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The Future of Work and Labor Dispute Settlement

Benjawan Tangsatapornpan[*]

Abstract

The Covid-19 pandemic has transformed workplace models from a purely on-site model where all executives and employees work in one or several principal offices, to diverse new models: hybrid or fully remote workplaces. These new workplace models, known as "the future of work," enable employers to access talent remotely and without geographical limitations, leading to more productivity and lower overall cost. However, these hybrid or fully remote working models could create legal complications concerning labor disputes, which the available traditional approaches may not be successful in resolving. This article aims to discuss two main issues: firstly, it will examine the current available approaches to resolving labor disputes, particularly the mechanisms specified in Thailand's Labor Relations Act, while highlighting more compromising, efficient approaches to labor disputes—especially in relation to the new working models. Secondly, it will tackle the possibility of implementing employment arbitration under Thai law, analyzing the pros and cons of this approach and its suitability when applied to the new working models.

Keywords: Dispute settlement — Future of work — Labor arbitration — Employment arbitration

[*] Judge attached to the Court of Appeal for Specialized Cases, Thailand; former Executive Director of the Thai Arbitration Institute, Office of the Judiciary.

I. INTRODUCTION

The Covid-19 pandemic has changed working models in various industries from a purely on-site working model, where most employees and executives work in one or few principal offices, to semi-remote or virtual working models where employees and executives can work remotely without geographical limitations of geography. In some industries that do not require personal interaction (e.g., the financial sector and the legal profession), hybrid or purely virtual models provide businesses with an increased ability to access talent in different jurisdictions, sometimes at a lower cost. This new working model also has the advantage of increasing productivity and reducing real estate costs.

Table 1. Future Trends in Remote Work Worldwide from 2020 to 2021

Share of respondents (%)				
	September 2020	December 2020	March 2021	June 2021
Were working remotely before the coronavirus	16	15	-	-
Are currently working remotely	72	74	69	60
Are anticipating to be working remotely in six months	57	60	50	38
Are expecting to be working remotely permanently	34	35	31	30
Are currently working in a hybrid model	-	-	-	33
Will be working in a hybrid model in six months	-	-	-	43
Will be working in a hybrid model permanently	-	-	-	42

Source: Statista

According to a global survey conducted with Chief Information Officers (Table 1), respondents stated that fully remote work is likely to transition to hybrid work in the near future. Approximately 15 to 16 percent of respondents stated that their companies' workforce worked remotely prior to the pandemic, and as of late 2020, 34 percent of respondents expected the workforce to be working remotely on a permanent

basis. By June 2021, 42 percent of respondents expected to be working in a hybrid model permanently.[1] The bar chart clearly shows that the percentage of companies using a remote-working model increased substantially—from only about 15 percent in September 2020 to more than 70 percent in December 2020. Although this percentage is expected to fall to around 30 to 40 percent, the figure will still have doubled in comparison to the situation before the Covid-19 pandemic.

Table 2. Public Opinion on the State of Remote Work Worldwide in 2022

Share of Respondents (%)			
	Fully remote	Hybrid	Office
Currently	45	29	26
In six months	36	34	30
Permanently	29	36	34

Source: Statista

According to Table 2, the statistics show a global trend toward remote working; the majority of firms are still employing hybrid or fully remote working models, which accounted for 74 percent in 2022, though this figure is expected to drop slightly to around 70 percent within six months. The percentage of firms employing hybrid or fully remote working models is predicted to decrease slightly to around 65 percent as a permanent state. It can be seen from this overall data that the percentage of new working forms—hybrid or fully remote working models—has increased substantially from around 15 percent during the period before the beginning of the Covid-19 pandemic, to above 60 percent as a permanent figure. Hybrid or fully remote working models will therefore be the future trend for working models—in other words, "the future of work."

However, the hybrid and remote working models could create legal complexities, and thus the traditional approaches to dispute resolution may, in some cases, not be successful. For example, dispute settlement or litigation under national law may not be efficient, especially in cases where the dispute is settled in one jurisdiction and the award needs to be enforced in another jurisdiction.

As the new working models trend toward borderlessness, the author has an initial assumption that labor dispute settlement in the form of mediation, conciliation or arbitration will be more effective than litigation in settling disputes occurring in the new working models. On the other hand, employment arbitration will also be more effective, especially in terms of flexibility of the seat of hearing, the applicable law, the languages used, etc. However, from the author's point of view, the arbitrator or the

[1] Justina Alexandra Sava, "Future trends in remote work worldwide from 2020 to 2021" *Statista* (7 April 2022) <https://www.statista.com/statistics/1199110/remote-work-trends-covid-survey-september-december/>.

arbitrator tribunal shall set what is specified in the Employment Act of the party's chosen law as the minimum standard to issue an award to meet the rationale and minimum standard of employment law itself.

In this regard, the author will first address the different forms of working models, and outline the key characteristics of arbitration in comparison with litigation. Subsequently, the author will address the current available approaches to labor dispute resolution, and the possibility of employment arbitration under Thai law. It is clear that Thailand's Labor Relations Act B.E. 2518 (1975) employs various different approaches to labor disputes; these include more extreme approaches such as strike and lockout, as well as more compromising approaches—mediation, conciliation, compulsory arbitration, and voluntary arbitration. The author will then examine the Supreme Court of Thailand's doctrines to ascertain whether labor disputes can be arbitrated, and if so, in which cases. Finally, the differences and limitations of the various arbitration approaches under Thailand's Labor Relations Act B.E. 2518 (1975) will be analyzed in comparison with general arbitration approaches.

II. THE FUTURE OF WORK, LEGAL COMPLICATIONS AND DISPUTE RESOLUTION

A. The Future of Work: New Working Models and Legal Complications

The Covid-19 pandemic has essentially disrupted the workforce, effecting changes in labor market models and consumer behavior.[2] These include the shift from a purely physical on-site working model to hybrid or fully virtual models in some sectors where physical presence is not necessary. We can divide the working models into three main models, as follows:

1. The purely on-site model.

The traditional-style working model was usually employed before the Covid-19 pandemic. Under this model, almost all employees work on-site, and executives and employees generally work in one or several large principal offices. The company bears the full cost of real estate, thereby limiting its ability to access talent and reducing productivity.[3] Most industries that need personal interaction, e.g., hotels, healthcare, tourism, and on-site customer service, fall under this category and are unlikely to shift their working model to a hybrid or fully virtual one. Some sectors, e.g., airports, have

[2] Susan Lund, Anu Madgavkar, James Manyika, Kweilin Elingrud, Mary Meaney, and Olivia Robinson, 'The Post-Pandemic Economy: The Future of Work After Covid-19" *McKinsey Global Institute* (2021).

[3] Andrea Alexander, Aaron De Smet, and Mihir Mysore, "Reimagining the Post-Pandemic Workforce" *McKinsey Quarterly* (2020).

nevertheless in part transformed their business models through the use of automation.[4] Traditional employment and labor law as well as traditional dispute resolution measures can generally be used in this working model.

2. The hybrid virtual model.

The hybrid virtual model is a new combination of remote and on-site working in which some employees work on-site and others from home. This new working model promotes better access to talent and a cross-border labor workforce, increases productivity with lower costs, and provides more flexibility. Nevertheless, remote workers could feel somewhat isolated without face-to-face interaction such as team meetings and cafeteria discussions. The hybrid virtual model is generally employed in industries that need only moderate physical presence and in which most tasks can be carried out remotely or virtually, e.g., computer-based office work and administrative work in factories.

There are four different hybrid models, listed as follows: (i) Partially remote work within a headquarters where company executives and the majority of employees spend most of their time in principal offices; (ii) partially remote work with multiple hubs where executives and employees work in several offices; (iii) partially remote work with multiple micro hubs where executives and employees work across these hubs located in different countries; and (iv) partially remote work where there is no permanent office, and a flexible rented space is used for in-person collaborations.[5] According to a report by the McKinsey Quarterly, compared to a fully on-site model, hybrid models allow organizations to access more talented employees with higher productivity and lower real estate costs.

Table 3. Companies' Adaptation to Remote Work

How would you describe how effective your company has been at performing the following activities with employees working remotely?

Share of Respondents (%)			
	Worse than pre-COVID-19	Better than pre-COVID-19	Same as pre-COVID-19
Collaborating on new projects	17	44	39
Securing relationships with new customers	23	43	35

[4] Susan Lund et al., "The Future of Work after Covid-19" (n 2).

[5] Andrea Alexander, Aaron De Smet, and Mihir Mysore, "Pandemic-Style Working From Home May Not Translate Easily to a 'Next Normal' Mix of On-Site and Remote Working," *McKinsey Quarterly* (2020).

Share of Respondents (%)			
	Worse than pre-COVID-19	Better than pre-COVID-19	Same as pre-COVID-19
Coaching employees to succeed	20	44	35
Onboarding new hires	27	38	35
Innovating products or services	18	41	41

Source: Statista

According to Table 3, the overall percentage shows that the new remote-working model provides more efficiency, and more than 70 percent of those surveyed believe that employees can perform most tasks remotely with the same or better productivity than they did prior to Covid-19.

This new remote-working model, however, creates some legal complications under employment and labor laws. It may be difficult to resolve disputes using measures currently available under labor laws, e.g., strike or lockout, in some cases where employees work remotely in different jurisdictions.

3. The virtual workplace model.

Under this model, almost all employees work remotely. Compared to an on-site model, the virtual workplace model gives companies more ability to access talent and increases productivity, while saving real estate cost. According to Table 4 as seen below, although there are some leading challenges in adopting remote workplaces (e.g., time zone differences), this new model of workplace essentially allows organizations to employ employees from elsewhere without geographical limitations. A cross-border employment dimension is created; however, this raises some complications under employment and labor laws.

In the virtual workplace model, executives and workers work remotely from different locations via a central platform, e.g., Zoom or other similar applications. For example, the metaverse, a new way of interacting using various components of cyberspace—augmented reality, the combination of digital and physical aspects of life, three-dimensional technology, the 'internet of things,' personal avatars, and digital marketplaces and content providers[6]—is an example of a new virtual working model. The metaverse is essentially an immersive 3D virtual world. Users adopt an avatar to

[6] Valerio De Stefano, Antonio Aloisi, and Nicola Countouris, "The Metaverse is a Labour Issue" *Social Europe* (1 February 2022) <https://socialeurope.eu/the-metaverse-is-a-labour-issue?fbclid=IwAR340_iujh55XRU2LVRzQFBip4dig5NriUIgG1_d8EdHm4mbQbaalqTYXnk>.

represent themselves in the metaverse, and can interact with other people's avatars by using wearable technology.[7]

Table 4. Leading Challenges in Adopting Remote Work in the Asia-Pacific Region in 2021 by Market

Characteristic	Time zone difference (%)	Language and cultural barriers (%)	Need to refine performance management (%)	Lack of knowledge in labor laws and regulations (%)	No office to support operations (%)	Need to resolve logistics issues (%)
Indonesia	53	52	-	45	-	-
India	42	42	-	-	-	43
Thailand	41	39	56	-	-	-
New Zealand	38	-	-	27	-	30
Malaysia	38	-	46	36	-	-
Australia	37	33	-	-	-	26
Singapore	34	35	45	-	-	-
China	32	-	46	-	42	-
Hong Kong	31	-	-	37	30	-
Taiwan	-	38	37	-	46	-
South Korea	-	41	-	35	36	-
Vietnam	-	37	55	-	30	-

Source: Statista

For organizations, the metaverse provides a realistic platform[8] for employees and executives to work together remotely. For instance, Microsoft employs the 'mixed-reality capabilities' of Microsoft Mesh, allowing people in different locations to work together via central platforms, including Microsoft Teams, where people can join virtual meetings, send messages, and work together on shared documents.[9] The metaverse and other types of virtual office will allow businesses to access a workforce globally without geographical limitations, thus enabling them to employ outsourced workers in countries with much lower wages and weaker labor protection.[10] There are

[7] Emma Hamnett, "The Metaverse: Real Employment Issues in a Virtual World of Work" *Clarke Willmott* (28 February 2022) <https://www.clarkewillmott.com/news/the-metaverse-real-employment-issues-in-a-virtual-world-of-work/>.

[8] Maria Moraes Robinson, "The Metaverse Will Shape the Future of Work. Here's How" *Workplace Insight* (9 February 2022) <https://workplaceinsight.net/the-metaverse-will-shape-the-future-of-work-heres-how/>.

[9] ibid.

[10] ibid.

various industries that can be transformed to work remotely under this model without any effect on productivity, e.g., finance and insurance, advisory services, and management.

Based on a survey of 31,102 full-time or self-employed workers in 31 countries during January and February 2022 by Microsoft's 2022 Work Trend Index, the percentage of Gen Z, Millennials, Gen X and Baby Boomers expected to be working in the metaverse in the near future was 51 percent, 48 percent, 37 percent and 28 percent respectively. Considering this survey, the future working trend will most likely shift toward the new working models—especially a fully virtual model in some industries.

From the author's viewpoint, although the new forms of working model have many advantages, they inevitably create legal complications under employment and labor law. The methods currently available for settling disputes under different national laws are also controversial: the question arises as to whether they are still applicable for use in the new working models, as these will allow people to work together without geographical limitations and thus may raise various legal issues when a dispute arises, e.g., as to which national laws shall be applied; whether or not an award or judgment made in one country is enforceable in relation to employees in another country; and which country's dispute resolution approach shall be applied when the employers and employees work remotely in different countries.

B. The Future of Work: Labor & Employment Dispute Settlement

In this section, the author will divide the discussion into two main issues: labor dispute settlement and employment dispute settlement. According to Thailand's Labor Relations Act B.E. 2518 (1975) section 5, "labor dispute" means a dispute between an employer and an employee relating to the state of employment including employment or working conditions, working days and hours, wages, welfare, dismissal of employment, benefits, etc. Labor disputes generally arise from the collective bargaining agreement. Employment disputes nevertheless basically arise from the violation of employment law or contract, whereas the employment law itself sets the minimum standard for employers and employees. The discussion in this article will thus be divided into these two main scenarios.

As discussed in the previous section, the new forms of working model—the future of work—may create complications in dispute resolution as there will be more connection between cross-border workforces and organizations. The questions (e.g., which law shall be used, whether an award made in one jurisdiction can be enforced in another where the employees working remotely have their domicile) generally challenge the currently existing dispute resolution models. For example, litigation in a specific national court has limitations, as well as being time-consuming and in some cases more costly. Arbitration, on the other hand, is a contractual system for dispute resolution. The parties can agree to handle their future disputes through appointed arbitrators. An arbitral arrangement is governed by the 'principle of party autonomy'

and thus provides more flexibility in settling the disputes.[11] The principle of party autonomy allows parties the freedom to consensually execute an arbitration agreement. It provides parties with the right to choose the applicable substantive laws, the venue of arbitration, the arbitrators, the language to be used during the arbitration proceedings, etc. None of these are applicable in litigation.[12] Various factors influencing the parties' preference for arbitration over litigation are as follows:

Table 5. A Comparison between Arbitration and Litigation

	Arbitration	Litigation
Confidentiality	√	X
Appointment of Judges or Arbitrators	√	X
Neutrality	√	√
Procedural Flexibility	√	X
Applicable Law	Agreed on by the parties	Generally Thai Laws
Language	Agreed on by the parties	Thai
Hearing approach	▪ Both ad-hoc and institutional arbitration are available ▪ Remote hearing is applicable	Generally conducted in the court room
Seat of hearing	Agreed on by the parties	Thailand
Enforceability	Arbitral award is enforceable in other countries that are members of the New York Convention.	Only in Thailand
Finality	√	X
Timeframe	Generally fast with a clear timeframe	No clear timeframe
Overall cost	Can be estimated in advance	More difficult to be estimated. Depends upon adjudication period plus lawyer fee, etc.

[11] Clive M. Schmitthoff, "Finality of Arbitral Awards and Judicial Review" in Julian D. M. Lew (ed) *Contemporary Problems in International Arbitration* (Springer 1987) 230–37.

[12] Sunday A. Fagbemi, "The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?" (2015) 6 *Journal of Sustainable Development Law and Policy* 202–46.

1. Confidentiality.

Arbitration is generally more confidential than litigation. Litigation is generally conducted in a public court room. Arbitration, however, is conducted in a closed conference room to which only relevant persons are allowed entry.

2. Appointment of judges or arbitrators.

The parties are generally eligible to choose the arbitrators who will make up the tribunal. The parties can consider the profile, professional qualities, experience, or expertise of a person before appointing their arbitrators. For instance, the Thai Arbitration Institute, Office of the Judiciary's rules address the appointment of arbitrators in Article 15 and Article 16, stating that the parties shall jointly nominate a person or persons to be appointed as an arbitrator within the specified timeframe. Unlike in litigation, the parties can choose the judge who will adjudicate their case.

3. Neutrality.

Another advantage of arbitration over litigation is that the parties are eligible to refer their disputes to a neutral forum. This feature is essentially important when parties come from different national legal systems and may thereby wish to refer their disputes to the national court of their contracting party. They may prefer to seek a legal system that is impartial, efficient and pro-arbitration, in which neither party is "at home." The parties can thus choose the seat of hearing and their arbitration tribunal, in order to ensure neutrality.

4. Flexibility.

Another attractive factor of arbitration is flexibility. The parties are eligible to choose the laws that will apply to their disputes, the language used throughout the hearing, the hearing approaches (virtual hearing, semi-remote hearing, etc.), the seat of hearing, etc.

5. Enforceability and finality.

Ease of enforcement is one of the strongest factors in favor of arbitration for cross-border disputes. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Federal Arbitration Act (FAA) makes enforceable foreign and domestic arbitration agreements and awards.[13] Thus, arbitral awards made in one country can be enforced in any other country that is a member of the New

[13] Practical Law Litigation and Practical Law Arbitration, "Arbitration vs. Litigation in the US" *Thomson Reuters Practical Law* (2021) <https://uk.practicallaw.thomsonreuters.com/w-006-5897?transitionType=Default&contextData=(sc.Default)&firstPage=true>.

York Convention. Unlike litigation, the arbitral award cannot only be enforceable in one specific jurisdiction in general.

Another key factor of arbitral proceedings is the finality of an arbitral award. The arbitral award is generally made final and binding by incorporating a set of arbitration rules (e.g., Article 32(2) of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, Article 28(6) of the International Chamber of Commerce (ICC) Rules,[14] Article 48 of the Thai Arbitration Institute, Office of the Judiciary Rules, etc.).

6. Time frame and cost.

A final key factor in favor of arbitration over litigation is that arbitration has a clear time frame, stated in the arbitration rules, and provides a speedier proceeding than litigation. Parties can also estimate the cost of the arbitral proceedings in advance.

III. LABOR DISPUTE RESOLUTION: THAILAND'S CONTEXT

The Covid-19 pandemic has accelerated the transformation of the fully on-site working model to hybrid or fully remote working models. In Thailand, according to data from the National Statistical Office,[15] around 19.4 percent of respondents (from a total of 11,765 respondents) work remotely every day, while approximately 21.3 percent work remotely some days of the week. This data also shows a shift toward working from home or a remote model, increasing from 20 percent to 30 percent during the coronavirus pandemic. As discussed in the previous section, the new working models inevitably affect the way disputes are settled. This is due to the fact that with a remote workforce, there are more cross-border elements and thus controversial issues arise, particularly in terms of applicable laws, enforceability of national judgments in other jurisdictions, languages used in the proceedings, etc. The traditional, available tools (e.g., strike or lockout) may not be effective in the hybrid or remote working models where employees work remotely in different jurisdictions.

The previous section discussed the different working models and possible legal complexities. In the current section, the author aims solely to discuss labor dispute settlement issues—disputes between an employer and an employee relating to the state of employment, generally arising from a collective bargaining agreement. The author

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[14] Jonathan Cotton and Caroline Edwards, Slaughter and May, "Just How Final is 'Final and Binding'?" *Thomson Reuters Practical Law* (2022) <https://uk.practicallaw.thomsonreuters.com/9-321-3952?transitionType=Default&contextData=(sc.Default)&firstPage=true>.

[15] สำนักงานสถิติแห่งชาติ, "ผลสำรวจชี้ประชาชน WFH ได้ทุกวันแค่ 19.4% แนะลดค่าใช้จ่ายสาธารณูปโภคหนุนทำงานที่บ้าน" (Hfocus 2020) [National Statistical Office, "Survey shows 19.4% of the population can work from home everyday, reduce utility bills suggested to promote WFH" *Hfocus* (2020) <https://www.hfocus.org/content/2020/04/19044>] (Thai).

will mainly address the currently available tools for settling labor disputes under Thai law.

Thailand's Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979) section 38[16] and section 43[17] and the Labor Relations Act B.E. 2518 (1975) prescribe rules on labor dispute approaches.

Firstly, sections 38 and 43 employ mediation as one of the labor dispute settlement approaches, and the court shall mediate before the start of the trial or at any time during the litigation.

Secondly, Thailand's Labor Relations Act B.E. 2518 (1975) employs mixed approaches to settling labor disputes, including (i) intense measures—lockouts and strikes (section 34), and (ii) softer measures—negotiation (section 13—18), mediation (section 21—22) and arbitration. The main purpose of these measures is to lead to an agreement relating to conditions of employment (section 5), or a so-called "collective bargaining agreement" that regulates the terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties, thus ensuring harmonious and productive industries and workplaces. Collective bargaining is an essential approach that enables employers, their organizations, and trade unions to establish fair wages and working conditions.[18] According to data from the Labor Standard Development Bureau (Table 6), Department of Labor Protection and Welfare, the number of collective agreements registered in Thailand during the years 2018, 2019 and 2020 was 457, 424 and 396 agreements respectively.

Table 6. Registered Collective Agreements in Thailand During 2018–20

Year	Registered Collective Agreements
2018	457
2019	424
2020	396

Source: Labor Standard Development Bureau, Department of Labor Protection and Welfare

[16] Section 38 of the Labor Courts and Labor Court Procedure B.E. 2522 (1979) stipulates:

> When the plaintiff and the defendant appear in court, the labor court shall mediate the parties to reach an agreement or a compromise. For the purpose of continuous relationship between the parties, it shall be deemed that the labor case possesses specific nature that and it should be settled with good understanding.
>
> In the case where the labor court has conducted mediation but the parties could not reach an agreement or a compromise, the labor court shall proceed with the trial.

[17] Section 43 of the Labor Courts and Labor Court Procedure B.E. 2522 (1979) stipulates that "the labor court, at any stage of the trial, has power to bring about an agreement of a compromise as implied in Section 38."

[18] "Collective Bargaining and Labor Relations" *International Labor Organization* <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm>.

The concept of voluntary conciliation and arbitration in Thailand's Labor Relations Act B.E. 2518 (1975) also goes in line with the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)[19] and the Examination of Grievances Recommendation, 1967 (No. 130),[20] certified by the International Labor Organization (ILO).[21]

Table 7. Labor Disputes, Strikes and Lockouts in Thailand 2018–2020

Year	Labor Disputes			Strikes			Lockouts		
	Times	Employees Involved	Workplaces Involved	Times	Employees Involved	Total Working Days Lost	Times	Employees Involved	Total Working Days Lost
2018	98	67,572	89	-	-	-	2	58	2,668
2019	73	70,991	69	2	596	24,990	5	931	27,087
2020	85	56,647	75	1	56	1,624	-	-	-

Source: Labor Standard Development Bureau, Department of Labor Protection and Welfare

Concerning the intense measures, according to the labor dispute, strike and lockout statistics by the Labor Standard Development Bureau, Department of Labor Protection and Welfare, the overall number of labor disputes in 2018, 2019 and 2020 was 98, 73, and 85 disputes respectively, involving a large number of employees (approximately 56,000—70,000 employees per year). In 2019, where they were complete, available data, labor disputes included 2 strikes and 5 lockouts, with a total loss of 24,990 and 27,087 working days respectively. This inevitably causes harm to both the economy and the workforce.

Thailand's Labor Relations Act B.E. 2518 (1975) employs mixed approaches in settling labor disputes, including (i) intense measures—lockouts and strikes (section 34) and (ii) softer measures—negotiation (section 13—18), mediation (section 21—22) and arbitration. Concerning an arbitration, Thailand's Labor Relations Act B.E. 2518 (1975) adopts two different approaches, namely (i) voluntary arbitration and (ii) compulsory arbitration divided by types of labor disputes.

Firstly, according to Thailand's Labor Relations Act B.E. 2518 (1975) section 23, *compulsory arbitration* will be used in labor disputes in essential sectors (those relating to the country's infrastructure and everyday necessities). The sectors under section 23 include logistics, telecommunication, electricity, water, gasoline

[19] "Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)" *International Labor Organization* <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R092>.

[20] "Examination of Grievances Recommendation, 1967 (No. 130)" *International Labor Organization* <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R130>.

[21] Kasemsan Wilawan, *Labor Law* (28th edn, Winyuchon 2020).

production, hospitals, and aviation. When a labor dispute occurs in a sector specified under section 23, the dispute will be handled through a conciliation officer who will refer the dispute to the labor relations committee, which is appointed by the minister of the Ministry of Labor pursuant to section 23 para. 2 and section 37. The decision of the labor relations committee can be appealed by the minister of the Ministry of Labor (section 23 para. 3) to the labor court. Regarding the finality of an award, Thailand's Supreme Court Decision No. 254/2524 finds that even if the minister of the Ministry of Labor makes an arbitral award in accordance with the internal rules, it should be considered whether such rules violate the law. If the rules violate the law, the parties have the right to appeal the award to the labor court.

Compulsory arbitration is nevertheless different from general voluntary arbitration, where both parties can freely choose their arbitrators. Concerning voluntary arbitration, the decision of an appointed arbitrator is final unless it violates public interest or the law while the parties are still eligible to object to the court. Voluntary arbitration also generally has a clear time frame and estimated cost in accordance with the rules of the selected arbitration institution. This can provide essential information to the parties, enabling them to estimate the time frame and approximate overall cost of settling the disputes. For example, the Thai Arbitration Institute (TAI), Office of the Judiciary, one of the main arbitration institutions in Thailand, clearly specifies the time frame and estimated cost in the arbitral rules, and publishes these on its website.

Secondly, Thailand's Labor Relations Act B.E. 2518 (1975) also employs *voluntary arbitration* as an approach to settling labor disputes. The parties are eligible to appoint arbitrators for their cases (section 22 and section 26). This applies to labor disputes in general cases outside of the industries specified in section 23. Nevertheless, there are some exemptions under Thailand's Labor Relations Act B.E. 2518 (1975); even if a labor dispute arose in a sector that is not specified in section 23, the parties may still need to enter into a compulsory arbitration process. Exemptions include (i) a labor dispute that the minister considers may affect the economy of the country or public order (section 24); (ii) a lockout or strike considered by the minister to adversely affect the economy, cause hardship to the public, endanger the security of the country, or to be against public order (section 35 (4)); and (iii) the labor dispute that the Minister makes an announcement in the government gazette that such labor disputes shall be settled by the appointed committee members during the declaration of martial law, state emergency or economic crisis (section 25).

IV. THE FUTURE OF WORK: LABOR & EMPLOYMENT ARBITRATION AND THE WAY FORWARD

A. The Future of Work and Labor Arbitration pursuant to Thailand's Labor Relations Act B.E. 2518 (1975)

This sub-section will mainly focus on labor disputes arising from collective bargaining agreements. Thailand's Labor Relations Act B.E. 2518 (1975) accepts arbitration as one of the tools to resolve labor disputes. The key consideration in this part is to analyze the current available labor arbitration approach under Thailand's Labor Relations Act B.E. 2518 (1975) and examine further steps for promoting and implementing this tool, especially with a view to providing more flexibility to dispute settlements in the new working models.

According to Tables 8 and 9, it can be seen that the future of work is shifting toward the new working models. After the Covid-19 pandemic, the new working trend will still remain, changing the percentage of hybrid and fully remote work globally from only about 15 percent during pre-Covid-19 times to around 65 to over 70 percent in 2022—a figure that is predicted to remain permanently (Table 9).

Table 8. Future Trends in Remote Work Worldwide from 2020 to 2021

Share of Respondents (%)				
	September 2020	December 2020	March 2021	June 2021
Were working remotely before the coronavirus	16	15	-	-
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Source: Statista

Table 9. Public Opinion on the State of Remote Work Worldwide in 2022

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Permanently	29	36	34

Source: Statista

Although the hybrid and fully remote working models create more productivity, with the ability to access talent globally with lower overall cost, this new borderless working model may create legal complications, especially concerning labor law. The available, traditional dispute resolution approaches, e.g., strike or lockout, can create immense working day losses and cause a harmful effect to the overall economy. The author believes that labor arbitration could fill this loophole, and could be used as an alternative tool in resolving cross-border labor disputes effectively.

Concerning Thai law, although Thailand's Labor Relations Act B.E. 2518 (1975) adopts the concept of voluntary conciliation and arbitration as prescribed in the

provisions, there are various differences and limitations compared to the international arbitration system. The key considerations are addressed as follows:

Table 10. The Comparison Between Arbitral Proceeding in accordance with Thailand's Labor Relation Act B.E. 2518 (1975) and the Arbitral Proceeding in General Cases

	Labor Arbitration in accordance with Thailand's Labor Relation Act B.E. 2518 (1975)	General Arbitration
1. Time frame	Not applicable	Applicable according to the Arbitration Rules of each Arbitration Institution
2. Finality	√	√
3. Enforceability in other jurisdictions	X	√
4. Cost	Overall cost is unclear	Clear
5. Arbitrator Fee	Not clearly stated in the provision	Can be estimated in advance
6. Languages	Mostly conducted in Thai	Any languages as agreed by the parties
7. Arbitrator appointed process	Appointed by the Minister of Ministry of Labor	Appointed by the parties
8. Law	Thai Law	Agreed on by the parties

Concerning labor dispute settlement approaches in accordance with Thailand's Labor Relations Act B.E. 2518 (1975), Thailand has adopted mixed approaches, including negotiation, mediation, and arbitration. Labor arbitration includes voluntary arbitration, as in the US and German models, and compulsory arbitration, as in Japan's model. Labor arbitration proceedings in accordance with Thailand's Labor Relations Act B.E. 2518 (1975) nevertheless differ from general arbitration proceedings in the following points:

1. Time frame.

Unlike general arbitration, Thailand's Labor Relations Act B.E. 2518 (1975) section 27 only specifies that "within seven days from the date of acknowledgement of the appointment, the labor dispute arbitrator shall notify the party submitting the claim and the party receiving the claim in writing . . . "; however, it has no clear time frame for issuing an award. The Arbitration Rules of arbitration institution in general cases

generally prescribe a clear time frame for the arbitral proceedings, and the parties can therefore estimate when their arbitral proceeding will end. The rules of the Thai Arbitration Institute, Office of the Judiciary[22] (section 28 para. 2) prescribe a clear time frame for the arbitral proceedings to be completed—within 180 days from the date when the final arbitrator is appointed. Speediness of proceedings is a key characteristic of arbitration, and one of the most important criteria leading parties to choose arbitration over other approaches.

2. Costs, Fees, and Expenses.

There is no clear detail of the cost of litigation, nor an estimated cost of labor arbitration proceedings pursuant to Thailand's Labor Relations Act B.E. 2518 (1975). Parties are thus unable to estimate the overall incurred cost. General arbitration, however, identifies clear costs, expenses and fees, which are published on the websites of the arbitration institutions. The overall cost of the proceedings is inevitably another crucial factor leading parties to choose one approach of dispute settlement over another.

3. Arbitrator Fees.

Thailand's Labor Relations Act B.E. 2518 (1975) has no clear provision regarding arbitrator fees. Hence, this may cause limitations in attracting people with expertise in the field of labor law to act as arbitrators. General arbitration proceedings, however, provide clear criteria for calculating the arbitrators' fee, thus making it easier not only for the parties, but also for the arbitrators to estimate the fee, based on which they can decide whether to accept the appointment as arbitrator of a specific dispute.

4. The process of appointing arbitrators.

Thailand's Labor Relations Act B.E. 2518 (1975) employs mixed approaches, including voluntary arbitration (section 22 and section 26) and compulsory arbitration (section 23). For compulsory arbitration, the dispute will be handed to the labor relations committee pursuant to section 23, and the members of the committee as well as the chairperson shall be appointed by the minister of the Ministry of Labor in accordance with section 37 para. 2; whilst in voluntary arbitration proceedings, parties can appoint their own arbitrators pursuant to sections 22 and 26. The parties are eligible to appoint their own arbitrators in voluntary arbitration pursuant to Thailand's Labor Relations Act B.E. 2518 (1975), similarly to arbitrator appointment in general arbitration proceedings. The ability to appoint their own arbitrators ensures that the parties can choose arbitrators whom they believe to be neutral. The neutrality of the

[22] "The Arbitration Rules" *The Thai Arbitration Institute Office of the Judiciary* (2019) <https://tai.coj.go.th/en/file/get/file/20190328eef186a18fce8194617ad031e441b36a153326.pdf>.

arbitrators and the neutral platform for settling disputes are other crucial reasons for the parties to select arbitral proceedings over other approaches.

5. Enforceability of awards.

Enforceability of awards in other jurisdictions is also another important characteristic of arbitral proceedings. Under the new working models—hybrid or fully remote models where employers and employees work remotely in different jurisdictions—the enforceability of the award in other jurisdictions becomes a crucial issue in resolving disputes. Therefore, the labor arbitration approach can be more effective in the new working models than litigation at the national court, or strike and lockout in a specific location.

B. The Future of Work and Employment Arbitration: Perspectives from Thailand's Supreme Court Doctrines

As discussed in the previous section, the new working models, or the future of work, tend to include or have nexus with more than one jurisdiction. Thus, disputes may become more complex in nature, especially in specific sectors where employers and employees work without borders in different jurisdictions. In this section, the author aims to focus on the issue of employment disputes arising from the violation of employment laws or contracts whereas the law itself sets the minimum standard of employers and employees. Unlike labor dispute settlements, to which Thailand's Labor Relations Act clearly specifies that arbitration can be one of the approaches, employment arbitration is not clearly covered in the legal provisions. Thus, the controversial consideration arises as to whether employment arbitration is acceptable in the context of Thailand, and whether it can be used as an alternative approach in settling employment disputes, especially those occurring in the new working models.

Regarding employment arbitration, the key consideration is whether employment disputes can be arbitrated, or whether pre-dispute agreements are acceptable under Thai law or by the Court. With respect to this, the Supreme Court of Thailand's doctrines state that employment dispute settlement agreements are enforceable (Thailand's Supreme Court Decision No. 1958/2548); however, this generally only covers disputes arising from rights under an employment contract (Thailand's Supreme Court Decision No. 3530/2549, Thailand's Supreme Court Decision No. 7723/2557 and Thailand's Supreme Court Decision No. 3535/2560) and does not include any disputes to do with rights arising after the termination of a contract (e.g., claims of unfair dismissal). Also, Thailand's Supreme Court Decision No. 1958/2548 provides similar doctrinal confirmation to the US Supreme Court's opinion in *Epic Systems Corp. v. Lewis* (2018), stating that employers can

impose arbitration contracts on their workers[23]. The author believes that allowing employment arbitration will create flexibility for the parties to arbitrate cases, especially those occurring in the new working model where employers and employees work partially or fully in different jurisdictions. If the parties choose Thai law as the applicable law, the arbitral tribunal shall consider criteria specified in the Labor Protection Act as a minimum standard for issuing an award, e.g., to consider the substantive rights of employees. If the arbitral tribunal issues an award that does not meet the minimum standard specified by the law, that part of the award shall be considered contrary to public order pursuant to section 40 (2) (b) of Thailand's Arbitration Act B.E. 2545 (2002), and thus the Court shall set aside the arbitral award.

The details of the Supreme Court of Thailand's doctrines are as follows:

1. Thailand's Supreme Court Decision No. 1958/2548.

Facts

The plaintiff is a British citizen. The defendant is a registered American corporation and the head office is located in the US. The labor contract was formerly signed by the plaintiff in Thailand and sent to the defendant to sign in the US. Therefore, it is deemed that the employment contract was made in the United States and must be enforced in accordance with section 13 of Thailand's Conflict of Law Act, B.E. 2481. The employment contract, however, has an agreement stating that this agreement shall be governed by and construed in accordance with the laws of the State of New Jersey in the US, and therefore must be enforced by the laws of the state of New Jersey in accordance with the intention of the parties. Furthermore, Article 20 of the employment contract stipulates that any disputes or conflicts that the parties cannot agree upon, and that any controversial claims or disputes arising from or in connection with the agreement shall be settled by arbitration in accordance with the rules of the United States Arbitration Association.

The Supreme Court of Thailand's Decision

The Supreme Court of Thailand deemed that the arbitrator's award is a prerequisite for litigation proceedings. The arbitration proceedings will be conducted in the US or in another location accepted by both parties. *This dispute settlement agreement is enforceable because such an agreement is not prohibited under Thai law or US law.* The plaintiff must comply with the contract by handling the case to the arbitrator to resolve, as this is a dispute arising from an employment contract, and thus is not able

[23] Karla Gilbride, "'Forced' Is Never Fair" *Economic Policy Institute* (30 May 2019) <https://www.epi.org/blog/forced-is-never-fair-what-labor-arbitration-teaches-us-about-arbitration-done-right-and-wrong/>.

to present the case to the Central Labor Court, pursuant to section 14 of Thailand's Arbitration Act B.E 2545.[24]

2. Thailand's Supreme Court Decision No. 3530/2549.

Facts

An employment contract between the plaintiff and the defendant states in Article 12: "Arguments which cannot be settled by a negotiation between the parties shall be adjudged and settled by the Danish arbitral tribunal."

The Supreme Court of Thailand's Decision

The Supreme Court of Thailand stated that the arbitral agreement shows that the parties wish to resolve the dispute by arbitration; however, this covers only disputes arising from rights under the employment contract. In this case, the plaintiff sued two defendants to pay compensation and damages for unfair dismissal, according to rights stipulated under section 118 of Thailand's Labor Protection Act (1998) and section 49 of Thailand's Establishment of the Labor Court Act B.E 2522. This is not a lawsuit about rights under an employment contract and therefore such dispute is not an argument under the arbitration agreement in the employment contract. The plaintiff can thus bring the case directly to the court, without the need to first submit the case to the arbitrator.[25]

3. Thailand's Supreme Court Decision No. 7723/2557.

Facts

The employment agreement states in Article 7: "if there is a dispute under this contract, the parties shall negotiate. If such negotiation is not successful, the dispute can be handled to the arbitrator tribunal in Shanghai, China to consider and the decision shall be final."

The Supreme Court of Thailand's Decision

The plaintiff sued the defendant to pay compensation and damages for unfair dismissal, according to rights arising after the termination of the labor contract between the plaintiff and the defendant, in accordance with section 118 of Thailand's Labor Protection Act, B.E. 2541 and section 49 of Thailand's Labor Court Establishment and Labor Criminal Procedure Act, B.E. 2522. This is not a lawsuit about a dispute arising from an employment contract. As a result, the plaintiff has the

[24] Thai Supreme Court Decision No. 1958/2548.
[25] Thai Supreme Court Decision No. 3530/2549.

power to sue the defendant directly to the Labor Court of Region 2 without first having to submit the dispute to the arbitrator.[26]

4. Thailand's Supreme Court Decision No. 3535/2560.

Facts

Document No. 1, Article 8 of the labor contract states that the laws of Thailand shall apply to this contract. Any disputes arising in connection with this contract shall be resolved by arbitration under the laws of Thailand. Document No. 3, Article 9, however, states that Swedish law shall be applied to this contract, and any dispute arising in connection with the contract is to be suspended by arbitration under Swedish law.

The Supreme Court of Thailand's Decision

The Supreme Court of Thailand addressed that the plaintiff and the defendant wish to have the dispute settled by arbitration for disputes arising from rights under the employment contract. However, the plaintiff sued the defendant for compensation and damages for unfair dismissal, according to rights arising after the termination of the labor contract between the plaintiff and the defendant in accordance with section 118 of Thailand's Labor Protection Act, B.E. 2541 and section 49 of Thailand's Labor Court Establishment and Labor Criminal Procedure Act, B.E. 2522. This also includes the issue of paying damages, as the cost of returning to the plaintiff's domicile occurred after the defendant terminated the plaintiff's employment. This is not a lawsuit about a dispute arising from an employment contract. As a result, Swedish law shall not be applied in this case. The plaintiff has the power to sue the defendant directly to the Central Labor Court without having to first submit the dispute to the arbitrator.[27]

B. Recommendation

This article covers the issue of employment and labor arbitration as an alternative to traditional adjudication, especially in resolving disputes arising in the new working models. "Employment arbitration" is defined as dispute resolution for workplaces overseen by private arbitrator(s) rather than by a judge in court. Employment arbitration generally generates from arbitral contractual terms and may apply particularly to executive level employees, for instance when they need disputes to be confidential. Labor arbitration, on the other hand, is designed to resolve disputes as a substitute for other forms of resolution, e.g., strike or lockout.

As discussed in the previous sections, the new working models create more legal complexities and engage with cross-border issues. Resolving disputes in the new

[26] Thai Supreme Court Decision No. 7723/2557.
[27] Thai Supreme Court Decision No. 3535/2560.

working models is challenging, especially in models where most of the employees and executives work remotely from different jurisdictions. Some key considerations are, for example, the applicable laws to be used, the language used in the proceedings, and the enforceability in one country of a judgment made in in another. The author divides these considerations into two main parts: labor arbitration and employment arbitration.

Firstly, concerning labor arbitration, Thailand's Labor Relations Act B.E. 2518 (1975) accepts arbitration as one of the tools in resolving labor disputes, allowing the parties to voluntarily appoint arbitrators in accordance with section 26. However, according to the statistics gathered during the past years, this tool is seldom used by the parties. The key question in this case is how to promote the currently available tool—labor arbitration—in resolving labor disputes, which would help to reduce lost working days and the harmful effect of other tools (e.g., strike or lockout) on the overall economy. In this regard, the labor law expert Asst. Prof. Dr. Panthip Pruksacholavit states in her paper that Thailand should consider final offer package arbitration as the best impasse resolution procedure for the public sector to begin with, and should also train arbitrators in particular sectors so as to have a sufficient number of elective neutral arbitrators.[28]

In the author's opinion, the number of labor arbitrations filed is quite low because, from the parties' point of view, arbitration represents a costly proceeding. Compared to commercial arbitration, the parties are also unsure if the award is enforceable and final. Moreover, arbitral proceedings in Thailand sometimes take more time than litigation due to the appeal procedure of an award to the court. The author nevertheless believes that labor arbitration will become a crucial tool in resolving disputes—especially disputes occurring in the new working models—and would compensate for the limitations of litigation, especially in terms of the enforcement of arbitral awards in other countries, the flexibility of applicable laws, and the confidentiality of the proceedings. The use of labor arbitration will also reduce potential harm to the overall economy caused by the other forms of dispute settlement provided by the law, e.g.,, the immense working day losses due to strike or lockout. The author believes that Thailand could take the first step by promoting compulsory labor arbitration, which is the approach available under Thailand's Labor Relations Act B.E. 2518 (1975), and could also promote the number of labor arbitrations filed by focusing on executive level and foreign employees. Arbitral proceedings differ from traditional adjudication in that they are confidential and function under the "principle of party autonomy." Thus, the parties can freely choose the applicable laws and the language used, which gives more flexibility to the employees, especially those in our first target groups. After a successful first phase of implementation and the creation of trust among parties involved, labor arbitration could be used more widely in other labor disputes.

[28] Panthip Pruksacholavit, "Resolution of Bargaining Impasses in the Public Sector" (2009) 3 Thammasat Law Journal 216.

To increase the number of cases filed, class arbitration—a form of multiparty dispute resolution—will be another essential approach, allowing employees to file their cases together and share the overall cost of arbitral proceedings. This will make labor arbitration more attractive, as the parties can end their disputes faster with a much lower cost, choose their own arbitrators whom they believe to be neutral, ensure that the arbitral award is enforceable in other relevant countries, choose applicable laws, etc. Compared to strike and lockout, this approach is much better for the overall economy and for business operations. Another benefit of labor arbitration, from the author's viewpoint, includes the reduction of economic losses arising from strike or lockout, and also the deviation part of the court pending cases to the alternative resolution proceeding, thus saving time and cost for the parties in the end. The empirical evidence of the former premise could be seen in Table 7 that is, for convenience, inserted again below as Table 11.

Table 11. Labor Disputes, Strikes and Lockouts in Thailand 2018–2020

Year	Labor Disputes			Strikes			Lockouts		
	Times	Employees Involved	Workplaces Involved	Times	Employees Involved	Total Working Days Lost	Times	Employees Involved	Total Working Days Lost
2018	98	67,572	89	-	-	-	2	58	2,668
2019	73	70,991	69	2	596	24,990	5	931	27,087
2020	85	56,647	75	1	56	1,624	-	-	-

Source: Labor Standard Development Bureau, Department of Labor Protection and Welfare

The first piece of empirical evidence showing the benefits of labor arbitration in reducing economic losses is the measurement of total working days lost. According to statistics from the Labor Standard Development Bureau, Department of Labor Protection and Welfare regarding labor disputes, strikes and lockouts in Thailand from 2018 to 2020, there were 98, 73 and 85 labor disputes in 2018, 2019 and 2020 respectively, involving around 56,000–70,000 employees in total. In 2019, strikes and lockouts resulted in a total of 24,990 and 27,087 working days lost respectively. Using more compromising measures, e.g., labor arbitration, will substantially assist to reduce the economic damage incurred by lost working days. This approach could also promote a better understanding between employers and employees, and help to maintain a good relationship after proceedings have ended.

A second piece of empirical evidence that shows the benefits of labor arbitration in deviating national pending court cases toward more friendly approaches to dispute settlement, is the percentage of annual pending cases in proportion to the number of cases that are arbitrated.

Table 12. Labor and Employment Case Statistic in Thailand during 2018–2020

Year	Cases pending from the previous year	New Cases	Cases Completed	Cases pending to the next fiscal year
2018	4,395	20,296	20,942	3,749
2019	3,749	11,989	12,919	2,819
2020	2,819	16,561	13,854	5,526

Source: Office of the Judiciary

According to case statistics by the Office of the Judiciary, there were around 2,819 and 5,526 pending cases in 2019 and 2020 respectively. Cases regarding collective bargaining agreements accounted for around 6.35 percent (1,427 cases in total) in 2019 and accounted for around 5.75 percent (1,965 cases in total) in 2020 among cases filed to the labor court. Collective bargaining agreement cases account for around 50 percent of the total pending cases in Thailand's labor court each year, and thus if labor arbitration is promoted, we can reduce the number of pending cases by around 50 percent, benefiting all parties through the use of more friendly settlement approaches that save time and cost.

Regarding employment arbitration, on the other hand, it is clear that the doctrines laid down by Thailand's Supreme Court of Justice allow employment arbitration agreements with employers. The Supreme Court doctrines ensure that employment dispute settlement agreements are enforceable (Thailand's Supreme Court Decision No. 1958/2548); however, this generally covers only disputes arising from rights under employment contracts (Thailand's Supreme Court Decision No. 3530/2549, Thailand's Supreme Court Decision No. 7723/2557, and Thailand's Supreme Court Decision No. 3535/2560) and does not include disputes arising from rights occurring upon the termination of a contract. The author believes that allowing employment arbitration will create more flexibility for parties to arbitrate cases, especially those occurring in the new working models. However, the arbitrator tribunal shall consider criteria specified in the chosen national law as a minimum standard for issuing an award. If the arbitration tribunal issues an award that does not meet the minimum standard specified in the law, that part of the award shall be considered contrary to public order, pursuant to section 40 (2) (b) of Thailand's Arbitration Act B.E. 2545 (2002), and thus the court shall set aside the arbitral award. This proceeding will support dispute resolution and save more time and cost, especially in disputes arising from the new working models.

V. CONCLUDING REMARKS

The Covid-19 pandemic has transformed working models from a purely on-site working model where all executives and employees work in one or few principal offices, to hybrid remote or fully remote models. The new working models enable employers to access talent elsewhere without geographical limitations, with the advantages of more productivity and lower overall cost. Hybrid or fully remote working models, however, could create legal complications, and the traditional, available approaches may not be able to resolve disputes arising in these new models. For example, lockouts or strikes may create immense working day losses and could potentially cause harm to the overall economy. Litigation also has limitations in resolving issues when a dispute involves several jurisdictions. While businesses can hire employees without geographical restrictions under the new models, gaining access to a cheaper workforce and increasing productivity, disputes may become more complicated. This article discusses two possible approaches, namely labor arbitration and employment arbitration.

Concerning labor disputes, Thailand's Labor Relations Act B.E. 2518 (1975) employs mixed approaches including mediation, conciliation, voluntary arbitration, and compulsory arbitration. The data from the past years, however, shows that parties are more likely to choose strikes or lockouts over other means of resolving disputes in Thailand, and this nevertheless results in economic loss, in particular a high volume of lost working days and a large number of employees involved. Therefore, the key question is how to promote the current available approach—labor arbitration—in labor dispute resolution.

From the author's viewpoint, Thailand could take the first step by promoting compulsory labor arbitration, which is the approach available under Thailand's Labor Relations Act B.E. 2518 (1975), and also could promote the number of arbitrations filed by focusing on the group of employees at an executive level, as well as foreign employees. This is due to the fact that arbitral proceedings are confidential and work according to the "principle of party autonomy." Thus, parties can freely choose the applicable laws, the language used, etc., which will provide more flexibility to employees in the target groups. After a successful first phase of implementation, the use of labor arbitration could thus be extended to other labor disputes. Class arbitration, a form of multiparty dispute resolution, will be another essential approach to this end, allowing employees to file their cases together and share the overall cost of the arbitration proceedings. This will make labor arbitration more attractive as the parties can end their disputes faster with a much lower cost, choose their own arbitrators whom they believe to be neutral, ensure that the arbitral award is enforceable in other relevant countries, and choose the applicable laws.

Regarding employment arbitration, it is clear that the doctrines laid down by Thailand's Supreme Court of Justice allow employment arbitration agreements with employers. The doctrines state that employment dispute settlement agreements are enforceable; however, this generally covers only disputes arising from rights under an

employment contract, and does not include any disputes arising from rights occurring after the termination of a contract, e.g., claims of unfair dismissal.

The author believes that allowing employment arbitration will create more flexibility to arbitrate the cases, especially those occurring in the new working model. If the parties choose Thai law to be applicable, the arbitration tribunal shall consider criteria specified in the Labor Protection Act as a minimum standard for issuing an award. If the arbitrator tribunal issues an award that does not meet the minimum standard specified by the law, that part of the award shall be considered contrary to public order, pursuant to section 40 (2) (b) of Thailand's Arbitration Act B.E. 2545 (2002), and thus the court shall set aside the arbitral award. This procedure will support dispute resolution and save time and cost during the proceedings, especially in disputes arising from the new working models.

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