



Royal University of Law and Economics

Final Report on:

**The Process of the National
Commercial Arbitration
Center in Cambodia**

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ABSTRACT

The establishment of the National Commercial Arbitration Center (NCAC) in Cambodia is created in purpose of resolving commercial disputes arise within Cambodia and beyond. The public understanding of the commercial arbitration, an alternative dispute resolution which brought by the NCAC is still limited. This book could be a useful resource for those who aim to learn more about the process of the arbitration, specifically, the process at the NCAC. In this dissertation, there are four key chapters with some important sub-chapters. The beginning chapter is a general description of the background of the National Commercial Arbitration Center in Cambodia which including the establishment, importance, scope, and the applicable law of the center. The next chapter is the outline of the process of how the center handles the case which starts with the commencement of the arbitral proceeding, arbitration hearing process, till forming the arbitral award. The stage of the recognition and enforcement of the arbitral award is stated in chapter three of this book. The final chapter analyze how reliable the center is by comparing the NCAC to some other centers in ASEAN region, especially the Singapore International Arbitration Center, and looking over the center's neutrality, independence, confidential, and its financial resources and support. The recommendation and opinion over the research would be described in the conclusion.

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LIST OF ABBREVIATIONS

- ADR : Alternative Dispute Resolutions
- ASEAN : Association of South East Asian Nations
- BANI : Badan Arbitrase National Indonesia
- HKIAC : Hong Kong International Arbitration Center
- NCAC : National Commercial Arbitration Center
- LCA : Law on Commercial Arbitration
- SIAC : Singapore International Arbitration Center
- UNCITRAL : United Nations Commission on International Trade Law
- WTO : World Trade Organization

LIST OF FIGURE

- Figure 1: Total number of new cases handled by SIAC from 2006-2016.

INTRODUCTION

1. Background

A court is a place where parties to the dispute choose to settle their conflicts.¹ This judicial dispute resolution strictly bounded parties of the dispute to obey the decision of the court since it is always binding. However, this method takes a long time for its process to be done and requires parties to pay more money comparing to alternative dispute resolutions (ADR).² Currently, this method has not been frequently used by investors, particularly when it comes to either national or international commercial disputes. Commercial arbitration is one of the most common forms among the three general forms of Alternative Dispute Resolutions, negotiation, mediation and arbitration, which has been used to resolve the commercial dispute. In spite of that, this alternative mean of dispute resolution is still governed by laws which makes it becomes a quasi-judicial system. Presently, commercial arbitration has been widely used all over the world since it is much more saving than the court in term of time and money with a streamlined procedure.³ These are the reasons why arbitration forums have been establishing in many countries for ages. Consequently, Cambodia has created its own commercial arbitration center in 2009 and officially launched on March 04, 2013⁴ in the reply to the popularity of resolving the commercial dispute through arbitration and the flow of international investment.

¹ “Methods for Resolving Conflicts and Disputes,” *Oklahoma Bar Association*, August 2015. <http://www.okbar.org/public/Brochures/methodsForResolvingConflictsAndDisputes.aspx> (Last accessed July 01, 2018)

² *Ibid.*

³ Maurice Kenton, and Peter Hirst, “Worldwide: Advantages of International Commercial Arbitration,” *mondaq*. July 30, 2015. <http://www.mondaq.com/uk/x/416416/international+trade+investment/Advantages+Of+International+Commercial+Arbitration>. (Last Accessed July 03,2018)

⁴ Kimsay Hor, “National Arbitration Center Launched,” *The Phnom Penh Post*, March 05, 2013. <https://www.phnompenhpost.com/business/national-arbitration-center-launched> (Last accessed July 03, 2018)

In Cambodia, business has notably increased up from \$3.6 billion in 2016 and rose to nearly \$6.3 billion in 2017.⁵ There are so many businesses arising in Cambodia and there is no business without conflicts. Because Cambodia is a developing country,⁶ the government wants to make it easy for foreign investors to resolve conflicts in order to attract more investment as well as helping the domestic business. Attracting more foreign investors to come and invest is the government's responsibility in boosting economic in the country. Regarding the issue, the Cambodian government had decided to establish the National Commercial Arbitration Center (NCAC) to resolve the commercial disputes. Cambodia had signed the New York Convention since 1960, but it just entered into force in 2001. Establishing the National Commercial Arbitration Center in Cambodia is essential however understanding (1) the main purposes and importance of creating this institution in the country, (2) how the procedure is conducted, (3) capacity to get recognize and enforce the arbitral award by local and foreign courts, and (4) would this center become a strongly dependable forum for foreign and domestic investors, is even more necessity.

2. Statement of Problem

In Cambodia, there is no specialized court for resolving commercial dispute; there is only provincial court to deal with civil and criminal disputes. It takes longer time and cost more money than arbitration as well as the lack of independence of the decision making.⁷ Cambodia is also known to be a corrupted country,⁸ especially in the judicial systems, so it is

⁵ Kimsay Hor, "Investment in Cambodia nearly doubles in 2017," *The Phnom Penh Post*, March 07, 2018. <https://www.phnompenhpost.com/business/investment-cambodia-nearly-doubles-2017> (Last accessed July 03, 2018)

⁶ "Data for Least developed countries: UN classification," *The World Bank*, 2015. <http://documents.worldbank.org/curated/en/815321468231847217/pdf/368240Alternat1on0BIB91Cam11PUBLI C1.pdf> (Last accessed April 03, 2018)

⁷ "Issues In The Judicial System of Cambodia," *Law Teacher*, <https://www.lawteacher.net/free-law-essays/administrative-law/issues-in-the-judicial-system-of-cambodia-administrative-law-essay.php>. (Last Access 16 July, 2018)

⁸ "CORRUPTION PERCEPTIONS INDEX 2017," *Transparency International*, https://www.transparency.org/news/feature/corruption_perceptions_index_2016?gclid=Cj0KCQjwzIWBRDnARIsAAkc8hHCx

hard for investors to believe in and rely on the court system as a method for dispute resolution. Following the process of the commercial arbitration helps to resolve the dispute quickly and effectively access to justice.⁹ There are wide ranges of international arbitration forums where parties to the dispute can choose. However, if the forum is available locally, it would benefit the parties to reduce cost and time as NCAC claims that they provide arbitration service for commercial dispute expeditiously and inexpensively.¹⁰ Furthermore, when the parties submit their case to other arbitration forums, they have to spend more times and money on traveling, hire translators and other expenses as well as other forums charge more than the NCAC. The National Commercial Arbitration Center's procedure base on The Commercial Law on Arbitration of the Kingdom of Cambodia which was established to facilitate the impartial and prompt resolution of commercial disputes,¹¹ so parties know what law will govern their conflicts, whereas they can also freely choose another law if they think it will provide more advantages to their conflict. Before, parties have to bring their case to another foreign arbitration forum because there was no commercial arbitration center in Cambodia and also it takes so long to solve it through court (483 days plus 44 procedures for enforcing a contract), so in order to settle the dispute, parties have to go to foreign arbitration forums if they want a fast and effective mechanism for commercial dispute resolution. However, the establishment of the NCAC in Cambodia would help them to feel more comfortable because investors can avoid an overburdened court system and almost take full

2wLYC8aV9hWx6M4H8A25oQpdo3c0IyuDpM718RHrIMR_RIm0aAkSbEALw_wcB (Last accessed April 04, 2018)

⁹ "Alternative Dispute Resolution: What it is, and why it is relevant to Cambodia," *International Finance Corporation*, 2005. <http://documents.worldbank.org/curated/en/815321468231847217/pdf/368240Alternat1on0BIB91Cam11PUBLIC1.pdf> (Last accessed June 21, 2018)

¹⁰ "National Commercial Arbitration Center (NCAC)," *National Commercial Arbitration Center*, <https://www.moc.gov.kh/tradeswap/userfiles/file/uploadedfiles/Gallery/NCAC%20presentation.18May2015.Eng518201511516.pdf> (Last accessed April 21, 2018)

¹¹ "The Commercial Arbitration Law of the Kingdom of Cambodia," *WIPO*, <http://www.wipo.int/wipolex/en/details.jsp?id=5998> (Last accessed July 05, 2018)

control over their own disputes.¹² The arbitration center in this country is still quite new and has been only successfully resolved 2 cases (ANNEX 1), so in this, we will discuss how the process of NCAC work, compared to other arbitration centers in ASEAN countries, for example, the Singapore International Arbitration Center (SIAC). Cambodia is a small developing country, thus we will discuss the capability of recognition and enforcement of arbitral award from NCAC in other foreign countries as well as inside Cambodia itself. According to Article 3 of Convention on the Recognition and Enforcement of Foreign Arbitral Awards, “Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon,” will the arbitral award from Cambodia be enforceable and get recognition by the foreign courts? Is NCAC a reliable place for the parties putting their trust on?

3. Research Objectives

- To look at the background of the NCAC including the reasons why the government decided to create this center, explaining the importance of NCAC, as well as how popular the center is.
- To have a better understanding of the procedure of the center starting from the first step, pre-hearing until an arbitral award is granted.
- To look at the recognition and the enforcement of the arbitral award in Cambodia and foreign countries.
- To compare the NCAC process to other ASEAN countries’ centers.
- To analyze how reliable NCAC is for the parties to the dispute.

¹² Supra note 9.

4. Scope and Limitation of Research

Regarding the topic “The Process of the National Commercial Arbitration Center in Cambodia”, we focus on the major process in conducting the arbitral tribunal. We have provided information on step to step of the proceeding of the commercial dispute settlement at the National Commercial Arbitration in Cambodia. Plus, we have also discussed the capability of the NCAC by comparing to other arbitration in the ASEAN region, especially, the Singapore International Arbitration Center.

5. Research Method

In this final research paper, we gathered information from many sources that are reliable and up to date. We get information from the library, local and international news website, books, reports, surveys from World Bank and Queen Mary University of London, national and international laws, official website of National Commercial Arbitration and the other sources relevant with international and national commercial arbitration and so on.

I. Background of National Commercial Arbitration Center in Cambodia

1.1. Establishment of the NCAC

National Commercial Arbitration Center (NCAC) was established in 2006 by Royal Kram (Royal Code) NO. NS/RKM/0506/010 and opened officially on March 04, 2013 to create a framework for alternative dispute resolutions through arbitration related to national and international business disputes to ensure the legal rights and interest of the parties and to promote the economy.¹³ The reason for creating NCAC is to meet the requirement from World Trade Organization (WTO) which requested each member state to create any forms of dispute resolutions to deal with commercial disputes.¹⁴ More importantly, the business is growing everywhere in the country which is one of the reasons that makes the government come to the decision of making the arbitration center in Cambodia. Commerce Ministry as Minister of Commerce Prasad Cham said, “The government is committed to improving and enhancing Cambodia’s business environment and investment climate for both domestic and foreign investors,”¹⁵ so establishing its own commercial arbitration center might earn more trust and show that the government is working on improving their methods of dispute resolution. According to National Commercial Arbitration Center, their vision is to “Enabling business environment which contributes to the equitable economic growth and a prosperous

¹³ Supra note 10.

¹⁴ “The Establishment of Commercial Arbitration Services in Cambodia,” *International Finance Corporation, World Bank Group*, page 1, September 2009. <http://documents.worldbank.org/curated/en/945761468016187350/pdf/543760NWP0PSDP1ox0349405B101PUBLIC1.pdf> (Last accessed April 23, 2018)

¹⁵ “Cambodia launches arbitration body to deal with commercial disputes,” *OpenDevelopment Cambodia*. <https://opendevelopmentcambodia.net/news/cambodia-launches-arbitration-body-to-deal-with-commercial-disputes/> (Last accessed July 05, 2018)

society in Cambodia.”¹⁶ This center might increase confidence for solving the commercial disputes between foreign and local investors or between local investors;¹⁷ they can access to better conflict resolution which costs less compare to the court system which costs at 103.4% of the value of a debt to enforce a commercial contract and other attorney fees and less time-consuming because it takes 483 days plus 44 procedures in order to enforce a contract in the judicial system of Cambodia.¹⁸ For foreign investors, Cambodia is a great destination to invest since the government offers certain tax holidays for qualifying projects, the low cost in labor¹⁹ and now offers arbitration center which mainly focuses on solving commercial disputes and the arbitral award from the foreign countries to enforce here through Appellate Court and vice-versa, so they can do their business here comfortably, knowing that they have a reliable and effective dispute resolution mechanism.²⁰ A good example for this is when the Korean Commercial Arbitration Board award was enforced here in Cambodia confirmed a decision of the Appellate Court by the Supreme Court of Cambodia in early 2014 and it was the first and only successful effort to enforce a foreign award in Cambodia.²¹ “The objective of National Commercial Arbitration Center ... is to promote settlement of commercial dispute ... to create the necessary infrastructure and rules for the administration of arbitration cases ... and to ensure the high-quality standard of arbitration are maintained ... as well as setting standards for the qualification of arbitrators,” as stated in Article 10 of the Law on the

¹⁶ Alex Larkin and Sambo Ly, “Arbitration in Asia: Recent development in commercial arbitration in Cambodia,” *Hong Kong International Arbitration Center*, available at https://www.dfdl.com/wp-content/uploads/2015/01/DFDL_Article_Recent_Developments_in_Commercial_Asian_on_Dispute_Review_January_2015.pdf (Last accessed April 23, 2018)

¹⁷ Ibid.

¹⁸ “Enforcing Contracts,” *The World Bank*, June 2017. <http://www.doingbusiness.org/data/exploretopics/enforcing-contracts> (Last accessed April 24, 2018)

¹⁹ Supra note 16.

²⁰ Ibid.

²¹ Julie Rouas and Peter Mewes, “The National Commercial Arbitration Center,” *Business2BusinessCambodia*, April 19, 2016. <https://www.b2b-cambodia.com/articles/first-case-for-the-national-commercial-arbitration-center/> (last accessed July 03, 2018)

Commercial Arbitration of the Kingdom of Cambodia (LCA).²² Hence, established its own center is important and fulfill the requirement of World Trade Organization, but the success and function of the center is also important that is why the National Assembly created LCA, and NCAC released their own rules such as The Process of NCAC as most other arbitration centers around the world, Sub Decree No. 125 and Codes of Ethics.

1.2 Importance of NCAC

The free market economy has led Cambodia up to another level in the world business community. This is the potential opportunity of bringing the name of Cambodia to the world and in reverse has attracted more prospective investors.²³ While Cambodia's economy is rapidly growing through investment, resolving disputes when arise is also the case to be considered. Since the flow of foreign investments into the country has increasingly risen, the National Commercial Arbitration Center in Cambodia established by the Ministry of Commerce in 2013 has become the point in proving the positive impact of the legal and commercial communities in Cambodia.²⁴ The existing of this independent institution can appears to be the catalyst in maintaining and gaining confidence in the business community with consequences, it takes part in helping to encourage foreign investment, which is the significant key to boost up the economy in the country.²⁵ Additionally, commercial arbitration has been widely using by business people for decades already because it demonstrates the fast and less expensive fee as well as non-complicated procedures, which is unlikely to the court, where its process cannot be surely trusted and not so effective.²⁶

²² The Commercial Arbitration of the Kingdom of Cambodia, The National Assembly, Chapter III, art.10, 2006. *available at* http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed April 28, 2018)

²³ "Cambodia's Emerging Resource Economy," *Gold Investing News*, April 24, 2018. <https://investingnews.com/daily/resource-investing/precious-metals-investing/gold-investing/mining-in-cambodias-emerging-resource-economy/>. (Last Accessed July 03, 2018)

²⁴ *Supra* note 21.

²⁵ *Supra* note 21.

²⁶ *Supra* note 7.

1.3. Scope of NCAC

Dispute settlement by NCAC in Cambodia is focused solely on commercial dispute, so investors can turn to mediation and arbitration for dispute settlement. More, it is enforceable beyond Cambodia as stated in Article 3 of Convention on the Recognition and Enforcement of Foreign Arbitral Awards, “Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon”,²⁷ so if the countries are members of New York Convention, the arbitral award can be enforced as to where the asset of the party is located.

1.4. Applicable Law

Cambodia became a member of the World Trade Organization (WTO) on October 13, 2004.²⁸ In response, as a membership to this organization, Cambodia is obliged to establish the law dealing with the commercial disputes. The Law on Commercial Arbitration (LCA) was enacted on April 06, 2006 by the Cambodian parliament, is the newborn of the alternative form regarding the Alternative Dispute Resolution (ADR).²⁹ This law had been formed following to the UNCITRAL (United Nations Commission on International Trade Law), the model law for member states to use in adaption the national commercial arbitration law.³⁰ In further, the pass of Law on Commercial Arbitration (LCA) has fulfilled the requirement of the 1958 New York Convention. Cambodia signed the New York Convention in 1960 and

²⁷ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, June 10, 1958, *United Nations Treaty Series*, vol. 330, No. 4739, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&lang=en (Last accessed July 03, 2018)

²⁸ “Cambodia as a Member of WTO,” *World Trade Organization*, https://www.wto.org/english/thewto_e/acc_e/a1_cambodge_e.htm. (last accessed July 03, 2018)

²⁹ “Recent development in commercial arbitration in Cambodia,” *ODFDL*, January 21, 2015. <https://www.dfdl.com/resources/news/recent-developments-in-commercial-arbitration-in-cambodia/> (last accessed July 03, 2018)

³⁰ United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (Vienna: United Nations, 2008), available at www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985_Model_arbitration.html. (Last accessed July 03, 2018)

entered into force in 2001.³¹ The international framework for the recognition and the enforcement of arbitral award has been provided in this convention which grants all member states the rights to enforce the arbitral award in other foreign countries.³² Although LCA is the law based in resolving commercial disputes in Cambodia, parties are free to choose law from any other countries to apply in the dispute settlement. As Article 36(1) of the LCA stated, “The parties shall free to agree...law to be applied by the arbitral tribunal to the merits of the disputes...”³³

³¹ “Contracting States,” *New York Arbitration Convention*, <http://www.newyorkconvention.org/countries>. (last accessed July 03, 2018)

³² *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, June 10, 1958, *United Nations Treaty Series*, vol. 330, No. 4739, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-1&chapter=22&lang=en (Last accessed July 03, 2018)

³³ The Commercial Arbitration of the Kingdom of Cambodia, The General Assembly, Chapter VII, art. 36(1). (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

II. The Procedure of the National Commercial Arbitration Center in Cambodia

2.1 Commencement of the Arbitration Proceeding

To initiate an arbitration proceeding, there are three distinct ways which parties can considered.³⁴ Parties choose to resolve their dispute through arbitration even before the dispute arise and have their arbitration agreement, so when the dispute arises they can go to the arbitration forum that both of them have agreed in their agreement. Even they do not have the arbitration agreement, parties are still able to resolve it by arbitration after the dispute arise by the voluntary of both parties. Another way is a court-order to the appointed center to start the arbitration proceeding because parties to the dispute have agreed with each other beforehand in their written arbitration agreement to resolve their dispute by giving absolute jurisdiction to the center where they chose as the arbitration forum.³⁵ To emphasize, after the dispute arises, one of the party submit the case to the court which against the contract which state that in case there is a significant dispute arise, parties must refer the case to the appointed arbitration forum to handle their dispute. In this situation, the court must refer that case back to the arbitration forum.

2.1.1. Arbitration Agreement

The official arbitration agreement shall be in writing which contained in such forms as a written document signed by both parties, or an exchange of letter, or an agreement that can be considered as the agreement record which was made via electronic telecommunication, or in an exchange of statement of claim and defense in which the existence of an agreement is

³⁴ Austermler, Steven M, *Cambodian Alternative Dispute Resolution* (Phnom Penh, 2010) p. 159.

³⁵ Ibid.

alleged by one party and accepted by another.³⁶ Within the arbitration agreement, the arbitration clause is an important part which clarified the scope of jurisdiction of the arbitrators in resolving the dispute. The parties to the dispute can decide whether or not, the final decision is binding which means parties have no rights to appeal. If it is binding, parties would be automatically bound by the award that is provided by the arbitrators. In contrast, if parties decide to refer the case to the court, all the decision would always be bound by the law. Parties to the dispute would oblige to follow whatever the decision is.³⁷ Moreover, any resolution of the dispute that is chosen to resolve through court would be publicly opened which means everyone can know about what happened between parties.³⁸

2.1.2. Arbitration Clause

Arbitration clause inside the arbitration agreement requires parties to resolve their dispute through the arbitration process. The arbitration clause is the significant part which is stated about the important points that the center needs to carefully look at before starting the arbitral proceeding. This part would state about the place where the arbitral proceeding would be conducted; the specific number of arbitrators who would handle the case, and which law would be applied to the dispute.³⁹

2.1.2.1. Seat of Arbitration

The seat of arbitration particularly refers to the forum where the disputes would be resolved, which accordingly based on the arbitration agreement made by the parties before the dispute arises or after the dispute arise. Furthermore, parties are free to select any place they

³⁶ “The Commercial Arbitration of the Kingdom of Cambodia,” *The National Assembly*, Chapter II, art.7 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

³⁷ Jean Murray, “Arbitration vs. Litigation-What is the Difference?” *The balancesmall business*, April 08, 2018. <https://www.thebalancesmb.com/arbitration-vs-litigation-what-is-the-difference-398747> (Last accessed July 03, 2018)

³⁸ Ibid.

³⁹ Supra note 34, at 148.

prefer to conduct the arbitral proceeding. In such cases which parties had not stated about this point inside their contract, Phnom Penh city would be the place where the proceeding would be conducted when parties choose NCAC as their forum.⁴⁰ In another way that the parties want their dispute to be resolved by the court, the court itself would have jurisdiction over the case only when there is a particular matter which the incident occurred at the place where is under authority of the court.⁴¹ But if the court finds out that the parties of the dispute had agreed with each other in the written contract to resolve the dispute through the arbitration process, the court would not consider the case and would refer the case to the arbitration that has jurisdiction over it as already mentioned above.

2.1.2.2. The Method in Selecting Arbitrator

Parties to the dispute are free to choose the number of arbitrators to resolve the dispute. However, this freedom to choose is limited by the LCA which requires parties to choose the arbitrators in the odd number to ensure that there will be a fair result. In case parties to the dispute failed to select the number of arbitrators, then there will be three arbitrators.⁴² Each party needs to select one arbitrator and the two selected arbitrators are required to select another arbitrator. Although two arbitrators are selected by both parties, it does not mean that they need to take any sides. There should not be any personal relationship between the parties and the appointed arbitrators. The party, in case later find out that the arbitrator might not be neutral because of their personal connection with another party, then the party can ask to replace the arbitrator, but after knowing that and not saying anything, the party will lose the right to replace the arbitrator or take any other actions against arbitrators. Selecting three

⁴⁰ Supra note 34, at 149.

⁴¹ Kram on the Organization of the Courts, *The Council of State*, Chapter I, art.2, 8 February. available at http://www.bigpond.com.kh/Council_Of_Jurists/Judicial/jud004g.htm (Last accessed July 3, 2018)

⁴² “The Commercial Arbitration of the Kingdom of Cambodia, Composition of Arbitral Tribunal,” *The National Assembly*, Chapter IV, art.18 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

arbitrators to resolve the dispute provide positives impact because it would help to ensure the final decision by the three arbitrators is decided independently, neutrally, and impartially. In addition, there is another method which parties may identify a specific person in the arbitration clause to resolve their dispute.⁴³

2.1.2.3. Substantive Law

Deciding to choose the substantive law to use in resolving the dispute is the decision from both parties. “The parties are free to agree or disagree on the procedure to be followed the arbitral tribunal Failing such agreement....conduct arbitration in such manner....materiality and weight of any evidence,” according to article 27 on the Law on Commercial Arbitration.⁴⁴ It means the parties failed to choose the law that would be used when the dispute arise. Within this case, the particular law that would be applied would be considered base on the place where they regularly conduct their business. This choice of law would not be applied to any cases that choose court as the dispute resolution. Cambodia courts usually will use Cambodia law over the case or the foreign law can apply over the case unless parties had already agreed with each other in the contract to use law from one of their country or the dispute arise in the sovereignty of another country where the court of and the law court of that country can have jurisdiction over it.⁴⁵

2.1.2.4. Ad Hoc

Ad Hoc arbitration refers to the form of organizing the arbitral tribunal by parties to the dispute. Once the parties of the arbitration agreement agree to arbitrate their dispute throughout this alternative dispute resolution, it means parties decide to grant their rights in deciding the final decision to the arbitrators. Although parties lost some rights over the case,

⁴³ Supra note 34, at 149.

⁴⁴ “The Commercial Arbitration of the Kingdom of Cambodia,” *The National Assembly*, Chapter VI, art.27 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

⁴⁵ Supra note 34, at 162.

yet parties themselves still can decide the place where they want to conduct the process, rules of procedure and any other things that they can organize by themselves as long as it has already stated in the contract that the arbitration would be conducted through ad hoc process.⁴⁶ For instance, parties choose to develop their own forum to resolve the arisen dispute.

2.1.2.5. Administer

Administered arbitration is another classification of the arbitration type. It refers to the process of arbitration which is conducted by the appointed arbitration center. Throughout the administered arbitration, parties are able to get the provision of rooms for hearing, a list of arbitrators to choose, as well as a set of procedural rules, and many other services which will be organized by the appointed forum. Generally, majority of parties choose administered arbitration rather than ad hoc since the most detail of the process are already determined and the parties would only have to follow the procedure organized by the forum that they have chosen.⁴⁷ It helps to reduce the amount of time spend on the arbitration process even though parties have to spend more money, but it is more convenient than ad hoc process.

2.1.3. Submission Agreement

In some cases, the arbitration agreement is not made beforehand when making a contract. When parties decide to use the arbitration as the dispute resolution method after the dispute arises, it is called submission agreement.⁴⁸ Within this point, it means parties agree to resolve their dispute by arbitration and the arbitration proceeding is conducted only after the dispute arise at the willing of both parties.

⁴⁶ “INTERNATIONAL ARBITRATION Network and Resources,” *INTERNATIONAL ARBITRATION LAW*, <http://internationalarbitrationlaw.com/about-arbitration/international-arbitration/ad-hoc-arbitration/>. (Last Accessed May 27, 2018)

⁴⁷ Supra note 34, at 142.

⁴⁸ Ahmad Ghoneim, “Know your type three types of Arbitration agreement in nutshell,” *ALTAMIMI & CO*, June 2013. <https://www.tamimi.com/law-update-articles/know-your-type-three-types-of-arbitration-agreements-in-a-nutshell/>. (Last Accessed May 27,2018)

2.1.4 Notice of Arbitration

A written notice of arbitration needs to be given by the claimant to the respondent in order to initiate the arbitration proceeding as well as the point to stipulate the number of arbitrators, place language and applicable law.⁴⁹ The arbitral proceeding would be considered to commence on the date on which the notice of arbitration is received by the respondent.⁵⁰ The notice shall include:

- A demand that the dispute be referred to arbitration.
- The name and addresses of the parties.
- A reference to the arbitration clause or the separate arbitration agreement which is invoked.
- A reference to the contract which is out of or in relation to which the dispute arises.
- The general nature of the claim and an indication of the amount invoke, if any
- The relief or remedy sought, and
- A proposal which stated about the number of arbitrators (one or three), if the parties have not agreed.⁵¹

The arbitration hearing process would be conducted right after there is an acceptance from the respondent to this notice of arbitration.

⁴⁹ “Arbitration Clauses,” *INTERNATIONAL CHAMBER OF COMMERCE*, <https://iccwbo.org/dispute-resolution-services/arbitration/arbitration-clause/> (Last accessed June 20, 2018)

⁵⁰ *United Nations Commission on International Trade Law*, Vienna, 1985, *UNCITRAL Model Law on International Commercial Arbitration*, article 3.2, available at www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html (Last accessed June 20, 2018)

⁵¹ *United Nations Commission on International Trade Law*, Vienna, 1985, *UNCITRAL Model Law on International Commercial Arbitration*, article 3.2, available at www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html (Last accessed June 20, 2018)

2.2. Arbitration Hearing Process

Parties to the dispute have the power to choose whether they want to have oral hearing or not,⁵² unlike in the court proceedings that parties must have an oral hearing. If they choose not to have the hearing stage, arbitrator(s) will review all the evidence that they collect from both parties then decide the case upon finding the best solution which is most suitable for the case.⁵³ It will not base on the resolution of the similar previous case that had been resolved which mean they do not comply that precedent to also resolve the case that the arbitrators are working on like in common law countries neither base on the law of any countries like in a civil law countries, unless parties want to resolve the case base on the law or arbitrator(s) think it is the best to resolve it depends upon the laws.⁵⁴ But if they agree to have an oral hearing stage, they have to go through some more stages. In arbitration, parties have the absolute rights to choose rules of law, place, et cetera, which benefit to their case because it is not strictly bound by the laws and also arbitration proceeding is often binding and final unless parties want otherwise. Also, if parties decide to do negotiation and mediation, it will not binding⁵⁵ and parties make the decision by themselves.

2.2.1. Evidence

Parties have the duty to demonstrate the facts, applicable rules, and other trade usages to assist their claim, counterclaim or defense.⁵⁶ All the evidence that was submitted by each party shall be checked by another party to prove that they are real, relevant to their dispute,

⁵² The Process of the National Commercial Arbitration Center, *National Commercial Arbitration Center*, Chapter 2, rule.37, 2014.

⁵³ The Process of the National Commercial Arbitration Center, *National Commercial Arbitration Center*, Chapter 2, rule.25, 2014.

⁵⁴ "The Commercial Arbitration of the Kingdom of Cambodia," *The National Assembly*, Chapter VII, art.36 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

⁵⁵ Supra note 9.

⁵⁶ The Process of the National Commercial Arbitration Center, *National Commercial Arbitration Center*, Chapter 2, rule.25.1, 2014.

and actually are the agreements between them. Here are the important details that need to be in the evidence.

Inquiries, orders, and examination of evidence:

The Tribunal may at any time during the arbitration proceedings conduct such inquiries as it deems necessary or appropriate, or order any party within such period as the Tribunal shall require, among other things:

- a- to produce documents, exhibits or other evidence;
- b- to provide an index or summary of the documents, exhibits or other evidence which that party has presented or intends to present;
- c- to make any site, object or documents under her/his control available for inspection by the Tribunal, the other party, or any expert appointed by the Tribunal; and
- d- to arrange for samples to be taken from, or any observation to be made of or experiment conducted upon, any site, object or documents under her/his control.⁵⁷

So if they choose to depend on only evidence to solve the case, then arbitrator(s) that have been appointed by parties would examine the evidence to resolve the case and decide base on those documents. There will not be any oral hearing process afterward.

2.2.2. Pre-Hearing

After the parties have done all the requirements before arbitration proceedings, the parties can go to another stage which is pre-hearing. If the arbitration clause in the contract is not clear, parties can take this opportunity to decide location(s), language(s), rules of procedures, evidentiary and other issues which can be reached during pre-hearing conference.⁵⁸ Even so, parties can leave all of this to the arbitration forum, so that they can save more time.

2.2.2.1. Place of Arbitration

The place of arbitration is very important because if they choose the country that is not the member of New York Convention, they might not be able to enforce the arbitration award

⁵⁷ The Process of the National Commercial Arbitration Center, *National Commercial Arbitration Center*, Chapter 2, rule.37 (2014).

⁵⁸ Supra note 34, at 162.

back in the home country of the party,⁵⁹ but since most of the time the losing party voluntarily complies, so it is not a big concern. The parties can choose the place as in the arbitration agreement or in another place. But if they did not make any agreement on this, the place of arbitration shall be determined by the tribunal which is considered as appropriate for members, witnesses, experts, parties, the residence of property or other documents or if both parties come from the same province then the residence of the parties will be the place of arbitration hearing. For the court, parties could not choose the places because a court has power only within its jurisdiction. This means Provincial courts in Cambodia have jurisdiction only over the conflicts that occur on the territory of each of those provinces as stated in Article 2 of Kram on the Organization of the Courts,⁶⁰ but for commercial arbitration, parties in the dispute do the procedure where they have been agreed on in the arbitration agreement or where they think most suitable for them.

2.2.2.2. Language

Parties can choose language(s) for proceedings and other documents. In court, the party does not have the right to do because the court of Cambodia will speak Khmer which will be hard to understand if parties do not speak the same languages or do not really know the language that the court speaks. In addition, the tribunal can freely request parties to translate the language(s) during arbitration proceedings and other documents as well. In case they did not choose the language, the arbitration tribunal will determine the language(s) based on nationalities, parties and the documents.⁶¹

⁵⁹ Supra note 34, at 149.

⁶⁰ Kram on the Organization of the Courts, *The Council of State*, Chapter I, art.2, 8 February. available at http://www.bigpond.com.kh/Council_Of_Jurists/Judicial/jud004g.htm (Last accessed July 3, 2018)

⁶¹ “The Commercial Arbitration of the Kingdom of Cambodia,” *The National Assembly*, Chapter VI, art.30, 2006. available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

2.2.2.3. Rule of Procedures

Just like other arbitration processes, parties are free to choose their own rules. But if they fail to agree on procedural rules, as stated in Article 27 of LCA, “Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”⁶² the tribunal itself would be responsible in choosing rule of procedure.

2.2.2.4. Interim Measures

Interim measure is done to stop some activities of the other party that could ruin the proceedings if one party thinks it could help to protect some important evidence. For instance, one party request the other party of the dispute to close their factory for a while and it is normally done in the first procedural hearing, so that it will not affect their arbitration proceedings and it will not effect on the final outcome of the arbitration. Party can request for interim measures from the court before or during arbitral proceedings⁶³ if they think it is necessary and can help them to protect their important evidence since arbitration proceedings take some time before the arbitrators make decision and award. Also, party sometimes needs to provide proper security in correspondence with such measures at the request of the arbitral tribunal unless otherwise agreed by the parties.⁶⁴

⁶² “The Commercial Arbitration of the Kingdom of Cambodia,” *The National Assembly*, Chapter VI, art.27, 2006. available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 9, 2018)

⁶³ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter II, art.9 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed June 15, 2018)

⁶⁴ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter V, art.25 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed June 15, 2018)

2.2.2.5. Experts

Arbitrator(s) have the right to appoint expert(s) unless parties have agreed not to.⁶⁵ Parties must provide all the information related to the dispute and have freedom to examine the expert(s) after they submit their conclusion to the tribunal at the hearing.

2.2.2.6. Mediation (med-arb)

Parties can choose to do mediation first and if they could not reach a final decision during the mediation then they can do the arbitration later. This step allows the party to come up with their own solution, it will not be binding and possibly save money and time for both parties if they could reach a resolution during this process. However, arbitral tribunal only does mediation at the request of both parties.⁶⁶ It is recommended to have different mediator(s) and arbitrator(s) working on the same dispute in most cases because it might affect the neutrality of the arbitrators since the parties know the arbitrators before starting the arbitral proceedings when the parties fail to resolve their dispute through mediation.

2.2.3. The Hearing

The arbitration hearing is similar to court proceedings, but normally it is less formal than court proceedings and more flexible on procedural or evidentiary issues.⁶⁷ Both parties are treated equally in the hearing process to present their point of arguments and freely choose anyone to be their representative.⁶⁸ There are six stages of hearing proceedings: opening statement by arbitrators, opening statement by parties, documentary evidence, pose questions to the witnesses questions and answers and closing statement.

⁶⁵ Supra note 34, at 164.

⁶⁶ Supra note 34, at 163.

⁶⁷ Supra note 34, at 165.

⁶⁸ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VI, art.26 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed June 15, 2018)

2.2.3.1. Opening Statements by Arbitrators

This is the first stage of the arbitration hearing, so arbitrators will introduce themselves, setting forth the facts and clarify the law. In order for the parties to understand the arbitral tribunal process and know about their roles to cooperate in this tribunal.

2.2.3.2. Opening Statements by Parties

After arbitrators have done with their opening statements, it is followed by statements by parties which will require each party to presents its facts, law and the solution they want.⁶⁹ In addition, this opening statements can be a replacement or add more to the summary that parties do before the tribunal. The main important thing about this stage is to make the arbitrators understand more and clear about the problems and the arising disputes, so it is easy for them to make decisions based on evidence and other documents.

2.2.3.3. Documentary Evidence

In case it is the complicated case, the tribunal will resolve it step by step by appointing one party to presents all of his/her evidence then another party does the same. The claimant shall prove his/her arguments by having witness, evidence and other documents, whereas the respondent, he/she also needs the witness, evidence and other documents in case he/she did not do as claimant said, so he/she can address those issues. This evidence includes the contract that has been breached, invoice and other documents that lead to disputes. After that arbitrators can invite the expert to clarify the fact and also go to the field work as well.

2.2.3.4. Questions to the Witnesses

The arbitrators will decide whether they allow the live witnesses or not, before arbitral proceedings start which means parties have to have the agreement from arbitrators first.

⁶⁹ Supra note 34, at 165.

Before the tribunal, each party and its attorney pose questions to their live witness.⁷⁰ However, the arbitrators will ask additional questions to the witness to clarify some important issues and both parties can pose questions to the other party's witness as well. More, it is the same as the court system which requires witnesses to swear before answering the questions and claiming.⁷¹

2.2.3.5. Questions and Answers

In the arbitral tribunal, it allows both parties to answers the questions of each other.⁷² It starts off with one party then follows by the other side and those parties' answers shall have evidence to prove that it is true. This evidence could relate to the cause of dispute and other applicable rules. When parties show evidence, arbitrators can ask parties to address some evidence to clarify the truth.

2.2.3.6. Close of the Hearing

This is the last step for arbitral proceedings, so parties will present their closing statements. Each party would summary their whole arguments by focus solely on their main points, after that, the tribunal will discuss and decide the case. Normally, the respondent or his/her attorney will present first. Moreover, in this stage parties have equal rights to pose questions, answer the questions and submit additional evidence and documents.

In the end, both parties can decide to have oral hearing or not, but if one party choose to have the oral hearing, there must be an oral hearing. If they choose not to have the oral hearing then the tribunal will consider the case base on documentary evidence and written submissions.⁷³

⁷⁰ Supra note 34, at 165.

⁷¹ Supra note 34, at 165.

⁷² Supra note 34, at 165.

⁷³ Supra note 34, at 165.

2.3. Forming the Award

After finishing the tribunal, it will follow by forming award. “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.”⁷⁴ For arbitration award to be enforceable in the court, it must contain some important details.

2.3.1. Form of Award

Tribunal’s award shall contain the following contents:

- It shall be made in writing and shall be signed by most of arbitrator(s) if more than one arbitrator has been in arbitral proceedings.⁷⁵
- It shall state the reasons upon which it is based unless the parties agree otherwise.⁷⁶
- It shall allocate among the parties the costs of the whole arbitration proceedings unless the parties agree otherwise. The award might also provide the reasonable attorney’s fee of the prevailing party against the other party.⁷⁷
- It shall state the dates and the place of arbitration which will be the place that the award made.⁷⁸
- After that, it will be copied, signed and gave to both parties.⁷⁹

⁷⁴ Darwin Hem and Chankoulika Bo, “Commercial Arbitration in Cambodia,” *BNG Legal*, February 2017. <http://bnglegal.com/cn/wp-content/uploads/2017/02/170206-Commercial-arbitration-in-Cambodia.pdf-February.pdf> (Last accessed May 12, 2018)

⁷⁵ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VII, art.39.1 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁷⁶ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VII, art.39.2 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁷⁷ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VII, art.39.3 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁷⁸ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VII, art.39.4 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

That's all that needed to be in an arbitral award, so if the arbitral award that parties receive contain all these important points, the losing party should volunteer to obey the award if they choose to have the decision to be final and binding. However, after both parties receive their arbitral award, parties have 30 days to set aside their award,⁸⁰ in case they find the arbitral award is breaking the ground rules of what they want, but the parties could not set aside award, just because they do not like the decisions that the arbitrator(s) make,⁸¹ whereas in court, the party has the right to bring their case to Appellate Court when they do not agree with the decision of the Provincial Court or bring their case to Supreme Court when they do not agree with the decision of Appellate Court. This means that the decision of Provincial Court and Appellate Court are not final.

⁷⁹ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VII, art.39.5 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁸⁰ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.3 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁸¹ *Supra* note 34, at 167-168.

III. Recognition and Enforcement of Arbitral Award

3.1. Recognition of Domestic Award in Cambodia

When the losing party does not volunteer to comply the award decisions, the prevailing party has to enforce it through Appellate Court because the arbitration tribunal does not have the right to enforce the award because the NCAC is just a private sector and has no police force, they can only make the decision and award. In this case, it will be hard for the party who want to avoid courts in the first place, but this is the only best way to get their compensation. There are some stages that prevailing party has to go through when they want to enforce their award. First of all, before the enforcement of the arbitral award, the prevailing party has to have the recognition from the Appellate Court.⁸² Therefore, party has to submit the original or certified copy of the arbitral award to court which requires to be in Khmer translation if the original was not, court will review some important details that require in the arbitral award, but the court does not require to review them, they can just enforce it right away if they consider this is appropriate. The court must recognize and enforce the award as if it were enforcing the judgment of the court if there are not any issue regarding the ethical or legal issues. After the party has the recognition from the court, they can start to enforce their arbitral award by seeking the help from the judiciary since the arbitration tribunal does not have the power to enforce the award. According to Article 3 of the United Nation Convention on the Recognition and Enforcement of Arbitral Award, “Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon,”⁸³ so as long as the arbitral

⁸² The Process of the National Commercial Arbitration Center, *National Commercial Arbitration Center*, Chapter 2, rule.37 (2014).

⁸³ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 10 June 1958, *United Nations Treaty Series*, vol. 330, No. 4739, art. 2 available at

award from Cambodia does not against grounds for setting aside the award, it will be enforceable in other signature countries of New York Convention.

3.1.1. Grounds for Setting Aside Award

The award from arbitration is often final and binding which means that the party must follow what the award says unless parties have agreed otherwise. However, there are some circumstances that make the arbitral award is not valid under LCA and most international arbitration laws. And this does not mean party can set aside the award just because they do not agree with the decision that makes by arbitrator(s). It is very limited because if they make it easy, it will lose one of the advantages of arbitration.⁸⁴

For the setting aside of an arbitral award, it is not including a review of the quality of evidence and decision. Therefore, the appeal court has the right to set aside an arbitral award when:

- A party is invalidated to make the arbitration agreement; age, mental health or get threaten to sign the agreement⁸⁵
- Party was not treated equally; do not get any notice of arbitration proceeding or do not get a chance to properly present his/her argument.⁸⁶
- The dispute falls outside of the agreement.⁸⁷

For example, Party A and Party B do business together and agree to solve their business disputes via arbitration, whereas the dispute that they solved is not their business dispute, it is

<http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> (Last accessed June 1, 2018)

⁸⁴ Supra note 34, at 167.

⁸⁵ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.2 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁸⁶ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.2 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁸⁷ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.2 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

their personal conflict with each other. Therefore, one party force to do it through arbitration because of their arbitration agreement.

- The problem with the tribunal or the procedure that is not in accordance to the arbitration agreement.⁸⁸

For example, the signature has to be from all arbitrators, but in the arbitral award, it is not.

- The subject matter of the case is contrary to the law of Cambodia that could not be settled by arbitration.⁸⁹

For example: under the law of the Kingdom of Cambodia, the foreigner is not allowed to own land, but the dispute is about the land that owned by a foreigner with local people. For that, it means the award will be invalidated.

- It against the public policy of the Kingdom of Cambodia. Different countries have different public policy, so the example below might only apply in Cambodia.⁹⁰

For example, the land of a pagoda which means it should not be owned by anybody since it is the public property and the dispute is about selling the land of pagoda, so it means that the award is invalidated.

As can be seen, the incapacity of party, no proper notice, dispute falls outside the agreement and problem with tribunal or proceeding, it has to be proved by the party. Parties have 30 days to file an application to the Appeal Court after they get the award in case they want to set aside the award. If they do not do anything within this period, they will lose the rights that can make the arbitral body challenge an award in the courts. The grounds for

⁸⁸ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.2 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁸⁹ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.3 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

⁹⁰ “The Commercial Arbitration of the King of Cambodia,” *The National Assembly*, Chapter VIII, art.44.3 (2006) available at http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf (Last accessed May 12, 2018)

setting aside the award can be a little bit different in other countries in accordance with their domestic laws, but these six grounds are the basic rules.

3.2. Enforcement of Arbitral Award

The enforcement of the arbitral award is the stage when the winning party of the dispute starts claiming remedies from the losing party after he/she get the recognition from the court.⁹¹ Within this condition, the only institution that has the power to enforce the award is the Provincial Court as already mentioned above. As stated in Article III, New York Convention, “Each Contracting State shall recognize arbitral awards as binding and enforce Shall not be imposed substantially more onerous conditions or fees.... recognition or enforcement of domestic arbitral awards”, this clarified that the arbitral award from any jurisdiction, the winning party can bring it to the appeal court among around 150 countries including the ASEAN countries which are members of this New York Convention in purpose of enforcing the award.⁹² The winning party needs to submit the granted award from the arbitration center to the appeal court of the country where the asset of the losing party is located, for example, the bank or factory. The winning party, in advance, can ask the court for freezing asset of another party in order to stop another party from removing their asset to other countries.⁹³

Regarding the remedies that the arbitrators can grant to the winning parties, it depends on the party themselves who require considering any specific remedies that they want the

⁹¹ Supra note 34, at 169.

⁹² *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 10 June 1958, *United Nations Treaty Series*, vol. 330, No. 4739, art. 3 available at <http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> (Last accessed June 1, 2018)

⁹³ W. Michael Tupman, “Staying Enforcement of Arbitral Awards under the New York Convention”, *ARBITRATION INTERNATIONAL*, December 12, 2014. <https://academic.oup.com/arbitration/article-abstract/3/3/209/196245?redirectedFrom=PDF>. (Last Accessed June 1, 2018)

arbitrator to be able to impose in advance. Moreover, they should either consider any specific remedies that they do not want the arbitrator to be able to impose.⁹⁴

The condition where the losing party has their asset in countries, for example, Yemen, Somalia, Iraq which are not a member of the New York convention,⁹⁵ the decision in enforcing the foreign arbitral award would base on the court of that country and the relation between country of arbitration and the enforcing state could affect the enforcement of arbitral award.

The cooperation from courts of Cambodia has a big impact on the success of NCAC because if the courts in the home country of NCAC do not recognize and enforce the domestic award, it would make the NCAC appears as a weak arbitration center. More, the investors might not submit their case to NCAC if they know that the NCAC's decisions are not enforceable.

3.3. The Recognition and Enforcement in Foreign Countries

Even though the international law governs these problems, the international law only exists when the countries are willing to obey, so does the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. For most cases, about 90%, losing party voluntarily comply,⁹⁶ so this is not a big concern. However, the prevailing party still sometimes needs to enforce the award which requires to enforce in where losing party's assets are located and oftentimes, in its home jurisdiction, which is not the seat of the arbitration. This is where thing get complicated and long, especially when the court wrongfully refuses to enforce the arbitral award. Since Cambodia is still new to arbitration world, the party of the dispute or the

⁹⁴ Supra note 34, at 153.

⁹⁵ Daniel Pascucci, "Enforcement of an International Arbitration Award in a Non-New York Convention Country", *MINTZ LEVIN*, March 1, 2017. <https://www.adradvice.com/2017/03/enforcement-international-arbitration-award-non-new-york-convention-country/> (last accessed June 1, 2018)

⁹⁶ Gerry Lagerberg and Loukas Mistellis, "International Arbitration: Corporate attitudes and practices 2008," *School of International Arbitration*, <https://www.pwc.co.uk/assets/pdf/pwc-international-arbitration-2008.pdf> (Last accessed June 1, 2018)

enforcing states might not have confidence in the NCAC's decision which leads to a lack of trust for the center and concern for the parties before they submit their case to NCAC. However, unless the arbitral award from Cambodia has one of the grounds for the setting aside of award clearly, the enforcing state, without any doubt must recognize and enforce the arbitral award from Cambodia as they do with their own arbitral award or other states. For instance, Badan Arbitrase Indonesia (BANI) clearly states, "Generally, if the foreign awards fulfill all the requirements under the Arbitration Act, the domestic court will recognize and enforce the foreign award in Indonesia."⁹⁷ It can be seen that the arbitral award from new or well-known centers still get recognition and enforcement in the foreign countries, so parties can ensure that their award will be recognized and enforced in the residence of their business-partner or where the asset is located. It is just like the Diplomatic Immunity, the Country A gives diplomatic immunity to the high ranking diplomat from Country B for the protection and safety of the other country's diplomats and vice-versa.

⁹⁷ Chelladurai, Celine. "ASEAN-Insiders-Arbitration-in-ASEAN," *ZICO Law*, September 2016, page 3.

IV. Comparison and Discussion on National Commercial Arbitration Center

4.1 Arbitration Centers in ASEAN Countries

The influence of globalization has increased much more cross-border transaction within ASEAN region. Establishing arbitration centers in the country is one of the keys to boost the economic development as well as to promote the strong procedural system of the arbitral proceedings and attracting more foreign investors since most local judicial systems in ASEAN ranked poorly in annual surveys for civil justice and enforcement of contract in local judicial systems in 2015.⁹⁸ Additionally, Cambodia ranked at 102 out of 102 countries that were surveyed which could be one of the reasons that investors do not want to do business here. So, commercial arbitration centers could help to boost the confidence in dispute resolution for local and mainly foreign investors in resolving their commercial disputes. These applicable laws for creating the commercial arbitration center in each member states mostly follow the UNCITRAL model Law, and there will be some changes in arbitration rules in accordance to each country's domestic law. There are not that many differences in arbitration rules, therefore, it can prove that the NCAC rules are also reliable for the parties, just like other successful arbitration centers in ASEAN countries and the low cost of arbitration service is the bonus of NCAC. For example, \$250 for the registration fee at NCAC⁹⁹ and around \$1,000 at Hong Kong International Arbitration Center (HKIAC)¹⁰⁰ and

⁹⁸ Alex Larkin, "Commercial Arbitration in the ASEAN Region Poised to Increase Confidence in Foreign Investment," *the American Bar Association*, 2017. https://www.dfdl.com/wp-content/uploads/2017/04/ILN_v45n3_Winter17_Larkin2.pdf (last accessed June 25, 2018)

⁹⁹ Youdy Bun, "Development of Commercial Arbitration in Cambodia," *National Commercial Arbitration Center*, September 22, 2015. <http://webcache.googleusercontent.com/search?q=cache:F3LE3XMdoGEJ:www.eurocham-cambodia.org/uploads/d2572-youdy-bubun.pptx+&cd=1&hl=en&ct=clnk&gl=kh&client=safari> (Last Accessed June 27, 2018)

¹⁰⁰ "Fees," *Hong Kong International Arbitration Center*, <http://www.hkiac.org/arbitration/fees> (Last accessed June 25, 2018)

the reason why the investors in Cambodia should choose NCAC, instead of going to other arbitration centers in ASEAN countries which could cost more money and time-consuming. In addition, the award from NCAC is also recognizable and enforceable within the country and other countries that are members of the New York Convention, like other well-known centers in ASEAN. Lastly, Cambodia investors can also benefit from speaking and understanding the Khmer language as their arbitrators if they choose Khmer arbitrators.

In spite of that, among ASEAN region, when refer to choosing arbitrators, investors' prior option would tend to the arbitrator from the Singapore International Arbitration Center (SIAC) since they are the well-established compare to other arbitrators from other centers existing within this region. Particularly, the business partner in Cambodia has already chosen to arbitrate their dispute at the SIAC center as well as selected arbitrators from the center, for instance, the dispute between a Cambodian company and a Malaysian over the case of a failure to take delivery and making payment.¹⁰¹ Subsequently, numerous caseloads from parties has been sent to the SIAC to handle. Counting from 2006 till 2016, 343 new caseloads had been handled by this center and the active caseload as of 31 March 2017 is about 650 cases.¹⁰²

¹⁰¹ "Profile of Case," *Singapore International Arbitration Center*, September 24, 2013. <http://siac.org.sg/2014-11-03-13-33-43/facts-figures/profile-of-cases> (Last accessed June 30, 2018)

¹⁰² "Statistics," *Singapore International Arbitration Center*, March 31, 2017. <http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics> (Last accessed June 30, 2018)

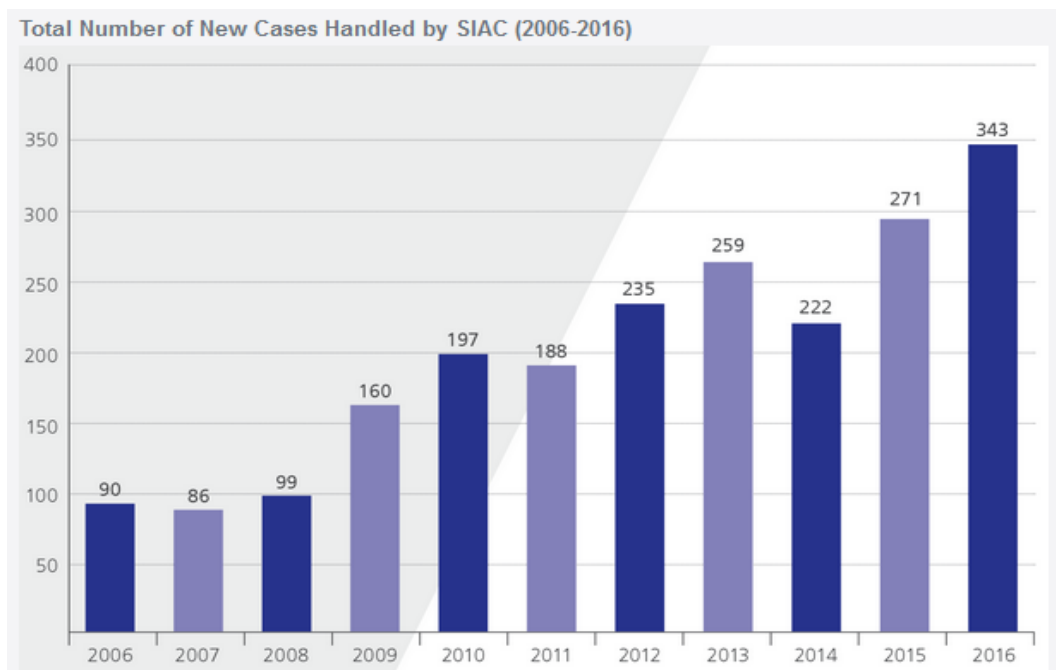


Figure 1: Total number of new cases handled by SIAC (2006-2016).

It is obvious that the gap between the SIAC and the NCAC is pretty far away from each other which so far, since the establishment of the NCAC, the center received only 2 cases in hand.

4.2. How Reliable NCAC is for Investors

The reliability of the NCAC can be proved by their job, but this center is still not widely known by investors or Cambodian in general. After about 5 years of establishment, only a few cases have been submitted to NCAC. There is no clear answer whether this center is a neutral, independence and confidential or not, but here are some important factors about this center that can take into consideration and what they have been done to open their tribunal to the public. So far, there are many workshops and training have been already conducted to mainstreaming the knowledge of the arbitration center to many lawyer students of the 13th generation, students at Royal University of Law and Economics as well as National Workshop on Relation between Judiciary and Commercial Arbitration.

4.2.1. Neutrality and Independence

The fact that NCAC was created by the government even though it is a private sector, it could make people think that it is in favor of the government. Therefore, people might think it is not neutral or a completely independent center and afraid to submit their dispute to this center. The NCAC's Arbitration Rules get helped from The International Finance Corporation and the Asian Development Bank in produced numerous drafts and the last version of the Rules were approved in July 2014.¹⁰³ Then The NCAC's Rules first open to the public at Phnom Penh's International Arbitration Day and became a-state-of-art document organized with so much care by international organizations and international arbitration consultants.¹⁰⁴ For this, it can be seen that NCAC is also interacting and get help from other organizations, not only just the government of Cambodia which make them could be less suspect to be in favor of the government. To prove that they are independence, impartiality, and efficiency arbitration tribunal, NCAC also adopted its Code of Ethics.¹⁰⁵ The code of Ethics makes the arbitrators having transparency, independence, and neutrality and will be fired if they break the code, whereas establishment of Code of Ethics is important, but enforcement and adhering of the code is way more important, so the center has to prove that their arbitrators strictly obey the Code of Ethics in resolving disputes. Also, Singapore International Arbitration Centre (SIAC) and Singapore Institute of Arbitrators had trained the independent elected members of NCAC¹⁰⁶ which is a good sign to show that they are professional and might be neutral in their job as an arbitrator. Finally, the parties themselves also can take action against

¹⁰³ Olga Boltenko, "Cambodia's Arbitration Center set off on its First Flight," *Wolters Kluwer*, June 10, 2015. <http://arbitrationblog.kluwerarbitration.com/2015/06/10/cambodias-arbitration-centre-sets-off-on-its-first-flight/> (Last accessed June 25, 2018)

¹⁰⁴ Ibid.

¹⁰⁵ Sothear Kang, "Arbitration Body Takes on Code of Ethics," *The Cambodia Daily*, April 7, 2015. <https://www.cambodiadaily.com/business/arbitration-body-takes-on-code-of-ethics-81556/> (Last accessed June 25, 2018)

¹⁰⁶ Julie Rouas, "The National Commercial Arbitration Center," *Phnom Penh*, April 19, 2016. <https://www.b2b-cambodia.com/articles/first-case-for-the-national-commercial-arbitration-center/> (Last accessed June 26, 2018)

arbitrator(s) in case they doubt impartiality and independence of the appointed arbitrator(s) which provide in the LCA, Article 20 “Ground for Challenge” and 21 “Challenge Procedure” that talk about what the parties can do when they face this problem/ the problems arrive.

The interaction with international communities, the establishment of the Code of Ethics, fair selection and trained of arbitrators and follow closely to the UNCITRAL model law could be reasons to prove that the NCAC is a neutral and independence commercial arbitration in Cambodia in spite the fact that it was established by the government.

4.2.2. Confidentiality

In most commercial arbitration cases, parties to the dispute want to keep their privacy when they have disputes with their partner for their companies’ reputation. More, they do not want to lose trust from other partners or have a bad reputation of their company as a whole because it can affect their commercial transaction. One of the reasons that could earn NCAC the trust from investors is to guarantee that they can keep privacy for parties.¹⁰⁷ Just like the neutrality, only the cases that the center resolved could prove this, but since the center has not worked on a lot of cases, it could be hard to prove this. However, there are still some activities of NCAC which need to look at and consider in order proving the confidentiality. Firstly, so far there was not any complain regardless of their lack of confidentiality. And generally speaking, there is no point or any benefits for them to do so, but this is not a logical thinking or fact, whereas they are still in the stage of trying to gain recognition and trust from public, so they might want to show their professionalism by not doing anything that against the basic arbitration rules and the nature of arbitration proceedings.

For example, the first case that NCAC received was between a commercial landlord and tenant dispute with a foreign element.¹⁰⁸ They did not even publish who breach the contract.

¹⁰⁷ Supra note 14, at 16.

¹⁰⁸ Supra note 21.

There is only that much information that was published by the center which shows that the NCAC respect the confidential nature of the proceedings.

4.2.3. Qualification of Arbitrators

Qualification of arbitrators at the National Commercial Arbitration in Cambodia is also a key point for the investors/companies to consider before choosing this out-of-court option from this center or other commercial arbitration centers. The arbitrators at the NCAC are fully qualified since they are trained by the international experts in arbitration. Moreover, the center consists of 43 arbitrators, (ANNEX 2) among them; there are 28 lawyers with experience specific to a certain industry, accountants, and academics.¹⁰⁹ As already mentioned in the above section, the independent elected members of the NCAC have been trained on arbitration at the Singapore International Arbitration Center (SIAC) and Singapore Institute of Arbitrator. It can prove that Cambodian arbitrators are qualified enough to responsible for any case the same as the arbitrators at the SIAC even though they are not as experienced as the arbitrators in other ASEAN centers, but they fully understand about the laws and rules of arbitration in Cambodia. The selection of arbitrators was made and published to the public for people who are interested in joining the center and wish to work as arbitrators. There is no private selection or anything as can be seen. Additionally, most of the arbitrators at the NCAC are Cambodia lawyers, so they have a wide knowledge in Cambodian law which allows the process in resolving the case becomes easier in case Cambodian law is chosen as a substantive law since they can interpret the law well. Generally, investors prefer choosing foreign arbitrator(s) to resolve their dispute.¹¹⁰

¹⁰⁹ Muyhong Chan, "Arbitrator ready to hear cases," *The Phnom Penh Post*, July 14, 2014.

<https://www.phnompenhpost.com/business/arbitrator-ready-hear-cases>. (Last Accessed June 27, 2018)

¹¹⁰ Youdy Bun, "Development of Commercial Arbitration in Cambodia," *National Commercial Arbitration Center*, September 22, 2015. (Last Accessed June 27, 2018)

According to article 29 of the Sub-Decree on the Organization and Functioning of the National Commercial Arbitration Center in Cambodia, which described the requirement for any person who wants to become the arbitrator at the NCAC,¹¹¹ one among other similar main requisitions made by the SIAC is that any person who intends to become an arbitrator at this center needs to be at least 10 years post qualification experience.¹¹²

Furthermore, for local investors, they can benefit from speaking and understanding the same language; Khmer, so they do not have to hire the translators during the arbitration proceedings and translate their documents if they choose Khmer Arbitrators. The language barrier could lead to so many difficulties such as misunderstanding the meaning and taking a long time to translate everything into each individual language to fit into each nationality that was involved in the arbitration proceedings.

4.3. Financial Resources and Financial Support

From the start, the National Commercial Arbitration Center is established under the operation and receiving the subsidy from the Ministry of Commerce. Financial resources and financial support of the NCAC receive from the membership fee of arbitrators and legal entities.¹¹³ However, it is a very limited amount for the daily expense including salary for staff, office supplies, electricity, phone call, internet, hiring international experts for training to arbitrators, internal meeting, General Assembly, and other activities.¹¹⁴ Other expense for office innovation, supporting office materials and supplies, and other activities received from

¹¹¹ Sub-Decree on the Organization and Functioning of the National Commercial Arbitration Center, Chapter 3, Section 4, *Membership of the National Commercial Arbitration Center*, Article 29.

¹¹² “Standards for Admission to SIAC Panel/ SIAC IP Panel,” *Singapore International Arbitration Center*, <http://siac.org.sg/our-arbitrators/standards-for-admission-to-siac-panel> (Last accessed June 30, 2018)

¹¹³ Sub-Decree on the Organization and Functioning of the National Commercial Arbitration Center, Chapter 3, Section 4, *Membership of the National Commercial Arbitration Center*, Article 28.

¹¹⁴ *Supra* note 10.

a charity donation has a very limited amount as well. NCAC still need much more operational capacity support in order to do more public outreach.¹¹⁵

¹¹⁵ Supra note 10.

Conclusion

The globalization increases more foreign investment into Cambodia, and there is no business without conflict which means the effective commercial dispute resolution mechanism is very essential in attracting and improving the business environment here. The government had decided to ratify the New York Convention and later on adopted their own commercial law which leads to the creation of NCAC. Another reason is that the requirement of WTO after Cambodia joined that request the member to create the alternative dispute resolution forum to help in solving commercial dispute to make it more accessible for investors around the globe and also effective resolution.

The parties have almost a full control over their arbitration proceedings. Starting from having the arbitration agreement states about rules of procedure governs their proceedings, place of proceedings, languages of documents and many other things, arbitration forum of their choice which will not be strictly bound by the jurisdiction like the court, number of arbitrators that come in an odd number. On top of that, parties can choose ad hoc which means parties will organize the whole arbitration proceedings by their own such as procedures, applicable law, selection of arbitrators and administrative support, so parties have to spend much more time, but cheaper than administered arbitration as the result it is not very popular among commercial arbitration. In commercial arbitration, parties rather prefer administration because everything is organized by the appointed forum which will save so much time, even though parties have to spend more money. More, investors would spend more money on their dispute resolution, so that they have more time focusing on their business rather than spending time on the proceedings that they believe that their appointed arbitration will do a great job for them. Sometimes parties did not plan beforehand, but after the dispute arises parties decide to go to the arbitration center to solve their conflicts. In this

situation, parties can also reach place of arbitration, language and rule of procedure in the pre-hearing process. After that claimant needs to give a written notice of arbitration to the respondent to start the arbitration proceedings.

Then the arbitration proceedings begin, it will start off by the speech from arbitrators to introduce themselves and clarify tribunal process, follow by parties to clear out some important facts about their dispute. After that, the tribunal will ask the parties to prove their evidence in case it is a complicated case. To make sure things are going the right way, the arbitrators and parties will ask some questions to the witness of each party. Before the closing statement to summary their whole argument, the tribunal will allow both parties to raise questions for each other.

After the hearing and decision making by arbitrators, it will be time to form the award. The arbitral award should be in writing form and signed by most arbitrators, state the reasons, state about the costs, date, and place of arbitration proceedings and copy for both parties.

If the losing party did not pay the compensation to the prevailing party. The prevailing party has to enforce arbitral award through Appellate Court, however, this is rarely happened since about 90% of the cases, parties voluntarily comply. Therefore, winning party has to submit their original or certified copy of their arbitral award to Appellate Court and it must be in Khmer Language. After the party got recognition from the Appellate Court, he/she can go to the Provincial Court in order to enforce the award. This stage really needs the cooperation from the courts which means the court should enforce it like the judgment from the court, so if the arbitral award could not get recognized and forced in Cambodia, it will be harder if the party want to enforce it in the foreign countries. Even so, the court does not have to recognize and enforce the award in all time if the award has one of the ground for setting aside the award then the court has the right to make the award invalidate.

Recommendation

After establish for about five years now, it might not have been known widely within the country and in other countries, but as it is continuously growing and being an independent and neutral center, in the near future this center will receive more recognition and might earn the trust from investors to submit their conflicts. The qualified arbitrators are also the key point that could contribute to the success of the center. For now, it is in need for aids because NCAC did not receive a lot of cases since it opened, so they could not support the center on their own. So for the success of NCAC, they have to reach out to the public more, remain neutral and independence, keep the confidentiality for the parties of the dispute as well as come up with the effective and great decisions for the parties. Lastly, remain great relation with the courts in Cambodia. So that in the future NCAC can support themselves by earning the money from the cases rather than the help from the national and international communities like it does nowadays.

ANNEX 1



មជ្ឈមណ្ឌលជាតិដោះស្រាយវិវាទ
NATIONAL COMMERCIAL ARBITRATION CENTRE

លេខ: ០១៨/NCAC/17

ព្រះរាជាណាចក្រកម្ពុជា
KINGDOM OF CAMBODIA
ជាតិ សាសនា ព្រះមហាក្សត្រ
NATION RELIGION KING

Monday, 30 October 2017

PRESS RELEASE

The National Commercial Arbitration Centre (NCAC) is pleased to announce that the Case 002 and 003 administered by it are now successfully completed. Two final awards have been issued by the Arbitral Tribunals appointed in accordance with the NCAC Rules.

The Case 002 was submitted to the NCAC on 20 June 2016. It relates to a commercial dispute arising out of the implementation of a supply contract governed by the laws of Cambodia. Cambodian company and State institution are among the parties to the dispute. The three-member Tribunal conducted the proceeding in Khmer. The choice of resolution of the dispute through arbitration administered by NCAC was provided in the relevant contract.

The Case 003 was submitted to the NCAC on 21 July 2016. It relates to a commercial dispute arising out of the implementation of a construction contract governed by the laws of Cambodia. The choice of resolution of the dispute through arbitration administered by NCAC was provided in the relevant contract.

Foreign and Cambodian companies are among the parties to the dispute. The three-member Tribunal conducted the proceeding in English, a language chosen by the parties. The award is also issued in English. During the proceeding, interim measure was also issued by the Arbitral Tribunal at the request of a party.

Today achievement constitutes an important milestone of NCAC's history. NCAC is proving itself as an institutional arbitration center capable of offering an alternative dispute resolution to investors conducting business in Cambodia including complex and cross-culture disputes.

As an independent institution, NCAC is committed to promote settlement of commercial disputes through arbitration with highest standard.

Cambodia is a signatory country to the 1958 New York Convention on Recognition and Enforcement of Foreign Awards. Therefore, a final award issued by NCAC is enforceable in other 157 signatories' countries.

For any further information please contact:

Mr. ROS Monin, President of NCAC

Tel: 012 855 474 or Email: info@ncac.org.kh

About NCAC

The NCAC was established by the virtue of the 2006 Law on Commercial Arbitration and officially launched in January 2013. It is a self-governing non-profit institution, based in Phnom Penh, Cambodia. NCAC's mission is to become the leading provider of commercial dispute resolution services in Cambodia with a reputation for delivering impartial and independent mediation and arbitration services expeditiously and inexpensively. In order to achieve this mission, NCAC has two primary goals: (1) To develop the institution of the NCAC and build the capacity of its staff, arbitrators and stakeholders; (2) To support the development of a favorable environment for commercial Alternative Dispute Resolution (ADR) services in Cambodia in which ADR proceedings are respected by the courts and other parties. Up to now, there are 48 arbitrators who have been registered as individual members along with 10 legal entities.



ANNEX 2



ក្រសួងពាណិជ្ជកម្ម
Ministry of Commerce

លេខ ៣៣

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
KINGDOM OF CAMBODIA
Nation - Religion - King

ភ្នំពេញ, ថ្ងៃទី ១៥ ខែ វិច្ឆិកា ឆ្នាំ ២០១២

បញ្ជីសមាជិកជាមជ្ឈត្តករ នៃមជ្ឈមណ្ឌលជាតិនៃមជ្ឈត្តករ
ក្រុមពាណិជ្ជកម្ម ម.ជ.ម.

ល.រ	នាម និងគោត្តនាម	Full Name	ភេទ	ថ្ងៃខែឆ្នាំកំណើត
1	ប៊ុន សុវណ្ណ	Bun Sovann	ប្រុស	06/02/1979
2	ប៊ុន យូឌី	Bun Youdy	ប្រុស	23/10/1979
3	ចាប កែវ	Chap Keo	ប្រុស	17/04/1975
4	ឈឹម ថេង	Chhiv Theng	ប្រុស	10/10/1969
5	អាង សុភ័ក្ត្រ	Eang Sopheak	ប្រុស	03/10/1977
6	ហួន សុខនីម	Huon Soknymph	ប្រុស	24/09/1979
7	ហ៊ុត សុភ័ក្ត្រ	Hut Sopheak	ស្រី	14/07/1979
8	អ៊ឹម ស៊ីណាត	Im Sinath	ប្រុស	05/06/1978
9	កង ស៊ីផាន់ណារ៉ា	Kang Siphannara	ប្រុស	01/01/1966
10	ខាន់ សិរីវុធី	Khan Sereyvuthy	ប្រុស	01/06/1970
11	ខឿវ មាលី	Khieu Mealy	ស្រី	06/08/1964
12	កើត វណ្ណវិទូ	Koeut Vannarith	ប្រុស	25/04/1966
13	កុយ នាម	Koy Neam	ប្រុស	12/01/1953
14	លីនដា សម័យ	Linda Samay	ស្រី	28/07/1969
15	លី សំបូរ	Ly Sambo	ប្រុស	17/10/1979
16	ញ៉ាន សុមុនុន្ទ	Nhean Somunin	ប្រុស	01/10/1975
17	ណុប សុខា	Nop Sokha	ប្រុស	04/09/1972
18	អិន ហ៊ីង	Orn Hing	ប្រុស	12/06/1969
19	អូច វុធី	Ouch Vuthy	ប្រុស	25/12/1975
20	អុក សុភោព	Ouk Sopheap	ប្រុស	01/03/1962
21	ប៉ា ងួនភា	Pa Ngounkea	ប្រុស	08/06/1975
22	ភីន សុវត្ថិ	Phin Sovath	ប្រុស	01/06/1979
23	ពេជ ប៉ាណេត	Pich Baneth	ប្រុស	09/11/1974
24	រស់ មុនីន្ទៈ	Ros Monin	ប្រុស	07/02/1972



ឡូត៍លេខ ១៤-៦១ វិថីក្រសួងពាណិជ្ជកម្ម (១១តាយ), ភូមិទឹកថ្លា សង្កាត់ទឹកថ្លា ខណ្ឌសែនសុខ, ភ្នំពេញ ព្រះរាជាណាចក្រកម្ពុជា
 Ministry of Commerce, Lot 19-61, MOC Road (113B Road), Phum Teuk Thla, Sangkat
 Teuk Thla, Khand Sen Sok, Phnom Penh, Kingdom of CAMBODIA

ទូរស័ព្ទ / ទូរសារ: (៨៥៥) - ២៣ ៨៦៦ ៤៦៤
 Phone/Facsimile: (855)-23 866 469

25	សេក សារៀន	Sek Saroeun	ប្រុស	09/10/1975
26	សេង វូចហ៊ុន	Seng Vuochhun	ស្រី	14/12/1977
27	ស៊ិន គឹមសាន	Sin Kimsean	ស្រី	10/08/1960
28	សុខ ហ៊ី	Sok Hy	ប្រុស	03/03/1976
29	ស៊ូ ចន្ទា	Sou Chantha	ប្រុស	15/05/1974
30	ទិត សារុន្ទី	Tith Savuthy	ប្រុស	14/04/1972
31	វង្ស មុនាថ	Vong Moneath	ប្រុស	10/10/1979
32	យុន ប៉ោទឹម	Yun Potim	ប្រុស	05/03/1975
33		Dialma Emmanuel	ប្រុស	20/02/1967
34	គាង សូសែន	Eang Sosen	ប្រុស	01/01/1977
35	ហុង គឹម	Hong Kim	ប្រុស	10/10/1972
36	លី សុភាព	Ly Sopheap	ប្រុស	10/11/1979
37	មិន ណាកុល	Men Nakol	ប្រុស	02/01/1979
38	ផន បញ្ញា	Phan Panha	ប្រុស	10/10/1975
39	សារិន ដេណូរ៉ា	Sarin Denora	ប្រុស	01/01/1957
40	សេង រិទ្ធី	Seng Rethy	ប្រុស	18/11/1976
41	សេង សុខឃឹម	Seng Sokhim	ប្រុស	15/12/1970
42	ទេស ចំរើន	Tes Chamroeun	ប្រុស	01/03/1974
43	ស៊ុង សូនី	Uong Sony	ប្រុស	20/04/1970

៧. រដ្ឋមន្ត្រីក្រសួងពាណិជ្ជកម្ម

រដ្ឋលេខាធិការ និចតា

ប្រធានគណៈកម្មការរៀបចំ និងជ្រើសរើសមជ្ឈក្កករដំបូង



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