

Thesis Title : Competence of Arbitrator in reducing penalty under Administrative Contract
Author Name : Ms. Weeraya Srijumnong
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Advisory Committee:

1. Prof. Phijaisakdi Horayangkura Chairperson
 2. Prof. Vichai Ariyanuntaka Member
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ABSTRACT

Nowaday, dispute resolution by way of arbitration has become more attractive as it has been chosen as alternative for settlement by parties concerned. It is flexible and easy to be adjusted to the business needs. Moreover, the arbitration procedures create friendly atmosphere and are capable of retaining trade secret and above all it is more comfortable than court's procedures. The Arbitration Act B.E. 2545 (2002) section 15 states that the dispute between the government agency and the private sector in which dispute relates to the administrative contract as defined in section 3 of the Act on Establishment of Administrative Court and Administrative Procedure B.E. 2542 (1999) are allowed to be settled by arbitration tribunal.

The power of arbitral tribunal to carry out the proceeding is important and necessary to bring about a quick and smooth arbitration process to achieve the objective of the parties.

This thesis aims to study and analyze the competence of arbitral tribunal in reducing penalty under Administrative Contract as a result of the decision of the Administrative Court which ruled that arbitrator can not apply section 383 of the Civil and Commercial Code to reduce disproportionate and high penalty because the parties have not raised the issue of penalty in arbitral tribunal. Notwithstanding the aforesaid decision, the researcher tends to believe that arbitrator should be able to consider reducing disproportionate and high penalty based on fairness and honesty as there is no written provision on penalty in Administrative contract, therefore it should be a duty of those who enforce the law to raise related provision to apply to

the case. Moreover the arbitrator should have a power to consider whether the penalty is appropriate to the damage occurred and even if the arbitrator does not use this power, the court shall still have power to reduce the high penalty.

In addition, the Act on Establishment of Administrative Court and Administrative Procedure B.E. 2542 (1999) does not provide precise substantive law on administrative contract causing uncertainty in setting dispute under administrative contract by arbitration. The researcher therefore would like to suggest that there should be a precise substantive law on administrative contract in order to set standard and procedure for administrative court, so that related parties including arbitrator may apply to expedite proceeding more than to wait for precedent of the Administrative Court which can take decades. This can be implemented by amending the amending the Administrative Procedure Act B.E. 2539 by adding clear cut provisions on the matter. Also there should be subordinate legislations of administrative procedural laws which designate the litigation under arbitration. This subordinate legislation can be done by amending the administrative procedural laws by specifying the provisions relating to the administrative contracts and dispute settlement by arbitration. These should be in accordance with the dispute resolution through arbitration under section 15 of The Arbitration Act B.E. 2545 (2002).

