

The New NCAC Rules 2021 Introduces New Key Features

With the aim to promote and develop more efficiency in dispute settlement, and flexibility during COVID-19 pandemic and that to provide more features in the arbitration to users in accordance with the best international practices, the National Commercial Arbitration Centre of Cambodia (“**NCAC**”) adopted its new Arbitration Rules 2021 (“**NCAC Rules 2021**”), which was effective on 28 June 2021.

In the recently adopted NCAC Rules 2021, NCAC has modified wordings and phase on the previous rules to provide more clarity, increased fee and cost to leverage their service and paved the way for NCAC to provide service(s) to non-institutional arbitration in Cambodia. In addition, from our practitioner’s insights, the significant amendment in NCAC Rules 2021 includes virtual hearing, expedited procedure (“**EP**”) and emergency arbitration (“**EA**”).

I. The Major Amendments

1. Virtual Hearing

Given the fact that Covid-19 pandemic has hindered both travelling and attending the traditional physical hearing while taking into consideration of continual roles of arbitral panel in providing efficient, timely and cost-effective resolution of disputes, Article 39 of the NCAC Rules 2021 allows the arbitral tribunal, after consulting with the parties, to decide on the type of hearing, whether a physical hearing or virtual hearing namely videoconference, telephone, or using other means of communication technology with participants in one or more geographical places or in a combined form.

2. Expedited Procedure (“EP”)

The NCAC Rules 2021 introduces the EP for the very first time. The EP is a time and cost saving option available in appropriate cases to the parties who agree to refer their disputes to the NCAC. Prior to the establishment of the arbitral tribunal, a party may request for the EP by submitting an application to the General Secretariat of the NCAC.

The procedure can be adopted should any of the following criteria be satisfied:

- a. the sum in dispute does not exceed the equivalent amount of USD3,000,000 (three million US Dollars), representing the aggregate value of the claim(s), counterclaim(s) and any set-off defence;
- b. the parties so agree; or
- c. in cases of exceptional urgency.

After filing the application, it depends on the Appointment and Proceedings Committee to decide whether the application is appropriate on the application to be accepted for EP after

considering the views of the parties. If the committee thereafter determines and accept the application, the following procedure shall apply:

- a. The General Secretariat may shorten any time limits under the NCAC Rules 2021;
- b. If the arbitration agreement does not provide for a three-member Tribunal, the case shall be referred to a one-member Tribunal. If the arbitration agreement provides for a three-member Tribunal, the General Secretariat shall invite the parties to agree to refer the case to the one-member Tribunal and if the parties do not agree to a sole arbitrator, the case shall be referred to the three-member tribunal;
- c. After consulting with the parties, the Tribunal shall then decide on the basis of documents only, or required for the examination of any witness and expert witness; and
- d. The final award shall be made within 270 (two hundred and seventy) calendar days from the date when the Tribunal is constituted unless, in exceptional circumstances, the Appointment and Proceedings Committee extends the time for making such final award.

In case the EP rule is applied, the EP rule shall be prevailed if the EP rule is in contrary to the terms under the arbitration agreement.

The Tribunal may order that the arbitration proceedings shall no longer be conducted in accordance with EP if there is a request from a party, after giving the parties the opportunity to give comment and after consulting with the Appointment and Proceedings Committee.

3. Emergency Arbitrator (“EA”)

The unprecedented feature introduced in the New NCAC Rules 2021 is the emergency arbitrator (“EA”). The new feature helps addressing situations where a party is in need of emergency interim measure before a Tribunal is constituted.

The interim order or award must be made within 15 (fifteen) calendar days from the appointment date of the EA, unless, in exceptional circumstances, the General Secretariat of the NCAC extends the time.

It is worth noting, however, that unless otherwise agreed by the parties, the EA may not act as an arbitrator in any prospective arbitration relating to the dispute.

II. Conclusion

This new NCAC Rules 2021 tends to provide more flexible, efficient, and transparent process in resolving the disputes in an indistinguishable environment of international arbitration. With these advantages, it is believed that the NCAC Rules 2021 will attract more users in opting in the NCAC as the dispute settlement hub.

Should any additional information be required regarding this legal alert or if you have any further inquiry, please contact our team at info@anlor.legal or reach out to our professionals below:



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