

Unofficial Translation*

Rules of the Thailand Arbitration Center
on the Application of the Rules of the
Thailand Arbitration Center
on Arbitration
B.E. 2558

Whereas the Arbitration Center Act B.E. 2550 requires the Thailand Arbitration Center to promote and enhance arbitration as well as administer procedures for dispute resolution through arbitration.

By virtue of Section 18(5) of the Arbitration Center Act B.E. 2550, the Thailand Arbitration Center Committee hereby issues the following Rules:

Article 1 These Rules shall be called the “Rules of the Thailand Arbitration Center on the Application of the Rules of the Thailand Arbitration Center on Arbitration B.E. 2558.”

Article 2 These Rules shall come into force on the day following the date of its publication in the Royal Gazette.

Article 3 The Rules, appended at the end of this, shall apply to the procedures for arbitration by the Thailand Arbitration Center from 1 July 2015 onwards.

Article 4 The Managing Director of the Thailand Arbitration Center is authorized to issue regulations and procedures for the management and conduct of the work in arbitration that are not in conflict with these Rules.

Announced on 11 June B.E. 2558

Pol. Gen. Chatchawal Suksomjit

Chairperson of the Thailand Arbitration Center Committee

Thailand Arbitration Center

Rules on Arbitration

B.E. 2558

In order to facilitate arbitral proceedings, to ensure expediency, efficiency, and fairness for all parties, and to accord with international standards and provide parties with freedom in the conduct of the arbitral proceedings as agreed; the Thailand Arbitration Center Committee issues these Rules to provide guidelines on dispute resolution through arbitration under the administration of the Thailand Arbitration Center.

Section 1

General Provisions

Article 1 Unless otherwise agreed by the parties, these Rules shall apply to arbitration in accordance with the agreement between the parties under the administration of the Thailand Arbitration Center.

These Rules shall not be in conflict with any provision of the law applicable to arbitration from which the parties cannot derogate.

Article 2 In these Rules:

(1) "Award" means any final decision by the arbitral tribunal which is essential to the dispute, including a partial award;

(2) "Statement" means the statement of claim, statement of defense, statement of defense to counterclaim, notice of arbitration, response to the notice of arbitration, or any request submitted as a notification between the parties during the arbitral proceedings;

(3) "Committee" means the committee constituted according to the Rules of the Arbitrator Committee of the Thailand Arbitration Center;

(4) "President" means the President of the Arbitrator Committee according to the Rules of the Arbitrator Committee of the Thailand Arbitration Center;

(5) “Registrar” means the Managing Director of the Thailand Arbitration Center and any individual designated to perform the duties of the Managing Director under these Rules; and

(6) “Arbitral Tribunal” means a sole arbitrator or several arbitrators.

* Thai is the official language of the THAC Arbitration Rules 2015. In the event of any inconsistency or discrepancy between the English and Thai versions, the Thai version shall prevail.

Article 3 For the purpose of these Rules, any Statement, communication, or request shall be made in writing and signed.

Article 4 Any Statement, communication, request or any document shall be submitted to the Registrar by post, electronic mail or through the method for information exchange electronically in accordance with the method and procedure as specified by the Registrar.

The Statement of Claim, Statement of Defense, Statement of Defense to Counterclaim, Notice of Arbitration, Response to the Notice of Arbitration, or any other request shall be submitted by the party responsible except where these Rules state otherwise.

Delivery under paragraph two shall be deemed to have been received by the recipient when such delivery is made either:

(1) in person to the recipient;

(2) to the habitual residence or place of business of the recipient, to the recipient’s representative or lawyer;

(3) to an address designated for documents to be delivered;

(4) to an address agreed upon by the sender and recipient; or

(5) to an address where the recipient and sender have previously received and sent documents.

After reasonable inquiry, if the recipient or above address cannot be found, delivery shall be made to the last-known residence or place of business as can be ascertained for the recipient.

After the documents have been sent in accordance with paragraphs 3 and 4, the documents shall be deemed to have been received on the date they are sent.

Article 5 After having sent any document to the recipient, the party shall also send a copy of that document to the Registrar.

Article 6 For the purpose of calculating a period of time under these Rules, a day shall mean the working hours according to the law or the normal working hours of that organization.

When calculating a period of time, the first day of that period shall not be included.

If the final day of the time period is an officially announced holiday or a traditional holiday, the first working day after that holiday shall be counted as the final day of that time period.

Article 7 In the event where a party is aware of a violation of any provision of these Rules or of the arbitration agreement, and the arbitration proceeds, that party will be deemed to have waived the right to object unless the objection had already been raised.

Article 8 Where appropriate or upon the request of a party, the Arbitral Tribunal or Registrar may shorten or extend the time period under these Rules, except where the Rules specify otherwise.

The extension of a time period in accordance with paragraph one shall not exceed 45 days.

Section 2

Commencement of the Arbitral Proceedings

Part I

Notice of Arbitration

Article 9 The party requesting to commence the arbitration (the "Claimant") shall submit the Notice of Arbitration to the Registrar.

The Notice of Arbitration shall include the following:

- (1) a request that the dispute be settled through arbitration;
- (2) the name, address, telephone number, facsimile number, and e-mail address (if available) of the parties and their representatives (if any);

- (3) the arbitration agreement or arbitration clause, and a copy thereof;
- (4) a reference to the contract or legal relationship out of which the dispute arises;
- (5) a summary of the facts based on the nature and circumstances of the dispute, the relief sought and the initial claim amount;
- (6) any statement on the arbitration agreement relating to the conduct of the arbitration or any other proposal by the Claimant;
- (7) the number of arbitrators if this has not been previously agreed upon;
- (8) the name of one arbitrator if the arbitration agreement provides for three arbitrators, or a list of names for appointment as the sole arbitrator, except where the parties have agreed otherwise;
- (9) any comment on the law applicable to the arbitral proceedings; and
- (10) any comment on the language of the arbitration.

Article 10 The Claimant may send the Statement of Claim along with the Notice of Arbitration by including the content as indicated under Article 42 and labeling it as the Statement of Claim.

Article 11 The Registrar shall examine the Notice of Arbitration, and if it satisfies all or all of the necessary requirements in accordance with Article 9 and the filing fee has been paid, the Registrar shall issue a notification accepting that Notice of Arbitration.

The arbitral proceedings shall commence on the day the Registrar accepts that Notice of Arbitration.

The Registrar shall notify all the parties of the commencement date of the arbitral proceedings.

Article 12 After the Registrar has accepted the Notice of Arbitration, the Claimant shall send a copy of the Notice of Arbitration to the other party (the “Respondent”), and inform the Registrar promptly of the date and means by which the Notice of Arbitration was sent.

Part II

Response to the Notice of Arbitration

Article 13 After a copy of the Notice of Arbitration has been received, the Respondent shall submit the Response to the Notice of Arbitration to the Claimant within 15 days from the day the copy of the Notice of Arbitration was received.

The Response to the Notice of Arbitration shall include the following:

- (1) an acceptance or rejection of all or part of the claims, with or without any supporting reasons;
- (2) a summary of the facts based on the nature and circumstances of the counterclaim (if any), the relief sought and the initial counterclaim amount;
- (3) any comment challenging the Notice of Arbitration; and
- (4) the name of one arbitrator if the arbitration agreement provides for three arbitrators, or a list of names for appointment as the sole arbitrator, except where the parties have agreed otherwise.

Article 14 The Respondent may send the Statement of Defense along with the Response to the Notice of Arbitration by including the content as indicated under Article 43 and labeling it as the Statement of Defense.

Article 15 After the Respondent has sent the Response to the Notice of Arbitration to the Claimant, the Respondent shall send a copy of the Response to the Notice of Arbitration to the Registrar and pay the filing fee for the counterclaim, and inform the Registrar promptly of the date and means by which the Response to the Notice of Arbitration was sent.

Article 16 If the Respondent fails to submit the Response to the Notice of Arbitration in the time given, or where submitted incomplete, the Registrar shall proceed to form the Arbitral Tribunal.

Section 3 Arbitral Tribunal

Part I Number and Persons Authorized to Appoint

Article 17 There shall be a sole arbitrator, except:

(1) Where the parties have agreed for three arbitrators. In any event, where the parties have agreed to more than three arbitrators, there shall only be three arbitrators.

(2) Where a party requests, and the Registrar finds that an Arbitral Tribunal of three arbitrators will benefit the proceedings taking into account the difficulty, the consequences or other circumstances of the case.

Article 18 An agreement authorizing any one party, a third person, or an appointed arbitrator to appoint any one arbitrator shall be considered as an agreement to nominate an arbitrator for the purpose of constituting the Arbitral Tribunal.

Article 19 The President shall constitute the Arbitral Tribunal promptly irrespective of whether an arbitrator has been nominated in accordance with the agreement of the parties or not.

When appointing an arbitrator for the Arbitral Tribunal, the President shall take into consideration the qualifications of the arbitrator as agreed upon by the parties, the independence and impartiality of the arbitrator as well as the readiness of the arbitrator to expeditiously and efficiently perform the duties.

The proceedings can continue once the Arbitral Tribunal has been constituted.

Part II Appointment of a Sole Arbitrator

Article 20 Where a sole arbitrator has been agreed upon, each party shall propose the name of one person or several persons for the other party to consider. If both the parties can agree, then the name of the agreed person shall be submitted to the President to be appointed as the sole arbitrator.

If both the parties are unable to reach an agreement within 30 days from the day the Registrar accepted the Notice of Arbitration, the President shall promptly appoint the sole arbitrator.

Part III

Appointment of the Arbitral Tribunal Composed of Three Arbitrators

Article 21 Where an Arbitral Tribunal of three arbitrators has been agreed upon, each party shall nominate the name of one arbitrator to the President.

If a party fails to nominate an arbitrator for any reason within 15 days from the day the other party submitted the name of its nominated arbitrator or from the day of any one of the circumstances as agreed by the parties, the President shall promptly appoint the arbitrator without waiting for that party to nominate an arbitrator.

Article 22 The President shall appoint the third arbitrator who shall be the presiding arbitrator where it appears:

- (1) the parties have not agreed on the procedure for appointing the presiding arbitrator; or
- (2) it is not possible to nominate the presiding arbitrator by the procedure agreed upon by the parties within 15 days from having received the proposed name of the arbitrator from the other party or from the day of any one of the circumstances as agreed by the parties.

Part IV

Multi-party Appointment of an Arbitrator

Article 23 Where an Arbitral Tribunal composed of a sole arbitrator has been agreed upon by the parties and there are more than two parties to the arbitration, all the parties shall jointly nominate the sole arbitrator.

If the parties are unable to jointly agree on the nomination of an arbitrator within 30 days from the date the Registrar accepted the Notice of Arbitration or within the time limit fixed by the Registrar, the President shall have the power to constitute the Arbitral Tribunal composed of a sole arbitrator.

Article 24 Where an Arbitral Tribunal composed of three arbitrators has been agreed upon by the parties and there are more than two parties, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator.

If any one party fails to nominate an arbitrator in accordance with the procedure agreed upon, or are unable to jointly agree on the arbitrator to be nominated within 30 days from the date the Registrar accepted the case or within the time limit as fixed by the Registrar, the President shall appoint three arbitrators and designate one of them to be the presiding arbitrator.

Part V

Duties and Disclosures of the Arbitrator

Article 25 The arbitrator shall perform his or her duties with impartiality and independence and shall not act as the defense for any one party even if nominated by that party. The arbitrator shall perform his or her duties in accordance with these Rules, and the procedures of the Registrar or agreement of the parties.

Article 26 The person appointed as arbitrator shall disclose the facts that may raise doubts over his or her impartiality and independence to the parties and the Registrar.

While performing his or her duties, should any circumstance under paragraph one arise, the arbitrator shall immediately disclose this to the other parties and arbitrators and the Registrar.

Article 27 Any party, including its legal and other representatives shall not have any ex parte communication with the arbitrator or any person that has received the nomination from that party for appointment as an arbitrator relating to the case, except:

- (1) to provide information about the general nature of the dispute or the proceedings that are to take place;
- (2) to inquire about the qualifications, preparedness and independence of that person; or
- (3) to inquire about the suitability of the person that should receive the nomination as the third arbitrator; when that party or the arbitrator nominated by that party has been authorized to nominate the third arbitrator.

The parties, including their legal and other representative shall not have any ex parte contact with any person to be appointed as the presiding arbitrator of the Arbitral Tribunal on any matter relating to the case under any circumstances.

Part VI

Arbitrator Challenge

Article 28 The arbitrator may be challenged if there appears to be justifiable doubts over his or her impartiality or independence, or that he or she lacks the qualifications as agreed upon by the parties, or any other serious circumstance that makes the proceedings lack fairness.

An arbitrator challenge will not be permitted by the party that nominated or jointly nominated the arbitrator, unless the party was not aware of the circumstances giving rise to the challenge at the time of nominating that arbitrator.

Article 29 The party who intends to challenge the arbitrator shall submit the notice indicating the reasons for the challenge to the Registrar within 15 days from the date of the arbitrator's appointment or from having become aware of the facts or circumstances giving rise to the challenge, but it must be no later than the date of the Award.

The party making the challenge shall send a copy of the notice to the other party, the arbitrator being challenged and the other arbitrators.

Article 30 Where there is an arbitrator challenge, the other party may agree to the reasons for the challenge or the challenged arbitrator may withdraw.

The arbitrator's withdrawal does not imply acceptance of the grounds upon which the challenge was based.

Article 31 Where the party accepts the grounds for the challenge, or the arbitrator withdraws, the substitute arbitrator shall be promptly appointed.

If the party refuses to accept the grounds for challenge, or if the challenged arbitrator does not withdraw within 15 days from the day of the notice of the challenge, the Committee shall promptly make a decision on the challenge. If the Committee is satisfied, an order shall be issued to appoint a substitute arbitrator, otherwise an order to dismiss the challenge shall be issued.

The Committee shall determine the party liable for the expenses relating to the arbitrator challenge.

The decision of the Committee shall be final.

Article 32 The provisions on the appointment of the Arbitral Tribunal shall apply mutatis mutandis to the appointment of a substitute arbitrator. However, in calculating the time period for appointing a substitute arbitrator, such a time period shall commence from the day the other party accepts the grounds of the challenge, or the day the challenged arbitrator withdraws, or the day the Committee orders the appointment of a substitute arbitrator.

The failure of a party to nominate an arbitrator earlier shall not deprive that party of the right to nominate the substitute arbitrator.

Article 33 Where the substitute arbitrator has been appointed, proceed as follows:

- (1) Unless otherwise agreed by the parties, where the sole or presiding arbitrator was appointed as the substitute arbitrator, the Arbitral Tribunal shall repeat the arbitral proceedings previously held.
- (2) Where the substitute arbitrator has been appointed under any other circumstances, the Arbitral Tribunal after consulting with the parties may

repeat any part of the arbitral proceeding previously held or only the part considered appropriate.

Part VII Removal of the Duties as Arbitrator

Article 34 The arbitrator accepts to be relieved of his or her duties upon:

- (1) death;
- (2) resignation; or
- (3) the President's order relieving the arbitrator of his or her duties.

Article 35 Where appropriate or upon the request of any party, the President following consultations with the parties may issue an order to relieve that arbitrator of his or her duties as a result of the arbitrator's refusal to perform his or her duties, or the circumstances prevent him or her from performing the duties effectively in accordance with these Rules.

The provisions relating to the challenge of the arbitrator shall apply mutatis mutandis to the notice for relieving the arbitrator from his or her duties.

Article 36 Where the arbitrator has been relieved from his or her duties, a substitute arbitrator shall be appointed in accordance with Article 32 mutatis mutandis.

Article 37 An arbitrator relieved from his or her duties in no way affects the provisional measures or partial Award already decided, and shall not deprive the Arbitral Tribunal from repeating the proceedings of the case concerning provisional measures or a partial Award.

In any other event not stated in paragraph one, the substitute arbitrator shall be appointed and Article 33 shall apply mutatis mutandis.

Section 4 Conduct of the Arbitration

Part I Power to Conduct the Arbitral Proceedings

Article 38 The Arbitral Tribunal has the power to conduct the arbitral proceedings as appropriate by taking into consideration the principles of justice, expediency, and cost efficiency, and the equal opportunity for the parties to present their claim and defense as appropriate based on the circumstances of the dispute.

Article 39 The Arbitral Tribunal that has been constituted shall schedule a meeting with all the parties to determine the procedures that are appropriate and efficient. The Arbitral Tribunal shall establish a timetable and the procedure for the proceedings of the case.

The meeting may be held in the presence of the parties or via other means of communication considered appropriate by the Arbitral Tribunal. The meeting of the Arbitral Tribunal to establish the procedure must be held in camera.

Article 40 The presiding arbitrator has the power to make a decision on any matter that is not a decision for the Award. However, the Arbitral Tribunal may order the correction or an amendment to that decision.

Part II

Submission of Statements During the Arbitral Proceedings

Article 41 If the Arbitral Tribunal has not stated otherwise, the submission of Statements during the arbitral proceedings shall be in accordance with the provisions of this Part.

Article 42 The Claimant shall submit the Statement of Claim to the Arbitral Tribunal and send this to the Respondent within the period of time fixed by the Arbitral Tribunal. The Statement of Claim must include the following:

- (1) the facts that form the basis for the claim;
- (2) the legal grounds or all the arguments that support the claim; and
- (3) the relief sought and claim amount.

The Claimant is not required to resubmit the Statement of Claim if this was sent along with the Notice of Arbitration.

Article 43 The Respondent shall submit the Statement of Defense to the Arbitral Tribunal and send this to the Claimant within the period of time fixed by the Arbitral Tribunal.

The Statement of Defense must clearly reply to the particulars of the defense or state the arguments, including the supporting reasons for the defense or argument.

Where there is a counterclaim, the Statement of Defense shall include the particulars as with the Statement of Claim.

Article 44 Where there is a counterclaim, the Claimant shall submit the Statement of Defense to Counterclaim to the Arbitral Tribunal and send this to the Respondent within the time limit fixed by the Arbitral Tribunal. The Statement of Defense to Counterclaim must

clearly demonstrate whether the counterclaim is accepted or disputed in full or in part, and include the supporting reasons.

Article 45 Where the Claimant has not submitted the Statement of Claim within the time limit fixed according to Article 42, the Arbitral Tribunal has the power to issue an order terminating the arbitral proceedings or issue any order considered appropriate.

If the parties have not submitted a Statement of Defense or Statement of Defense to Counterclaim within the time limit fixed according to Article 43 or Article 44, depending on the circumstances, or have not participated in any way according to the procedure established by the Arbitral Tribunal; the Arbitral Tribunal has the power to continue with the arbitral proceedings without having to give the opportunity to submit the Statement of Defense or repeat the procedure for that matter.

Article 46 The parties may amend the Statement of Claim, the Statement of Defense, the Statement of Defense to Counterclaim or any other Statement submitted to the Arbitral Tribunal. However, the Arbitral Tribunal shall not accept the amendment if it is considered that the amendment will delay the arbitral proceedings, disadvantage the other party in their case, or there are other reasons not to accept the amendment.

An amendment to the Statement of Claim, the Statement of Defense or the Statement of Defense to Counterclaim that results in the claim or counterclaim exceeding the scope of the arbitration agreement shall not be accepted.

Article 47 The Arbitral Tribunal may order a party to submit further Statements within a prescribed time period.

Article 48 The submission of any Statement during the arbitral proceedings must have attached a copy of the supporting document that has not been previously submitted.

Part III

Conduct of the Proceedings by the Arbitral Tribunal

Article 49 Unless otherwise agreed by the parties, the Kingdom of Thailand shall be the place of arbitration.

The Arbitral Tribunal may order all or part of the proceedings to be held outside the Kingdom of Thailand after considering all the circumstances of the dispute and upon finding that it will be more convenient to hold the arbitral proceedings outside the Kingdom of Thailand.

Article 50 The arbitral proceedings shall remain confidential unless the parties have agreed otherwise.

The arbitral proceedings shall take place in the presence of the parties or in any other manner considered expeditious and appropriate, and in any place considered convenient and expeditious.

Article 51 Unless otherwise agreed by the parties, the Arbitral Tribunal shall determine the language of the proceedings.

Article 52 If the document is written in another language which is not the language of the proceedings, the Arbitral Tribunal may order the party relying on that document to translate the entire document or only the relevant part according to the form as prescribed by the Arbitral Tribunal.

Where the Arbitral Tribunal has not been constituted, the Registrar shall be authorized in accordance with paragraph one.

Article 53 A party may appoint a representative or any other person to assist or act on their behalf for the arbitral proceedings, provided that the party notifies the Registrar of the representative's name, address and purpose for the appointment.

Article 54 If the parties have not agreed for the Arbitral Tribunal to decide the case by documents-only, where appropriate or where a party makes such a request, the Arbitral Tribunal has the power to examine witnesses, have evidence presented in oral submissions or in writing on an issue relating to the merits of the case or on the jurisdiction of the Arbitral Tribunal.

Article 55 The Arbitral Tribunal shall set the date, time and place of the hearing, and give the parties adequate advance notice.

If a party or both the parties fail to appear on the date of the hearing without any justified reason, the Arbitral Tribunal has the power to continue with the proceedings and make the final Award based on the Statements and evidence that are available.

Part IV Witnesses

Article 56 Prior to the proceedings, the Arbitral Tribunal may require the party intending to rely on the witness or the expert to identify the person, the subject matter and the relevance it has to the issues of the case.

Article 57 The Arbitral Tribunal may allow a party or its representative to question the witness relied on by one of the parties; or the person relied on as a witness may be questioned beforehand.

Article 58 The Arbitral Tribunal may allow, refuse or discontinue the examination of a witness.

A party, a party's representative and the Arbitral Tribunal may question a witness in the manner prescribed by the Arbitral Tribunal.

Article 59 The Arbitral Tribunal may order a party produce a witness statement in writing as considered appropriate.

A party may request the witness to testify before the Arbitral Tribunal. If the witness does not testify before the Arbitral Tribunal, the Arbitral Tribunal may accept the witness statement as considered appropriate or may refuse to admit that statement.

Part V Experts

Article 60 Unless otherwise agreed by the parties, the Arbitral Tribunal may proceed accordingly:

- (1) After consulting with the parties, appoint an expert to report on specific issues relating to the case.
- (2) Issue an order for the parties to provide factual information to the expert, produce or secure documents, objects or other property that relates to the case in order for the expert to examine.

Article 61 After the expert has delivered his or her report, the Arbitral Tribunal shall send the copy of that report to the parties for consideration, and the parties may submit observations to the Arbitral Tribunal.

Article 62 Unless otherwise agreed by the parties, where the Arbitral Tribunal finds it necessary, the Arbitral Tribunal may require the expert to testify on the findings of the report in order for the parties to question him or her.

Section 5 Powers of the Arbitral Tribunal

Part I Jurisdiction of the Arbitral Tribunal

Article 63 The Arbitral Tribunal has the power to rule on its jurisdiction, including any objection to the existence, termination or validity of the arbitration agreement.

Where the arbitration clause forms part of the contract, the arbitration agreement shall be treated as independent of that contract.

The decision of the Arbitral Tribunal that the contract is null and void shall not by itself invalidate the arbitration clause.

Article 64 An objection against the jurisdiction of the Arbitral Tribunal shall be raised no later than the date when the Statement of Defense or Statement of Defense to Counterclaim is submitted.

An objection that the Arbitral Tribunal has exceeded the scope of its powers; the parties shall raise this immediately as soon as the Arbitral Tribunal demonstrates its intention to decide on a matter exceeding the scope of its powers.

The Arbitral Tribunal may decide on an objection that is raised after the time limit under paragraphs one and two have passed for consideration if it finds the reason for that delay to be justified.

A party is not precluded from raising an objection against the Arbitral Tribunal under this Article even if it has nominated or jointly nominated an arbitrator.

Article 65 The Arbitral Tribunal may issue a preliminary ruling on the objection made pursuant to Article 64 or may join this to the Award.

Part II

Additional Powers of the Arbitral Tribunal

Article 66 In addition to these Rules and in so far as it does not conflict with the law applicable to the conduct of the proceedings, the Arbitral Tribunal shall have the power to:

- (1) Order the correction of errors in the contract made by the parties that is within the scope of the law on contracts permitting such correction.
- (2) Allow a third person to be joined to the proceedings where one party makes such a request and where;
 - (a) the third person provides written consent;
 - (b) the third person is a party to the arbitration agreement; and
 - (c) such joinder does not affect the other parties. The Arbitral Tribunal has the power to make the Award concerning the third person in the same Award or as a separate Award.
- (3) Extend or shorten time periods under these Rules or as prescribed by the Arbitral Tribunal.
- (4) Issue an Award for fees and unpaid expenses.
- (5) Issue an order for any party to provide security for legal or other costs as the Arbitral Tribunal finds appropriate.
- (6) Continue with the proceedings notwithstanding a party's failure or refusal to comply with these Rules, an order or partial Award of the Arbitral Tribunal, or a party's failure to appear at a meeting or hearing. The Arbitral Tribunal may prescribe a procedure for enforcement as it finds appropriate.
- (7) Determine the applicable law for the proceedings.
- (8) Decide on any issue where appropriate even where this was not expressed or implied from the Statements, provided that the concerned party is notified in order to give an adequate opportunity to respond.
- (9) Determine the claim in accordance with the law or other privileges.

Section 6 Award

Part I General Principles on the Award

Article 67 After the examination of witnesses as necessary and following a consultation with the parties, the Arbitral Tribunal shall declare the arbitral proceedings closed. Until the Award has been made, the Arbitral Tribunal may continue with the arbitral proceedings as considered appropriate in the interests of justice.

Article 68 The Arbitral Tribunal shall apply the law agreed by the parties to the dispute.

In the event that the parties have not agreed, the Arbitral Tribunal shall apply the law which it determines appropriate for the case.

The Arbitral Tribunal shall not decide *ex aequo et bono* unless the parties have expressly authorized the Arbitral Tribunal to do so.

In deciding the dispute, the Arbitral Tribunal shall make their decision in accordance with the terms of the contract by taking into account the trade usage applicable.

Article 69 Where there is more than one arbitrator, the decision shall be made by a majority of the Arbitral Tribunal. In the event where a decision cannot be made by a majority, the presiding arbitrator shall make the Award.

In the event where an arbitrator fails to make an Award within a reasonable period of time, the other arbitrators shall make the Award without that arbitrator. The Arbitral Tribunal may make separate Awards on particular issues at different times.

Article 70 The Award shall be made within 45 days from the date the proceedings were declared closed.

Part II Content and Effect of the Award

Article 71 The Award shall be made in writing and signed by the Arbitral Tribunal.

Unless otherwise agreed by the parties, the Award shall explicitly state the reasons on which it is based; but shall not prescribe or decide on matters exceeding the scope of the arbitration agreement or the request of the parties.

After the Award has been made, the Arbitral Tribunal shall send the Award to the Registrar to approve the form of the Award within the time limit according to Article 70, except where the Registrar extends the period of time or the parties agree otherwise.

The Registrar may request the Arbitral Tribunal to modify the form of the Award and may recommend for the Arbitral Tribunal to consider some issues in the Award. The recommendation shall not affect the Arbitral Tribunal's power to decide the dispute.

Article 72 When the Registrar has approved the form of the Award, the Registrar shall arrange for the Arbitral Tribunal to sign that Award. Where the fees and expenses have been paid in full, the Registrar shall promptly send a copy of the certified Award to the parties.

The date of the Award made by the Arbitral Tribunal shall be the date the arbitrators signed the Award.

Article 73 If the parties reach a settlement before the Arbitral Tribunal makes the Award, the Arbitral Tribunal may order the termination of the proceedings, or may make a consent Award upon the request of the parties.

The consent Award does not need to state the reasons on which it is based.

Article 74 Within 30 days from the date of having received the Award, any party may submit a request for the Arbitral Tribunal to do the following:

- (1) Correct minor errors, errors in computation or any other minor mistakes in the Award. If the Arbitral Tribunal finds it appropriate, it may correct those errors or mistakes within 30 days from the day the request is received. Where considered appropriate, the Arbitral Tribunal may amend an error or mistake under paragraph one within 30 days from the date of the Award.
- (2) Interpret part of the Award in writing within 30 days from the date of the request. The interpretation shall form part of the Award.
- (3) Make an additional Award for a claim not decided in the Award. The Arbitral Tribunal shall make an additional Award within 60 days from the receipt of the request.

For a request submitted pursuant to paragraph one, the requesting party shall send a copy of that request to the other party and the Registrar. Where the other party challenges that request, the challenge shall be made within 15 days from the date of receipt of the copy of the request.

An amendment and additional Award shall be made by the same procedure for making the Award under this Section.

Section 7 Fees and Expenses

Article 75 The fees refer to the filing fee, institutional fee and arbitrator's remuneration.

The fees shall be collected in accordance with Annex 1.

Article 76 The expenses refer to:

- (1) expenses of the Arbitral Tribunal;
- (2) expenses relating to case management of the Thailand Arbitration Center;
- (3) expenses of the experts that the Arbitral Tribunal appoints; and
- (4) other expenses that the parties agreed for the arbitration.

Article 77 The parties shall each deposit half of the fees and expenses, except where the Registrar determines otherwise.

The Registrar may request any one party to deposit the fees and expenses of the claim and counterclaim.

The deposit for the fees and expenses shall be made within 15 days from the date of notification from the Thailand Arbitration Center.

Article 78 Where appropriate, the Registrar may require the parties to make additional deposits for fees and expenses in the proportions as considered appropriate.

Article 79 If the amount of the claim or counterclaim is not quantifiable, the Registrar shall make an estimate of the fees and expenses by considering the nature and circumstances of the dispute, and if those circumstances were to change. The Registrar may amend the fees and expenses the parties shall be liable to pay.

Article 80 If the parties fail to make the deposit in accordance with the amount determined by the Registrar; after consultation with the Arbitral Tribunal and all the parties, the Registrar may request the Arbitral Tribunal to make an order suspending the proceedings. If the parties refuse to comply, it shall be deemed that the claim and counterclaim have been withdrawn without prejudice to the rights of the parties to recommence the arbitration.

The Arbitral Tribunal may refuse to continue with the arbitral proceedings altogether or in part until the full deposit has been received. Where a party requests, the Arbitral Tribunal may make an Award for the unpaid fees and expenses.

Where there is an order suspending the arbitral proceedings, any party may make the deposit in place of the other party responsible for the payment.

Article 81 All the parties are jointly and severally liable for the fees and expenses of the arbitration to the Thailand Arbitration Center and the Arbitral Tribunal.

Article 82 Where the arbitration proceeding has ended without any hearing, the Registrar shall determine the fees and expenses by taking into consideration all the circumstances of the case and proceedings already completed.

After the fees and expenses have been adjusted, if there remains any balance deposit, the Registrar shall return to the parties in the proportions that the parties have agreed. If the parties have not agreed or are unable to agree, the deposit balance shall be returned to the parties according to the proportions that each of the parties placed as their deposit.

Article 83 Any interest resulting from the deposit shall be retained by the Thailand Arbitration Center.

Article 84 In the Award, the Arbitral Tribunal shall determine the liability for the fees, legal fees and any other expenses that the other party paid for the arbitration.

Section 8 Expedited Arbitral Proceedings

Article 85 Before the Arbitral Tribunal has been constituted, a party may submit the request for expedited proceedings to the Registrar, which shall be applicable under the following circumstances:

- (1) the amount in dispute does not exceed Thai Baht 100 million; where the amount is calculated on the basis of the claim, counterclaim and set-off defense;
- (2) by agreement of the parties; or
- (3) in cases of an emergency.

Article 86 The President shall consider the request by first hearing both the parties. If the President determines there are sufficient grounds, an order shall be issued for expedited arbitral proceedings and the following procedures shall apply:

- (1) The Registrar may shorten a time period prescribed under these Rules as appropriate.
- (2) A sole arbitrator shall be appointed unless the President orders otherwise.
- (3) The parties may agree that the Arbitral Tribunal decide the dispute based on documentary evidence only.
- (4) The Arbitral Tribunal shall issue the Award within six months from the date of its constitution, except under special circumstances, where the Registrar may extend such period.
- (5) The Arbitral Tribunal may state the reasons upon which the Award is based in summary form, unless the parties have agreed that no reasons are to be given.

Section 9 Confidentiality of the Arbitral Proceedings

Article 87 A party or any arbitrator, including the President, the Registrar, officials, employees, and staff shall not disclose to a third person any matter relating to the arbitration proceedings, except where the parties have provided written consent, or in the following circumstances:

- (1) to file a motion to a court to enforce or set aside an Award;
- (2) to comply with an order or summons from a court with jurisdiction over the arbitration proceedings;
- (3) to enforce a legal right;
- (4) to comply with the legal provisions of a country which are binding on the party making the disclosure;
- (5) to comply with the request or requirement of an entity which regulates activities related to arbitration proceedings; and
- (6) to comply with an order by the Arbitral Tribunal pursuant to a request by a party which has notified the other party.

The matters relating to arbitration proceedings include the facts relating to the proceedings, the names of arbitrators, Statements, evidence, witnesses, or any object used in the proceedings and all the documents produced by the other party during the proceedings as well as the Award made following the proceedings, except for matters already in the public domain.

Article 88 Where a party's action is in breach of Article 87, the Arbitral Tribunal has the power to prescribe any measure it deems appropriate, including issuing an order or Award against the party in breach to accept liability for the loss incurred.

Article 89 The Thailand Arbitration Center, which includes the President, its Registrar, officials, employees, staff and arbitrators have no duty to issue any statement regarding the arbitral proceedings conducted under these Rules except where required by law.

A party shall not refer to the President, the Registrar, officials, employees, staff and arbitrators as a witness in any legal proceedings relating to the arbitral proceedings conducted under these Rules except where required by law.

Section 10 Exemption of Liability

Article 90 The Thailand Arbitration Center, which includes the President, its Registrar, officials, employees, staff and arbitrators or any person appointed by an arbitrator for the purpose of the proceedings shall incur no civil liability to any person for any act or omission in relation to the arbitral proceedings under these Rules, except for damages to a party caused by willful or gross negligence.

Annex 1

Fees and Expenses

Article 1 The filing fee shall be collected as follows:

(1) For collection from the Claimant, Thai Baht 50,000 when the Notice of Arbitration is submitted to the Thailand Arbitration Center.

(2) For collection from the Respondent, Thai Baht 50,000 when the Response to the Notice of Arbitration and counterclaim are submitted to the Thailand Arbitration Center.

(3) Where there is more than one party as the Claimant or Respondent, the filing fee shall be payable by each party except where a joint creditor or joint debtor submits the Notice of Arbitration or the Response to the Notice of Arbitration as one document.

Where the filing fee has been paid, irrespective of the circumstances, the parties will be unable to ask for a refund.

Article 2 Institutional Fee

(1) The institutional fee shall be based on the table below and shall apply from the day the Arbitral Tribunal has been constituted.

Table of the Institutional Fees

Sum in Dispute (Thai Baht)	Institutional Fee (Thai Baht)
Not exceeding 2,500,000	50,000
From 2,500,001 to 12,500,000	50,000 + 1% of the amount exceeding 2,500,000
From 12,500,001 to 25,000,000	150,000 + 0.75% of the amount exceeding 12,500,000
From 25,000,001 to 50,000,000	243,750 + 0.5% of the amount exceeding 25,000,000
From 50,000,001 to 125,000,000	368,750 + 0.25% of the amount exceeding 50,000,000
From 125,00,001 to 250,000,000	556,250 + 0.125% of the amount exceeding 125,000,000
From 250,000,001 to 1,250,000,000	712,500 + 0.075% of the amount exceeding 250,000,000
From Baht 1,250,000,001 and over	1,600,000

Article 3 Arbitrator's Remuneration

(1) The arbitrator's remuneration shall be based on the table below and shall apply from the day the Arbitral Tribunal is constituted.

Table of the Arbitrator's Remuneration

Sum in Dispute (Thai Baht)	Arbitrator's Remuneration (per person) (Thai Baht)
Not exceeding 2,500,000	150,000
From 2,500,001 to 12,500,000	150,000 + 5.5% of the amount exceeding 2,500,000 but not more than 700,000
From 12,500,001 to 25,000,000	700,000 + 4% of the amount exceeding 12,500,000 but not more than 1,200,000
From 25,000,001 to 50,000,000	1,200,000 + 2% of the amount exceeding 25,000,000 but not more than 1,700,000
From 50,000,001 to 125,000,000	1,700,000 + 1% of the amount exceeding 50,000,000 but not more than 2,450,000
From 125,00,001 to 250,000,000	2,450,000 + 0.5% of the amount exceeding 125,000,000 but not more than 3,075,000
From 250,000,001 to 1,250,000,000	3,075,000 + 0.25% of the amount exceeding 250,000,000 but not more than Baht 5,575,000
From 1,250,000,001 to 2,000,000,000	5,575,000 + 0.1% of the amount exceeding 1,250,000,000 but not higher than Baht 6,325,000
From 2,000,000,001 to 2,500,000,000	6,325,000 + 0.08% of the amount exceeding 2,000,000,000 but not higher than Baht 6,725,000
From 2,500,000,001 to 12,500,000,000	6,725,000 + 0.04% of the amount exceeding 2,500,000,000 but not higher than 10,725,000
From 12,500,000,001 and over	10,725,000 + 0.02% of the amount exceeding 12,500,000,000 but not higher than 50,000,000

(2) The parties may agree to a different remuneration for the arbitrator to what is provided for in the table of the arbitrator's remuneration under paragraph one which must however be agreed upon before the constitution of the Arbitral Tribunal.

Article 4 The institutional fee and the arbitrator's remuneration shall be calculated as an aggregate amount of the claim and counterclaim.

If any party requests to exercise the right to set-off, the capital amount subject to such a request shall also be included unless the Arbitral Tribunal after discussing with the parties finds that this will not raise issues that require significant additional work.

Article 5 Expenses

(1) The Arbitral Tribunal's expenses refer to the reasonable actual expenses of the Arbitral Tribunal incurred during the arbitral proceedings which are not included in the table of the institutional fee under Article 2 and the table of the arbitrator's remuneration under Article 3. For example, travel expenses, the cost of accommodation, food, communication, etc.

The Thailand Arbitration Center may determine guidelines regarding the accounting of expenses for the Arbitral Tribunal where the expenses may be separately charged and paid from the institutional fee table under Article 2 and the arbitrator's remuneration under Article 3.

(2) The case management costs include:

(2.1) The cost of the facilities and support services; such as, costs of the hearing room, equipment, transcription of the tape recording and the interpreter's fee based on the rates and items as prescribed by the Thailand Arbitration Center.

(2.2) The cost of the arbitration for the staff of the Thailand Arbitration Center who have to work outside of the normal working hours when arbitral proceedings take place after 18.00 hours or on a government holiday where the rate will be 2.5% of the hourly institutional fee. Anything less than an hour will be charged for the hour.

(2.3) The cost of food and beverages. The Thailand Arbitration Center may collect other expenses in addition to what is stated under Article 5(2) where all the parties consent.

(3) The costs of the expert appointed by the Arbitral Tribunal include:

(3.1) The cost of the expert's report and expenses incurred in preparing the report as specified by the Arbitral Tribunal.

(3.2) Travel and other expenses of the expert as already approved of by the arbitrator.

(3.3) Other expenses relating to the submission of the expert's report as required by the law.

(4) Any other expenses agreed by the parties to be expenses of the arbitration.

(5) The Registrar may collect no more than Thai Baht 50,000 from each party as a first-time deposit for expenses.

Annex 2

Model Arbitration Clause

The parties may agree to the following arbitration clause in their contract or as a separate arbitration agreement.

“Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Thailand Arbitration Center for the time being in force and the conduct of the arbitration thereof shall be under the administration of the Thailand Arbitration Center.”