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English version

Enforcement of Expedited Procedure Arbitral Awards in Thailand

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Carrying out an arbitration under the expedited procedure (“EP”) of a set of arbitral rules usually means the arbitration will take less time than typically required for an arbitration. For example, a tribunal may be required to issue an EP award within a fixed time period of their constitution.

Many leading institutional rules provide for EP under certain requirements. For example, under SIAC Rules 2016, parties can apply for EP if: ¹

- i. the amount in dispute does not exceed SGD 6,000,000 (about USD 4,500,000);
- ii. the parties so agree; or
- iii. in cases of exceptional urgency.

The ICC Rules of Arbitration 2021 contain similar provisions.²

Possible prior issues of enforcement resolved with Rule 5.3?

However there may be concerns of a challenge to an EP award at the setting aside or enforcement stage.

The award debtor may challenge the EP award on the alleged basis that the EP is inconsistent with the parties’ arbitration agreement. For example, the arbitration agreement may provide for the appointment of a three-member arbitrator panel instead of the standard single member under EP.

This was precisely the challenge that was raised in the Singapore High Court case of *AQZ v ARA* [2015] SGHC 49 (“AQZ”), as well as in the Shanghai No.1 Intermediate People’s Court case of *Noble Resources International Pte Ltd v Shanghai Xintai International Trade Co Ltd* (2016) Hu 01 Xie Wai Ren No.1 (“*Noble Resources*”).

The two courts reached diametrically opposing decisions.

The Singapore High Court held that by adopting the SIAC Rules 2010 into their contract, the parties had recognised the SIAC President’s power and discretion to appoint a sole arbitrator where the EP applied.

In contrast, the Shanghai No.1 Intermediate People’s Court held that the appointment of the sole arbitrator under SIAC Rules 2013 violated the parties’ arbitration agreement.

However Rule 5.3 of the SIAC Rules 2016 arguably resolves this prior issue by expressly providing that parties agree to apply the EP even if the arbitration agreement contains contrary terms.³

This is another notable example of how SIAC regularly updates its rules to incorporate the latest thinking in international arbitration as well as the courts’ decisions around the world for the benefit of SIAC users.

Are EP awards enforceable in Thailand?

Thai courts are bound to enforce a foreign award if it is subject to an international treaty or convention to which Thailand is a party. Under section 40 of the Thailand Arbitration Act B.E. 2545 (2002), there was some ambiguity whether the award debtor may request the courts to set aside a foreign award. However, in two decisions (nos. 9476/2558 and 8539/2560) released in 2015 and 2017, the Supreme

Court of Thailand interpreted the Arbitration Act B.E. 2545 (2002) and ruled that the Thai courts had only the authority to set aside an award issued in Thailand and could not set aside a foreign award.

The latest line of cases in Thailand suggests that similarly, Thai courts are likely to enforce EP awards as they would for any other foreign award.

In 2022, the Supreme Court of Thailand enforced an award issued by a sole arbitrator appointed under the EP under the SIAC Rules 2016. This is so in spite of the arbitration agreement providing for a panel of three arbitrators.

In that case, the award creditor attempted to enforce the award in Thailand under the New York Convention which both Thailand and Singapore are parties to. The award debtor also challenged the award and requested the court to set aside the award. At first, the Thai court of first instance dismissed the challenge and enforced the award in favor of the award creditor. The award debtor, therefore, appealed the decision to the Supreme Court of Thailand. The Supreme Court dismissed the appeal and affirmed the lower court's decision to enforce the award. The Supreme Court held that both parties had agreed to the application of the SIAC Rules 2016, which allowed the parties to appoint a sole arbitrator in case the EP was applied, and this overruled the previous agreement provided for a panel of three arbitrators.

Observations

The Thai court decisions cited above arguably give comfort to parties who choose SIAC arbitration and Singapore seat for their transactions of a higher value and higher stakes.

Three other observations can be made.

First, from the perspective of Thailand's arbitration legislation, the decisions above explain how a Thai court interprets and applies Section 43(5) of the Thailand Arbitration Act B.E. 2545 (2002), which gives effect to Article 36(1)(a)(iv) of the UNCITRAL Model Law. Parties can expect Thai courts to uphold parties' consent as fundamental to the jurisdiction of the tribunal under Thai law.

That said, on matters of arbitrability, we think that a Thai court is likely to give more weight to public policy than parties' consent.

Second, the latest case law is consistent with the present thinking in Thai arbitration community.

As with SIAC and ICC, the Thai Arbitration Institute ("TAI") amended its Arbitration Rules on 1 October 2021, providing for EP.⁴ The TAI included in Article 3/2 a provision expressly stating that where parties agree to apply the TAI Arbitration Rules 2021, parties are deemed to have agreed to the applicability of the EP rules, even if they are inconsistent with that under the arbitration agreement.

Third, a Thai court is likely to interpret "competent court" under section 40 of the Thailand Arbitration Act B.E. 2545 (2002) to mean the court where the award is issued, which is consistent with Article 5(1)(e) of New York Convention. In other words, Thai courts only have the power to set aside the awards rendered in arbitration proceedings seated in Thailand.

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¹ Rule 5.1 of the SIAC Rules 2016.

² Article 30 of the Rules and Appendix VI of the ICC Rules 2021. For arbitration agreements concluded on or after 1 March 2017 and before 1 January 2021, parties can only apply for expedited arbitration if the amount in dispute does not exceed US\$3,000,000.

³ See the Singapore High Court case of *BXS v BXT* [2019] SGHC(I) 10.

⁴ Article 3/2, The Arbitration Rules, the Thai Arbitration Institute, Office of the Judiciary (No.4) B.E. 2564.