration can normally “take place” in any location
- The legal place or seat of an arbitration is the jurisdictional seat of the arbitration and the law of that seat will govern the arbitration proceedings
- Do the applicable arbitration rules allow the arbitration to take place in Phuket or elsewhere?
- Why would you want to have an arbitration take place in Phuket?

Advantages and disadvantages of arbitration

The perceived advantages of arbitration when compared to litigation are:

- It is consensual
- It is quicker
- It is less expensive
- It is private
- It is more neutral
- Limited grounds to challenge an award
- An arbitration award is easier to enforce in a foreign jurisdiction

Advantages and disadvantages of arbitration

The perceived disadvantages of arbitration when compared to litigation are:

- It can be slow and expensive
- The Tribunal has limited powers
- Consolidation cannot always be ordered
- Inexperienced arbitrators
- Uncertain outcome
- Lack of an appeals procedure

Advantages and disadvantages of arbitration

In the 2018 International Arbitration Survey conducted by the School of International Arbitration at Queen Mary University of London the survey found that:

- 97% of the respondents indicated international arbitration is their preferred method of dispute resolution
- “Enforceability of awards”, “flexibility” and “ability to select the arbitrator” were the most favourable characteristics of arbitration
- “Cost”, “lack of sanctions during the arbitral process” and “lack of speed” were seen as arbitrations worst features

How can you avoid having a dispute being referred to the Thai courts

In order to have avoid having a dispute being referred to the Thai courts you must:

- Ensure there is a valid arbitration agreement in your contract
- File a motion with the competent court prior to the date of filing a statement of defence requesting the court to issue an order to strike the case
- If the court finds there are no grounds for rendering the arbitration agreement void, unenforceable or invalid to perform it should issue an order to strike the case

Practical measures to be taken into consideration

In order to maximise the benefits of the arbitration process you should:

- Choose procedures that are appropriate for your contract (governing law, arbitration rules, number of arbitrators, hearing venue, language etc.)
- Record the procedures in the arbitration agreement
- Ensure your lawyer is experienced in arbitration proceedings
- Choose an appropriate arbitrator

The practicalities of arbitration in Phuket

If you would like an arbitration to take place in Phuket the practical measures to be taken into consideration include:

- Do the arbitration rules you are considering allow this?
- Is a suitable venue for the hearing available?
- Does the venue have suitable facilities for the hearing?
- Are there any restraints on the arbitration taking place in Phuket, e.g. work permits for arbitrators, counsel, witnesses etc?
- What are the cost implications of having the arbitration take place in Phuket?

The practicalities of arbitration in Phuket

- Is it better to choose Thai law or a foreign law to govern the proceedings?
- What is the current arbitration law in Thailand? The 2002 Act and the 2019 Act
- Should the arbitration be administered or ad-hoc?
- Which Thai institution should be chosen to administer the arbitration? The TAI, THAC or the Board of Trade of Thailand?
- Can you choose a foreign institution to administer the arbitration?

Conclusions

- For most commercial disputes arbitration is preferable to Thai courts
- It is relatively easy to avoid a commercial dispute being referred to the Thai courts
- Careful consideration must be given to contents of the arbitration agreement
- There may be constraints on where the arbitration can take place
- It may not be practical to have the arbitration take place in Phuket

About the CIArb and the ICC

The Chartered Institute of Arbitrators (CIArb) is the world's leading professional membership body for arbitration and alternative dispute resolution (ADR). CIArb promotes the use of ADR internationally through 16,000 professionally qualified members in over 133 countries. As of September 2019 the Thailand Branch of the CIArb had 73 members.

The International Court of Arbitration of the International Chamber of Commerce (The Court) was established in 1923 and is one of the largest arbitration bodies in the world. From 1923 to 2017 the Court has administered over 23,000 cases with 810 new cases being filed in 2017. The Court's headquarters is in Paris and it has Secretariat offices in Paris, Hong Kong, New York, San Paolo, Singapore and Abu Dhabi.

Thank you, any questions?

Victor Smith LLM FCIArb
Chartered Arbitrator

Phone: + 66 81 833 8133

Email: vsmith@charndell.com