

# Recognition and Enforcement of Arbitral Awards in Cambodia

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## Introduction

Arbitration is a form of alternative dispute resolution (ADR) in which the parties to a dispute agree to have their dispute resolved by one or more arbitrators instead of by a court. One of the notable features of arbitration is the finality and enforceability of arbitral awards ("**awards**"). This means that an award is binding on the parties and can be enforced in the courts of any country that is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**").

As of October 2023, there are 172 countries that are signatories to the New York Convention, with Timor-Leste (East Timor) being the latest. Cambodia became a party to the New York Convention on 5 January 1960.

In this article, we discuss:

1. the legislation applicable to the recognition and enforcement of awards;
2. the procedures applicable under the above-mentioned legislation;
3. grounds for setting aside awards; and
4. challenges faced in the recognition and enforcement of awards.

This article only focuses on commercial awards (including domestic, international, and foreign awards) that fall under the jurisdiction of the New York Convention. It does not address other types of awards that are not commercial in nature, such as labour awards or investor-state awards.

## Legal Framework

The regulations applicable to the recognition and enforcement of awards are the Law on the Adoption and Implementation of the New York Convention dated 23 July 2001 ("**Law on Implementation of the NYC**"), the Law on

Commercial Arbitration dated 6 March 2006 ("**Law on Commercial Arbitration**"), and the Code of Civil Procedure of Cambodia dated 6 July 2006 ("**Code**").

1. The **Law on Implementation of the NYC** recognises the New York Convention as a local law in the Kingdom of Cambodia. It outlines the procedures and jurisdiction of the Cambodian judiciary when recognising and enforcing foreign awards under the New York Convention.
2. The **Law on Commercial Arbitration** is the *lex arbitri* of Cambodia, which applies to both local and international commercial arbitration. This law substantially follows the UNCITRAL Model Law on International Commercial Arbitration. It sets out general legal principles governing commercial arbitration, including the issuance and enforcement of awards.
3. The **Code** is a general procedural law of Cambodia applicable to all types of civil disputes. Under the Code, both commercial and non-commercial awards issued in Cambodia or abroad may be enforced by the courts in Cambodia provided that legal requirements are met.

At first glance, there appear to be overlapping legal provisions between the Code and the other two legislations. However, the Code is a general procedural law, while the other two are considered special laws applicable to only the subject matter set out therein. Accordingly, it can be interpreted that they prevail over the Code in case of inconsistencies. Where the Law on Implementation of the NYC and the Law on Commercial Arbitration are silent, the Code serves as a gap filler.

## Procedures for Recognition and Enforcement of an Award

1. **Relevant courts:** The Court of Appeal of Phnom Penh ("**Court of Appeal**") has jurisdiction to recognise and enforce an award. If a party is dissatisfied with the Court of Appeal's decision, it may appeal to the Supreme Court.
2. **Application requirements:** In Cambodia, an award shall be recognised as binding, irrespective of the country in which it was made. A party wishing to have an award recognised and enforced in Cambodia shall submit an application to the Court of Appeal to recognise and enforce the award. The application shall include the authenticated award and the authenticated arbitration agreement (accompanied by certified Khmer translations if the award or agreement is not in the Khmer language). Upon application in writing to the Court of Appeal, the award shall be enforced subject to the provisions of the law.
3. **Timelines:**
  - a. The Law on Commercial Arbitration sets out the timeline for parties to make the relevant applications.
    - i. An application to set aside an award must be made within 30 days from the date on which the party making the application receives the award.
    - ii. An appeal petition to the Supreme Court against the decision of the Court of Appeal must be made within 15 days of the decision of the Court of Appeal.
  - b. The Law on Implementation of the NYC sets out the timeline for the Cambodian Courts to issue an order to recognise and enforce a foreign award.
    - i. The Court of Appeal shall issue an order to recognise a foreign award within 60 days after receiving an application to recognise and enforce an award.
    - ii. The appeal to the Supreme Court, if any, shall be made within 60 days after the date the decision of the Court of Appeal was made. This appears to contradict the timeline under the Law on Commercial Arbitration, which we address below.

- iii. The Supreme Court shall make a decision on the appeal petition within 60 days from the date of accepting the appeal petition.

## Grounds for Setting-aside or Refusing Recognition and Enforcement

Cambodian courts shall recognise and enforce an award without examining the merits of the case. There are however limited situations where Cambodian courts may decide to set aside or refuse the recognition and enforcement of an award or set aside an award. The grounds for setting aside are set out in Article 44 of the Law on Commercial Arbitration while the grounds for refusal of recognition and enforcement are set out in Article 45 of the Law on Commercial Arbitration and Article 15 of the Law on Implementation of the NYC. These grounds are based on Articles 34 and 36 of the UNCITRAL Model Law on International Commercial Arbitration, as follows:

- (i) The losing party can prove that:
  - (a) A party to the arbitration was incapacitated or the arbitration agreement is invalid;
  - (b) The party resisting the enforcement was not given proper notice of the appointment of an arbitrator of the arbitral proceeding or was unable to effectively present its case;
  - (c) The award deals with a dispute or decision beyond the scope of the arbitration agreement;
  - (d) The composition of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the parties;
  - (e) The award has not become binding, or the award has been set aside or suspended (this ground is not applicable for a setting-aside application).
- (ii) The courts find that:
  - (a) The subject matter of the dispute is non-arbitrable under Cambodian law; or
  - (b) The recognition of the award would be contrary to the public policy of Cambodia.

For item (i) a party resisting enforcement shall submit to the court a request with reasonable proof for the court's determination. However, for item (ii) the court may decide, on its own volition, to refuse the recognition and enforcement with or without a party's request.

## Practical Issues with Recognition and Enforcement

From our observation, Cambodian courts generally recognise and enforce awards, and Cambodia is therefore seen as arbitration-friendly. However, an issue practitioners experience in the recognition and enforcement of the awards is the use of delay tactics by the party resisting enforcement. Examples include frivolous challenges to court rulings, or requests for unnecessary extensions due to changes of lawyers or supposed scheduling conflicts.

Another issue is that the 60-day period for the court to issue an order, as imposed by the Law on Implementation of the NYC, is generally impractical. This is because courts must provide parties with adequate time to receive notices, participate in proceedings, and defend their cases. Nonetheless, although strict compliance with this timeline is not always possible, we believe that justice is served as long as an order is made within a reasonable timeframe that enables parties to participate and present their case effectively.

Additionally, as mentioned above, the timeline to appeal against the decision of the Court of Appeal is inconsistent under the Law on Commercial Arbitration (15 days) versus the Law on Implementation of the NYC (60 days). This is an issue currently faced by legal practitioners, as it is unclear which law takes precedence. We look forward to an amendment to either law or the issuance of any clarifying regulations in this regard.

## Concluding Remarks

As a mode of alternative dispute resolution, arbitration plays an important role in Cambodia's legal system which provides a quicker resolution for the parties in disputes. The enforcement of awards in Cambodia is generally considered to be reliable and efficient. However, awards can be set aside in limited circumstances including due process issues, non-arbitrability and violation of public policy. Thus, it is important that the parties and the tribunals do their best to ensure that due process is met and local laws and policies are observed.

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

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