

# Public Policy and Good Morals: Setting Aside Arbitral Awards in Thailand

November 2022 | [Thailand](#)



## Introduction

The grounds on which a Thai court may set aside an arbitral award are set out in section 40 of the Arbitration Act B.E. 2545 (2002) ("**Arbitration Act**"). Although the Arbitration Act is silent on whether a foreign arbitral award (i.e. an award issued outside Thailand) can be set aside by a Thai court, the Thai Supreme Court has recently made clear in several of its decisions that the Arbitration Act is based on the UNCITRAL Model Law. Thus, the power of the Thai courts to set aside arbitral awards is limited to awards issued in Thailand.

While there are multiple grounds on which arbitral awards may be set aside, the ground that enforcement of the award would be contrary to public policy or good morals is most often relied on by the parties seeking to set aside an award, and yet remains less defined than other grounds.

Below, we consider the procedure for setting aside an award; the grounds on which arbitral awards may be set aside; and the approach taken by the Thai courts specifically in relation to the ground of public policy and good morals.

## Procedure

A motion to set aside an award must be filed with the competent Thai court within 90 days from the date on which a copy of the award was received. However, if the arbitral tribunal has corrected or interpreted the award or made an additional award, the motion must be filed within 90 days from the date on which the arbitral tribunal did so.

## Grounds

The grounds on which an award can be set aside by a Thai court are as follows:

1. a party to the arbitration agreement was under some incapacity under the law applicable to that party;
2. the arbitration agreement is not binding under the law of the country agreed to by the parties or, if no such agreement was made, under the law of Thailand;
3. the party seeking to revoke the award was not given proper advance notice of the appointment of the arbitral tribunal or the arbitral proceedings, or was otherwise unable to defend the case in the arbitral proceedings;
4. the award deals with a dispute falling outside the scope of the arbitration agreement or contains a decision on a matter beyond the scope of the arbitration agreement. If so, the court may decide to revoke only the affected part if it can be severed from the rest of the award;
5. the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or, if no such agreement was made, the Arbitration Act;
6. the award deals with a subject matter which is not capable of settlement by arbitration under the law;  
or
7. the enforcement of the award would be contrary to public policy or good morals.

### **Contrary to public policy or good morals**

The term "public policy or good morals" is neither defined in the Arbitration Act nor in the Civil and Commercial Code, and its application is left to the discretion of the Thai courts. Based on publicly available past Supreme Court decisions to date, it appears no distinction has been made by the Thai courts between the terms "public policy" and "good morals", and the terms are not used separately and independently.

One basis on which this ground has been satisfied is where there has been a misapplication of the law by the arbitral tribunal, or in other words an error of law. For example, the Supreme Court had found in one case that the arbitral tribunal had misapplied the prescription period. In another case, it found that the arbitral tribunal had upheld a contractual provision whose purpose was contrary to Thai law (the governing law of the contract) and was thus void. The Supreme Court accordingly set aside the awards in both cases.

### ***Minimum judicial review on questions of fact***

Consistent with the principle of minimum judicial interference, the Thai courts have been reluctant to revoke an award on the ground that it is against public policy or good morals where the issue relates to the arbitral tribunal's weighing of evidence or determination of factual issues. For example, in Supreme Court Decision No. 6411/2560 (2017), the Supreme Court declined to set aside an award, noting that this was not a case where it was clearly apparent that the arbitral tribunal did not exercise its discretion in good faith or had acted dishonestly. Moreover, the scrutiny and determination of the facts in dispute between the parties by the court would be contrary to the objective of resolving disputes by arbitration. The Supreme Court also referred to section 25, paragraph two, of the Arbitration Act which provides as follows:

*"Unless otherwise agreed by the parties or provided by this Act, the arbitral tribunal shall have the power to conduct any proceedings in any manner, as it deems appropriate. The arbitral tribunal's power shall include the power to determine the admissibility and weight of the evidence."*

### **Concluding Remarks**

It would be fair to say that the Supreme Court's current approach to setting aside of awards is in line with internationally accepted practice. This should be conducive to promoting Thailand as an arbitration-friendly venue and a regional hub for international arbitral proceedings, which the Thai government has been putting its efforts into achieving.

Nevertheless, there is still much room for the term "public policy or good morals" in the context of setting aside or refusal of enforcement of awards to be further interpreted by the Thai courts. This is particularly so given that the Thai legal system does not have the doctrine of precedent – strictly speaking, the Thai courts are not bound by their past decisions, although it is usual practice to follow past Supreme Court decisions.

For further queries, please feel free to contact our team below.

Visit [Arbitration Asia](#) for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

## Contacts



**Surasak Vajasit**  
Partner, Thailand

T +66 2656 1991  
[surasak.v@rajahtann.com](mailto:surasak.v@rajahtann.com)



**Krida Phoonwathu**  
Partner, Thailand

T + 66 2656 1991  
[krida.phoonwathu@rajahtann.com](mailto:krida.phoonwathu@rajahtann.com)

Please feel free to contact the editorial team of *Arbitration Asia* at [arbitrationasia@rajahtannasia.com](mailto:arbitrationasia@rajahtannasia.com), and follow us on LinkedIn [here](#).

Rajah & Tann Asia is a network of member firms with local legal practices in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Our Asian network also includes our regional office in China as well as regional desks focused on Brunei, Japan, and South Asia. Member firms are independently constituted and regulated in accordance with relevant local requirements.

The contents of this article are owned by Rajah & Tann Asia together with each of its member firms and are subject to all relevant protection (including but not limited to copyright protection) under the laws of each of the countries where the member firm operates and, through international treaties, other countries. No part of this article may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Asia or its respective member firms.

Please note also that whilst the information on this article is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as legal advice or a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. You should seek legal advice for your specific situation. In addition, the information on this article does not create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on the information on this article.