

# Expedited Procedure, Emergency Arbitrators: New National Commercial Arbitration Centre Rules 2021

April 2022 | [Cambodia](#)



## Introduction

The National Commercial Arbitration Centre of Cambodia ("**NCAC**") adopted its first arbitration rules on 11 July 2014 ("**2014 Rules**"). Since then, there has been a significant jump in cases referred to NCAC, showing the growing trust that the business community has in Cambodia's arbitration services.

In July 2020, NCAC announced a commitment to reform the 2014 Rules to better serve the needs of the business community and all users of NCAC's services. As a result, NCAC has adopted its new arbitration rules ("**2021 Rules**") in its 7<sup>th</sup> Annual Assembly Meeting on 28 March 2021.

The 2021 Rules became effective from 28 June 2021. This article highlights major amendments and new features in the 2021 Rules, specifically:

1. Introduction of an expedited procedure;
2. Provision for an emergency arbitrator; and
3. Other amendments.

## Expedited Procedure

Article 9 of the 2021 Rules introduces an expedited procedure, namely a faster and costs-saving procedure for disputes involving small claims. Parties may file an application to implement the expedited procedure under three circumstances:

1. if the sum of the dispute does not exceed the amount of US\$3 million representing the aggregate value of the claim, counterclaim and any set-off defence;
2. if the parties so agree; or
3. in cases of exceptional urgency.

Under Article 9.2, the application needs to be approved by the Appointment and Proceeding Committee ("**APC**"). If accepted, the following procedure shall apply:

- The General Secretariat of NCAC ("**General Secretariat**") may shorten the time limit for the proceedings under the 2021 Rules.
- The case shall be referred to a one-member tribunal unless the arbitration agreement provides for a three-member tribunal.
- The tribunal may, after consultation with the parties, decide whether the dispute is to be decided on the basis of documents only or if an oral hearing is required.
- The final award shall be made within 270 calendar days from the date when the tribunal is constituted.

It is worth noting that Article 9.3 states that by agreeing to arbitrate under the NCAC Rules, the rules and procedures set out in Article 9.2 will supersede any contrary terms in the parties' arbitration agreement. This minimises the risk of a party disputing the application of the Expedited Procedure due to a conflict with the terms of the arbitration agreement. Nonetheless, under Article 9.4, a party may still apply for an order from the Tribunal to cease conducting the arbitration in accordance with the Expedited Procedure.

## Emergency Arbitrator

To tackle the need for urgent interim measures before the constitution of the tribunal, the 2021 Rules have provided for the appointment of an emergency arbitrator.

A party wishing to seek emergency interim measures may file an application with the General Secretariat for such interim measures to be issued by an emergency arbitrator, accompanied by payment of the costs of the application. Costs include application fees, emergency arbitrator fees, and expenses for such proceedings.

If APC accepts the application, the following timeline applies:

Procedure	Timeframe (calendar days)
<ul style="list-style-type: none"> <li>• APC to appoint emergency arbitrator</li> <li>• Prior to the appointment, the emergency arbitrator must disclose any circumstances that may give rise to justifiable doubts as to his/her impartiality or independence</li> </ul>	Within <u>three days</u> from the date of receipt of application and payment
<ul style="list-style-type: none"> <li>• Any challenge by a party to the emergency arbitrator's appointment must be made</li> </ul>	Within <u>two days</u> of being notified of the appointment and disclosed circumstances

Procedure	Timeframe (calendar days)
<ul style="list-style-type: none"> <li>Emergency arbitrator to establish a schedule for consideration of the application for the interim measures. Such schedule shall provide a reasonable opportunity for the parties to present their case.</li> </ul> <p>Note: The emergency arbitrator has the power to order or award any interim measure that she/he deems necessary.</p>	<p>Within <u>two days</u> from the date of his/her appointment</p>
<ul style="list-style-type: none"> <li>Emergency arbitrator to issue an interim order or award after such interim order or award has been scrutinised as to its form by the General Secretariat</li> </ul> <p>Note: Per Article 21, such interim order or award is binding on the parties, who irrevocably waive their rights to any appeal, review, or recourse to the courts with respect to such order or award.</p>	<p>Within <u>15 days</u> from the date of his/her appointment, unless the General Secretariat extends the timeline in exceptional circumstances.</p>

The emergency arbitrator shall not act as an arbitrator in any future arbitral proceeding relating to the same dispute unless otherwise agreed by the parties, and shall no longer have power after the tribunal is constituted. The tribunal may review, modify, or terminate any interim order or award issued by the emergency arbitrator. Further, the tribunal is not bound by the reasons given by the emergency arbitrator.

## Other Amendments

Other key amendments introduced in the 2021 Rules include:

1. Allowing NCAC to administer cases and provide other services under arbitration rules apart from the 2021 Rules;
2. Enabling the parties to shorten the time limit specified in the 2021 Rules;
3. Empowering the tribunal to take necessary measures to avoid a conflict of interest of an arbitrator arising from a change in party representation after the constitution of the tribunal;
4. Officialising the use of video conferencing or similar means of digital communication technology in all arbitral proceedings, in response to the growing demand for electronic communication in light of the COVID-19 pandemic; and
5. Setting a time limit for the tribunal to declare the closing of an arbitration, so that the parties can have a better idea of the timeline for the issuance of the award.

## Concluding Remarks

The introduction of the 2021 Rules comes at an important juncture as the world recovers from the devastating effect of the COVID-19 pandemic. Cambodia is slowly reopening all sectors and looking forward to continuing its economic recovery and ultimately reaching its goal of attaining an upper middle-income status by 2030. With these goals, it is only reasonable that NCAC readies itself to serve as a trusted and competent partner for Cambodia's business community in delivering quality dispute resolution services.

In line with these aspirations, the 2021 Rules introduce welcome updates that reflect changing commercial demands. The Expedited Procedure enables commercial parties to resolve disputes expeditiously and in a cost-efficient manner, while the Emergency Arbitrator procedure provides for parties who require interim relief on an urgent basis. These procedures contribute to the ability of the 2021 Rules to address the needs of commercial parties and smoothen the way for the increased adoption of arbitration as a means of dispute resolution in Cambodia.

For further queries, please feel free to contact our team below.

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