

## Abstract

Nowadays, dispute resolution by arbitration is commencing to have important functions especially in international business for all parties shall appoint certain persons to be the arbitrators considering their expert knowledge and ability in the specific field. Moreover, this method of dispute resolution helps reduce the amount of time, that's why it becomes much more popular.

In performing their duty, the arbitrators do quasi-judicial function; that is to say, their duties are to take the dispute into account and judge it fairly for both parties. However, each party usually appoints persons who are close to them or in whom they trust for doing the duty besides consideration in their certain knowledge and abilities. This raise doubts about impartiality and/or independence of arbitrators by which they are obliged to abide or it can be deemed as specifications which can be waived by the parties' agreement.

By studying impartiality and/or independence of the arbitrators, there are 3 points of view concerning impartiality and/or independence of the arbitrator as follow:

1. The view of the arbitrators must be impartial and independent.

This view agrees that any arbitrators, no matter they are the arbitrators appointed by each party or the third arbitrator, must always be impartial and independent when performing their duty. Moreover, they must avoid doing or not-doing anything which may raise any suspicions in their impartiality and independence in performing their duty. Countries which agree with this view are Germany, Netherlands, and Thailand; for example.

2. The view of impartiality

This view points out that arbitrators must be impartial, giving the parties opportunity to waive the independence of the arbitrators. This is because the parties of dispute usually appoint the persons they well know and/or are trustworthy to adjudicate certain disputes hoping such appointed arbitrators will advocate them. The country which supports this idea is England.

### 3. The view of independence

This point of view focuses on the function of the arbitrators that the arbitrators must be independent in adjudication so that anyone concerned can examine the circumstances or fact conveniently by considering the relationship existed before or during the state of being arbitrator. This view also see that the impartiality is something inward, it's impossible for anyone except the arbitrator oneself to really know or inspect. The arbitration institution which supports this idea is the International Chamber of Commerce (ICC).

By considering the appointment of the arbitrators, it was found that the dispute parties usually appoint the persons they well know and/or are trustworthy to perform the duty. And when accounting section 19 of the Arbitrator Act 2545 B.E., it regulates that the arbitrators must be impartial and independent. That makes the provision ineffectively enforces. According to this, there should be an amendment to the first paragraph of section 19 about the impartiality and independence of the arbitrators by using guideline from the concept of impartiality of England as follow: "the arbitrators must perform their duty justly and impartially between the dispute parties". That is to say, impartiality is the duty of the arbitrator which anyone cannot agree to differentiate. However, about the independence, the parties should be able to decide mutually deeming it as one of the arbitrator's qualifications according to the principle of juristic act which accords with the actual fact.

By researching, the author accounted that section 19 of the Arbitrator Act 2545 B.E. which provides regulations concerning impartiality and independence cannot be enforced as much as it should have been. For such provision to be effectively and fully enforced in accordance with actual circumstance of the appointment of arbitrators by the parties there should be an amendment to such provision. Besides, such amendment can help promote the use of arbitration also.