

## Summary

The arbitration is a dispute resolution mechanism outside the courts. It is a process the state recognizes as part of the judiciary's power. The parties to a dispute can submit to arbitration to resolve civil issue. The arbitration process is fast and effective. With the proceedings not strict and complicated, arbitration is thus ideal for complex issue and help ease the court's burdens a great deal.

In arbitration, the arbitrators play a key role in finding the truth in order to hand down an arbitration award. The proceeding is governed by the common law system or the civil law system. Under the common law system, the arbitrators act as a mediator and focus on the taking of evidence in verbal. The arbitrators in civil law system acquire the truth by evidence taking in writing.

In arbitration's finding under the model law, if the parties have not agreed otherwise, the arbitrators have the freedom to determine the consideration process, the admitting of evidence, the taking of evidence in verbal or writing, the seeking of expert's advice or other actions. The arbitrators must fairly admit evidences presented by both parties. The arbitrators must be impartial and not biased. The arbitrator must not act as representative of the party who appointed him/her. Such bias action would constitute a ground to oppose and eventually revoke an arbitration award.

The arbitrators' fact finding process is more flexible than the court's as they need not stick to the Civil Procedure Code. The consideration process can be adjusted according to the dispute context. The principle is that the arbitration is subject to the arbitrators' discretion , which is not contrary to the laws and the parties' agreement. This is provide that the arbitrators must actively search for fact by fairly taking evidences presented by the parties and acting neutrally and without prejudice or bias. The arbitrators must provide both parties with equal opportunity. During the arbitration process, the arbitrators must not contact one party, without notifying the other.

The UNICITRAL Arbitration Model Law 1985 prescribes the key criteria for fact finding in Article 10, 12, 19 and 24 , where the parties have the full right to determine the consideration process

in each step and to agree on the principles governing a consideration process that the arbitrators undertake, on the conditions that such principles will not disturb the public peace and good order. The parties must be equally treated and have an opportunity to fully present the fact on their parts. The arbitrators must neutrally perform the duties. In the arbitration proceedings , if the parties have not agreed otherwise, the arbitrators can admit evidence in verbal or writing.

Article 15, 24 and 25 of the Arbitration Rule 1976 stipulate that each party has a burden of proof to back up their allegation or objection under a secret arbitration proceedings. The arbitrators in arbitration proceedings may request the party to submit information, documentation and other evidences and decide whether to accept the evidence presented.

The fact finding under the civil law system and the common law system differs. In a common law system, the parties must disclose all relate documents and agreed upon the scope of fact-finding. The parties proceed by presenting evidences. The arbitration proceedings is made in verbal – testimony of witnesses who take an oath. The civil law system promotes complete exchange of documentation. The arbitration proceedings is made in writing. The issues for consideration are determined by the arbitrators after review all documentary evidence. The arbitrators value documentary evidence and their genuineness, whilst verbal statement is treated as secondary evidence. Both system are sometimes mixed in fact-finding process.

The fact-finding process of Thai arbitration is biased on the Arbitration Act B.E 2002, which is taken from the UNCITRAL Model Law. In practice, the organic laws and regulations of the Thai Arbitration Institute are in the same directive as Thai courts, i.e. the common law system. In the fact-finding, the arbitrators give the dispute parties a full opportunity to present evidences to back up their allegation or objection. If necessary, related evidence may be taken further. The arbitrator can demand re-taking of evidence or additional interrogation. The arbitrators' role in fact finding is not to act on behalf of the parties , but extend equal assistance to both of them, provided that the arbitrators must cautiously maintain neutrality.