

National Commercial Arbitration Centre Adopts Mediation Rules

April 2023 | [Cambodia](#)



Introduction

The National Commercial Arbitration Centre ("**NCAC**") is a non-profit commercial dispute resolution institution based in Phnom Penh, Cambodia. It was established in 2006 and officially launched in 2013. It aims to provide businesses with an alternative to the Cambodian court system for the resolution of commercial disputes.

On 18 March 2023, the General Assembly of the NCAC adopted three main documents to allow the NCAC to provide mediation services. Those documents are: (a) the Mediation Rules, which set out the procedure and principles for conducting mediation under the auspices of the NCAC; (b) the Code of Conduct for Mediators ("**Code of Conduct**"), which establishes the ethical standards and professional responsibilities for mediators registered with the NCAC; and (c) the Rules on Qualification and Registration of Mediator of National Commercial Arbitration Centre ("**Rules on Qualification and Registration**"), which specify the criteria and process for becoming a mediator accredited by the NCAC.

This Update highlights the key features of the Mediation Rules, Code of Conduct and Rules on Qualification and Registration of Mediator.

Mediation Rules

Purpose. The Mediation Rules set out the procedure and principles for conducting mediation administered by the NCAC, starting from the initiation of the proceeding, conduct of mediation and the termination of the proceeding.

Scope. Mediation under the Mediation Rules is limited to only those disputes categorized as commercial disputes. The term "commercial" is to be interpreted broadly to cover a wide range of transactions including but not limited to any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession agreement; joint venture and other forms of industrial or business co-operation; and carriage of goods or passengers by air, sea, rail or road.

Initiation. A party or all parties to a dispute may initiate the mediation proceeding to be administered by the NCAC by issuing a request to the NCAC accompanied by a registration fee of US\$30. This fee is non-refundable. In case of unilateral request (request by one party), the initiating party shall send a request to both the NCAC and the other party to the dispute. The NCAC will assist by way of helping the other party to understand the benefits of mediation and to participate in the mediation proceeding. If the other party agrees to accept the mediation, the mediation will commence; however, if the other party rejects the mediation, the mediation will not be commenced.

Selection of mediator. A mediator is an independent third party who assists the parties to the dispute in reaching an amicable settlement to their dispute, whether in whole or in part, through mediation. There may be more than one mediator in a mediation proceeding which is known as a co-mediation. The parties may select the mediator to conduct the mediation from the NCAC's list of mediators (which has yet to be published at the time of this Update) or outside of the said list if the mediators in the list do not fit the necessary requirements of mediators considering the type and complexity of the dispute. The mediator shall be confirmed by the NCAC, and the mediator themselves shall declare their availability to take on the matter, their independence and that there is no conflict of interest. All mediators conducting mediation under the administration of NCAC shall comply with the NCAC Mediation Rules.

Mediator's roles. The mediator's main role is to assist the parties to resolve their dispute through mediation. The mediator conducting the mediation shall, among others: (a) observe their duties under the Mediation Rules and the Code of Conduct; (b) remain independent and impartial and ensure fair treatment of the parties; (c) ensure that the parties understand the mediation process and what is expected of them; (d) always comply with confidentiality obligations; and (e) not impose their opinions on the parties, and only provide recommendations if all parties so request and the mediator views that it is appropriate. With the consent of the parties, the mediator may seek assistance from a co-mediator, experts and/or translators/interpreters.

Parties' roles. Parties shall join the mediation proceedings in good faith to advance the mediation as expeditiously, smoothly, and efficiently as possible. Parties may be represented either by legal counsel or the appointed representative of their choice. The representative attending the mediation sessions shall have the power and authority to decide on how to settle the dispute.

Conduct of mediation. Upon appointment, a mediator shall, as soon as practicable, discuss with the parties on the manner of conduct of the mediation. The mediator may meet with each of the parties in private sessions or joint sessions, as the mediator deems appropriate.

Termination of mediation. Mediation may come to an end or be terminated in various situations, including but not limited to: (a) rejection by the invited party to the mediation; (b) parties signing a settlement agreement covering the entire dispute; (c) parties signing a written declaration that mediation has ended without settlement or with partial settlement; (d) written notification by any party to the mediator/NCAC that they have decided not to continue with mediation; (e) written notification by the mediator to the parties and NCAC that, in the mediator's opinion, the mediation is not likely to settle the dispute between the parties; (f) the expiry of all the timeframes and limits pertaining to the mediation proceeding agreed by the parties; (g) failure to nominate a mediator by the parties; or (h) non-payment of any of the costs required.

Costs. Costs in a mediation proceeding include a registration fee of US\$30, an administration fee based on the claim value starting at US\$140, and mediator fees based on claim value starting at US\$300 (for the entire mediation process) and any other actual costs incurred by the NCAC and mediator as part of the mediation process.

Code of Conduct for Mediators

This Code of Conduct is established to guide mediators in their conduct of the mediation process administered by NCAC. It sets out the main principles that the mediators shall observe and comply with such as availability, competence, impartiality, independence and non-conflict of interest. It also sets out a guide for the conduct of the mediation, including an explanation of the process of mediation to parties, withdrawal of the case and termination of the mediation proceeding.

Rules on Qualification and Registration of Mediator

These rules set out the qualification and registration requirements of a mediator registered in the NCAC mediator list. Under these rules, those who are interested in becoming an NCAC mediator shall meet the following requirements: (a) being at least 30 years old, or possessing a minimum of five years of experience in any business or profession; (b) holding a bachelor's degree specialising in any field of study from any faculty in Cambodia or overseas; (c) having attended training courses on commercial mediation organised by the NCAC, or training courses organised by any professional commercial mediation centre recognised by the NCAC; and (d) having passed an accreditation exam organised by the NCAC or by any commercial mediation institution recognised by the NCAC. The mediator shall not, among others, be an official or hold any title or position with the hierarchy of the executive, legislative, or judiciary branches. The candidates who meet the above criteria shall file the application for registration as a mediator to the NCAC and pay an annual contribution fee if appointed.

The above documents reflect the NCAC's commitment to promoting alternative dispute resolution mechanisms in Cambodia and enhancing its services to meet the needs and expectations of its users. The NCAC hopes that by offering mediation services, it will help parties resolve their disputes amicably, efficiently and cost-effectively.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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