

**Procedures of the Thailand Arbitration Center
on the Appointment of Arbitrators
2017**

The purpose of these Procedures is for the Thailand Arbitration Center to act as the appointing authority in an *ad hoc* arbitration, including arbitration under the UNCITRAL Arbitration Rules. Whereas, these Procedures provide for the Thailand Arbitration Center to be designated as the appointing authority by the Secretary-General of the Permanent Court of Arbitration in The Hague in accordance with the UNCITRAL Arbitration Rules.

Article 1: Scope of application and interpretation

1.1 These Procedures shall be referred to as the “Procedures of the Thailand Arbitration Center on the Appointment of Arbitrators 2017”.

1.2 These Procedures shall come into force on 1 January 2018.

1.3 Where designated as the appointing authority under an arbitration agreement or by the Secretary-General of the Permanent Court of Arbitration in The Hague, the THAC shall act as the appointing authority in accordance with the arbitration agreement and/or the UNCITRAL Arbitration Rules.

1.4 These Procedures shall apply where the THAC is requested to act as the appointing authority in other than arbitration under the Rules of Arbitration of the Thailand Arbitration Center.

1.5 In these Procedures:

“**Arbitrator Committee**” means the committee constituted according to the Rules of the Arbitrator Committee of the Thailand Arbitration Center B.E. 2558;

“**Appointment Panel**” means any three members of the Arbitrator Committee constituted pursuant to Article 3.1 of these Procedures;

“**Appointment of Arbitrator Application**” means the application form, Form A, for submission to request the THAC to appoint an arbitrator;

“**Registrar**” means the Managing Director of the THAC or any individual designated by the Managing Director;

“**THAC**” means the Thailand Arbitration Center; and

“**UNCITRAL Arbitration Rules**” includes the 1976, 2010 and 2013 UNCITRAL Arbitration Rules.

1.6 The use of a singular noun shall be understood to refer to the plural in the appropriate context.

Article 2: Nomination of a suitable person as arbitrator by the Registrar

- 2.1 The Registrar shall promptly nominate an arbitrator where appropriate after the receipt of the Appointment of Arbitrator Application and any submissions made by the Respondent within 15 working days of being served notice in accordance with Article 6.4.
- 2.2 The nomination of a suitable person by the Registrar must take into consideration:
- (a) the nature of the dispute;
 - (b) the applicable law;
 - (c) the language of the arbitration;
 - (d) the nationalities of the parties and arbitrator appointed;
 - (e) the availability of the arbitrator;
 - (f) the independence and impartiality of the arbitrator;
 - (g) any stipulations in the arbitration agreement; and
 - (h) any suggestions made by the parties.
- 2.3 The Registrar may contact the nominated arbitrator to determine his or her suitability for appointment.

Article 3: Appointment of the arbitrator

- 3.1 The Registrar shall nominate an arbitrator for each case to be reviewed and approved of unanimously by the Appointment Panel.
- 3.2 Where the Appointment Panel declines to approve of the proposed arbitrator, the Registrar shall promptly submit the name of another suitable arbitrator to the same Appointment Panel for review and approval.
- 3.3 The Registrar shall communicate to the parties where an appointment has been made or declined by the Appointment Panel.

Article 4: Acting as the appointing authority under the UNCITRAL Arbitration Rules

- 4.1 When designated as the appointing authority under the UNCITRAL Arbitration Rules, the Registrar shall act in accordance with Article 2 and Article 3 of these Procedures.
- 4.2 When the appointment of a sole or presiding arbitrator is requested pursuant to Articles 6(3) or 8(2) of the UNCITRAL Arbitration Rules, the Registrar shall follow the list-procedure unless all the parties agree that the list-procedure should not be followed, or otherwise the Registrar exercises his or her discretion in deciding that the list-procedure is not appropriate for the individual case.
- 4.3 Where the appointment cannot be made by the list-procedure, the Appointment Panel may exercise his or her discretion in appointing the sole or presiding arbitrator.

- 4.4 Where a party has failed to appoint an arbitrator pursuant to Articles 7(2) or 9(2) of the UNCITRAL Arbitration Rules, the Appointment Panel may exercise its discretion in making the appointment.
- 4.5 A challenge under Articles 10 or 12 of the UNCITRAL Arbitration Rules shall be decided by the Arbitrator Committee after the arbitrator concerned, the other party and other members of the arbitral tribunal have been given the opportunity to comment in writing within a reasonable period of time from the date of the Registrar's notification of the challenge.
- 4.6 Where the THAC is called upon to appoint a substitute arbitrator pursuant to Articles 13(1) or 14 of the UNCITRAL Arbitration Rules, the procedure followed in Articles 4.2 to 4.4 shall apply.

Article 5: Acting as the appointing authority for *ad hoc* arbitral proceedings (not including under the UNCITRAL Arbitration Rules)

- 5.1 Where the parties have agreed that the THAC shall act as the appointing authority for an *ad hoc* arbitration proceeding other than under the UNCITRAL Arbitration Rules; the Registrar shall act in accordance with Article 2 and Article 3 of these Procedures in the appointment of an arbitrator.
- 5.2 The parties may agree for the THAC to decide on a challenge made by a party against any member of the arbitral tribunal. A challenge against an arbitrator shall be made by submitting to the Registrar a written statement identifying the facts and circumstances that give rise to the challenge being made.
- 5.3 The THAC shall decide on a challenge in accordance with the procedure prescribed *mutatis mutandis* in Article 4.5 of these Procedures.

Article 6: Application procedure for the appointment of arbitrators

- 6.1 Any party seeking the appointment of an arbitrator by the THAC in an *ad hoc* arbitration shall submit the duly completed application.
- 6.2 The application must have:
- (a) the completed Appointment of Arbitrator Application (Form A);
 - (b) the signature of the party or authorized person seeking the appointment; and
 - (c) the non-refundable fee under Article 7.1.
- 6.3 For the purpose of Article 6.2, registered post, courier delivery or delivery by electronic means to the Registrar shall constitute good service.
- 6.4 The party seeking the appointment shall:
- (a) serve a copy of the completed Appointment of Arbitrator Application together with all the requisite attachments on the other party or parties at the last known address or addresses of that other party or those other parties; and

(b) provide the THAC with the documentary verification of service.

6.5 For the purpose of Article 6.4, registered post or courier delivery shall constitute good service.

6.6 Where a party does not comply with Article 6.2 or Article 6.4 under these Procedures, the Registrar may require the requesting party to resubmit the application and/or complete the procedure in Article 6.2 or Article 6.4.

Article 7: Fees

7.1 The request for an appointment shall be accompanied by the non-refundable appointment fee payable by the requesting party to the THAC in accordance with the appointment fee applicable at the time the request is made.

7.2 For a decision under Article 4.5 or Article 5.3 under these Procedures, the party making the challenge shall pay the non-refundable fee applicable at the time the challenge is made to the THAC.

Article 8: Decisions by the Arbitrator Committee, Appointment Panel and Registrar

8.1 The decisions of the Arbitrator Committee, Appointment Panel and Registrar are final.

8.2 The reasons leading to the decisions taken by the Arbitrator Committee, Appointment Panel and Registrar shall not be communicated.

8.3 The THAC, which include members of the Arbitrator Committee, its Registrar, officers, employees, and staff, or anyone in connection with the appointment procedure authorized by the THAC shall not be liable to any person for any act or omission in the performance of his or her duties under these Procedures.