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Dispute Resolution

# Relaxation of Limitations for Foreign Arbitrators or Representatives in Thai Arbitral Proceedings

## Introduction

In an effort to promote Thailand as an arbitration-friendly venue and a regional hub for international arbitral proceedings, the limitations imposed on foreign arbitrators and representatives who are appointed to act in arbitration proceedings in Thailand have been relaxed.

Previously, foreign parties may have been discouraged from choosing Thailand as the venue for arbitration because of concerns on the limited selection of arbitrators and representatives due to restrictions on foreign arbitrators and representatives. Foreign arbitrators were required to undergo an onerous and time-consuming process to obtain a work permit, while foreign representatives were prohibited from acting in arbitration proceedings in Thailand unless the dispute was governed by foreign law or the award would not be required to be enforced in Thailand.

The Arbitration Act (No. 2) B.E. 2562 (A.D. 2019) ("**Arbitration Act (No. 2)**"), which came into force on 15 April 2019, has introduced amendments to the Arbitration Act B.E. 2545 (A.D. 2002) to expressly allow the appointment of foreigners as arbitrators or representatives. Nevertheless, foreign arbitrators and representatives are still required to obtain visas and/or work permits, as the case may be.

## New Position

Under Section 23 of the Arbitration Act (No. 2), a foreigner who has been appointed as a foreign arbitrator or representative in an arbitration in Thailand that is to be conducted by a government agency or organisation may request from such government agency or organisation a certificate for the consideration of Thai officials in their issuance of a work permit ("**Certificate**"). In practice, the government agency or organisation would be either the Thai Arbitration Institute ("**TAI**") or the Thailand Arbitration Center ("**THAC**").

Once a foreign arbitrator or representative has obtained a Certificate, he or she is entitled to begin performing his or her duties without having to wait for his or her work permit to be issued. Based on their current practice, THAC and TAI are willing to issue Certificates in respect of arbitration proceedings conducted under the rules of other arbitration institutions as well as ad hoc arbitrations, provided that the hearings are held at THAC or TAI.

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An alternative to obtaining the Certificates and work permits as set forth above is to apply for Smart Visas, which have been introduced for foreign experts working in the alternative dispute resolution ("ADR") sector. This is pursuant to the Announcement of the Board of Investment No. Por 12/2018 regarding Qualification, Rules and Conditions for Smart Visa dated 18 December 2018.

In order to apply for a Smart Visa, the applicant must produce documents showing his or her expertise in ADR including, among others, a confirmation from a Thai arbitration institution (in practice, this would be either TAI or THAC) of such expertise. While the category of ADR experts has not been defined by the Thailand Board of Investment, on 11 January 2019 the Office of the Judiciary has announced that it includes arbitrators, representatives, legal practitioners, speakers, tribunal secretaries and advisors of TAI.

## Restriction for Arbitrations Governed by Thai Law

It must be noted that foreigners are still prohibited from acting as representatives in arbitration proceedings in Thailand where the dispute is governed by Thai law. This is pursuant to the Notification of the Ministry of Labour, Re: Prohibited Occupations for Foreigners, which was issued pursuant to the Emergency Decree on the Foreigner's Working Management B.E. 2560 (A.D. 2017) and came into force on 20 June 2020.

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