

บทความวิจัย

อุปสรรคทางกฎหมายในการระงับข้อพิพาททางเลือกคดีการค้าและการ
ลงทุนระหว่างประเทศของไทย*

Obstacles to Alternative Dispute Resolution in International
Trade and Investment under Thai Law

รุ่งนภา อติศรมงคล¹

Rungnapa Adisornmongkon²

คณะสังคมศาสตร์ มหาวิทยาลัยเกษตรศาสตร์ 50 ถนนงามวงศ์วาน เขตจตุจักร

แขวงลาดยาว กรุงเทพฯ 10900

Faculty of Social Science, Kasetsart University 50 Ngamwongwan Road,

Chatuchak, Ladyao, Bangkok 10900

* Corresponding author E-mail: fsocrnmp@ku.ac.th

วันที่รับบทความ : 16 กุมภาพันธ์ 2569 วันที่แก้ไขบทความ : 6 พฤษภาคม 2569

วันที่ตอบรับ : 29 มิถุนายน 2569 วันที่เผยแพร่ : 29 มิถุนายน 2569

* บทความนี้เป็นส่วนหนึ่งของวิจัย เรื่อง “ปัญหาการระงับข้อพิพาททางเลือกในคดีการค้าและการลงทุนระหว่างประเทศของไทย” ด้วยทุนสนับสนุนจากภาควิชานิติศาสตร์, ปี พ.ศ. 2568.

¹ รองศาสตราจารย์รุ่งนภา อติศรมงคล, อาจารย์ประจำคณะสังคมศาสตร์ มหาวิทยาลัยเกษตรศาสตร์.

² Associate Professor Rungnapa Adisornmongkon, Lecturer, Faculty of Social Science, Kasetsart University.

บทคัดย่อ

บทความวิจัยนี้มีวัตถุประสงค์เพื่อ สํารวจปัญหาและอุปสรรคในการระงับข้อพิพาททางเลือกในข้อพิพาททางการค้าและการลงทุนระหว่างประเทศ ภายใต้พระราชบัญญัติอนุญาโตตุลาการ พ.ศ. 2545 พระราชบัญญัติการไกล่เกลี่ยข้อพิพาท พ.ศ. 2562 โดยใช้วิธีการวิจัยเชิงเอกสารเพื่อศึกษาถึงความเหมาะสมของกระบวนการระงับข้อพิพาทด้วยวิธีไกล่เกลี่ยและอนุญาโตตุลาการ ตลอดจนปัญหาเกี่ยวกับการบังคับตามคำชี้ขาด

ผลการศึกษาพบว่า การไกล่เกลี่ยยังมีปัญหาถึงความเหมาะสมและการแต่งตั้งผู้ไกล่เกลี่ย และปัญหาในการนำข้อตกลงที่เกิดจากการไกล่เกลี่ยข้อพิพาทในต่างประเทศมาบังคับในประเทศไทย ส่วนอนุญาโตตุลาการ ยังมีปัญหาในความเป็นกลางของอนุญาโตตุลาการและความโปร่งใสในการระงับข้อพิพาทระหว่างรัฐกับนักลงทุนต่างชาติ และปัญหาการบังคับคำชี้ขาดอนุญาโตตุลาการ ซึ่งเป็นอุปสรรคสำคัญที่มีผลกระทบต่อความเชื่อมั่นในการระงับข้อพิพาททางการค้าและการลงทุนระหว่างประเทศของไทย

ผู้วิจัยเสนอให้มีการปฏิรูปกฎหมายอย่างตรงจุดเพื่อเสริมสร้างความเชื่อมั่นของนักลงทุน และยกระดับบทบาทของประเทศไทยให้เป็นศูนย์กลางการระงับข้อพิพาทระหว่างประเทศในภูมิภาคโดยเป็นภาคีสมาชิกอนุสัญญาสิงคโปร์ว่าด้วยการไกล่เกลี่ย ค.ศ. 2019 (พ.ศ. 2562) เพื่อขจัดอุปสรรคในการบังคับข้อตกลงจากสัญญาไกล่เกลี่ยข้ามพรมแดน อันเนื่องมาจากข้อจำกัดของพระราชบัญญัติไกล่เกลี่ยข้อพิพาท พ.ศ. 2562 ที่ไม่ครอบคลุมการบังคับใช้ข้อตกลงระงับข้อพิพาททางพาณิชย์ระหว่างประเทศและเสนอแนะให้แก้ปัญหาคำความโปร่งใสของกระบวนการอนุญาโตตุลาการโดยศึกษาตามแนวทางของข้อบังคับว่าด้วยความโปร่งใสของคณะกรรมการสิทธิการสหประชาชาติว่าด้วยกฎหมายการค้าระหว่างประเทศเกี่ยวกับความโปร่งใส ค.ศ. 2014 (พ.ศ. 2557) เพื่อขจัดปัญหาในความเป็นกลางของอนุญาโตตุลาการ

คำสำคัญ: การระงับข้อพิพาททางเลือก, อนุญาโตตุลาการระหว่างประเทศ, การไกล่เกลี่ยข้อพิพาทเชิงพาณิชย์, อนุสัญญาสิงคโปร์ว่าด้วยการไกล่เกลี่ย

ABSTRACT

This research article aims to investigate the challenges and obstacles to alternative dispute resolution (ADR) in international trade and investment disputes under the Arbitration Act B.E. 2545 (A.D. 2002) and the Mediation of Disputes Act B.E. 2562 (A.D. 2019). The research employs a documentary research approach to examine the suitability of mediation and arbitration processes, as well as issues concerning the enforcement of foreign arbitral awards and international settlement agreements resulting from mediation.

The findings reveal that the mediation, concerns persist regarding the appropriateness of the appointment of mediators, and the enforceability of international settlement agreements resulting from mediation. In arbitration, issues remain regarding the neutrality of arbitrators and the transparency of arbitral process in disputes between states and foreign investors, as well as judicial scrutiny of the legality of foreign arbitral awards enforced in Thailand. These are significant barriers that undermine confidence in resolving international trade and investment disputes in Thailand.

The study recommends targeted legal reforms to strengthen investor confidence and enhance Thailand's role as a regional hub for international dispute resolution. Specifically, it proposes Thailand's accession to the Singapore Convention on Mediation A.D. 2019 (B.E. 2562) to eliminate the obstacle of cross-border enforcement of international settlement agreements resulting from mediation. Due to they cannot be enforced under the Mediation of Disputes Act B.E. 2562 (A.D 2019).

Furthermore, it suggests improving transparency in arbitration proceedings by adopting practices aligned with the United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration A.D 2014 (B.E. 2557). It will eliminate the issue of tribunal's Impartiality and Independence.

Keywords: Alternative Dispute Resolution (ADR), International Arbitration, International Commercial Mediation, Singapore Convention on Mediation

1. Introduction

Trade and foreign direct investment (FDI) are pivotal drivers of economic expansion. In an increasingly globalized economy, the volume of international capital flows are heavily contingent upon the host country's legal infrastructure. When domestic frameworks governing dispute resolution are perceived as obstructive, foreign investors face heightened regulatory risks.

In the realm of transnational business, alternative dispute resolution (ADR) mechanisms—most notably arbitration and mediation—are globally favored due to their procedural flexibility, strict confidentiality, and relative expediency compared to court litigation. However, a primary institutional defect within the current Thai legal landscape is the systemic failure to clearly bifurcate and contextualize international disputes according to their distinct legal natures.

Internationally, cross-border disputes operate under two fundamentally separate legal regimes. First, international commercial disputes typically involve private-to-private corporate entities. The primary

mechanism utilized to resolve these conflicts is international commercial arbitration, which is supported by a robust global enforcement framework under the New York Convention 1958. Thailand operationalizes this framework domestically through the Arbitration Act B.E. 2545 (A.D. 2002), which provides for the recognition and enforcement of foreign arbitral awards. Second, International Investment Disputes involve a direct conflict between a foreign investor and the host State, commonly referred to as Investor-State Dispute Settlement (ISDS). These disputes are rooted in international law, arising from Bilateral Investment Treaties (BITs), and are traditionally adjudicated under specialized rules such as those of the International Centre for Settlement of Investment Disputes (ICSID).

By separating these regimes, the actual legal gaps within Thai law become visible. In the domain of international commercial mediation, a significant statutory bottleneck exists. Thailand's Mediation of Dispute Act B.E. 2562 (A.D. 2019) was fundamentally designed and enacted to handle low-stakes domestic, community-level conflicts. Consequently, its framework is ill-equipped and structurally inadequate for complex, high-value cross-border commercial settlements. Furthermore, Thailand is not a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) 2019. As a result, Thai law lacks a streamlined mechanism to recognize and enforce international settlement agreements resulting from mediation. This enforcement deficit forces foreign investors to rely on cumbersome local contract enforcement procedures, thereby undermining international confidence in Thailand's out-of-court mediation system.

Concurrently, ISDS mechanisms face systemic challenges under Thai law regarding impartiality and procedural transparency. Under the Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010), when the Thai government is a party to an arbitration, public prosecutors ;who defend the state, are legally mandated to serve as an arbitrator. In an international investment context, this dual capacity inevitably raises legitimate anxieties among foreign investors regarding the independence and impartiality of the tribunal. Moreover, post-award enforcement under the New York Convention is not self-executing in Thailand; prevailing parties must still petition the Thai judiciary for enforcement under Section 41 of the Arbitration Act B.E. 2545 (A.D. 2002). A process that subjects international awards to local judicial review and introduces potential enforcement delays that disrupt business continuity. Therefore, this article systematically examines these legal gaps and proposes targeted legislative remedies to eliminate these structural vulnerabilities.

2. Principle of Alternative Dispute Resolution (ADR)

Alternative dispute resolution is commonly preferred for disputes of international commercial contracts because it is convenient, expedient, and better at maintaining confidentiality and business relationships than resorting to litigation in a court. There are three main methods of alternative dispute resolution which are negotiation, mediation, and arbitration. However, the preferred methods for resolving disputes in Thailand are arbitration and mediation.

2.1 Mediation

Mediation is an initial way to manage conflicts between parties. By its process, all parties must voluntarily engage in mediation to resolve the disputes, with a mediator who is a neutral third party not involved in or related to the dispute and helping to find a resolution without making decisions on the dispute (Wongthip, 2023, p. 32). A mediator is a significant person who is appointed by disputing parties to assist them in negotiating a settlement to resolve the dispute. In the meanwhile, the mediator must seek solutions to resolve the issues that both parties are likely to accept. Therefore, a mediator must be impartial and have experiences that can view the parties' issues. These capabilities enable the mediator to clearly understand the parties' issues and find a way to resolve the dispute.

1) Characteristics of Mediation

Mediation can be divided into two types in Thailand: (1) extrajudicial mediation or out-of-court mediation which is resolving disputes or conflicts outside the formal judicial system, without involving a court or judge. (2) mediation in judicial court which occurs before filing a case in court, or after filing a case, where both parties agree to mediate the dispute with the court acting as a facilitator (Thapwong, 2007, p. 77).

Extrajudicial Mediation is a case where the parties choose to mediate before filing a lawsuit in court. There may have been other processes that have taken place beforehand, such as negotiation. Initially, one party may propose terms for the other party to accept, but they may not reach an agreement. Failed negotiations often involve external factors that hinder the negotiation process, such as lack of trust, fear of being

disadvantaged by accepting terms, lack of understanding of the issues and problem-solving methods, and bias towards the other party. Mediation serves as a supplement to negotiation, increasing the chances of reaching an agreement by having a mediator address various issues that may arise during the process to lead to a satisfactory resolution for both parties.

Mediation in court is a process in court by submitting a petition to the Mediation Center of the court of justice or notifying the court's designated mediation unit. In addition, the parties may express their intention to the panel of judges during the case consideration to request mediation.

2) Legal Consequences of Mediation

When mediation is successful and satisfactory to both parties. They will enter into a settlement agreement, which will effectively suspend the dispute either in whole or in part. In cases of in-court-mediation, once the parties enter into a settlement agreement, the court will render a consent judgment. This leads to the complete suspension of the dispute.

Regardless, the enforceability of a settlement agreement resulting from successful mediation, whether in or out of court, has different enforcement implications. For instance, when parties enter into a settlement agreement in court, there is a court order that compels the parties to abide by the terms of the settlement agreement (Thapwong, 2007, p. 80). Once the court renders a consent judgment, it creates contractual rights between the parties based on the agreement. This allows each party to enforce their rights as creditors and debtors against each other. The creditor under the settlement agreement has the right to demand compliance from the debtor

as per the terms of the settlement agreement. The debtor under the settlement agreement is obligated to comply. If they do not comply, the creditor can petition the court to enforce compliance without filing a new lawsuit. Meanwhile, when parties enter into a settlement agreement outside of court. Enforceability is based solely on the agreement itself. Once the parties have properly entered a legally binding settlement agreement. The agreement can be enforced according to general contract principles. This allows each party to enforce their rights as creditors and debtors against each other. In cases where one party fails to comply with the agreement from the out-of-court mediation. The other party can compel performance or seek remedies by filing a lawsuit to the court for infringing the agreed-upon settlement terms, leading to further delays in court proceedings.

2.2 Arbitration

Arbitration is the one of ADR that is often preferred for resolving disputes arising from international commercial contracts more than mediation. It has a process similar to resolving disputes in court, but it is more convenient and flexible. Upon the completion of the arbitration process, the arbitral tribunal must issue an enforceable award which can be enforced in all countries that are contracting States of the New York Convention.

1) Characteristics of Arbitration

Resolving disputes through arbitration can be conducted in both ad hoc arbitration and institutional arbitration (Yuprasert, 2023, p. 40). Institutional arbitration has the advantage of expertise, with officials who are recognized and accepted by the courts to provide assistance or enforce

awards, but it may involve high costs. In Thailand, there are institutions that handle arbitration in an institutional format, such as Thai Arbitration Institute (TAI) of ministry of justice, and Thailand Arbitration Center (THAC) which is independent arbitration institute, and arbitration institute of the Thai Chamber of Commerce. Each arbitration institution has its own rules. In Thailand, arbitration can take two forms.

1.1) Court-Annexed Arbitration

It is a form of arbitration that takes place in court when a case has already been filed in court and the parties wish to resolve the dispute through the arbitration. The court appoints an arbitrator with expertise in the subject matter of the dispute. Once the arbitrator issues an award, it is submitted to the court for further consideration. In Thailand, court-annexed arbitration is subject to the Civil Procedure Code, Articles 210-222.

1.2) Out-of-Court Arbitration

It is a process where arbitration is conducted outside of the court system. It involves agreeing to arbitrate without resorting to the courts for decision-making. Out-of-court arbitration can take the form of ad hoc arbitration or institutional arbitration. The process involves appointing an arbitrator or arbitral tribunal to consider the dispute and make a decision or render an award (Chantaraopakorn, 1993, p. 31). The terms are usually outlined in the arbitration agreement. In Thailand, out-of-court arbitration is governed by the Arbitration Act B.E. 2545 (A.D. 2002). Once the arbitrator issues an award, if the parties comply with the decision, the dispute is

resolved. If a party does not comply, the winning party must petition the court to enforce compliance with the arbitral award.

2) Arbitral Awards

Arbitral tribunals render awards that determine the case, which must be in writing and followed by the majority. A copy of the award is provided for the party that must comply with it. Arbitral awards have binding and enforceable effects on the disputing parties (Srisanit, 1992, p. 32). However, parties cannot enforce arbitral awards on their own but must rely on court intervention to enforce them (Srisanit, 1992, p. 32). Typically, the court does not review the merits of the arbitral award but rather examines whether the arbitration process was conducted correctly, in accordance with the criteria and if there are grounds for prohibition under the law. When the losing party does not comply with the arbitral award, the winning party must request the court to enforce compliance with the award by submitting a petition along with the arbitration agreement. Thailand is a contracting state of New York Convention, which allows for the enforcement of foreign arbitral awards conducted in other member countries.

Furthermore, enforcing arbitral awards in Thailand under the Arbitration Act B.E. 2545 (A.D. 2002) does not differentiate between domestic arbitral awards and the foreign one. The Thai court has the authority to review whether the arbitration process was conducted correctly according to regulations or laws, whether enforcement contradicts public order or morality. The court does not have the power to interfere or amend the content or discretion of the arbitral award, except to enforce it as requested or to reject enforcement (Supreme Court Case No. 1505/2547). It is different

from court-annexed arbitration where the court can order the arbitrator to amend the award if it is deemed incorrect before issuing the award. Additionally, challenging an arbitral award in court must comply with the provisions of the Civil Procedure Code, Article 222, with some minor differences in the grounds for challenge.

3. Dispute Resolution in International Trade and Investment under Thai Laws

3.1 Mediation of Disputes Act B.E. 2562

Mediation in international trade and investment disputes in Thailand may be conducted either within the court system or outside the court. It is governed primarily by two key legal instruments: the Mediation of Disputes Act B.E. 2562 (A.D. 2019) and the Regulations of Central Intellectual Property and International Trade Court on Mediation before Filing a Lawsuit B.E. 2562 (A.D. 2019). The latter provides a framework for pre-litigation mediation in disputes which, if filed, would fall within the jurisdiction of the Central Intellectual Property and International Trade Court. Accordingly, disputes arising from international commercial contracts may be submitted to pre-litigation mediation under the auspices of the Central Intellectual Property and International Trade Court.

1) Mediation Proceeding

Pre-litigation mediation is initiated on a voluntary basis by both disputing parties. Either one party or both parties may express their intention to the Central Intellectual Property and International Trade Court to participate in mediation (Regulations of Central Intellectual Property and

International Trade Court on Mediation before Filing a Lawsuit B.E. 2562 (A.D. 2019), Section 5 and 6), provided that the dispute has not yet been filed before the court (Regulations of Central Intellectual Property and International Trade Court on Mediation before Filing a Lawsuit B.E. 2562 (A.D. 2019), Section 4). In circumstances where one party submits a request to the Central Intellectual Property and International Trade Court for mediation, the Court shall promptly notify the other party in order to ascertain its willingness to participate in the mediation process. Upon receipt of the other party's written consent to enter into mediation, the Court shall appoint a mediator from the list of mediators registered with the Office of the Judiciary (Regulations of Central Intellectual Property and International Trade Court on Mediation before Filing a Lawsuit B.E. 2562 (A.D. 2019), Section 5). Accordingly, as the mediation is conducted under the auspices of the Central Intellectual Property and International Trade Court, the appointment of the mediator is made by the court, rather than being a matter of party autonomy. The court may appoint more than one mediator, as it deems appropriate.

In cases where a dispute has already been filed before the court, but no judgment has yet been rendered. The mediation process may be initiated upon the request of either party. Such a request made by submitting an oral statement to the panel of judges during the proceedings (Regulations of Supreme Court President on Mediation B.E. 2554 (A.D. 2011), Section 8). The mediation must be concluded within the period prescribed by the panel of judges (*Regulations of Supreme Court President on Mediation B.E. 2554 (A.D. 2011)*, 2011).

Mediation proceedings shall be conducted in the presence of all parties, unless, for the benefit of the mediation process, the mediator conducts a private session with one party. In such circumstances, the mediator shall inform the absent party of the conduct of the mediation (*Mediation of Disputes Act B.E. 2562 (A.D. 2019)*, 2019). Where the mediation is successful and the parties reach an agreement, a compromise agreement shall be drawn up by the mediator, the parties, or a court officer.

2) Mediator

In-court mediation is conducted by the panel of judges hearing the case (*Regulations of Supreme Court President on Mediation B.E. 2554 (A.D. 2011)* Section 10, 11). In contrast, out-of-court mediation is conducted by a conciliator registered with the Office of the Judiciary and appointed by the Central Intellectual Property and International Trade Court. Such mediators must possess qualifications in accordance with the criteria prescribed by the Office of the Judiciary (*Regulations of Supreme Court President on Mediation B.E. 2554 (A.D. 2011)*, 2011). Nevertheless, the disputing parties retain the right to object to the appointment of a mediator where there are reasonable grounds to question the mediator's impartiality, or where it appears that the mediator has acted in any capacity as a representative of either party, or has otherwise acted on behalf of a party, or has any interest in or connection with either party in relation to the dispute in question.

3) Enforcement of Settlement Agreements Resulting from Mediation

Where the parties have successfully concluded mediation and executed a settlement agreement. If one party subsequently fails to comply with such agreement. The aggrieved party may file a petition with the court

in whose jurisdiction the settlement agreement was made or with the court in whose jurisdiction either party is domiciled, seeking enforcement of the settlement agreement. Such petition must be filed within three years from the date on which enforcement of the settlement agreement first becomes permissible (*Mediation of Disputes Act B.E. 2562 (A.D. 2019)*, 2019). If no petition for enforcement is filed within the prescribed period, the underlying obligation under the settlement agreement shall be extinguished (*Mediation of Disputes Act B.E. 2562 (A.D. 2019)*, 2019). Upon inquiry into the petition, the Court shall order enforcement of the settlement agreement, unless it appears to the Court, or the party against whom enforcement is sought proves, that: (1) any party to the settlement agreement lacked the legal capacity to enter into such agreement; (2) the subject matter of the dispute or the settlement agreement is expressly prohibited by law, impossible to perform, or contrary to public order or good morals; or (3) the settlement agreement was entered into as a result of fraud, coercion, or any other unlawful act.

3.2 Arbitration Act B.E. 2545

Arbitration is a widely popular form of alternative dispute resolution for international commercial contract disputes. The Arbitration Act B.E. 2545 (A.D. 2002) applies to both court-annexed arbitration conducted under the Civil Procedure Code and out-of-court arbitration, including pre-litigation arbitration.

1) Appointment of Arbitrators

The appointment of arbitrators constitutes a fundamental stage in arbitral proceedings. The selection of suitably qualified individuals

contributes significantly to ensuring that the arbitration process is conducted efficiently, fairly, and in a manner that fulfills the parties' intention to resolve their disputes through this alternative mechanism.

With respect to the number of arbitrators, the Arbitration Act B.E. 2545 (A.D. 2002) provides that the arbitral tribunal may consist of one or more arbitrators; however, the total number must be odd (*Arbitration Act B.E. 2545 (A.D. 2017), 2002*). In cases where a sole arbitrator is to be appointed and the parties are unable to reach agreement, the court shall make the appointment. Where the tribunal consists of more than one arbitrator, each party shall appoint one arbitrator, and the appointed arbitrators shall jointly appoint a further arbitrator. If the parties fail to complete the appointment of arbitrators within thirty days from the date of receipt of a request to do so, either party may apply to the court having jurisdiction to issue an order appointing the arbitrator (*Arbitration Act B.E. 2545 (A.D. 2017), 2002*).

Notwithstanding, where there are reasonable grounds to doubt the impartiality, independence, or qualifications of an arbitrator. A party may challenge such arbitrator by submitting a written statement of challenge to the arbitral tribunal. The grounds therefor must be specified within fifteen days from the date on which the party became aware of the appointment or of the circumstances giving rise to the challenge (*Arbitration Act B.E. 2545 (A.D. 2017), 2002*).

2) Arbitral Proceeding

2.1) Commencement of Arbitral Proceeding

Arbitral proceeding may be initiated in any of the following circumstances: (1) when one party receives a written request from the other party to submit the dispute to arbitration; (2) when one party notifies the other party to appoint an arbitrator or to consent to the appointment of an arbitrator; (3) where an arbitration clause provides for the constitution of an arbitral tribunal, and one party expresses its intention to submit the dispute to such tribunal; or (4) when one party submits the dispute to an arbitral institution.

Once both parties have agreed to resolve their dispute through arbitration and the arbitral tribunal has been duly constituted. The tribunal may require the claimant to submit a statement of facts, the issues in dispute, and the relief sought. The respondent shall, in turn, submit its statement of defense, including any objections or counterarguments, together with relevant supporting documents and a list of witnesses it intends to rely upon, and shall communicate such materials to the opposing party (*Arbitration Act B.E. 2545 (A.D. 2017), 2002*).

2.2) Taking of Evidence

There is no mandatory form for the taking of evidence in arbitral proceedings. Accordingly, the tribunal may determine whether evidence shall be taken through oral hearings, written submissions, or by consideration of documents or other forms of evidence. The conduct of evidentiary proceedings in arbitration is discretionary, and the arbitral tribunal may render its award on the basis of documents, statements of claim, statements

of defense, or any other information submitted by the parties (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002).

Where the taking of evidence is deemed necessary, the arbitral tribunal or either party may apply to a court of competent jurisdiction for the issuance of a summons to compel the attendance of a witness or for an order requiring the production of documents or other tangible evidence (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002).

2.3) Rendering of the Arbitral Award

The arbitral tribunal shall determine the dispute by rendering an award. In making its determination, the tribunal shall decide in accordance with the terms of the contract. In the case of commercial disputes, shall also take into account any applicable trade usages relevant to the transaction (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002). Where the arbitral tribunal consists of more than one arbitrator, the award shall be made by a majority decision. In the absence of a majority, the presiding arbitrator shall render the award (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002). The award shall be signed by the arbitrator(s).

Where, in the course of arbitral proceedings, the parties enter into a settlement agreement. The arbitral tribunal considers that such agreement is not contrary to law, also shall render an award in accordance with the terms of the settlement. Such award shall have the same status and effect as an award rendered on the merits of the dispute (*Arbitration Act B.E. 2545 (A.D. 2002)*, 2002).

3) Enforcement of Arbitral Award

3.1) Court of Competent Jurisdiction

An application for the enforcement of an arbitral award must be submitted to a court of competent jurisdiction. Section 9 of the Arbitration Act B.E. 2545 (A.D 2002) provides that the competent court under this Act shall be the Central Intellectual Property and International Trade Court. The court within whose jurisdiction the arbitral proceedings were conducted, or the court within whose jurisdiction either party is domiciled.

Accordingly, the determination of the appropriate court for filing an application for enforcement of an arbitral award depends on the nature of the dispute to which the award relates. In the case of disputes arising from international trade and investment contracts, an application for enforcement shall be filed with the Central Intellectual Property and International Trade Court. The court within whose jurisdiction either party is domiciled, or, in the case of court-annexed arbitration, the court that conducted the arbitral proceedings. However, in the case of disputes arising from investment contracts between a State and an investor, the application for enforcement must be filed with the Administrative Court, which has jurisdiction over disputes concerning administrative contracts.

3.2) Recognition and Enforcement of Arbitral Award

The parties are not entitled to enforce an arbitral award by themselves, but must seek enforcement through the court. Whether the arbitral award is rendered in Thailand or in a foreign jurisdiction. If the losing party fails to comply with the award, the winning party may seek to enforce such award in Thailand by filing a petition with a court of competent

jurisdiction for a judgment enforcing the award (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002).

In considering the petition, the court shall examine whether the arbitral proceedings were conducted in accordance with the prescribed rules and whether the arbitration process. The award was carried out without contravening the law, public order, or good morals. The court shall not review or revise the substantive merits of the award, but shall be limited to either recognizing and enforcing the award or refusing enforcement (Supreme Court Case No. 1505/2547).

In the case of a foreign arbitral award, such award may be enforced in Thailand provided that it falls within the scope of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Accordingly, member States shall recognize and enforce arbitral awards rendered in Thailand in the same manner as Thailand recognizes and enforces arbitral awards rendered in other member States. A party seeking enforcement of an arbitral award must file a petition with a court of competent jurisdiction within three years from the date on which the award becomes enforceable (*Arbitration Act B.E. 2545 (A.D. 2017)*, 2002).

3.3) Setting Aside of Arbitral Awards

An arbitral award shall be binding upon the parties, unless either party files an application with a court of competent jurisdiction to set aside the award within 90 days from the date of receipt of a copy thereof, on any of the following grounds (*Arbitration Act B.E. 2545, 2017*), 2002):

1. The arbitral award falls outside the scope of the arbitration agreement;

2. The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties;

3. It appears to the court that the subject matter of the dispute is not capable of settlement by arbitration under the law, or that the recognition or enforcement of the award would be contrary to public order or good morals.

With respect to foreign arbitral awards, where any of the foregoing grounds exist, a party may apply to a court of competent jurisdiction in Thailand for an order setting aside the award. If the court, upon consideration, deems it appropriate to set aside the award, such order shall have effect only within Thailand. For the setting aside of an arbitral award to have effect in all jurisdictions. An application must be made to the court of the country in which the arbitral award was rendered, in accordance with Article 5 of New York Convention.

4. Analysis of Legal Obstacles to Alternative Dispute Resolution in International Trade and Investment in Thailand

4.1 Suitability and Appointment of Mediators

The first problem is the composition of the mediation panel, which must include judges from the court. As stipulated by the Regulation of the President of the Supreme Court on Mediation B.E. 2554 (A.D. 2011), annex 3 on Mediation by the Judge Panel, Section 11, which states that "the judge panel may mediate on its own or appoint one or more judges in the panel to mediate." This provision applies to mediating before filing a lawsuit. From this provision, it can be seen that in cases of international commercial

disputes, judges of the Central Intellectual Property and International Trade Court will participate as a mediator in mediation. Although having judges serving as mediators themselves may still be confidence in the parties regarding the judges' roles. On the other hand, one party may view it as interference and coercion, leading the other party to accept the outcome of mediation even if it may be disadvantageous.

The second issue is the appointment of a person to act as a mediator in the conciliation process of mediation. According to the provisions of the Regulation of the President of the Supreme Court on Mediation B.E. 2554 (A.D. 2011), the responsible person of the court or the judge of the court will appoint the mediators. In cases of mediation conducted by the Central Intellectual Property and International Trade Court. The court itself will appoint the mediators, not the right of the parties to choose a mediator. Additionally, there can be more than one mediator as deemed appropriate by the court. This is in accordance with Section 6 of the Intellectual Property and International Trade Court Regulations on Mediation Procedures B.E. 2562 (A.D. 2019). However, when compare to common law system like the UK, mediation is fundamentally based on party autonomy. So the parties typically select and appoint the mediator themselves under Civil Procedure Rules of the UK. (Bartlet, 2019, pp. 51-53)

Although a person appointed as a mediator must register with the Ministry of Justice, and meeting the qualifications and criteria as stipulated in the provisions of the Regulation of the President of the Supreme Court on Mediation B.E. 2554 (A.D. 2011), but the parties do not have the right to appoint their own mediators in their mediation process. This is different from

arbitration proceedings where each party has a role in appointing the arbitral tribunal who each party has confidence in the qualifications, expertise, or specialized experience in relevant issues for the arbitral tribunal to adjudicate and render decisions on the case. While parties are allowed to challenge appointed mediators in case of doubts about their impartiality or concerns about potential bias or involvement with either party. Challenging and considering new mediator appointments can delay and hinder the mediation process, failing to achieve the parties' objectives in choosing to resolve disputes as a result.

In addition, the mediation panel also includes mediators who are ordinary people selected to act as mediators by the Central Intellectual Property and International Trade Court. This may cause concern for the parties if the mediators lack expertise or experience in specialized cases. The mediation process may become difficult in finding different methods and techniques, which may hinder the ability to present ideas to the parties, affecting their confidence. There may be worries that the mediators handling the disputes are not well-informed or do not understand whether they have a good understanding of issues of the disputes.

Although the Ministry of Justice's regulations require mediators to undergo training, relying solely on negotiation techniques learned may not be sufficient to truly resolve disputes between the parties, especially in complex international trade and investment disputes. Sometimes, registered mediators with the Ministry of Justice may not be able to understand the cause of the problem because they do not truly understand the content of the case. This can make it difficult for successful dispute resolution through

mediation. When parties are dissatisfied or unsure about the people acting as mediators and have doubts about their abilities. It can lead to unsuccessful negotiations and ultimately result in disputes returning to litigation before a judicial court which consumes times, hindering foreign trade and investment due to delays in the slow court system.

Thus, it could be stated that the process of appointment and selection of a mediator is state-controlled rather than party autonomy for international trade and investment disputes. Conversely, the Civil Procedure Rules (CPR) of the United Kingdom place a strong emphasis on party autonomy, thereby empowering the disputing parties to select and appoint their own mediator (Bartlet, 2019, pp. 51-53).

4.2 Problems of Enforcing International Settlement Agreements Resulting from Mediation

In addition to the legal obstacles to resolving international trade and investment disputes through mediation mentioned earlier. There are also challenges in enforcing settlement agreements resulting from mediation in Thailand.

Thailand lacks legal mechanisms to enforce settlement agreements resulting from mediation conducted in foreign countries. In cases where one party wishes to enforce an agreement resulting from mediation conducted in abroad in Thailand. They must bring the settlement agreement to Thai court for making an order to render a defendant complies such agreement, and requesting execution in the later step (*Regulations of Central Intellectual Property and International Trade Court on Mediation before Filing a Lawsuit B.E. 2562.*, 2019). It is different from cases where arbitral

awards made in foreign countries can be enforced in Thailand by petitioning the court for enforcement. As Thailand is a signatory to the New York Convention.

Normally, resolving disputes through mediation, if it is successful, will lead to a settlement agreement between the parties. However, the agreement resulting from successful mediation does not have any legal binding, unlike a court judgment. Therefore, enforcing agreements from mediation is a crucial factor in building trust and confidence between the parties in the mediation process. Especially, in enforcing agreements from mediation conducted in foreign countries. Even if there is a settlement agreement resulting from mediation, when it comes to disputes between States and foreign investors. There are difficulties in enforcing agreements in foreign countries. As a result, it cannot be considered that the dispute has been resolved because the ultimate goal of the dispute is to enforce the agreement resulting from successful mediation. Even if mediation is successful in reaching an agreement between the parties, if one party fails to comply with the agreement resulting from mediation. The dispute is not considered resolved, but will move to a different dispute resolution mechanism, such as arbitration or litigation. Due to decisions from both arbitration and court have enforceable qualities and legally bind the parties to comply.

Resolving disputes through mediation raises issues regarding the enforcement of the settlement agreements, especially in cases involving disputes in international trade agreements or investments between States and foreign investors. After the parties have reached an agreement through

mediation to resolve the dispute. How to enforce this agreement by which means will differ from enforcing arbitral awards in disputes between States and foreign investors covered by international agreements, such as New York Convention or the enforcement provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). These provide a basis for enforcing arbitral awards internationally. One way to address the problem of enforcing agreements resulting from mediation is by utilizing the domestic legal system of a State. If the domestic law of a country where an agreement resulting from mediation is made provides for enforcement similar to arbitral awards by consent, it can be enforced solely based on the agreement (Ng, 2020, p. 101). When examining Thai laws related to this issue, it is found that Section 4 of Arbitration Rules of the Arbitration Institute on Arbitration of Settlement Agreements Resulting from Mediation, B.E. 2560 (A.D. 2017) stipulates that agreements resulting from mediation have the same binding effect as arbitral awards by consent. It requires parties to present such agreements to the arbitral tribunal to enter into the arbitration process. When the arbitral tribunal determines that the agreement resulting from mediation does not violate the law, it issues a decision based on the agreement, in writing and signed by the tribunal.

In the process of arbitration according to the settlement agreement resulting from the mediation. There is a specific arbitration solely for issuing awards based on the settlement agreement resulting from the mediation under the management of the Thai Arbitration Institute. If it is an agreement resulting from mediation or conciliation made in abroad, it cannot be

applied this approach. The only way that the settlement agreement made from mediation conducted in abroad can be enforced in Thailand. It must be filed a lawsuit in Thai court to consider and adjudicate the breach of contract based on the agreement. Subsequently, the court's judgment will be brought for execution in the further step.

There is currently international regulation for enforcing settlement agreements resulting from mediation in international commercial disputes under the United Nations Convention on International Settlement Agreements Resulting from Mediation or known as the Singapore Convention on Mediation 2019 that Thailand is not a signatory to this Convention. This Convention is designed to make settlement agreements resulting from mediation conducted in foreign countries to be enforceable. It is similar to the enforcement guidelines of arbitral awards under the New York Convention of 1958.

4.3 Problems of Impartiality in Arbitration

1) Impartiality Issues in Cases Where the Mediator and Arbitrator are the Same Person

In cases where disputes are resolved use a combined mechanism of mediation and arbitration. It involves attempting mediation as the initial step, but it fails, leading to the transition to arbitration for dispute resolution. Both methods are employed based on the parties' consent and agreement. Moreover, there are no restrictions on using a combined mediation-arbitration mechanism. Utilizing a combined mediation-arbitration approach can be cost-effective and efficient because the same person acts as the neutral third party administering the dispute resolution

process. This means that the mediator and arbitrator in the process of dispute resolution are the same person. When the same person serves in both roles, it simplifies the decision-making process as that person is familiar with the facts and issues involved in the dispute.

Furthermore, when considering the provisions in both the Rules of Thai Arbitration Institute of the Ministry of Justice and the Rules of Thailand Arbitration Center. They do not have any provision that prohibits or restricts the appointment of an arbitrator who has previously acted as a mediator in the mediation process. However, having the same person serve as both mediator and arbitrator may potentially lead to impartiality issues. For example, concerns may arise if mediation is failed and the dispute proceeds to arbitration, with the arbitrator being the same person who previously served as the mediator. This situation could create impartiality concerns as the arbitrator may have knowledge of confidential information between the parties from the mediation process. In practice, it can be challenging to ensure that information obtained during mediation is not used in the arbitration process to make decisions on the dispute (Ng, 2020, p. 105)

2) Impartiality Issues of Arbitrators in Foreign Investor-State Dispute

Inappropriate appointments of arbitrators may lead to issues of independence and impartiality. It can impact on the arbitral decision-making process. While issues of independence and impartiality of the arbitrator are often not as critical for mediation. As the mediators do not have the authority to make decisions or participate in the decision-making process like the arbitrators do. The resolution of disputes depends on the agreement of

the parties, and if the parties cannot reach an agreement, the mediator does not have the authority to make decisions.

The appointment of an arbitrator by the disputing party is an important part of the arbitration process because it is the beginning of legitimacy in the arbitration process. Giving the disputing party the right to appoint an arbitrator is a way to appoint an arbitrator with experience, reputation, capability and impartiality. This will increase the disputing party's confidence in the arbitration process. However, in the case of dispute resolution between the State and foreign investor by arbitration in Thailand, there are concerns about the impartiality and independence of the arbitrator. Since the Cabinet Resolution dated July 28 B.E. 2553 (A.D. 2009) are strictly prohibited from incorporating arbitration agreements or clauses into public contracts, particularly within 'concession agreements' or joint-venture contracts executed between the State and foreign investors. Case-by-case written approval from this Cabinet Resolution may be an exception. However, if it was approved an arbitration clause in such contract, state agencies are strictly mandated to appoint arbitrators exclusively from the official roster maintained by the Ministry of Justice according to the Cabinet Resolution dated July 14 B.E. 2558 (A.D. 2015).

Typically, the disputing party that is the State will always appoint the public prosecutor, who is a civil servant in the Ministry of Justice, to be the arbitrator. The public prosecutor is considered the State's lawyer who has the duty to protect and maintain the interests of the State, which is a party of dispute. According to Article 14 of the Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D.2009) stipulates that

the public prosecutor has the power and duty to prosecute on behalf of the government in arbitration. This leads to problems in the impartiality and independence of the arbitrator. This is because he is a state official and a representative of the government. This affects confidence in the arbitration process. As a result, foreign investors who are parties to the arbitration may have no confidence in the arbitrator's consideration and decision. Thus, to concern this issue it can be seen that no cases take an arbitration proceeding in Thailand. There are two landmark cases, which are *Walter Bau v. Thailand* (2005) and *Kingsgate v. Thailand* (2017), settled by UNCITRAL arbitration instead of arbitration in Thailand.

Even both Rules of Thailand Arbitration Center on Arbitration B.E. 2558 (A.D. 2015) and Thai Arbitration Institute on Arbitration B.E. 2560 (A.D. 2017) stipulate that the arbitral tribunal shall be independence and impartiality. In the meantime, if the public prosecutor of a State is appointed to be an arbitrator, he or she may not be able to avoid the role of a State representative. This may cause the proceeding to lose confidence in the transparency of the arbitration process and the neutrality of the arbitrator. Although various arbitration institutes have rules on the neutrality of the arbitrator. For example, Section 10 of the Code of Ethics for Arbitrators of the Arbitration Institute, Office of the Judiciary states that “after being appointed or while performing duties, an arbitrator shall not involve with any party to the dispute or any other person, whether in terms of finance, business, occupation, or family and social relationships. It may cause the parties to the dispute to have reasonable doubts about his or her independence or neutrality in performing the duties of an arbitrator.”

However, such regulations do not strictly guarantee the neutrality and independence of arbitrators appointed by State agencies because prosecutors, who are State officials, are considered to have a stake in the State which is a disputing party. Therefore, it is difficult to create confidence in the neutrality and independence of the foreign investor for investor-State dispute.

3) Transparency Issues of Arbitration for Investor-State Dispute

Transparency is a key component of arbitration, especially in investor-State disputes. Transparent arbitration builds confidence among foreign investors when entering into agreements with governments, which often include arbitration clauses for dispute resolution.

Transparent arbitration refers to a process that is open to scrutiny, rather than one shrouded in secrecy. Generally, when discussing the transparency of arbitration processes under international regulations. This encompasses the public disclosure of information related to the arbitration, access to documents and hearings, and the involvement of stakeholders in the case (Euler et al., 2015, p. 5).

Overall, transparency in arbitration plays a crucial role in enhancing trust and acceptance among all parties involved in the dispute resolution process. It positively impacts international relations and long-term investments. Transparency is important in dispute resolution between States and foreign investors. Since in many cases which are often based on investment contracts related to public services or environmental issues, including allegations of improper conduct by the host State and corruption issues. In addition, dispute resolution processes between States and

investors involve high costs of proceedings and damages, which are related to the State budget collected from taxpayers (Ali & Repousis, 2017, p. 227). Therefore, the arbitration process must be transparent in order to verify that the trial process is fair. However, the arbitration process must still maintain business secrets. Otherwise, it will affect the confidence of foreign investors in investing and the confidence in the dispute resolution mechanism in international investment treaties. Due to the ineffectiveness in protecting foreign investors' investment. The main principle of the international trade and investment arbitration mechanism is to maintain the confidentiality of the arbitration process to prevent the information of the disputing parties from leaking to the outside, such as the leakage of business information. However, for disputes between States and investors, they are often related to public interests. The public's inability to access information in the arbitration process will cause problems with transparency. The importance of this transparency issue can be seen from the efforts of UNCITRAL to develop and improve arbitration rules to increase transparency in investor-State arbitrations at various stages, such as submitting documents from third parties, allowing public access hearings, and disclosing awards. The regulations of the arbitration institution and related Thai laws should be studied as a model. From the problem of foreign investors' uncertainty in resolving disputes by arbitration in Thailand, both *Walter Bau v. Thailand* and *Kingsgate v. Thailand* cases, as well as other investment disputes between the Thai government and foreign investors. All cases were settled by arbitration in foreign country. Even though at the time of that arbitration, Thailand had already established Thai Arbitration Institution which organized

by the Ministry of Justice, and Thailand Arbitration Center which is independent institution. However, due to the issue of uncertainty about the transparency of the process. This has led to foreign investors taking their disputes abroad to settle. While the Thai government has tried to bring such disputes into the resolution process in Thailand.

Since Thai arbitration rules are generally drafted with a commercial arbitration approach in mind. Arbitration rules themselves do not promote transparency. For example, Section 87 of the Rules of Thailand Arbitration Center on Arbitration B.E. 2558 (A.D. 2015), and Section 36 of the Rules of Thai Arbitration Institute on Arbitration B.E. 2560 (A.D 2017) provide that all arbitral proceedings must be held in secret, unless otherwise agreed by the parties. Also, the Rules of the Thai Arbitration Institute on Arbitration require that the hearing of evidence shall be conducted in confidentiality. It prevents the public from accessing information about the case. However, the principle of transparency must balance the public interest with the interests of the disputing parties. As disclosing all information without considering the impact when the information is released to the public may create unfairness for the disputing parties.

In terms of public interest, transparency in arbitration will increase public access to information in the arbitration process, such as the publication of documents, disclosure of the arbitral proceedings at the hearing stage, and participation of disputing parties and third parties.

4.4 Problems of Enforcement of Arbitral Awards in Thailand

Out-of-court arbitration is a private dispute resolution system. Arbitration does not have the power like court. Therefore, an arbitral award

is not enforceable like a court judgment. If the losing party refuses to pay the debt according to the award. The method of enforcement of the award of the winning party is petition to the court for making a judgment according to that award. This is in accordance with Section 41 of the Arbitration Act, which stipulates that the award of the arbitral tribunal is binding on the disputing parties only when a petition is made to the court to enforce the award. The disputing party who wishes to enforce the award must file a petition to the court within 3 years from the date on which the award may be enforced pursuant to Section 42 of the Arbitration Act. When the plaintiff files a petition to the court, the court will examine the award. As a result of the binding effect of the New York Convention, a foreign arbitral award shall be recognized and can be enforced in Thai court. In the case of a foreign arbitral award, the Thai court has less power to examine than a domestic arbitral award. That is, in the case of an arbitral award in Thailand, court has the power to examine the content of the dispute, i.e. whether the award is in accordance with applicable law and whether the award falls within the scope of the arbitration agreement. If it is a foreign arbitral award, it is the defendant's duty to prove the invalidity of the award, making it easier to enforce a foreign arbitral award than to enforce a domestic award (Ariyanunthaka, 1997, p. 127).

In addition, there is a problem in requesting to revoke an arbitral award in the Thai court. The Arbitration Act does not provide a provision for the plaintiff to set aside the award in the situation that the plaintiff is not satisfied with the award. Typically, when the defendant is not satisfied with the arbitral award, whether made domestically or internationally. The

defendant may not pay the debt according to the award, causing the plaintiff to petition the court to enforce the award. The court then examines the award as the defendant objects. On the other hand, if the plaintiff is not satisfied with the award, the plaintiff has no remedy in this case. For example, the plaintiff claims damages for breach of contract from the defendant in the amount of 100 million Baht. The arbitrator awards the plaintiff only 50 million Baht in damages. If the arbitrator finds that the plaintiff has not suffered any damage, the plaintiff may award only 1 million Baht in damages. In this case, the plaintiff cannot ask the court to revoke the award or appeal the award in any way. The Thai arbitration considers that the arbitration award, regardless of which country it is made, is final and binding on the parties. (Arbitration Act B.E. 2545 (A.D. 2002), Section 41). Yet, the problem that arises is that the plaintiff and the defendant are treated differently when contesting in Thai courts in cases where the award is enforced in Thai courts. According to Article 40 para 3 of the Arbitration Act, the court has the power to revoke the award only on the grounds that: 1) One of the parties to the arbitration agreement is incompetent; 2) The award is not within the scope of the arbitration agreement, or the decision exceeds the scope of the agreement in the arbitration agreement; or 3) The acceptance or enforcement of the award is contrary to public order or good morals.

5. Conclusion

Overall, the role of Alternative Dispute Resolution (ADR) in international trade and investment is pivotal. Especially in the context of

Thailand's strategic position within the ASEAN region. As countries in Southeast Asia increasingly engage in cross-border trade and investment. Effective dispute resolution mechanisms become essential for fostering a conducive business environment. ADR, particularly mediation and arbitration, offers a streamlined approach to resolving disputes that can significantly impact investor confidence and regional economic integration. To fully leverage the benefits of ADR in international trade and investment, legal reforms are necessary to address existing challenges within Thailand's ADR framework. Thereby, this study suggests as the followings.

1. Regarding the issue of suitability and appointment of mediators of mediation in judicial court. It suggests that Section 6 of International Trade Court Regulations on Mediation Procedures B.E. 2562 (A.D 2019) should be revised to give parties a choice of appointment of the mediator.

2. Regarding the issues of enforcing international settlement agreements achieved through mediation abroad. It suggests that the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) is needed to be ratified.

3. Section 4 of Arbitration Rules of the Arbitration Institute on Arbitration of Settlement Agreements Resulting from Mediation, B.E. 2560 (A.D. 2017) should be revised by extending its scope to cover international settlement agreements resulting from mediation, thereby making them enforceable in Thailand.

4. Regarding the issues of independence and impartiality of arbitration in investor-State dispute. It suggests that Article 14 of the Public Prosecution Organization and Public Prosecutors Act B.E. 2553 (A.D. 2010)

should be repealed. The public prosecutor would not have a duty to prosecute on behalf of the government in arbitration.

5. Regarding the issue of and transparency of arbitration. It suggests that the provisions of arbitration process under Arbitration Act B.E. 2545 (A.D. 2002) should be reformed to align with the UNCITRAL Rules on Transparency. By this rules, it makes arbitral process more transparency. At the end of the day, it should review the Cabinet Resolutions concerning restrictions on arbitration clause within concession agreements in order to mitigate procedural obstacles in legal disputes, in particular Investor-State dispute.

6. References

- Ali, S., & Repousis, O. (2017). Investor-State mediation and the rise of transparency in international investment law: Opportunity or threat. *Denver Journal of International Law and Policy*, 45(2), 225-249.
- Arbitration Act B.E. 2545 (A.D. 2002)*. (2002, April 29). Royal gazette. Book 119, Section 39 Koh, p. 1.
- Ariyanuntaka, W. (1997). Dispute resolution arising from international trade contracts, part 1. *Dulapaha Journal*, 44(3), 105-128.
- Bartlet, M. (2019). Mandatory mediation and the rule of law. *Amicus Curiae*, 1(1), 50-83. <https://doi.org/10.14296/ac.v1i1.5066>.
- Chantaraopakorn, A. (1993). *Law on business dispute resolution by arbitration*. Thammasart University Press.

- Euler, D., Gehring, M., & Scherer, M. (2015). *Transparency in international investment arbitration: A guide to the UNCITRAL rules on transparency in treaty-based investor-state arbitration*. International Institute for Environment and Development (IIED).
- Mediation of Disputes Act B.E. 2562* (A.D. 2019). (2019, May 22). Royal Gazette. Book 136, Section 67 Koh, p. 1.
- Ng, D. (2020). *The way forward for mediation as a reform option for ISDS: Background pape*. UNCITRAL working group III virtual pre-interessional meeting. https://aail.org/wp-content/uploads/2020/11/2020_UNCITRAL_WGIII_Background_Paper_Session_4.pdf.
- Regulations of Supreme Court President on Mediation B.E. 2554* (A.D. 2011) (7 October 2011). Royal Gazette. Book 128, Section 73 Koh, p. 19.
- Regulations of Central Intellectual Property and International Trade Court on Mediation before Filing a Lawsuit B.E. 2562*. (A.D. 2019). (2019). Court of Justice.
- Srisanit, A. (1992). *Handbook on rule, convention, law, and court judgment of arbitration I*. Office of Arbitration, Ministry of Justice.
- Supreme Court Case No. 1505/2547.
- Thapwong, C. (2007). *Mediation in court, conflict management and mediation*. Office of Dispute Resolution Office of the Judiciary.
- Wongthip, W. (2023). *Business law*. Sukothai Thammathirat University Press.
- Yuprasert, P. (2023). *Business law*. Sukothai Thammathirat University Press.