

## TABLE OF CONTENTS

- Commercial Arbitration in Cambodia

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### Introduction

Since 1994, Cambodia has been considered as one of the most appealing destinations for foreign investment. This is in part because of the investment incentives provided by the government such as, but not limited to: tax holidays, import and export duty exemptions for Qualified Investment Projects (QIP), pro-business laws, low-cost labor and a significant improvement of infrastructure. The increased foreign investments have resulted in a stable macroeconomic growth rate of 7% per annum. This rate has held steady for the past 10 years. The economic growth means increased business transactions. But, sometimes disputes go with these transactions. Because the dispute resolution in the court system is time-consuming and most of the time not satisfactory to the parties, an alternative method of resolution is another choice. To respond to this challenge the government of Cambodia has adopted the Law on Commercial Arbitration and established an independent National Commercial Arbitration Center (NCAC) to provide people with an alternative venue for the resolution of their disputes. In addition, Cambodia was ratified to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) under which foreign arbitral awards can be enforced in Cambodia.

This newsletter will highlight some key reasons for choosing a commercial arbitration, arbitral proceeding of the National Arbitration Center (NCAC) and how to enforce an arbitral award in Cambodia.

### Why commercial arbitration?

Arbitration is an alternative dispute resolution (ADR) forum outside of the court system. Parties can resort to an arbitral forum by making an arbitration agreement before or after the dispute arises. An arbitration agreement results from

a mutual consent of the parties. They agree to voluntarily submit their disputes to an arbitral tribunal. An arbitral arrangement can be ad hoc or institutional. An institutional arbitration is provided by a private or quasi-private entity which provides arbitration services to the parties in dispute.

For example, in Cambodia there are two arbitration institutions: the Arbitration Council for Labor Disputes and the National Commercial Arbitration Center for commercial disputes. The Arbitration Council for Labor Disputes is a quasi-private institution because it was established by the government but managed by a Council composed of independent private individuals. The NCAC is a private institution because it is established and managed by a governing board of private individuals. While the Arbitration Council hears cases arising from collective disputes between employers and employees, the NCAC hears only disputes arising from the performance of contractual obligations.

In contrast with the court, where the court has complete control over the procedure, commercial arbitration gives the parties the choice of how proceedings should be conducted.

### The National Arbitration Center of Cambodia (NCAC)

In Cambodia, commercial arbitration can be held ad-hoc or by an arbitral institution namely the National Arbitration Center of Cambodia (NCAC). If the parties wish to submit their disputes to the NCAC, they must obey the arbitral rules of the NCAC. For more information about NCAC and its Rules, please access <http://www.ncac.org.kh/>.

Established by the Law on Commercial Arbitration dated March 2016 and the Sub Decree No.124 on the Organisation and Functioning of the National Commercial Arbitration Center dated of August 2009, the NAC, which was officially launched in 2013, is an independent institution which arbitrates commercial disputes and provides training and admission of arbitrators. Since its official launching, the Center has accepted three cases.

### NCAC Arbitration Rules and Internal Rules

In July 2014, the NCAC adopted its arbitration



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BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

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We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

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rules which are substantively based on the Law on Commercial Arbitration, the UNCITRAL Model Law and rules of other well-known international arbitration centers. The NCAC rules are flexible and allow the parties to have significant control over arbitration proceedings. The key features of the NCAC rules are briefly described below:

- The parties can choose the laws of any jurisdiction which are applicable to the dispute.
- They can choose the language of the proceedings. Furthermore, an arbitral award or order by the NCAC can be issued in English or Khmer.
- The parties can freely choose their representatives in arbitration proceedings.
- The parties are free to decide the number of arbitrators, so long as it is an odd number. If the parties did not determine the number of arbitrators in their arbitration agreement, the number of arbitrators shall be three, two of which are selected by the parties and a third one is selected by the party-appointed arbitrators. The arbitrators which are affiliated with the NCAC must meet the qualification criteria set out in the NCAC rules. The arbitrators are bound by their code of ethics.
- Arbitrators have power to grant interim or conservatory relief.
- Arbitral awards must be in writing, signed by the arbitrators, reasoned and allocate cost of arbitration among the parties.
- Following the closure of the proceeding, the arbitral tribunal must submit the draft of the award to the General Secretariat of the NCAC within 45 days for scrutiny and approval on the form of the award.

- Ex parte communication is prohibited.

According to the Law on Commercial Arbitration and the NCAC Rules, a valid arbitration clause bars access to the courts. The court must refer a case to the arbitral tribunal when an action is brought to the court in a matter which is subject to an arbitration agreement and when a party requests for the case to be referred to arbitration. When an action is brought before the court while the arbitral proceedings begin or continue, the court must refer that case to the arbitral tribunal pending the outcome of the arbitration.

### Setting aside the arbitral awards

An arbitral award can be set aside by the Court of Appeal and it can also be appealable to the Supreme Court. The request for setting aside the arbitral findings is only possible within 30 days after the date of receiving the award. A party can ask the court to set aside the arbitral award if it can prove that the arbitral tribunal did not properly serve notice of the appointment of the arbitrators, on the arbitral proceedings or if it cannot present

its case in an effective manner. Another ground for setting aside the arbitral finding is that the tribunal is not constituted in accordance with the arbitration agreement or not consistent with the Law on Commercial Arbitration. Also, the court can set aside an arbitral award if it finds that the subject matter of the dispute cannot be arbitrated under the laws of Cambodia or the arbitration is against public policy.

### Enforcement of domestic awards in Cambodia

Parties in the arbitration can voluntarily implement the arbitral award between themselves by following the verdict of the award. However, if one party does not obey the award and refuses to settle the claims, the party who wins the arbitral award can file an application with the court requesting it to issue an "order to enforce the arbitral award" (deika samreich anuwat).<sup>1</sup>

For a domestic award, the court which issues this order is the court of first instance. This court must have geographical jurisdiction over the party or its property which is subject to the execution of the award. This is called a compulsory execution under the Cambodian Civil Code. The winning party must follow the procedure of compulsory execution in order to obtain the settlement of its claims. The court must not look into the merits of the award. The documents which should accompany the application include an original and authenticated copy of the award, a copy of an original and authenticated copy of the contract.

### Enforcement of a foreign arbitral award in Cambodia

Cambodia is a party to the United Nations Convention of Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). All parties of the New York Convention, which are 149 member countries at the moment, must recognize and enforce arbitral awards issued in other member states. Thus, foreign arbitral awards can be enforced in Cambodia. The New York Convention imposes the signatory states to establish the enforcement mechanisms of foreign arbitral awards. In Cambodia, the motion seeking execution of a foreign arbitral award shall be submitted to the court of appeals. The opposing party has 60 days to object to the recognition and enforcement of the award by appealing to the Supreme Court. The decision of the Supreme Court is final and binding.

The winning party can apply for the recognition and, at the same time, the enforcement of the arbitral award. The party must request the "order to enforce the arbitral award" from the court of appeals by following the same procedure as that of the domestic award.<sup>2</sup>

1. Article 353, Code of Civil Procedure

2. Article 353.6, Code of Civil Procedure

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## Conclusion

The recent development of the NCAC as institutional arbitration entity, the adoption of the NCAC rules, the adoption of other related laws and regulations all contribute to the significant improvement to the resolution of commercial disputes. While the commercial arbitration institutions lack enforcement powers such as ordering police actions, seizure of assets or sale of assets etc, parties can still resort to such powers from the courts without spending much resource and time to finally resolve their cases

Cambodia is continuing its economic growth in the upcoming years and the availability of commercial arbitration is a fundamental component of this long-term growth. With pro-business laws and regulations and reliable arbitration institutions, investors will be confident that they are doing business in a favorable and protected business environment.