



# **Arbitration Laws in Thailand**

**By**

**Associate Professor**

**Anan Chantara-opakorn**



- **1. The Code of the Three Great Seals**
  - Promulgated in 1805 during the reign of King Rama I.
  - It was the revision of the earlier law.
  - The law recognized the voluntary nature of arbitration.
  - The law remained in force until the Civil Procedure Act of 1896 came into force.

## **2. The Civil Procedure Act of 1896.**

- The 1896 Civil Procedure Act provided for the court-annexed or ‘in-court’ arbitration.**
- The parties may refer the case pending in court to arbitration.**
- The arbitral award had to be filed with the court and entered as the court’s judgment in the case.**

- Therefore, an arbitral award as such was neither binding nor enforceable.
- Question was whether the parties were able to refer their dispute to out-of-court arbitration.
- The Supreme Court confirmed the right of the parties to refer their disputes to arbitration because the Act did not explicitly prohibit the parties from doing so. [*Deka no. 224 Ror. Sor. 118*].

### **3. The Code of Civil Procedure**

- The Code of Civil Procedure was promulgated in 1935 which replaced and repealed the 1896 Civil Procedure Act.**
- The Code remains in force today with modification from time to time.**
- The Code had one provision on “out-of-court” arbitration, which later abolished when the 1987 Arbitration Act was adopted.**

**– This paucity of provisions related to out-of- court arbitration reflects the fact that Thai courts had been influenced by the ‘ousting-of-court’ jurisdiction concept:**

- An arbitration agreement could not bar party from brining legal action before a court.**
- An arbitral award was accepted by courts as evidence of a debt. When a losing party did not comply with an award, the other party had to bring a lawsuit, and the court would conduct a full trial to their case, including the original dispute between the parties.**


## **4. The 1987 Arbitration Act.**

- The law implements Thailand's obligations under the treaties that it became Contracting State, especially the 1958 New York Convention.**
- The objectives also include promotion of investment climate and arbitration in Thailand.**
- In 1990 the Arbitration Office (later known as TAI) was established and attached to the Ministry of Justice. At that time the judiciary was within the Ministry of Justice.**

## **5. The 2002 Arbitration Act.**

- The law replaced and repealed the 1987 Arbitration Act.**
- It intends to improve the law and practice of arbitration in Thailand to meet with international standard.**
- Most provisions follow the UNCITRAL Model Law on International Commercial Arbitration.**




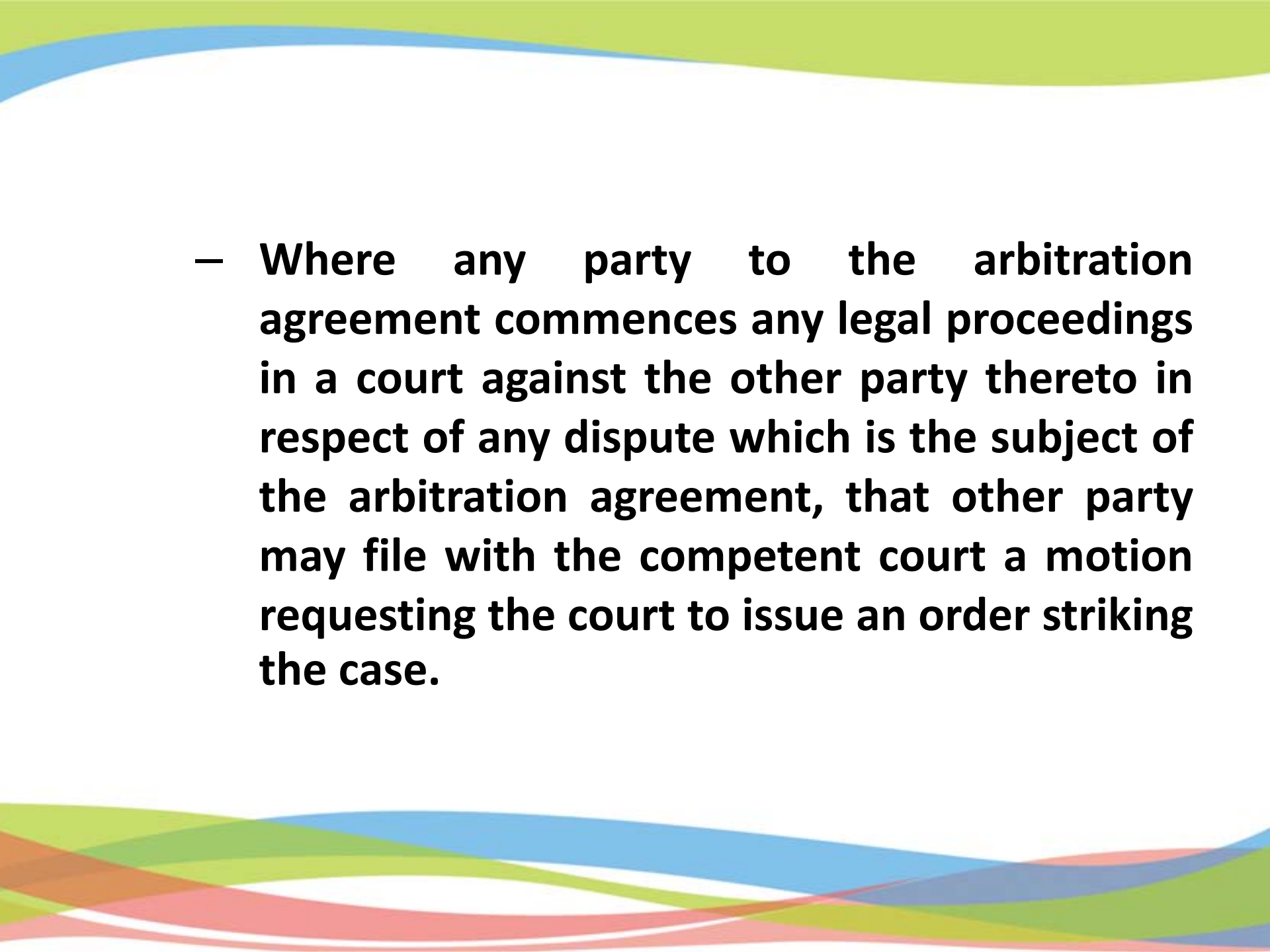
- 
- **The law was promulgated 2 years after the judiciary was separated from the Ministry of Justice.**
  - **The TAI was operated by the support of the Judiciary Office. However, the arbitral tribunal is independent from the Judiciary Office.**
  - **The TAI is the most active arbitration institute in Thailand.**



- **Some Features of the 2002 Arbitration Act.**

- 1. Arbitration Agreement**

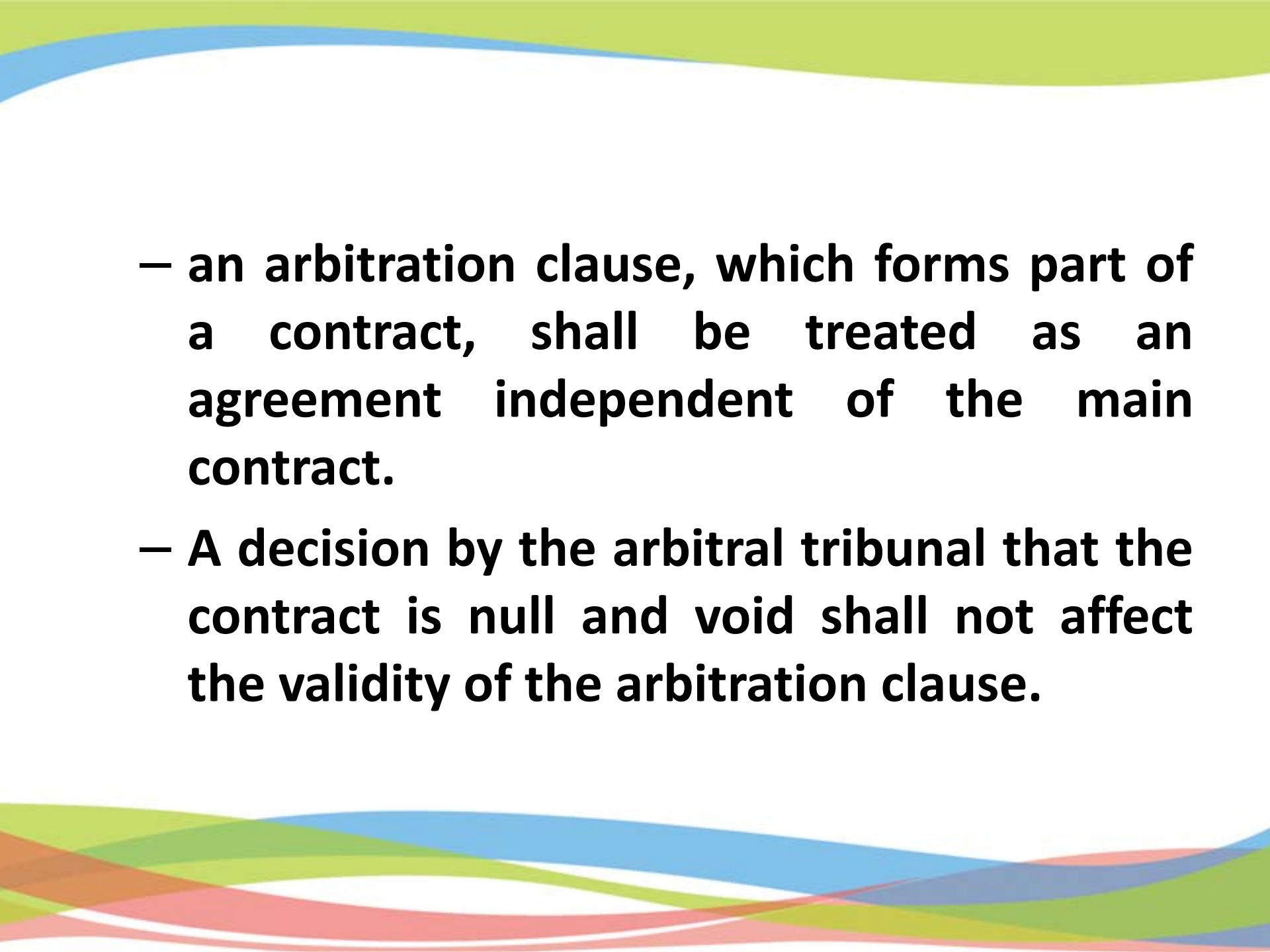
- Arbitration Agreement is needed for the parties to refer their disputes to arbitration. However, verbal agreement is not accepted.
  - Arbitration Agreement to refer disputes under a contract between a private party and a government agency is recognized.
- 

- 
- **Where any party to the arbitration agreement commences any legal proceedings in a court against the other party thereto in respect of any dispute which is the subject of the arbitration agreement, that other party may file with the competent court a motion requesting the court to issue an order striking the case.**

## **2. Doctrines of Severability and Competence-Competence Jurisdiction.**

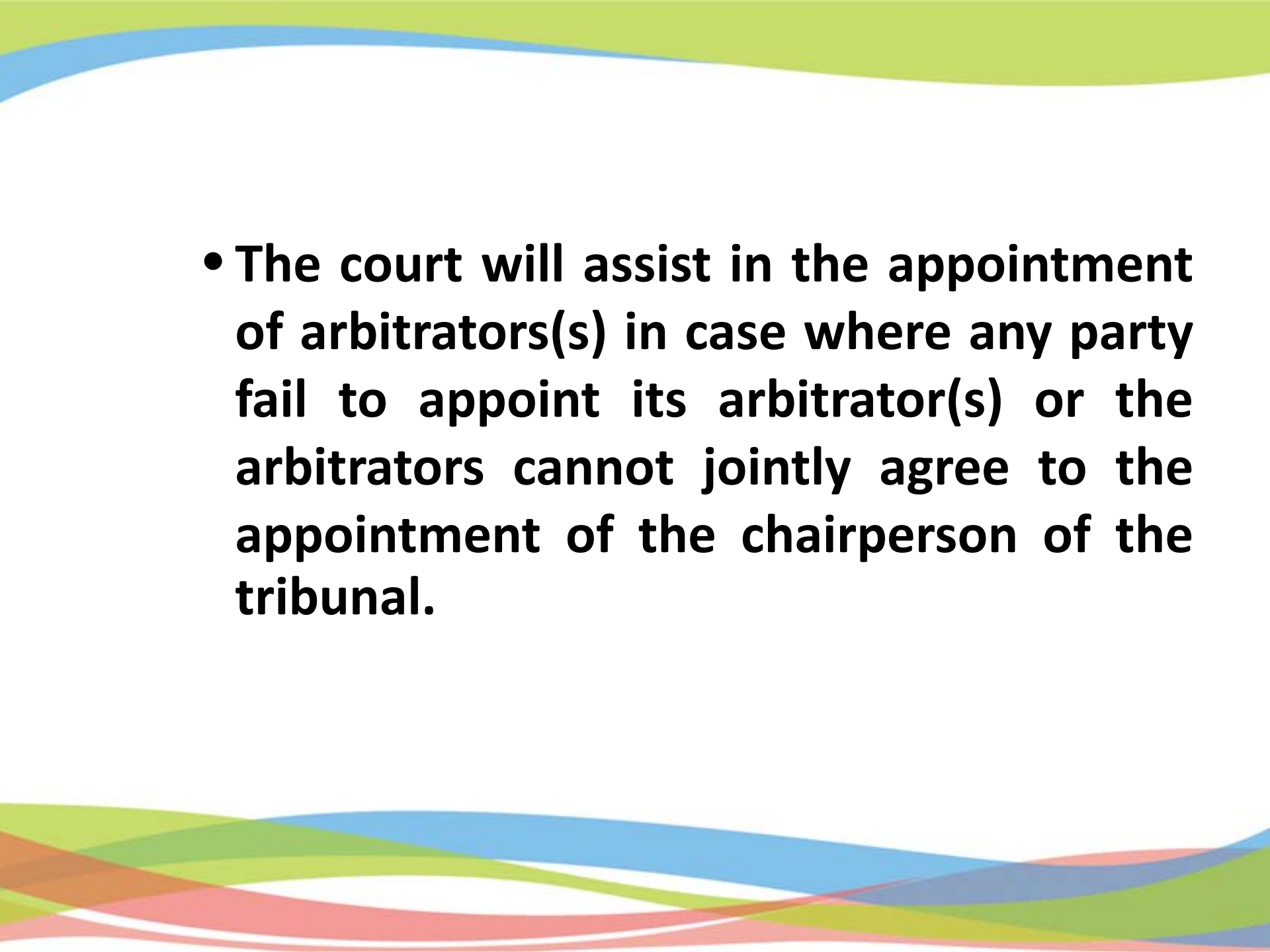
**– These two doctrines have been adopted by Section 24 of the 2002 Arbitration Act saying that:**

- the arbitral tribunal shall be competent to rule on its own jurisdiction,...., and**

- 
- an arbitration clause, which forms part of a contract, shall be treated as an agreement independent of the main contract.**
  - A decision by the arbitral tribunal that the contract is null and void shall not affect the validity of the arbitration clause.**

### **3. Composition of Arbitral Tribunal**

- The parties are free to fix the number of arbitrators. Failure to do so, the sole arbitrator shall be appointed.**
- In case where there are more than one arbitrators, each party shall have the right to appoint an equal number arbitrators, and the so appointed arbitrators shall jointly appoint an additional arbitrator to be the chair person of the tribunal.**

- 
- **The court will assist in the appointment of arbitrators(s) in case where any party fail to appoint its arbitrator(s) or the arbitrators cannot jointly agree to the appointment of the chairperson of the tribunal.**

## **4. Role of Arbitrators**

- As a matter of practice the parties frequently agree that the chairperson shall be entitled to issue any procedural order but not the order relating to the merit of the dispute.**
- The award or order shall be made by the majority of votes among the arbitrators. However, where the majority cannot be obtained, the chairperson will render the award or order.**

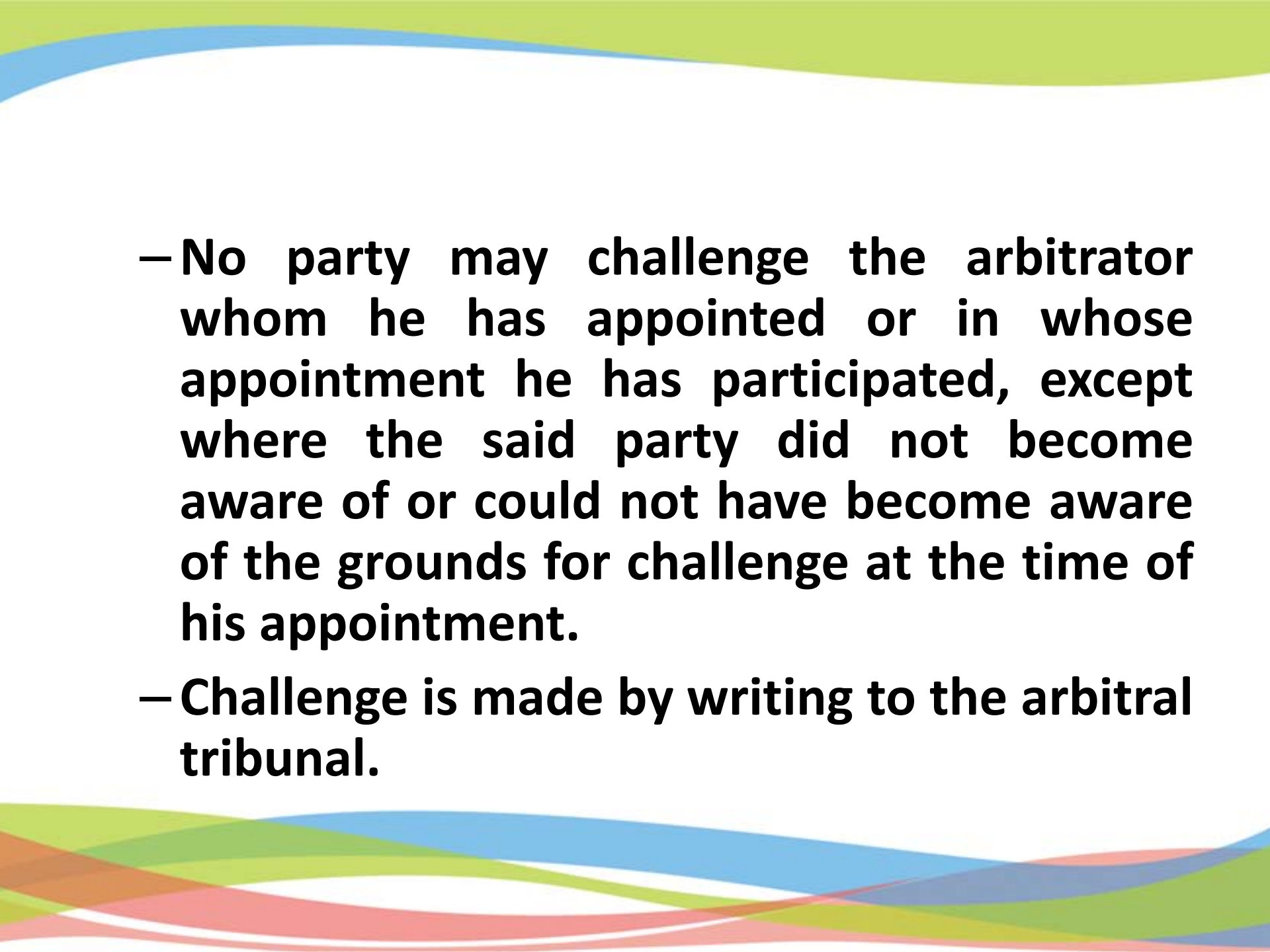


## **5. Qualifications of Arbitrators**

- An arbitrator shall be impartial, independent and poses the qualifications prescribed in the arbitration agreement or the an institution agreed upon by the parties, in case of institutional arbitration.**
- There is no conditions about the nationalities nor religions of arbitrators. However, foreigners have to observe other relevant laws, such as immigration and work permit laws.**

## **6. Challenge of Arbitrators**


- Grounds for challenging : circumstances of justifiable doubts as to impartiality or independence of an arbitrator, or not possessing of qualifications agreed to by the parties.**

- 
- No party may challenge the arbitrator whom he has appointed or in whose appointment he has participated, except where the said party did not become aware of or could not have become aware of the grounds for challenge at the time of his appointment.**
  - Challenge is made by writing to the arbitral tribunal.**

## **7. Procedural Issues**

### **(1) Seat of Arbitration**

- The seat of arbitration will be fixed by agreement of the parties, if the parties fail to do so the arbitral tribunal shall determine the seat of arbitration.**


- 
- When the parties choose Thailand as the ‘seat of arbitration’ the parties and arbitrators may choose to hold certain hearings or meetings outside of Thailand as they deem convenient.**


## **(2) Foreign Rules of Arbitration**

- The law does not limit that when the seat of arbitration is in Thailand the parties must choose the arbitration rules of any institution located in Thailand.**
- As a matter practice, there were cases where the parties choose the UNCITRAL Rules of Arbitration and ICC Rules of Arbitration where the seat of arbitration was in Thailand.**



### **(3) Commencement of Arbitral Proceedings.**

- According to the Civil and Commercial Code of Thailand Section 193/4(4) the period of prescription is interrupted upon submission of the dispute to arbitration.**
- 



**–The law provides the arbitral proceedings shall commence in one of the following manners:**

**(a) When a party receives a letter from the other party, requesting that the dispute be settled by arbitration;**

**(b) When a party notifies the other party in writing to appoint an arbitrator or to approve the appointment of an arbitrator;**








**(c) When a party sends a written notice of the disputed issues to the arbitral tribunal designated in the arbitration agreement;**

**(d) When either party submits the dispute to an agreed arbitration institute established for settlement of disputes by arbitration as has been agreed upon.**



## **8. Judicial Assistance**

- The 2002 Arbitration Act contains certain provision for the parties to seek judicial assistance necessary for effective operation of arbitral proceedings, including provisional measures.**



## **9. Choice of Law**

- The 2002 Arbitration Act allows the parties to choose applicable law.**
- 


## **10. Arbitration Ex aequo et Bono.**

- Arbitration Ex aequo et Bono is allowed in case the parties explicitly agree upon.**

## **11. Arbitral Award**

- Arbitral award must be made in writing,**
- The award is made by the majority of votes among the arbitrators.**
- In case where the majority of votes cannot be obtained, the award shall be made by the chairperson.**
- The award must contain reasons of deliberation.**

- **Efforts Taken to Meet with New Challenges.**
  - A new legislative draft is in the process of proposing for amendment of the 2002 Arbitration Act on some major issues, in particular:
    1. For clarification of certain provisions in the 2002 Arbitration Act to avoid unnecessary interpretation.
    2. To facilitate foreigners to be appointed as arbitrators and representatives of the parties.



**3. Hopefully the proposed draft will make Thailand a more friendly country to arbitration. However, it is too early to predict any consequences.**