

National Commercial Arbitration Centre: Development and Challenges

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Introduction

Commercial arbitration is an alternative method for resolving disputes between private parties arising out of commercial transactions that allows the parties to avoid litigation in courts. Arbitration procedures are generally flexible and allow the parties greater autonomy in resolving their disputes. Arbitral awards – the decisions of the tribunal made to resolve the dispute – are final and binding on the parties.

Considering the benefits of the commercial arbitration, the National Commercial Arbitration Centre of Cambodia ("**NCAC**") was established in 2006 with initial funding and assistance from the Asian Development Bank ("**ADB**") and the International Financial Corporation ("**IFC**"), a member of the World Bank Group. NCAC officially commenced operation in 2013, and its first executive board was subsequently elected. NCAC was established to promote commercial arbitration in Cambodia, provide alternative dispute resolution services in relation to commercial disputes, and provide qualification trainings, arbitrator capacity building assistance, and arbitrator accreditation. In this respect, NCAC also provides limited hearing facilities for the functioning of the tribunal such as the venue and hearing rooms and certain administrative services, while other administrative services such as audio/visual recording, translation, and transcription can be arranged separately at the expenses of the parties.

Recently, NCAC has achieved significant developments and tackled various challenges in resolving commercial disputes in Cambodia. Key progress includes the improvement of facilities and services, case

administration and statistics, development of its member arbitrators, and improvement of its arbitration rules and model arbitration clause. Meanwhile, NCAC is also working to earn more confidence from the business communities and stakeholders.

Improvement of Facilities and Services

NCAC has upgraded its facilities by moving into one of the most advanced and prestigious business districts in Cambodia. Recently, NCAC has successfully conducted its first online hearing for commercial disputes involving foreign parties in a financial transaction relating to a real estate deal. This first online hearing was conducted among 30 participants from five separate locations with different time zones, namely Cambodia, Macau, China, Hungary, and Japan. This success demonstrates NCAC's improved capability to effectively administer arbitration cases with technology and innovation in response to new business and legal landscapes, as well as the new norm of service delivery caused by the COVID-19 pandemic.

Statistics on Administered Cases

NCAC has seen an increase in the number of cases being submitted for its administration and resolution since the official start of its operation in 2013. It has administered a total of 25 cases with a total sum in dispute of more than US\$72 million between 2015 to September 2020, with 75% of these cases conducted in the English language. The nature of disputes submitted to NCAC are mostly real estate (44%), banking and financial services (28%), construction (12%), international trade (8%), and general corporate (8%).

To date, 28% of the cases have been concluded with final awards issued while 60% of the cases remain active. 4% of the cases were withdrawn by the parties while NCAC found that it had no jurisdiction on the remaining 8% of the cases. The increase in new cases is a positive sign for commercial arbitration in Cambodia and most certainly for NCAC. Brief statistics of NCAC's caseload have been published in its official website, available [here](#).

Development of Member Arbitrators

A member arbitrator refers to any local or foreign individual who has fulfilled the requirements of being an arbitrator and is a registered member of NCAC. The first batch of member arbitrators were selected by the Initial Arbitrator Selection Committee on 26 April 2010. They underwent a series of training courses on arbitration skills and commercial law which were organised by IFC in cooperation with the Singapore Institute of Arbitration ("**SIArb**").

At present, there are currently 64 arbitrators of various nationalities on NCAC's panel list including Cambodian, Canadian, Chinese, Singaporean, French and American. NCAC has enhanced the quality of the arbitrators through continued education for its member arbitrators and special trainings for potential new arbitrators by trainers who are highly experienced from other arbitral institutions such as the Singapore International Commercial Arbitration Centre ("**SIAC**") and the Hong Kong International Arbitration Centre ("**HKIAC**").

Improvement of NCAC's Arbitration Rules and Model Arbitration Clause

NCAC has formally commenced a process to review and amend the current NCAC's arbitration rules that came into force in 2014 to better serve the needs of the business communities and all users of its services. To this end, NCAC has established an internal working group to draft a new edition of its arbitration rules by seeking input from its users, arbitrators and experienced arbitration professionals in Cambodia and other jurisdictions. NCAC has planned to complete this reform process in 2021.

Furthermore, NCAC has recently updated its model arbitration clause to provide clearer consent of the parties to refer the dispute to be resolved and administered by NCAC in accordance with NCAC's arbitration rules. The new model arbitration clause can be found in NCAC's official website [here](#), which is extracted as below:

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, performance or termination, shall be referred to and finally resolved by National Commercial Arbitration Centre in the Kingdom of Cambodia in accordance with the Arbitration Rules of the National Commercial Arbitration Centre (NCAC's Rules) being in force at the time of commencement of arbitration, and by reference in this clause, the NCAC Rules are deemed to be incorporated as part of this contract.

*The tribunal shall consist of _____ * arbitrator(s). (*state an odd number)*

The language of the arbitration shall be _____.

*This contract is governed by the laws of _____ **. (**state the country or jurisdiction)".*

Perspective of Business Communities and Stakeholders

Although it is evident that NCAC has made significant progress, it has yet to be deemed a preferred venue for dispute resolution for commercial transactions in Cambodia due to the lack of recognition and confidence from business communities and stakeholders (i.e., local and foreign investors and legal practitioners).

However, we note that NCAC has been working to resolve this issue through raising public awareness and updating the business committees and stakeholders on its progress over the past years. In addition, NCAC has enhanced the reputation of registered member arbitrators through professional training and continued education, as well as special training courses for potential new arbitrators.

A good testament of a positive result of this effort can be seen in the awards of the NCAC having been recognised and endorsed by both local and foreign courts, with no NCAC awards having been set aside thus far.

Concluding Remarks

The recent developments of NCAC has given a positive outlook on commercial dispute resolution in Cambodia. The trend of an increasing caseload for NCAC demonstrates that it has earned more confidence and trust from the business communities and stakeholders.

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