

ภาคผนวก ค.

บทบัญญัติความรับผิดชอบของอนุญาโตตุลาการในกฎหมายต่างประเทศ

อังกฤษ

Arbitration Act 1996

Section 29 Immunity of Arbitrator

(1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in **bad faith**.

(2) Subsection (1) applies to an employee or agent of an arbitrator as it applies to the arbitrator himself.

(3) This section does not affect any liability incurred by an arbitrator by reason of his resigning (but see section 25).

ไอร์แลนด์

International Commercial Arbitration Act 1998

Section 12 (1) An arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been in **bad faith**.

(2) Subsection (1) shall apply to an employee, agent or advisor of an arbitrator and to an expert appointed under An article 26, as it applies to the arbitrator.

สิงคโปร์

Singapore Arbitration act

part V Arbitral tribunal

Liability of arbitrator

20. An arbitrator shall not be liable for —

(a) negligence in respect of anything done or omitted to be done in the capacity of the arbitrator; or

(b) any mistake of law, fact or procedure made in the course of arbitration proceedings or in the making of an arbitral award.

ออสเตรเลีย

International Arbitration Act 1989

Section 28 An arbitrator is not liable for negligence in respect of anything done or omitted to be done in the capacity of the arbitrator, **but is liable for fraud** in respect of anything done or omitted to be done in the capacity of the arbitrator.

ประมวลกฎหมายวิธีพิจารณาความแพ่ง

Article 584(2) An arbitrator who does not fulfill in time or at all the obligations assumed by his acceptance of office is liable to the parties for all the loss caused by his wrongful refusal or delay, without prejudice to the parties' right to claim rescission of the arbitration agreement.

เบอร์มิวดา

International Conciliation and Arbitration Act 1993

Section 34 An arbitrator is not liable for anything act or omission in the capacity of arbitrator in connection any arbitration under this Act **except** that he **may be liable** for the consequences of **conscious and deliberate wrongdoing**

ฮ่องกง

Arbitration Ordinance 1989 (revised 1996)

Section 2GM An arbitral tribunal is liable in law for an act done or omitted to be done by the tribunal, or by its employees or agents, in relation to the exercise or performance or the purported exercise or performance of the tribunal's arbitral functions **only** if it is proved that the act was done or omitted to **be done dishonestly**.

เยอรมนี

ประมวลกฎหมายแพ่งเยอรมัน (Bürgerliches Gesetzbuch หรือ BGB)

Section 276 Responsibility of the obligor

(1) The obligor is responsible for intention and negligence, if a higher or lower degree of liability is neither laid down nor to be inferred from the other subject matter of the obligation, including but not limited to the giving of a guarantee or the assumption of a procurement risk. The provisions of sections 827 and 828 apply with the necessary modifications.

(2) A person acts negligently if he fails to exercise reasonable care.

(3) The obligor may not be released in advance from liability for intention.

Title 27 Torts

Section 839 Liability in case of breach of official duty

(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.

(2) If an official breaches his official duties in a judgment in a legal matter, then he is only responsible for any damage arising from this if the breach of duty consists in a criminal offence. This provision is not applicable to refusal or delay that is in breach of duty in exercising a public function.

(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.

ญี่ปุ่น

Civil Code Act No. 89 of 1896

Chapter 5

Torts

Article 709 Damages in Torts

A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

อิตาลี

The Italian Code of Civil Procedure

Chapter II

Acceptance and Duties of the Arbitrators

Article 813

The arbitrators shall render their award within the time-limit set by the parties or by law; if they fail to do so and the award is set aside on this ground, the arbitrators shall be held liable for damages. They shall likewise be liable for damages if, after accepting their appointment, they relinquish the office without just cause.

หอการค้านานาชาติ (ICC)

Rules of Arbitration of International Chamber of Commerce (ICC Rules 1998)

Article 34 Exclusion of Liability

Neither the arbitrators, nor the Court and its members, nor the ICC and its employees, nor the ICC National Committees shall be liable to any person for any act or omission in connection with the arbitration.

สถาบันอนุญาโตตุลาการแห่งกรุงลอนดอน (LCIA)

The London Court of International Arbitration Rules (LCIA Rules 1998)

Article 31.1 None of the LCIA, the LCIA Court (including its President, Vice Presidents and individual members), the Registrar, any deputy Registrar, any arbitrator and any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration conducted by reference to these Rules, **save** where the act or omission is shown by that party to constitute **conscious and deliberate wrongdoing** committed by the body or person alleged to be liable to that party.

สถาบันอนุญาโตตุลาการแห่งเยอรมนี

(Deutsche Institution für Schiedsgerichtsbarkeit e. V.) หรือ (DIS)

DIS Arbitration Rules 1998

Section 44 Exclusion of liability

44.1: All liability of an arbitrator for any act in connection with deciding a legal matter is excluded, provided such act does not constitute an intentional breach of duty.

44.2: All liability of the arbitrators, the DIS, its officers and its employees for any other act or omission in connection with arbitral proceedings is excluded, provided such acts do not constitute an intentional or grossly negligent breach of duty.

สถาบันอนุญาโตตุลาการสากลแห่งสิงคโปร์ (SIAC)

Arbitration Rules of the Singapore International Arbitration Center (SIAC Rules 2007)

Rules 33 Exclusion of Liability

33.1 The Centre including its officers, employees or agents, or any arbitrator shall not be liable for:

a. negligence for anything done or omitted to be done in connection with any arbitration conducted under these Rules; and

b. any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an award.

33.2 The Centre including its officers, employees or agents, or any arbitrator shall not be under any obligation to make any statement to any person about any matter concerning the arbitration. No party shall seek to make any officer, employee or agent of the Centre, or any arbitrator, a witness in any legal proceedings arising out of the arbitration whether before, during or after the arbitration.

ความรับผิดทางอาญากรณีเรียกรับสินบน

มลรัฐแมสซาชูเซต

Criminal code

PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

TITLE I. CRIMES AND PUNISHMENTS

CHAPTER 268. CRIMES AGAINST PUBLIC JUSTICE

Section 14. Receipt of gift by juror, arbitrator, umpire, referee, master or auditor

Whoever, being summoned as a juror or chosen or appointed as an arbitrator, umpire or referee, or, being a master in chancery, master or auditor, corruptly takes anything to give his verdict, award or report, or corruptly receives any gift or gratuity from a party to a suit, cause or proceeding for the trial or decision of which such juror has been summoned, or for the hearing or determination of which such master in chancery, master, auditor, arbitrator, umpire or referee has been chosen or appointed, shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than one year.

มลรัฐแคลิฟอร์เนีย (California)

California Penal Code

PART 1 OF CRIMES AND PUNISHMENTS

TITLE 7 OF CRIMES AGAINST PUBLIC JUSTICE

CHAPTER 1 BRIBERY AND CORRUPTION

Section 93 (a) Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his or her vote, opinion, or decision upon any matters or question which is or may be brought before him or her for decision, shall be influenced thereby, is punishable by imprisonment in the state prison for two, three, or four years and, in cases where no bribe has been actually received, by a restitution fine of not less than two thousand dollars (\$2,000) or not more than ten thousand dollars (\$10,000) or, in cases where a

bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or two thousand dollars (\$2,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or ten thousand dollars (\$10,000), whichever is greater.

(b) In imposing a restitution fine under this section, the court shall consider the defendant's ability to pay the fine.

มลรัฐไอดาโฮ (Idaho)

Idaho Statutes

TITLE 18 CRIMES AND PUNISHMENTS

CHAPTER 13 BRIBERY AND CORRUPTION

18-1305 MISCONDUCT OF JURORS AND ARBITRATORS.

Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,
2. Wilfully and corruptly permits any communication to be made to him, or receive any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is guilty of a felony.

มลรัฐเซาท์แคโรไลนา (South Carolina)

Title 16 - Crimes and Offenses

CHAPTER 9.

OFFENSES AGAINST PUBLIC JUSTICE

ARTICLE 3.

BRIBERY, CORRUPTION OF JURORS AND THE LIKE

Section 16-9-270 Acceptance of bribes by jurors, arbitrators, umpires or referees.

If any person summoned as a juror or chosen or appointed as an arbitrator, umpire or referee corruptly receives any gift or gratuity whatever from a party to a suit, cause or proceeding for the trial or decision of which such juror has been summoned or for the hearing or determination of which such arbitrator, umpire or referee has been chosen or

appointed, he shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years or by fine not exceeding one thousand dollars and imprisonment in jail not exceeding one year.

สิงคโปร์ (Singapore)

Statutes of the Public of Singapore Penal Code

21. The words “public servant” denote a person falling under any of the following descriptions:

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice, or by any other competent public authority;

CHAPTER IX

OFFENCES BY OR RELATING TO PUBLIC SERVANTS

Public servant taking a gratification, other than legal remuneration, in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Government, or with any Member of Parliament or the Cabinet, or with any public servant, as such, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

เยอรมัน

ประมวลกฎหมายอาญา (Strafgesetzbuch หรือ StGB)

Chapter Thirty Crimes in Public Office

Section 331 Acceptance of a Benefit

(1) A public official or a person with special public service obligations who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of a duty, shall be punished with imprisonment for not more than three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed, or would in the future perform a judicial act, shall be punished with imprisonment for not more than five years or a fine. An attempt shall be punishable.

(3) The act shall not be punishable under subsection (1), if the perpetrator allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorizes the acceptance, or the perpetrator promptly makes a report to it and it authorizes the acceptance.

Section 332 Taking a Bribe

(1) A public official or person with special public service obligations who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or would in the future perform an official act, and thereby violated or would violate his official duties, shall be punished with imprisonment from six months to five years. In less serious cases the punishment shall be imprisonment for not more than three years or a fine. An attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or would in the future perform a judicial act, and thereby violates or would violate his judicial

duties, shall be punished with imprisonment from one year to ten years. In less serious cases the punishment shall be imprisonment from six months to five years.

(3) If the perpetrator demands, allows himself to be promised or accepts a benefit in return for a future act, then subsections (1) and (2) shall already be applicable if he has indicated to the other his willingness to:

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

ญ่บ่น

ARBITRATION LAW (Law No.138 of 2003)

Chapter X Penalties

Article 50. Acceptance of Bribe; Acceptance with Request; Acceptance in Advance of Assumption of Office

(1) An arbitrator who accepts, demands or promises to accept a bribe in relation to its duty shall be punished by imprisonment with labor for not more than five years. In such case, when the arbitrator agrees to do an act in response to a request, imprisonment with labor for not more than seven years shall be imposed.

(2) When a person to be appointed an arbitrator accepts, demands or promises to accept a bribe in relation to the duty to assume with agreement to do an act in response to a request, imprisonment with labor for not more than five years shall be imposed in the event of appointment.