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Commercial Arbitration in Cambodia

Commercial arbitration: Legislation and statutory body

Commercial arbitration is a means by which disputes arising out of trade and commerce can be resolved in accordance with the voluntary agreement of parties through a process other than litigation at a court of competent jurisdiction. In Cambodia, dispute resolution through the court system can be an expensive and time-consuming affair. This has often resulted in international businesses choosing to forgo the litigation process and writing off losses. The Royal Government of Cambodia, in accordance with its WTO accession commitments and its constitutional mandate of promoting rule of law, introduced and passed the Commercial Arbitration Law in 2006. This legislation establishes a regulatory framework for the private arbitration of business disputes in accordance with international practices.

The Commercial Arbitration Law promulgated the creation of a National Arbitration Center with the help and guidance of the Ministry of Commerce. Subsequently, a sub-decree was passed by the Council of Ministers in 2009 on the organization and functioning of this body. The Center was formed in the year 2010 and has recently announced the election of its executive board members. The Center will become an independent statutory body upon the nomination of its office-bearers. The body will have a non-exclusive but prominent role in promoting the process of arbitration, training of arbitrators and providing commercial arbitration services in the country.

Statutes and International Treaties

As of February 2013, only collective labour disputes are subject to arbitration in the Kingdom. The Arbitration Council was similarly created under the auspices of the Labour Law of 1997. In July 2001, Cambodia adopted the “Law on the Approval and Implementation of the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards” and in March 2006, the “Law on Commercial Arbitration”, as referred above, was passed in conformity with the UNCITRAL Model Law.

In principle, parties to an agreement, whether foreign or resident in the Kingdom, reserve the flexibility to determine the terms and conditions in accordance with their requirements. However there are certain exceptions where only Cambodian courts retain original and appellate jurisdiction. The Law on Commercial Arbitration applies to both domestic and international arbitration allowing parties to choose foreign arbitration institutions. The Law contains detailed and substantive requirements for procedures to be followed during arbitration proceedings. The Labour Law is applicable for domestic arbitration resulting from labour disputes.

Cambodia is a party to the United Nations Convention of Recognition and Enforcement of Foreign Arbitral Awards in 1958 which came into force through the adoption of the Law on Approval and Implementation of the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards.

The Cambodian Code of Civil Procedure does not apply to arbitration, however, when an arbitral award comes into effect, the execution of the awards must comply with the provisions of the Code of Civil Procedure.

Arbitral process

There are two major arbitration institutions in Cambodia: (i) Arbitration Council, for the resolution of collective labour disputes and (ii) the National Arbitration Center which is in the process of activation. The Rules of the National Arbitration Center have not yet been drafted, however, members of the Arbitration Council are subject to its professional guidelines.



A No 64, St 111
PO Box 172
Phnom Penh
Cambodia

T +855 23 217 510
+855 23 212 740

F +855 23 212 840

E info@bnglegal.com

W www.bnglegal.com

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.

CAMBODIAN LAW BLOG

cambodianlaw.wordpress.com

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

The provisions of the Arbitration Law allow parties to choose their preferred location and institution for arbitration based on their contractual agreement, however as per Article 18 of the Commercial Arbitration Law, the number of arbitrators must be an odd number. In case the parties fail to decide on the number of arbitrators, the same article requires three arbitrators. There are no restrictions as to the choice of arbitration institutions.

Furthermore, there are no restrictions as to the parties' choice of representation in the arbitration proceedings. The parties are free to choose their representatives (Article 26) which denotes that the representatives in an arbitral proceeding may not have to be qualified legal professionals.

Arbitrators have the power to grant interim relief unless otherwise agreed upon by the parties.

Cambodian courts can intervene in the arbitral proceedings under limited circumstances described below:

- * when there is no arbitral agreement or when it becomes null and void;
- * when the parties fail to appoint the arbitrator(s);
- * when there is a motion to challenge the arbitrator(s);
- * when there is a conflict of interest of the arbitrator(s);
- * when there is a request from the arbitrators, for instance, when they require the collection and production of evidence.

Additionally, arbitral awards may be rescinded in the event that the recognition of an arbitral award would be against public policy or when the subject matter of arbitration is not capable of settlement. An arbitral award may be appealed against in case:

- * the agreement is invalid;
- * there is insufficient notice of the appointment of arbitrators or the initiation of the proceedings;
- * the award deals with a dispute not stipulated by or not falling within the ambit of the agreement;
- * the appointment process of the arbitrators was not done in accordance with the mutually agreed terms of the parties.

Enforcement

A valid arbitration clause, in the context of law, can bar access to courts, however arbitrating parties have to rely on the judiciary to implement the arbitral award in the event when one of the parties refuses to comply.

An arbitral award is binding and can be executed in the country in which it was made. For the execution and recognition of an arbitral award,

the aggrieved party must submit a motion to the relevant court having jurisdiction along with supporting documentation, such as a duly authenticated original arbitration award or a duly certified copy or the original arbitration agreement or a duly certified copy. In case of enforcement of a domestic arbitration agreement, a motion must be made with the Court of First Instance. The Court of Appeal shall have jurisdiction over a motion seeking execution of a foreign arbitral award.

Concluding Commentary

In a country where the judicial system is overstretched by existing and ongoing matters in courts, commercial arbitration provides a speedy, reliable, private and cost-effective manner of dispute resolution. The potential cost of dispute resolution through arbitral proceedings is often lower than litigation process through the court system and makes more business sense. Several commercial agreements concluded in Cambodia refer dispute resolution to foreign arbitration institutions such as the Singapore International Arbitration Center (SIAC), and since Cambodia is a party to the New York Convention, it is obligated to honour foreign arbitral awards.

However, one of the main limitations of commercial arbitration in Cambodia is that in the case of non-cooperation by parties, the aggrieved parties have to rely upon the existing court system for the enforcement of the arbitral award which lends uncertainty to the process. The National Arbitration Center has been established by the Royal Government with the intent to allay fears regarding judicial uncertainty and bringing more predictability to the markets.

Additions to our team

MS. SOKCHENG OEUNG

Legal Consultant

Ms. Sokcheng OEUNG is a legal consultant at BNG Legal. Sokcheng holds double Bachelor Degrees of Law from Lumière Lyon 2 University in France and from Royal University of Law and Economics in Cambodia. Sponsored by the Eiffel excellence scholarship program, she pursued the two-year Master Degree of Notary law at Jean Moulin Lyon 3 University in France, which is also the first year Degree program of French Postgraduate Diploma of Notary Law (diplôme supérieur de notariat).

Sokcheng previously worked as internship at Notary office of Didier Tholon and Jean-Michel Mathieu in France. Her practice included a variety of matters pertaining to property, sales

and purchase agreements, matrimonial regimes, divorces, succession issues, taxation and asset management strategies.

At BNG, her practice areas cover civil and commercial laws.

Sokcheng speaks Khmer, English, French and Chinese.

MS. SOPHEA SIN

Legal Consultant

Ms. Sophea SIN is a legal consultant at BNG Legal. Sophea holds a Master in Business Law specialized in Corporate Social Responsibility and a Bachelor in Business Law from University Lumière Lyon 2, France, as well as a Bachelor in Comparative Law from the Royal University of Laws and Economics.

In addition to her solid academic background, Sophea also worked as Professional Legal Intern to the Office of Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia and as translator to The Documentation Center of Cambodia. Sophea also used to work as a legal advisor for Mekong Market Group.

At BNG, Sophea practices mainly in the area of contract law, labor law and corporate law.

Sophea speaks Khmer, English, French and conversant in Mandarin

LEGAL UPDATES

Prakas No. 970 (MEF) dated December 27, 2012 on Provision of Unit's Public Services under Ministry of Economic and Finance.

The Ministry of Economy and Finance (MEF) is duly authorized by this Prakas to collect the income from the public service fees for the advantages of the national budgets. Fees charge and its descriptions such as timeframe and validation of the public services provided by the Ministry have been clearly listed in the annex of the Prakas. The Ministry shall publicly post at their service places all their standard services including fee table, documentation forms, and the service procedures. The Ministry is requested to arrange a place where public can drop their complains regarding the over-charged fee or the delay in providing the public services.

Joint Prakas No. 985 (MEF) dated December 28, 2012 on Provision of Public Services of the Ministry of Commerce.

The Ministry of Commerce is duly authorized by this Prakas to collect the income from the public service fees for the advantages

of the national budgets. Fees charge and its descriptions such as timeframe and validation of the public services provided by the Ministry have been clearly listed in the annex of the Prakas. The Ministry shall publicly post at their service places all their standard services including fee table, documentation forms, and the service procedures. The Ministry is requested to arrange a place where public can drop their complains regarding the over-charged fee or the delay in providing the public services.

Joint Prakas No. 991 (MEF) dated December 28, 2012 on Provision of Public Services of the Council for the Development of Cambodia.

The Council for the Development of Cambodia (CDC) is duly authorized by this Prakas to collect the income from the public service fees for the advantages of the national budget. Fees charge and its descriptions such as timeframe and validation of the public services provided by the CDC have been clearly listed in the annex of the Prakas. The CDC shall publicly post at their service places all their standard services including fee table, documentation forms, and the service procedures. The CDC is requested to arrange a place where public can drop their complains regarding the over-charged fee or the delay in providing the public services.

Joint Prakas No. 991 (MEF) dated December 28, 2012 on Provision of Public Services of the Council for the Development of Cambodia.

The Council for the Development of Cambodia (CDC) is duly authorized by this Prakas to collect the income from the public service fees for the advantages of the national budget. Fees charge and its descriptions such as timeframe and validation of the public services provided by the CDC have been clearly listed in the annex of the Prakas. The CDC shall publicly post at their service places all their standard services including fee table, documentation forms, and the service procedures. The CDC is requested to arrange a place where public can drop their complains regarding the over-charged fee or the delay in providing the public services.

Joint Prakas No. (MEF) dated December 28, 2012 on Provision of Public Services of the Ministry of Tourism.

The Ministry of Tourism is duly authorized by this Prakas to collect the income from profit receiving from the public service fees in favor of the national budgets. Fees charge and its descriptions such as timeframe and validation of the public services provided by the Ministry have been clearly listed in the annex of the Prakas. The Ministry shall publicly

post at their service places all their standard services including fee table, documentation forms, and the service procedures. The Ministry is requested to arrange a place where public can drop their complains regarding the over-charged fee or the delay in providing the public services.

Prakas No. 222 (MOC) dated October 30, 2012 on Registration of Name of Enterprises, Companies, Associations and Protection.

This Prakas is to require the enterprises, associations or organizations to conduct name search with Department of Intellectual Property and Commercial Registration (DIPCR) at the Ministry of Commerce before its activities operation registration with relevant competent authorities.

The purpose of this procedure is to protect well known trade name and avoid infringement of the registered trade name. The registrability search process is subject to charge administrative fee through determination of Prakas between Ministry of Commerce and Ministry of Economy and Finance.

DIPCR shall notice in writing to applicant within three days after completed application about eligibility of business registration. The notification of business registration eligibility is valid only seven days after the signing date, and it can be extended with reasonable ground. On the other hand, enterprise and companies shall request DIPCR to protect their trade name in form as service mark.

Prakas No. B 7.012.140 (NBC) dated September 13, 2012 on Maintenance of Reserve Requirement Against Commercial Banks' Deposits and Borrowings. (L&R/Ban/Khm& Eng/2012) (Royal Gazette, Year 12, No. 75, dated October 12, 2012).

On September 13, 2012, the National Bank of Cambodia (NBC) issued a regulation that requires commercial banks to maintain reserve requirements against deposits and borrowings at a daily average balance equal to 8% (eight percent) in Riel and 12.5% (twelve point five percent) in foreign currencies with the NBC. The NBC will provide interest fees as follow:

- Reserve requirement in Riel equal to 8% (eight percent) will bear interest at 0% (zero percent).
- For reserve requirement in foreign currencies equal to 12.5% (twelve point five percent): 8% (eight percent) will bear interest at 0% (zero percent), while the remaining 4.5% (four point five percent) will bear interest at the rate established under the Prakas on Term Deposit Interest Rate Determination, Deposit on Reserve Requirement, and Banks's

Gurantee in US Dollars Currencies.

The Regulation No. B7.09-020 dated January 26, 2009, on the maintenance of reserve requirement against commercial banks' deposits and borrowings is repealed.