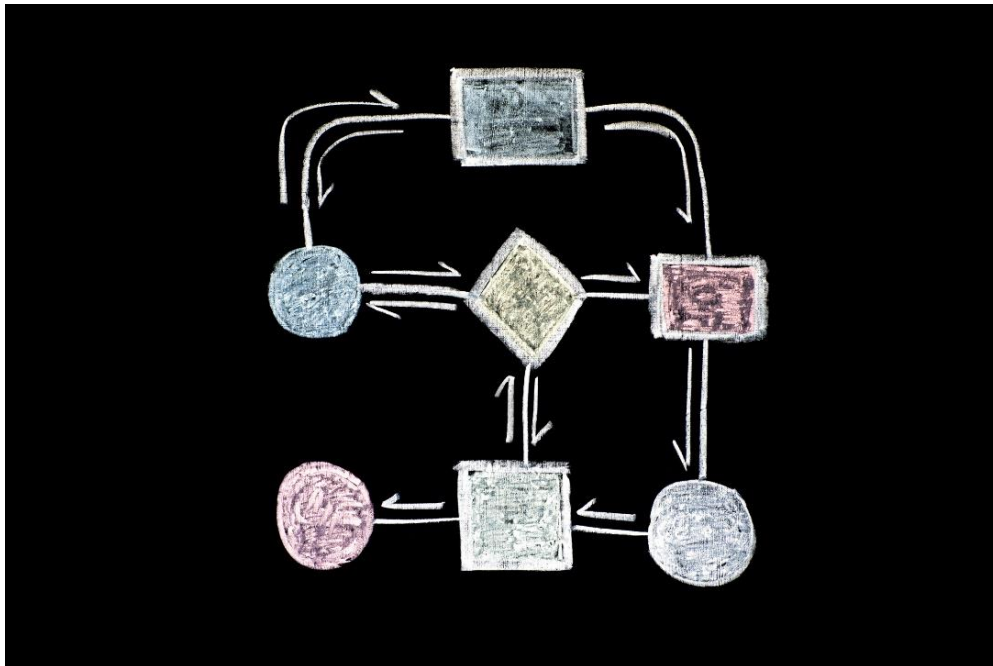


# Overview of Arbitral Proceedings in Cambodia

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## Introduction

Cambodia established its first commercial arbitration centre, the National Commercial Arbitration Centre of Cambodia ("**NCAC**") in 2006, which then commenced operations in 2013. As of December 2020, NCAC has received 25 cases under its first arbitration rules adopted in 2014 ("**2014 Rules**").

In June 2021, NCAC amended the 2014 Rules. The new arbitration rules ("**2021 Rules**") consist of 9 chapters and 74 articles.

This article highlights the key stages of arbitral proceedings under the 2021 Rules as follows:

1. Commencement of arbitration;
2. Interim stage;
3. Hearings; and
4. Issuance of arbitral award.

## Commencement of Arbitration

### Notice of Arbitration

To commence an arbitration, a party ("**Claimant**") shall file a notice of arbitration ("**Notice**") with the General Secretariat of NCAC ("**General Secretariat**"). The Notice shall be in the language of the arbitral proceedings. If such language is not Khmer or English, it shall be accompanied by either a Khmer or English translation. The Notice must include the following information:

- A statement that the dispute be referred to arbitration;
- The identities, nationalities or corporate identities, addresses, and contacts of the parties and their representative(s), if any;
- A reference to the arbitration clause or the separate arbitration agreement that is invoked and a copy of such clause or agreement;
- A reference to the contract or other relationships in connection with the dispute and, where possible, a copy of such contract or relationship;
- A brief statement describing the nature and circumstances of the dispute, the statement of relief or remedy sought, and if possible, an initial quantification of the claim(s) of the Claimant;
- The agreed/or proposed number of arbitrators; and
- Further statements or proposals, if any, on the conduct of arbitration such as the applicable law, language, and the agreed or desired qualifications and nationalities of the arbitrators.

The Notice shall be accompanied by payment of the case registration fees.

Unless otherwise agreed by the parties, the arbitral proceedings commence from the day the General Secretariat receives the complete Notice.

## **Notice of Response**

The General Secretariat shall notify the other party to the dispute ("**Respondent**") upon the receipt of the complete Notice. The Respondent has 15 days to submit a notice of response which shall contain the same basic information as the Notice (such as the identities of parties, the agreed/proposed number of arbitrators and statements or proposals on the conduct of arbitration).

However, the Respondent must also provide a statement of confirmation or denial of all or parts of the alleged claim(s). Additionally, if there is an intention to submit a counterclaim(s), the Respondent must provide a brief statement of the counterclaim(s). The Respondent must also pay registration fees for the counterclaim, otherwise the counterclaim will not be considered in the arbitral proceedings.

After the deadline for the notice of response, the General Secretariat shall notify all parties regarding whether the complete notice of response has been received ("**Notification**").

## **Constitution of Tribunal**

The Tribunal shall be composed of an odd number of arbitrator(s), and by default will be three arbitrators unless the parties have agreed otherwise. Parties may agree on a procedure for constituting the Tribunal. Where the parties have not agreed, and where the Tribunal consists of three members, each party shall appoint one arbitrator within 15 calendar days after the receipt of the Notification. The two arbitrators shall jointly appoint a presiding arbitrator within 15 days after their appointment or after the last of them has been appointed, whichever is later.

If either the parties or the arbitrators fail to appoint an arbitrator/presiding arbitrator, the Appointment and Proceedings Committee of NCAC shall make such appointment.

## **Interim Stage**

After the arbitration commences, the Tribunal and the parties shall prepare for the interim stage, which includes the preliminary meeting and additional meeting(s), and the submission of the relevant documents by parties.

## **Preliminary meeting and additional meeting(s)**

Under article 35.2 of the 2021 Rules, the preliminary meeting shall be held as soon as practicable to organise and schedule subsequent proceedings, as well as for parties to decide on the most appropriate and cost-effective procedures to solve the dispute. In addition to the preliminary meeting, the Tribunal may also convene additional meetings to decide upon matters such as the manner of hearing (e.g. oral hearings or documents-only arbitration), production of documents, taking of samples, examination of evidence, and to give procedural orders.

## **Submissions by parties**

According to Article 37 of the 2021 Rules, the parties shall submit the following statements:

- **Statement of Claim:** The Claimant shall submit details of the facts surrounding the disputes, legal grounds or arguments supporting the claim(s), and the relief or remedy sought together with the amount of all quantifiable claims.
- **Statement of Defence and Counterclaim(s):** In its Statement of Defence, the Respondent shall submit details of its admissions and/or denial of facts and contentions of law, and other facts and contentions of law that are relied upon. The Statement of Counterclaim(s), if submitted by the Respondent, shall comply with the requirements of a Statement of Claim set out hereinabove.
- **Statement of Defence to Counterclaim(s):** The Claimant shall respond to the counterclaim(s) within 30 days after receiving the Statement of Defence and counterclaim(s).
- **Supporting documents and further submissions:** All submissions of the abovementioned statements shall be accompanied by copies of the supporting documents that have not been submitted. Parties may also make further submissions on matters such as the challenge of arbitrators and interim measures within the timelines stipulated in the 2021 Rules.

## **Hearings**

Based on Article 39 of the 2021 Rules, the hearing shall be conducted in the manner as agreed between the parties. If the parties have not agreed on the manner of hearing, the Tribunal shall decide whether to hold oral hearing(s) or conduct the proceedings on the basis of documents or other materials only. However, the Tribunal shall hold oral hearing(s) if so requested by a party.

The Tribunal shall fix the date, time, place, and means of hearing(s), and shall provide reasonable advance notice to the parties of no less than 15 calendar days prior to the hearing date.

## **Issuance of Award**

Once the hearing is concluded, the Tribunal shall declare the closure of proceedings when it is satisfied that the parties have no further relevant and material evidence to produce or submission to make. The Tribunal will thereafter issue a final award which must be first scrutinised by the General Secretariat. Aside from a final award, the Tribunal may issue a consent award where both parties to the dispute reach a settlement or issue an award for interim measures at any time prior to the final award as deemed necessary. Consent awards and awards for interim measures are not required to be scrutinised by the General Secretariat.

## **Concluding Remarks**

Commercial arbitration has become an increasingly favoured means of dispute resolution in Cambodia. NCAC, being the only national commercial arbitration centre, has demonstrated its commitment to resolving disputes in an amicable, confidential, and cost-effective manner through efficient arbitral proceedings. To achieve this goal, a set of well-defined arbitration rules is essential to ensure the smooth conduct of arbitral proceedings, and for the disputing parties to understand their roles, rights, and obligations. Taking this into account, the 2021 Rules set out in detail the steps of an

arbitration proceeding from the commencement of arbitration to issuance of an award, for the purpose of facilitating the overall arbitration process.

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

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## Contact

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**[Heng Chhay](#)**

Partner, Cambodia

T +855 23 963 112 / 113

[heng.chhay@rajahtann.com](mailto:heng.chhay@rajahtann.com)

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Please feel free to contact the editorial team of *Arbitration Asia* at [arbitrationasia@rajahtannasia.com](mailto:arbitrationasia@rajahtannasia.com), and follow us on LinkedIn [here](#).

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