

Institutional Arbitration in Thailand – The Thai Arbitration Institute:
PART 2 – costs, fees, and who pays

“Class actions” are coming to Thailand and they have the potential to significantly change civil litigation and corporate practices in Thailand.

The Thai Arbitration Institute (TAI) — currently under the auspices of the Thai government’s judiciary — is the most commonly chosen institutional arbitration service provider by commercial parties to administer their contractual dispute arbitrations seated in Thailand. Unless the parties agree to deviate from the **TAI Rules** — and somewhat controversially — *“with the consent of the Director of the Alternative Dispute Resolution Office”*, the TAI Rules will apply to any arbitration proceeding under its administration. Part 2 of this article covers the Costs of the arbitration and the arbitrator’s Fee — and who pays them — in a TAI arbitration.

COSTS

The TAI’s current cost rates are as follows:

Types of Costs	Rate (Thai Baht)
A. Services provided by TAI	
1. Refreshment and snacks	100/meal
2. Transcription of testimony (in Thai)	600/hour
3. Transcription of testimony (in English)	2,000/hour

4. Over-time remuneration for officials	
4.1 business day after 16.30 hrs.	In both cases, 210/hour/person but not
4.2 holiday with not less than 7 hours of work (not including 1-hour break)	exceeding 1,250/person

5. Remuneration for officials for working out-of-office during office hours	300/day/person
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6. Arbitrator's meal	Actual cost
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7. Transportation and remuneration for witnesses summoned to testify or expert witnesses	As set by the arbitral tribunal
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B. Other equipment used in the arbitral proceedings

8. Equipment for preparing case files- Folder	200/folder
– Index	50/set
– Box file	100/box file

9. Sound recording onto CD or DVD	50/CD or DVD
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10. Video recording onto DVD	200/DVD
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11. Delivery of documents (each party is responsible for its own documents delivery)	Actual cost
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12. Other expenses relating to arbitral proceedings for example, transportation, accommodation, etc	As set by the arbitral tribunal
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13. Certified copy of the award and/or any rectifications thereof (excluding photocopy fee) Certified copy of other case-related documents	100/copy 50/copy
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14. Photocopy	2/page
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15. Other office supplies (if any) Actual cost

The parties must each pay an advance for costs and expenses to the TAI. The TAI will normally ask that the payment be made within 30 days from receipt of the payment notification from the TAI. The amount of advance payment may vary as it depends on the TAI's discretion. The minimum amount is usually Thai Baht 15,000 each.

The Claimant must pay the first installment of its share of the advance Costs payment upon filing of the statement of claim. The first installment amount may vary pursuant to TAI's discretion, for example:

- Thai Baht 5,000 if the language of the proceedings is Thai and both parties reside in Thailand;
- Thai Baht 10,000 if the language of the proceedings is Thai but either one or both parties reside outside Thailand (may be higher depending on the distance between the party's residing country and Thailand);
- Thai Baht 10,000 if the language of the proceedings is *not* Thai but both parties reside in Thailand; and
- Thai Baht 20,000 if the language of the proceedings is *not* Thai and either one or both parties reside outside Thailand (may be higher depending on the distance between the party's residing country and Thailand).

When the arbitral proceedings end, the TAI will summarize costs and expenses and notify the arbitral tribunal in order to incorporate such in the award. If there is any balance, it will be returned to the relevant parties. If, however, the advance sum is not sufficient to cover all costs and expenses, the parties will be required to pay the shortfalls.

FEE

The current Fee for an arbitrator in a TAI arbitration is calculated as follows:

Disputed Amount (Thai Baht) Sole arbitrator

No disputed amount	4,000/session
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Not exceeding 2,000,000	30,000
2,000,001 – 5,000,000	30,000 + 0.5% of amount exceeding 2 million
5,000,001 – 10,000,000	45,000 + 0.4% of amount exceeding 5 million
10,000,001 – 20,000,000	65,000 + 0.3% of amount exceeding 10 million
20,000,001 – 50,000,000	95,000 + 0.2% of amount exceeding 20 million
50,000,001 – 100,000,000	155,000 + 0.1% of amount exceeding 50 million
100,000,001 – 200,000,000	205,000 + 0.05% of amount exceeding 100 million
200,000,001 – 500,000,000	255,000 + 0.04% of amount exceeding 200 million
500,000,001 – 1,000,000,000	375,000 + 0.03% of amount exceeding 500 million
1,000,000,001 – 2,000,000,000	525,000 + 0.02% of amount exceeding 1,000 million
Exceeding 2,000,000,000	725,000 + 0.01% of amount exceeding 2,000 million

Disputed Amount (Thai Baht)	More than one arbitrator
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No disputed amount	20,000/session
Not exceeding 2,000,000	60,000
2,000,001 – 5,000,000	60,000 + 1% of amount exceeding 2 million
5,000,001 – 10,000,000	90,000 + 0.8% of amount exceeding 5 million
10,000,001 – 20,000,000	130,000 + 0.6% of amount exceeding 10 million
20,000,001 – 50,000,000	190,000 + 0.4% of amount exceeding 20 million
50,000,001 – 100,000,000	310,000 + 0.2% of amount exceeding 50 million
100,000,001 – 200,000,000	410,000 + 0.1% of amount exceeding 100 million
200,000,001 – 500,000,000	510,000 + 0.08% of amount exceeding 200 million
500,000,001 – 1,000,000,000	750,000 + 0.06% of amount exceeding 500 million
1,000,000,001 – 2,000,000,000	1,050,000 + 0.04% of amount exceeding 1,000 million

Exceeding 2,000,000,000

1,450,000 + 0.02% of amount exceeding 2,000 million

Although the arbitrator's fee is set, the TAI may adjust the amount at its discretion. One of the reasons for an adjustment might be that the disputed amount in the statement of claim is considerably different than that in the counterclaim. The TAI may then have each party pay the arbitrator's fee based on each party's claim. The TAI may also increase a previously determined fee amount if the proceedings end up being more complicated or time consuming or both, than previously anticipated.

WHO PAYS THE COSTS AND FEE

Both the Arbitration Act of Thailand (the "Act") and the TAI Rules provide that the arbitrator is to determine what part of the Costs and Fee the parties must pay. However, it should be noted, that it is not clear whether the Act or the TAI Rules include any expenses, which are not billed by the TAI, among the Costs. Further, both the Act and the TAI Rules explicitly exclude attorney's fees from the Costs. Thus, if the parties wish to have such costs awarded, it is highly advisable for the parties to explicitly agree to this prior to the beginning of any arbitration under the TAI and to further seek explicit recognition of such agreement from the arbitrator once the arbitration has begun.

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