

Kluwer Arbitration Blog

Cambodia's Arbitration Centre sets off on its First Flight

Olga Boltenko (Fangda Partners) · Wednesday, June 10th, 2015

The National Commercial Arbitration Centre of the Kingdom of Cambodia (“**NCAC**”) was conceived in 2006, when Cambodia’s Commercial Arbitration Law entered into force. The initiative to create the centre surfaced as a part of Cambodia’s attempt to attract foreign investment on the one hand and to offer a viable alternative to domestic litigation to local businesses on the other. In 2009 and 2010, the Commercial Arbitration Law was amended to accommodate the birth of the NCAC. The International Finance Corporation and the Asian Development Bank produced numerous drafts of NCAC’s Arbitration Rules (“**Rules**”) until the final version of the Rules was approved in July 2014.

When NCAC’s Rules were unveiled at Phnom Penh’s International Arbitration Day in 2014, it became apparent that whilst the Rules are a state-of-the-art document prepared with much care by international organizations and international arbitration consultants, they differ in many respects from the more conventional ICC, LCIA, SIAC, SCC, and other rules. For example, Article 2.3 of the Rules dictates what prevails if there is a discrepancy between the Rules, the mandatory laws of the seat, and any other laws that might govern the arbitration proceedings. Article 12.3 of the Rules requires that all arbitrators appointed under the Rules abide by the NCAC’s Arbitrator Code of Conduct. Article 23.1 of the Rules deals with the claimant’s right to revoke its claims and the consequences of the revocation. There are many other provisions that set NCAC’s Rules apart from many other institutional rules.

Despite the fine work and the good will behind the NCAC and its Rules, much scepticism has been levelled at both. Many suggest that the NCAC does not possess a viable self-funding mechanism to survive which in turn impairs its independence. Some are uncertain about NCAC’s capability to administer cases given its lack of experience and funding.

In the last week of May, the NCAC received its first notice of arbitration. The dispute allegedly arises out of a lease agreement between a foreign national and a Cambodian landlord over the lease of a factory in Phnom Penh. The eyes of Cambodia’s business community are now certainly on the NCAC. It will not be an understatement to say that the future of the center will be affected by the way the center administers its first case.

In addition to the scepticism towards the NCAC and its Rules, some in Cambodia are sceptical about the very concept of arbitration, mostly because any award, even if it is obtained expeditiously and fairly through the NCAC, will inevitably end up in the Cambodian courts if its enforcement is sought in Cambodia. Under Cambodia’s Commercial Arbitration Law, largely

modelled after the UNCITRAL Model Law, the Court of Appeal in Phnom Penh is in charge of enforcement matters.

Until very recently, there was no enforcement case law to speak of in Cambodia. In 2014, the Supreme Court of Cambodia rejected a motion to annul the decision of the Court of Appeal by which the court recognized and enforced a Korean Commercial Arbitration Board award (“**KCAB**”). The underlying KCAB dispute arose between a Korean company and a Cambodian company over a large-scale commercial and residential real estate development in Phnom Penh. The Supreme Court affirmed the decision of the Court of Appeal to enforce the award against the Cambodian party.

Despite the scarcity of enforcement case law, it transpires that the Cambodian government and judiciary are increasingly interested in arbitration, and in particular in the New York Convention enforcement mechanisms. In May 2015, a judge of the Cambodian Court of Appeal attended ICCA’s judicial forum in Hong Kong, at which senior ASEAN judges discussed the New York Convention issues pertaining to their respective jurisdictions. The forum was hosted by the HKIAC and spearheaded by a Hong Kong based arbitrator Neil Kaplan CBE QC SBS, who also chairs the Judicial Committee to the ICCA Governing Board.

Further updates are warranted as Cambodia grows into an arbitration-friendly jurisdiction, but suffice to say, as a matter of fact, that the Cambodian National Commercial Arbitration Centre has spread its wings and has set off on its first flight.

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This entry was posted on Wednesday, June 10th, 2015 at 12:01 am and is filed under [Arbitral seat](#), [Asia-Pacific](#), [Cambodia](#), [International arbitration](#), [National Commercial Arbitration Centre of the Kingdom of Cambodia](#)

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