

Abstract

Arbitration is one of the alternative dispute resolutions besides bringing the case to court. It is generally accepted in various countries that it is very important to international business trade and investment because there are many advantages whether in term of speedy proceeding and confidentiality. Arbitral proceeding is confidential and more flexible than court proceeding including the decrease of the case in court. Moreover, parties can choose the arbitrators who are suitable to the dispute.

The arbitrators' duties may affect parties because whether how the arbitrators perform their duties accurately and honestly but a mistake can happen. Therefore, there is a promulgation to immunize the arbitrators to perform their duties, on the other hand there are exceptions which arbitrator shall be liable. In Thailand, the promulgation on the immunity and liability of arbitrator is provided under Section 23 of the Arbitration Act B.E. 2545 concerning the civil and criminal liabilities. The provision causes the problems because of the ambiguity and consequence of the provision whereas this thesis aims to study and propose the solutions to these problems.

From the study, it is found that the civil liability of arbitrators, which the Thai provision stated that the arbitrators shall be liable in case they commit intentional or gross negligent conducts, is suitable in order to make arbitrators to perform their duties carefully and attentionally which will lead to the efficiency of the arbitrators' performance by defining the definition of "gross negligence" in the Arbitration Act. To make a clearer definition, The Guideline should be made in order to explain the extent of conduct will be defined as the gross negligent conduct which will set the practice and clarify definitely the provision.

With respect to the arbitrators' criminal liability in case of corruption regarding bribe, it is strongly criticized about its suitability and impact on Thai arbitration development because the basis of arbitration is about the contract and this Act has set the process to check and balance the arbitrators' authority. If the arbitrators commit any wrongful act, they will be sued under both civil and criminal cases. Furthermore,

the measures to prevent the arbitrators' corruption can be additionally set which should be sufficient to let the arbitration processes proceed toward the target and purpose of the arbitration.