

Arbitration Institute Act, B.E. 2550 (2007)

Translation

Bhumibol Adulyadej, Rex.

Given on the 27th day of June B.E. 2550

Being the 62nd year of the Present Reign

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

Whereas it is deemed expedient to have a law on an arbitration institute;

Be it, therefore, enacted by H.M. the King, by and with the advice and consent of the Parliament, as follows:

Section 1

This Act shall be called the "Arbitration Institute Act, B.E. 2550 (2007)".

Section 2

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

Section 3

In this Act:

"Institute" means the Arbitration Institute;

"Committee" means the Arbitration Institute Committee;

"Committee member" means a member of the Arbitration Institute Committee;

"Director" means the director of the Arbitration Institute;

"Advisor" means an advisor to the Arbitration Institute;

"Staff" means a member of staff of the Arbitration Institute;

"Employee" means an employee of the Arbitration Institute;

"Minister" means the Minister in charge of this Act.

Section 4

The Minister of Justice shall be in charge of this Act

Chapter 1

Establishment, Objectives, and Authority

Section 5

An institute called "the Arbitration Institute" shall be established as a juristic person.

Section 6

The headquarters of the Institute shall be situated either in Bangkok or a nearby province.

Section 7

The Institute shall have the following objectives:

- (1) to promote and develop procedures on dispute resolution and arbitration;
- (2) to deal with affairs relating to disputes through dispute resolution and arbitration; and
- (3) to promote and disseminate knowledge concerning dispute resolution and arbitration, as well as relevant laws.

Section 8

In order to fulfill the objectives stated in Section 7, the Institute shall have the authority to act as follows:

- (1) to exercise rights to ownership, rights to possession, and real rights;
- (2) to establish rights or to create juristic acts concerning assets located within and outside the country;
- (3) to employ or authorize persons to deal with affairs within the scope of the Institute's duties and authority;
- (4) to make loans in order to proceed in the interest of fulfilling the objectives;
- (5) to collect fees, dues, remuneration and service charges for the Institute's work; and to carry out any other duties specified by this Act, or as entrusted by the Committee.

"Loans" in accordance with (4) shall be in compliance with criteria prescribed by the Cabinet.

Chapter 2 Capital, Income, and Assets

Section 9

Capital and assets used for the Institute's activities shall be comprised of:

- (1) monies received from the Government as starting fund;
- (2) general subsidies provided by the Government as appropriate and necessary;
- (3) monies or other assets donated by others;
- (4) fees, dues, remuneration and service charges levied from parties in dispute or the Institute's clients;
- (5) income derived from training programs and seminars for the dissemination of knowledge concerning dispute resolution and arbitration procedures and relevant laws; and
- (6) the interests and other benefits derived from the Institute's income, including that derived from intellectual property.

Section 10

The Institute's income shall not be a remittance to be sent to the Ministry of Finance under the Treasury Reserve Law and the Budgetary Law.

Section 11

The Institute's property shall not be subject to any civil case enforcement.

Chapter 3 Management and Administration

Section 12

There shall be a Committee called "the Arbitration Institute Committee" comprised of the Permanent Secretary for Justice, as the chairperson; the Attorney General; the Secretary-General of the Office of the Judiciary; the President of the Thai Chamber of Commerce; the President of the Federation of Thai Industries; the President of the Thai Bankers' Association; the President of the Lawyers' Council of Thailand; and five qualified members.

The Director shall be both a committee member and Secretary-General.

Qualified members, according to paragraph one, shall be appointed from among those with knowledge, expertise or experience in the spheres of economics, commerce, industry, law or arbitration, at least three of whom shall be representatives from the private sector.

Section 13

Each qualified member shall conform to the following specifications and prohibitions:

- (1) be of Thai nationality;
- (2) be not less than thirty-five years of age and not more than seventy years of age;
- (3) not be a bankrupt, an incompetent or quasi-incompetent person;
- (4) never have been sentenced to imprisonment by a final judgment, except for an offence committed through negligence or a petty case; and
- (5) not be a holder of a political office; a member of a local assembly or a local administrator; a committee member or holder of other managerial position in a political party; a member or officer of a political party.

Section 14

A qualified member shall hold a position for a four-year term.

Upon vacating a position, the committee member may be re-appointed. Prior to the appointment of a new qualified member, the outgoing committee member shall remain in office until the appointment has been made.

Section 15

Other than retirement on the expiration of the term as under Section 14, a qualified member shall be discharged from their position upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Cabinet due to failure or inability to perform their duties or behaving in an unseemly manner; and
- (4) being unqualified or falling under any of the prohibitions as prescribed in Section 13

Section 16

On the dismissal of a qualified member prior to the expiration of their term, the Cabinet shall appoint another person to fill the position. A qualified member thus appointed to fill a vacant position shall remain in office for the remaining term of the dismissed member.

Section 17

To be a quorum, a meeting of the Committee shall consist of no less than one-half of the total number of committee members.

At a meeting of the Committee, if the chairperson does not attend or is unable to perform duties, the committee members present shall select one among them to act as the chairperson of the meeting.

Decisions shall be made by majority votes, with each committee member having one vote. In the case of an equal number of votes, the chairperson shall have an additional casting vote.

Section 18

The Committee shall oversee the performance of the Institute and have, in particular, the following authority and duties:

- (1) to determine the administrative policy of the Institute;
- (2) to issue measures, principles and conditions concerning income and expenditure;
- (3) to approve the Institute's financial plan and annual budget;

- (4) to determine the size of the workforce, the period of employment, salary scales, wages and remuneration of staff and employees;
- (5) to issue rules for dispute resolution and arbitration procedures;
- (6) to issue rules for the morals, ethics and conduct of arbitrators in order to establish their neutrality and independence;
- (7) to issue rules or regulations for the supervision of working practices and general administration of the Institute as follows:
 - a) general administration of the Institute, the organization of divisions and the scope of their authority;
 - b) staff recruitment and human resource management of the Institute;
 - c) the recruitment, election, appointment, and dismissal of the Director, the Director's working practices, and the authorization of a person to act in their stead;
 - d) to provide welfare and other benefits for staff and employees;
 - e) to fix the fees, dues, remunerations, service charges and income of the Institute in accordance with Section 9 (4) and (5); and
 - f) to administer and manage the finances, procurement and assets of the Institute, including accounting and the writing off of assets from the accounts, such writing off of asset shall be complied with principles fixed by the Cabinet.
- (8) to perform any act as necessary or that in continuation with the previous act, in order to achieve the objectives.

Rules and regulations in accordance with (5), (6) and (7) shall come into force following their publication in the Government Gazette.

Section 19

The Committee shall have the authority to appoint knowledgeable persons with expertise as advisors, and to appoint sub-committees to consider or implement affairs as entrusted by the Committee.

The provisions of Section 17 shall be applied *mutatis mutandis* to the convening of a sub-committee.

Section 20

The chairperson of the Committee, committee members, advisors, and sub-committee members shall be paid a meeting allowance and remuneration as prescribed by the Cabinet.

Section 21

The Institute shall have a Director to administer the Institute's undertakings under the supervision of the Committee.

The Committee shall appoint a suitable person to be Director, who is able to work for the Institute full-time and with knowledge and expertise beneficial to the Institute.

Section 22

The Director shall conform to the following qualifications and prohibitions:

- (1) be of Thai nationality;
- (2) be not less than thirty-five years of age, and not more than sixty-five years of age;
- (3) have knowledge, expertise or experience appropriate for the work of the Institute; and
- (4) not fall under any of the prohibitions as prescribed in Section 13 (3), (4), or (5).

Section 23

The Director shall hold the position for a four-year term and, upon vacating the position, may be re-appointed for a maximum of two consecutive terms.

Section 24

Other than retirement on the expiration of the term, the Director shall be dismissed from the position upon:

- (1) death;
- (2) resignation;
- (3) being dismissed by the Cabinet due to failure or inability to perform their duties or behaving in an unseemly manner; and
- (4) being unqualified or falling under any of the prohibitions as prescribed in Section 13.

The Committee's decision to dismiss the Director shall be made by the votes of at least two-thirds of the committee members present, excluding the Director's.

Section 25

The Director shall have the following duties and authority:

- (1) to manage the Institute in accordance with legislation, rules, regulations and the Committee's resolutions;
- (2) to supervise the Institute's staff and employees;
- (3) to recruit, appoint, promote, demote, reduce salary or wages, discipline, and dismiss staff and employees of the Institute in compliance with regulations issued by the Committee; and
- (4) to issue regulations concerning the Institute's administration which are not in conflict with or obstructive to the rules, regulations and the Committee's resolutions.

Section 26

In matters relating to the third person, the Director shall be the representative of the Institute, and in such matters, the Director could authorize a person to any perform specific procedure which is in compliance with the regulations determined by the Committee.

Section 27

The Committee shall determine the salary scale and other benefits for the Director as prescribed by the Cabinet.

Chapter 4 **Accounting and Auditing**

Section 28

The Institute shall prepare the accounts in accordance with international accounting standards and the criteria set out by the Committee, and, in addition, hold internal financial, accounting and procurement audits and report to the Committee at least annually.

Section 29

The Institute shall prepare balance sheets, financial statements, and operational accounts to be submitted to the auditor within 90 days of every accounting reference date and

submit a copy of financial statements to the Comptroller General's Department for use in the preparation of National Monetary Budget.

The Office of the Auditor General of Thailand, or an outsider appointed by the Committee with the approval of the Office of the Auditor General of Thailand, shall act as the auditor and submit the auditing reports to the Committee annually.

In order to carry out such matter, the auditor shall have the right to examine all books and accounts and any other Institute documents; investigate the Director, the internal audit staff and employees or other individuals; and request the submission of additional books and accounts and other Institute documents as necessary.

Chapter 5 **Supervision**

Section 30

The Director shall propose draft rules or regulations as stated in Section 18 (5), (6), and (7) to the Minister. The Minister may veto such draft rules or regulations, clearly stating the reason for so doing. If the veto has not been made within a period of thirty days following the date of receiving the draft from the Director, such draft could be proceeded and published in the Government Gazette.

Section 31

Where the Minister vetoes a draft rule or regulation, the Committee shall reconsider such draft along with the reason provided by the Minister. If at least two-thirds of the committee members present at the meeting vote to confirm the draft, it could be proceeded and published in the Government Gazette.

Countersigned by

General Surayud Chulanont

Prime Minister

Note: The rationale for the promulgation of the Arbitration Institute Act is to promote dispute resolution through arbitration for parties in dispute to resolve their civil and commercial disputes as a resort to court proceeding: this will also assist reduce the case load in the courts. There should be an independent agency with a highly flexible administrative system together with knowledgeable personnel equipped with expertise in conducting dispute resolution through the use of arbitral methods. Such personnel shall have the duty of promoting and developing dispute resolution and arbitration as well as implementing dispute resolution through arbitration. It is, therefore, deemed necessary to promulgate this Act.

Disclaimer

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