

## **Arbitration in ASEAN: Part Two – How does arbitration work?**

In part one of this blog we told you that formal arbitration offers many advantages over domestic court proceedings when you need to resolve a dispute with your contract partner. We also told you that “formal” arbitration is arbitration “prescribed by law” –in other words recognized, supported and enforced by law. Here, we tell you how.

“The law” that makes arbitration agreements and judgments enforceable and controls their proceedings is actually a three-part body of laws and rules:

-Part one: international treaties. The pre-eminent international treaty regarding international arbitration is the “New York Convention”. Signatories to the New York Convention will generally recognize any “foreign” arbitration agreement and any foreign arbitration award if that award was made in a country that is also a signatory to the New York Convention. There are currently 144 signatories to the New York Convention.

-Part two: national arbitration laws. Although these laws are laws of individual countries, they tend to be quite similar for two main reasons. First most countries in the world are signatories to the New York Convention and so their domestic arbitration laws are intend to support a country’s obligations to this treaty. For example Thailand’s Arbitration Act provides that “. . . [i]n case where an arbitral award was made in a foreign country, the award shall be enforced by the competent court only if it is subject to an international convention, treaty, or agreement to which Thailand is a party.”

The second reason is because many countries adopt, in large part if not in whole, the United Nations’ Model Arbitration Law when drafting and enacting their own arbitration law.

The following table illustrates the uniformity of these first two tiers of arbitration law in Southeast Asia and a few other countries whose investments in the region have increased in recent years:

COUNTRY	NY CONVENTION?	ARBITRATION LAW?	FOLLOWS MODEL LAW?	U.N.
Thailand	Yes	Yes		Yes
Brunei	Yes	Yes		Yes
Cambodia	Yes	Yes		Yes
Indonesia	Yes	Yes		No
Laos	Yes	Yes		No
Malaysia	Yes	Yes		Yes
Myanmar	No*/YES#	Yes		No*√
Philippines	Yes	Yes		Yes
Singapore	Yes	Yes		Yes
Vietnam	Yes	Yes		No
China	Yes	Yes		Yes
Hong Kong	Yes	Yes		Yes
India	Yes	Yes		Yes
Russia	Yes	Yes		Yes

\* in March 2012 Myanmar began the legal process of acceding to the New York Convention and of adopting the United Nations Model Law for international (not domestic) arbitrations.

# on 16 April 2014 Myanmar formally acceded to the New York Convention.

√ in the Spring of 2014, the Myanmar Parliament published a draft Arbitration Bill, which largely follows the UNCITRAL Model law.

-Part three: the parties' arbitration agreement. A fundamental difference between litigation in a domestic court and arbitration is the source of the power to decide the

dispute. In the former, it is the relevant country's law. In the latter, it is the private agreement between the parties. It is true that international treaties and national laws are part of the system of law that prescribes arbitration; but it is the private agreement of the parties to submit their dispute to arbitration, which gives the arbitrator the power to decide their dispute. And, in general, the international treaties and national laws merely recognize, support and enforce the parties' agreement.

But typically, arbitration agreements do not contain enough details to manage the arbitration proceedings. Furthermore, an efficient arbitration proceeding requires administrative support. Thus, most arbitration agreements provide that the proceedings will "under the auspicious of" a given arbitration administrative service provider and will follow that service providers' arbitration procedural rules. By way of such reference the parties thereby incorporate those—generally tried and tested—rules into their agreement without having to draft and agree all such details in advance themselves.

There are a number of excellent arbitration administrative service providers. Which one would be the most appropriate choice for your contract—if at all—depends on factors far too numerous to detail here. The following will give you an idea of a few of the leading providers operating in the Southeast Asia region:

-The American Arbitration Association's international arm, the International Centre for Dispute Resolution, is among the most popular such providers, which now has offices providing services world-wide from New York, Dublin, Mexico City and, notably, Singapore. They are available to conduct arbitrations anywhere in the world and generally the office closest to where the arbitration proceedings are being conducted would then do so.

-Another well-known and perhaps the oldest international service provider is the International Chamber of Commerce's International Court of Arbitration, which is headquartered Paris, France but which also conducts arbitrations worldwide.

-The Singapore International Arbitration Center is probably the fastest growing now considered one of the top arbitration administration service providers in the world.

-In Thailand the Thai Arbitration Institute of the Alternative Dispute Resolution Office, Office of the Judiciary, provides arbitration services to proceedings held within Thailand.

-Hong Kong and Malaysia also have excellent and well-experienced arbitration service provider centers.

Alternatively, it is possible to administer your own proceedings. But if you do not want to draft your own procedural rules, there is a set of rules that was specifically designed by the United Nations for and which are commonly used in such “ad hoc” arbitration proceedings.

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