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Commercial Arbitration - An Important Step for the Cambodian Investor

THE FORTHCOMING NATIONAL ARBITRATION CENTER

Cambodia's first National Arbitration Center will be established with the aim of resolving business disputes and enhancing the confidence of private sector investors. The International Finance Corporation, a member of the World Bank Group, and Cambodia's Ministry of Commerce signed a Memorandum of Understanding (MOU) in August, 2009 to implement a three-year project to set up a National Arbitration Center.

The National Arbitration Center will be the first commercial arbitration body in Cambodia offering the business community an alternative commercial dispute resolution mechanism to the courts. In theory, it will enable businesses to resolve their disputes quickly, inexpensively, fairly, and with certainty. It thus promises to enhance the private sector's comfort level when engaging in business transactions.

As a form of Alternative Dispute Resolution (ADR), Commercial Arbitration (CA) could act as a catapult for economic growth and creation of wealth in Cambodia. It could do this in such a way as to advertise an enhanced and more reliable business climate, crucial to attracting foreign investment. Predictability is also a valuable commodity given systemic issues in the judiciary. Unlike the court process, CA gives both parties in a dispute the flexibility to choose both the arbitrator as well as the rule that will be followed in deciding the case. Essentially, as the Cambodian economy grows and with it the number of commercial

transactions, a streamlined dispute resolution mechanism gives the private sector more comfort to engage in business transactions. These features of a more enticing economic landscape in which to invest are echoed in the legislation itself:

"The purpose of this law is to facilitate the impartial and prompt resolution of commercial disputes in accordance with the wishes of the parties, to safeguard the legal rights and interests of the parties, and to promote the sound development of the economy."

-Article 1, Commercial Arbitration Law of Cambodia

THE POSITIVE EXPERIENCE OF THE ARBITRATION COUNCIL

The Arbitration Council is an independent, national institution with quasi-judicial authority derived from the Labor Law of Cambodia. Established in 2003 with the support of the Ministry of Labor, employers and unions, the Arbitration Council is empowered to assist parties in resolving collective labor disputes in Cambodia.

At the Arbitration Council, labor law disputes, over wages or termination for example, are resolved. Although the decisions are non-binding, with a professional staff, published decisions, and a good track record, the Arbitration Council has developed a solid reputation for resolving labor disputes in a relatively fair and open manner.

BENEFITS OF COMMERCIAL ARBITRATION

Because arbitration does not require the services of lawyers or experts it may lower the potential costs of disputes. Taking some disputes away from judiciary should also have the effect of reducing the burden on an already overstretched court system.

As a point of comparison with the Arbitration Council, the formal court process in Cambodia is relatively expensive and slow. It takes a court on average 401 days to enforce a contract in Cambodia, while in Singapore it takes only 69 days. Court and attorney's fees can represent approximately 121.3% of the amount in dispute. Clearly, this finding indicates that for most businesses going to court to enforce a contract, it just does not make business



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ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

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

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

sense.

For these reasons, commercial contracts often provide for arbitration outside of Cambodia with, for example: The International Chamber of Commerce (ICC) or the Singapore International Arbitration Centre (SIAC). At the ICC, amicable dispute resolution offers a framework for the settlement of disputes with the assistance of a neutral. Parties choose the settlement technique, such as negotiation or mini-trial. Of course, Cambodia is ill-equipped to handle arbitration cases in the manner that Singapore does at this stage. That said, however, Singapore's model is a good example of some of the best characteristics of CA and how the best results are reached.

Cambodia enacted arbitration legislation based on UNCITRAL's Model Law on International Commercial Arbitration of 1985. This came into effect in 2006. Cambodia is also a party to the New York Convention on Recognition of Foreign Arbitral Awards and has adopted domestic legislation implementing the terms of the Convention (also included in the Civil Procedure Code). Cambodian arbitration awards are enforceable in over 140 countries worldwide. Cambodia is also a party to the International Chamber of Commerce (ICC) International Court of Arbitration. ICC arbitration is possible only if there is an agreement between the parties providing for it.

SHORTCOMINGS OF COMMERCIAL ARBITRATION

There are limitations which co-exist with the benefits of CA. Most important is that it relies on the disputing parties' willingness to resolve their issues and CA has shortcomings that cannot resolve all disagreements.

Although arbitration allows for an arbitrator to decide a dispute, it relies upon parties to implement the decision themselves. If one party refuses to implement a decision it can be enforced, but this requires a decision from a court. So operating in a country where the courts are unreliable or slow can undermine the effectiveness of CA.

CONCLUSION

Finally, through methods such as arbitration, people's access to justice is improved. In Cambodia, the court system is currently overwhelmed by a high caseload. The establishment of a National Arbitration Centre will hopefully contribute to the resolution of business disputes outside the court process thereby reducing the burden on the already over-stretched court system and also enhancing and promoting investor confidence in Cambodia. In sum, what is at stake is a potential

confidence booster: to the business enterprise of foreign investors, the Cambodian economy on a wide-reaching scale and ultimately the improved welfare of the Cambodian people.

Recent Additions to Our Team

Mr. Chris Toms

LEGAL COUNSEL

Mr. Chris Toms is legal counsel to BNG Legal. Chris holds a Graduate Diploma in Legal Practice from the College of Law of New South Wales and a Masters of International Law (MIL) from the University of Sydney. While undertaking his Graduate Diploma in Legal Practice, Chris focused his attention on Private International Law and was a senior consultant for a corporate advisory firm in Sydney. Chris has also spent time working in the field of Human Rights both remotely from Sydney and on the ground in Cambodia for the Cambodian Center for Human Rights. He is admitted to the Supreme Court of New South Wales, Australia and is a member of the Law Society of NSW.

Prior to his graduate studies, Chris received a Bachelor of Laws in International Law (LLB) and a Bachelor of Arts in European Studies (BA) from the University of Sydney. He worked at the Consulate General of France in the Press Service during his LLB. He also gained exposure to a number of diverse publications and jurisdictions while working as a legal publishing editor at LexisNexis.

His practice focuses on commercial law and alternative dispute resolution. Chris is fluent in English and French, and proficient in German and Dutch.

Mr. Yangny Sovearcha

ATTORNEY TRAINEE

Mr. Yangny SOVEARCHA is an attorney trainee in the Litigation Department of BNG Legal. Sovearcha is a member of the Cambodian Bar Association, and holds a Certificate of Aptitude in the Legal Profession, issued by the Lawyer Training Center of the Bar Association of the Kingdom of Cambodia.

Sovearcha holds a Bachelor's Degree in Law from the Royal University of Law and Economics in Phnom Penh, and is currently completing his Master's Degree in Private Law at the Royal

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals will be writing a blog discussing recent developments in the legal landscape. Several of our recent posts cover:

- Overtime Rules under the Labor Law
- Pitfalls to Avoid in Setting Up a Business
- Foreign Corrupt Practices Act
- Special Economic Zones
- Changes to Internet Structure

University of Law and Economics.

Prior to joining BNG Legal, Sovearcha worked as the Merchandising Team Leader with CAM GSM Co., Ltd. Sovearcha has experience in civil and penal laws, court procedure, alternative dispute resolution, contract drafting, and land law. In the Litigation Department at BNG Legal, he specializes in civil and criminal cases, drafting contracts, and land law.

Sovearcha speaks Khmer and English.

Legal Updates

A selection of important laws and regulations affecting businesses enacted since the publication of our previous newsletter.

Prakas No. 131 (MoAFF) dated April 08, 2010, on the Procedure for Inspecting the Sanitation of Slaughterhouses, Animal Meat and Meat Products Produced from Animals (L&R/ Age/2010/Khm) (Royal Gazette, Year 10, No.31, April 27, 2010)

This Prakas determines the procedure for inspecting the sanitation of slaughterhouses, animal meat, and meat products produced from animals, to ensure their quality and safety. All legal and natural persons who are licensed to own such businesses must fulfill the requirements stipulated in Article 2 of the Prakas. Licensed veterinarians will be assigned to inspect the activities of legal and natural persons in this business before and after the slaughter of animals to assure the quality and safety of the meat.

Royal Kram NS/RKM/0410/004 dated April 04, 2010, on the Promulgation of the Anti-corruption Law (L&R/ Crp/2010/Khm) (Royal Gazette, Year 10, No. 29, April 19, 2010)

This law aims to promote the effectiveness of all forms of service and strengthening Good Governance and Rule of Law. It aims to maintain integrity and justice of the country, which is fundamental for social development and poverty reduction. This law also aims to combat all forms of corruption in both the public and private sectors throughout the Kingdom of Cambodia.

Efforts to combat corruption will be made through education, prevention and enforcement with support from the public and international cooperation.

To ensure the enforcement of this law, two institutions for anti-corruption were established by this law:

- National Council for Anti-Corruption: this Council was established to provide guidance and recommendation on anti-corruption work and will make a semester report and annual report to the Royal Government. The National Council for Anti-Corruption will be established with 11 members appointed by the Royal Decree with 5 year renewable terms.
- Anti-Corruption Unit: this unit is an independent body. It was established to guarantee the application of the laws, orders, regulations and provisions related to corruption offenses. This Unit was granted the right to establish offices in the cities and provinces within the Kingdom of Cambodia.
- The law mentions the declaration of assets and debts; persons required to declare assets and debts are as follows:
 - The members of the Senate, the National Assembly, and the Royal Government of Cambodia;
 - Appointed public officials by a specific mandate;
 - Members of the National Council for Anti-Corruption, Chairman, Vice-chairman, and all officials of the Anti-Corruption Unit;
 - Civil servants, military personnel, national police, and other public servants appointed by Royal Decree or Sub-Decree;
 - Other officials appointed by Prakas and decided by the Anti-Corruption Unit to be added to the list of declaration on assets and debts, after consultation with the National Council for Anti-Corruption;
- Trial judges, prosecutors, notary public, court clerks and bailiffs; and
- Leaders of civil societies.
- The declaration must be made within 2 year terms no later than the 31st of January.
- Corruption offenses include existing offenses as described in the Criminal Code and offenses as mentioned in this Anti-Corruption Law.

Prakas No. 099 (MOAFF), dated March 10, 2010, on Imposing the Method of Using Good Agriculture Practices for Fruit and Vegetable Production (L&R/ Agr/ 2010/ Khm) (Royal Gazette, Year 10, No.41, June 04, 2010)

This Prakas implements Good Agriculture Practices (GAP) in fruit and vegetable

LEGISLATION TRACKER

cambodianlaw.wordpress.com/legislation-tracker/

Cambodia is rapidly filling in the gaps in its legal system, passing important legislation all the time. To keep abreast of these developments, this tracker will monitor drafts as they progress through the legislative process. Only laws and the most important sub-decrees and regulations will be reported.

BNGLaw

www.bnglaw.net

BNGLaw is a legal database website developed by the expertise of the Legal Research and Documentation Department (LRD) of BNG Legal. It is a complete database containing the existing laws and regulations of Cambodia from 1920 to the present, as well as international instruments applied in the Kingdom of Cambodia. LRD continuously updates the information to stay current with the law. This website was created to provide wider access to Cambodian law and to serve as a global resource so that all may have a deeper understanding of the legal system in Cambodia.

production to promote food safety, prevent negative environmental impacts, protect consumers' and farmers' health, promote the quality of crops, and facilitate fruit and vegetable commerce in the market. Natural and legal persons who plant or commercialize fruits and vegetables will be educated so they are able to implement and respect the Prakas effectively. The rules of producing fruits and vegetables are determined in the Annex of the Prakas.

Prakas No. 546 (MIME), dated July 11, 2010 on the Implementation Rules for Inspecting Factory-Handicraft (L&R/IME/2010/Khm) (Royal Gazette, Year 10, No. 56, July 31, 2010)

This Prakas aims to strengthen product safety through factory and handicraft inspection. The Prakas sets forth the rules and regulations by which the Ministry of Industry, Mines and Energy inspect factories.

Authorized officers must inform factories and handicrafts' owners 10 days before inspection, and request them prepare any documents for the inspection. In certain situations, prior notice is not required

During the inspection, inspectors must check everything including documents, recorded data and the quality and safety management system. Inspectors must also collect samples for further tests if necessary.