

# When the going gets tough – Arbitration vs. State Courts with a special view to Thailand

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- ❖ Dr. Andreas Respondek: Rechtsanwalt (D), Attorney at Law (USA), Chartered Arbitrator (FCIArb)
- ❖ Assignments as Head of Legal, Managing Director Thailand, Managing Director Greater China, Regional Managing Director Asia
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Dr. Andreas Respondek

Member of:



# **When the going gets tough – Arbitration vs. State Courts with a special view to Thailand**

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## WHAT IS ARBITRATION?

### A R B I T R A T I O N

Form of private dispute resolution

Adjudicative in nature

Agreement

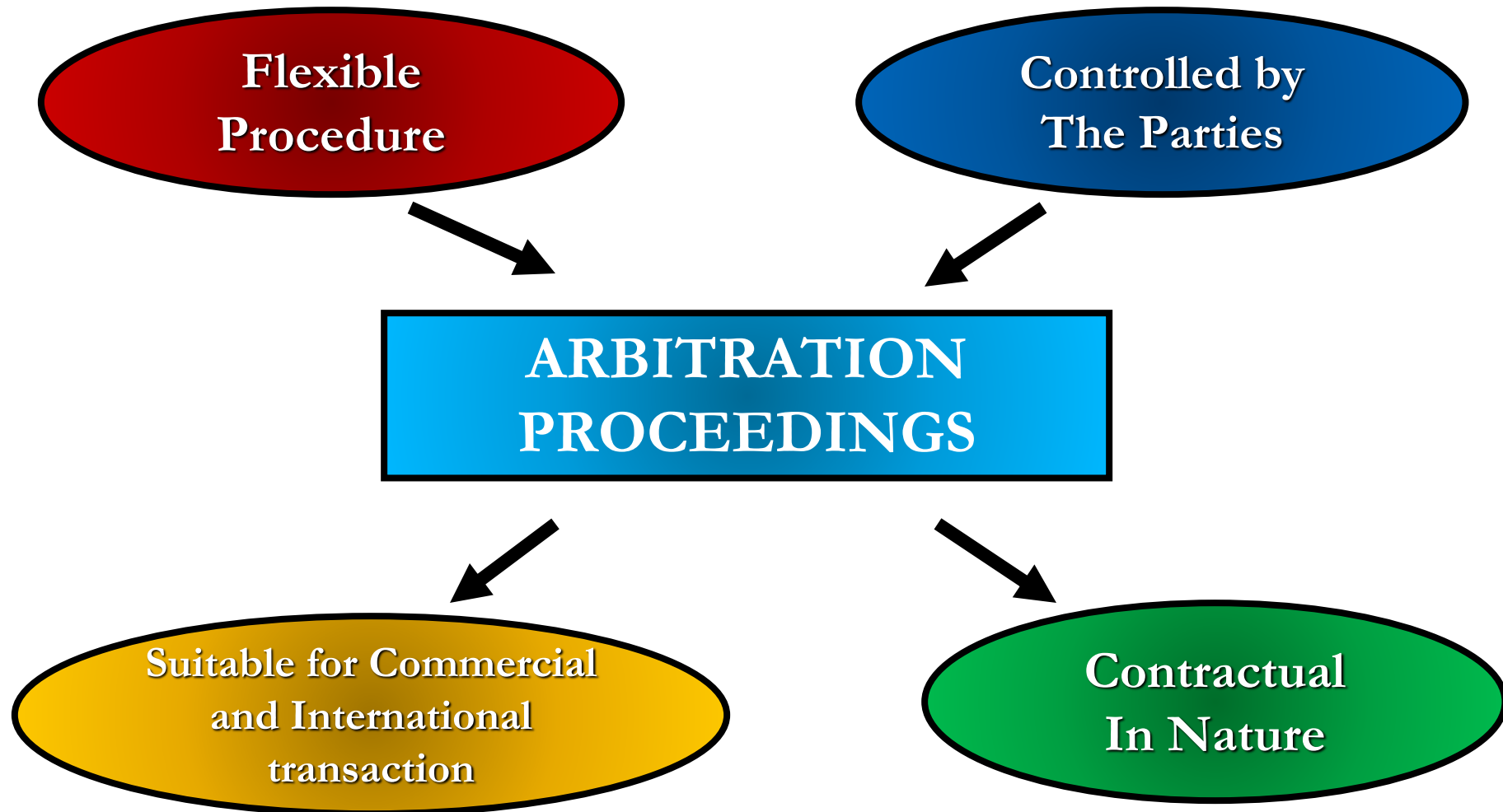
To submit their dispute

To one or more impartial persons  
(arbitrator or arbitral tribunal)

Binding Decision



## GENERAL CHARACTERISTICS OF ARBITRATION PROCEEDINGS





### Ad hoc arbitration

- Meaning: “for this”
- Allows maximum flexibility for parties to tailor procedural rules according to their particular requirements
- UNICITRAL Arbitration Rules



### Institutional arbitration

- Arbitration administered by an institution under its own rules of procedure
- Important administrative and management functions or arbitral proceedings are taken care of
- Hearing rooms and private conference rooms, telecommunication, audio and recording facilities, secretarial services, interpretation, translation etc.



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## INTERNATIONAL ARBITRATION INSTITUTIONS



香港國際仲裁中心  
Hong Kong International  
Arbitration Centre

**International Chamber of Commerce  
(ICC)**



**Hong Kong International Arbitration  
Centre (HKIAC)**

**Singapore International Arbitration  
Centre (SIAC)**



中国国际经济贸易仲裁委员会  
CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION

**China International Economic and Trade  
Arbitration Commission (CIETAC)**



**The Asian International Arbitration  
Centre (Malaysia) (AIAC)**





## WHAT MAY BE SUBJECT TO ARBITRATION?

Any type of dispute, except those specifically excluded by statute or by general principles of law (e.g. order public etc.)

Non arbitrable matters: Succession, marriage, adoption, citizenship, insolvency, criminal liability and other matters which form part of the “public policy”



## WHAT IS THE LEGAL FRAME WORK FOR ARBITRATION?

- ❖ **Domestic Arbitration Laws**
- ❖ **UNCITRAL Model Law on International Commercial Arbitration (e.g. Singapore, Hong Kong, Thailand, South Korea, India, Japan, Philippines)**
- ❖ **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**
- ❖ **ICSID Convention**



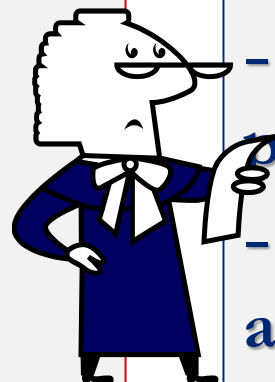


## STATUS:

- Exercises a judicial function
- Relationship is contractual
- Breach of obligations results in removal and annulment of the award

## DUTIES:

- Acts impartially and equitably; duty to disclose conflict of interest
- Avoid any appearance of impropriety
- Settles disputes between the parties with due diligence
- Respects confidentiality of arbitration proceedings





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## RECOURSE AGAINST ARBITRATION AWARDS

Very limited, only with regard to mistakes and omissions

No appeal procedures



## New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) June 10, 1958

### ❖ New York Convention

(<http://www.newyorkconvention.org/countries> )



❖ More than 150 signatories

❖ Easier enforceability than normal judgments (e.g. Thailand)



# PROS

- Confidentiality
- Arbitrators have usually special expertise
- Procedural rules more flexible
- Usually faster than state courts

# CONS

- In some cases more expensive
- Not all countries that are party to the New York Convention do actually enforce



❖ **Enforcement of foreign judgments in Thailand?**

❖ **Work permit requirement for arbitrators**

❖ **Thai arbitration institutions**

- Thai Arbitration Institute (TAI) : [www.tai.coj.go.th](http://www.tai.coj.go.th)
- Thailand Arbitration Centre (THAC) : [www.thac.or.th](http://www.thac.or.th)
- The Office of the Arbitration Tribunal of the Board of Trade of Thailand : [www.thaichamber.org](http://www.thaichamber.org)







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## ASIA ARBITRATION GUIDE



### MORE INFORMATION REQUIRED?

Hand-out  
ASIA ARBITRATION GUIDE  
can be downloaded for free from our  
website [www.rf-arbitration.com](http://www.rf-arbitration.com)



<https://www.rf-arbitration.com/upload/document/asia-arbitration-guide-2017.pdf>



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**THANK YOU FOR  
YOUR  
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