

KINGDOM OF CAMBODIA

NATION RELIGION KING

**THE COMMERCIAL ARBITRATION LAW
OF THE KINGDOM OF CAMBODIA**

Submitted to
The NATIONAL ASSEMBLY

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THE COMMERCIAL ARBITRATION LAW

OF THE KINGDOM OF CAMBODIA

CHAPTER I

GENERAL PROVISIONS

Article 1: Purpose and Scope of Application

The purpose of this law is to facilitate the impartial and prompt resolution of commercial disputes in accordance with the wishes of the parties, to safeguard the legal rights and interests of the parties, and to promote the sound development of the economy.

This Law shall not affect any other law of the Kingdom of Cambodia by virtue of which certain dispute may be submitted to arbitration or other dispute resolution procedures, or by virtue of which certain disputes may not be submitted to arbitration.

Article 2: Definitions and Rules of Interpretation

For purposes of this Law:

- (a) "Arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "Court" means a body or organ of the judicial system of a state;
- (d) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (e) Where a provision of this law, except Article 36 of this Law, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (f) Where a provision of this Law refers to the fact that the parties have agreed, or that they may agree, or in any other way refers to an agreement of the parties, such agreement includes any rules referred to in that agreement;
- (g) Where a provision of this Law, other than in Articles 33(a) and 40(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defense, it also applies to a defense to such counter-claim;
- (h) An arbitration is "international" if
 - (i) the parties to an arbitration agreement have their places of business in different States at the time of the conclusion of that agreement; or
 - (ii) one of the following places is situated outside the state in which the parties have their places of business:

- the place of arbitration, if determined in, or pursuant to, the arbitration agreement;
 - any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- (iii) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
- (iv) For the purposes of this paragraph (h);
- if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - if a party does not have a place of business, reference is to be made to his habitual residence.
- (i) The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of good or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; and carriage of goods or passenger by air, sea, rail or road.

Article 3: Receipt of Written Communications

Unless otherwise agreed by the parties:

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally, or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or at the last known address of the addressee;
- (b) The provisions of Article 3 of this Law do not apply to communications in Court proceedings.

Article 4: Waiver of Right to Object

A party who knows that any provision of this Law from which parties may derogate, or any requirement under the arbitration agreement, has not been complied with, and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

Article 5: Extent of Court Intervention

In matters governed by this Law, no Court shall intervene except where so provided in this Law.

Article 6: Court or other Authority for Certain Functions of Arbitration Assistance Supervision

The functions referred to in Articles 19(3), 19(4), and 19(5); 21(3); 22; and 24(3) of this law shall be performed by the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center.

CHAPTER II

ARBITRATION AGREEMENT

Article 7: Definition and Form of Arbitration Agreement

Arbitration agreement includes an arbitration clause in a contract or a separate submission agreement.

The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, or other means of electronic telecommunication (telexes, telegrams, faxes) which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreed is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make the clause part of the contract.

Article 8: Arbitration Agreement and Substantive Claim before Court

A Court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Where an action referred to in paragraph (1) of this Article has been brought, arbitral proceedings may nevertheless be commenced or continued and the court shall refer the issue to the arbitration, while it is pending before the arbitration.

Article 9: Arbitration Agreement and Interim Measures by Court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings from a Court an interim measure of protection and for a Court to grant such measure.

CHAPTER III

NATIONAL CENTER OF COMMERCIAL ARBITRATION

Article 10: National Arbitration Center

An independent National Arbitration Center (“NAC”) shall be established under the auspices of Ministry of Commerce. The objectives of the National Arbitration Center are:

- (a) to promote settlement of commercial disputes by means of arbitration in Cambodia;

- (b) to create the necessary infrastructure and rules for the administration of arbitration cases in the Kingdom of Cambodia, where an express agreement of disputing parties to refer disputes to National Arbitration Center;
- (c) to ensure that high quality standards of arbitration are maintained in the Kingdom of Cambodia. This objective includes setting standards for the qualification of arbitrators,

Article 11: Arbitrators

The Khmer natural person or foreigner who is arbitrator shall register with the National Arbitration Center. The National Arbitration Center shall have an obligation to determine the arbitrators' qualification and shall make the public announcement of arbitrators' list yearly. The list is not absolute; the parties are free to choose the arbitrator outside that list.

Article 12: Qualification of Members of Arbitrators

The natural person and legal entity to be permitted as a member of the National Arbitration Center are:

- an Arbitrator who has registered his/her name with the National Arbitration Center;
- the Chamber of Commerce;
- the Bar of the Kingdom of Cambodia; and
- the Association that comprises of businessman, industrialist, merchant and services provider.

The application to be a member of the National Arbitration Center shall be determined by the Executive Board of the National Arbitration Center that comprises not more than seven (7) members. The term of each member is three (3) years and may re-elect for one more term.

Article 13: The Chamber of Commerce and Chamber of Professionals

The Chamber of Commerce may establish an Arbitration Center in Phnom Penh. The Association that comprises of businessman, industrialist, merchant and services provider may establish its own arbitral institution for disputes arising among its members; and between its members and third party.

Article 14: Management of National Arbitration Center

The National Arbitration Center shall be governed by:

- a General Assembly; and
- an Executive Office.

The General Assembly shall have *inter alia* functions and duties:

- to meet one or twice per year at the request of the Chairman of the National Arbitration Center or at the request of the majority members of Executive Board;
- to elect the Executive Board;
- to inspect the annual report of Executive Board;
- to approve the financial budget of National Arbitration Center;

- to approve the list of arbitrators that annually published;
- to determine the fees and costs of arbitration;
- to approve the amendment of rules and regulations that related to the operation of National Arbitration Center and functioning of arbitration; and
- to fulfill other functions and duties that determined in the Sub-Decree of the organization and functioning of National Arbitration Center.

Article 15: The General Assembly

The General Assembly shall be attended by the members who are natural persons and a representative of each legal entity.

Article 16: Composition of Executive Board

The Composition of Executive Board that manages the National Arbitration Center shall be elected among its members by the General Assembly. The Chairman of Executive Board shall be the Chairman of the National Arbitration Center.

Article 17: Organization and Functioning of National Arbitration Center

The organization and functioning of National Arbitration Center shall be determined by implementing Sub-Decree.

CHAPTER IV

COMPOSITION OF ARBITRAL TRIBUNAL

Article 18: Number of Arbitrators

The parties are free to determine the number of arbitrators. The number of arbitrators shall be odd number.

Failing such determination, the number of arbitrators shall be three (3).

Article 19: Appointment of Arbitrators

The appointment of arbitrator shall determine as follows:

- (1) no person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) the parties are free to agree on a procedure for appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this Article.
- (3) failing such agreement,

- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law.
- (4) Where, under an appointment procedure agreed upon by the parties, either party may request to the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law to take a necessary measure for any of the following:
- (a) a party fails to act as required under such procedure, or
 - (b) the parties, or two (2) arbitrators, are unable to reach an agreement expected of them under such procedure, or
 - (c) A third party, including an institution, fails to perform any function entrusted to it under such procedure. This article shall not apply, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) A decision on a matter entrusted by paragraph (3) or (4) of this Article to the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law shall be subject to no appeal. The Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In the case of a sole or third arbitrator in an international arbitration, the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties as specified in Article 19(1) of this Law.

Article 20: Ground for Challenge

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, unless they have already been informed of them by him.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 21: Challenge Procedure

To challenge the arbitrator, the parties shall comply with the following procedures:

- (1) the parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this Article.

- (2) failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen (15) days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Article 20(2) of this Law, send a written statement of the reasons for the challenge to the arbitral tribunal and the other party or parties. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) if a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this Article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 22: Failure or Impossibility to Act

If an arbitrator becomes *De Jure* or *de facto* unable to perform his functions, or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the Court (Commercial, or Appeal, or Supreme) or National Arbitration Center as specified in Article 6 of this Law to decide on the termination of the mandate, which decision shall be subject to no appeal.

If, under this Article or Article 21(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Article or Article 20(2).

Article 23: Appointment of Substitute Arbitrator

Where the mandate of an arbitrator terminates under Article 21 or 22 of this law, a substitute arbitrator shall be appointed according to Article 19 of this law.

CHAPTER V

JURISDICTION OF ARBITRAL TRIBUNAL

Article 24: Competence of Arbitral Tribunal To Rule on Its Jurisdiction

The jurisdiction of Arbitral Tribunal shall determine as follows:

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *Ipso Jure* the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator, A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as-soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this Article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the Court specified in Article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 25: Power of Arbitral Panel to Order Interim Measures

Unless otherwise agreed by the parties, the arbitral panel may, at the request of a party, order any party to take such interim measure of protection as the arbitral panel may consider necessary in respect of the subject matter of the dispute. The arbitral panel may require any party to provide appropriate security in connection with such measure.

CHAPTER VI

CONDUCT OF ARBITRAL PROCEEDINGS

Article 26: Equal Treatment of Parties

The parties shall be with equality and each party shall be given a full opportunity to present his case, including representation by any party of his choice.

Article 27: Determination of Rules of Procedure

The parties are free to agree or disagree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 28: Place of Arbitration

The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the agreement of the parties.

Notwithstanding the provisions of paragraph (1) of this Article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or to conduct inspection to equipment, property or other documents.

Article 29: Commencement of Arbitral Proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 30: Language

The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 31: Statements of Claim and Defense

Within the period of time agreed by the parties or determined by the arbitral panel, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

Unless otherwise agreed by the parties, either party may amend or supplement his claim or defense during the course of the arbitral proceedings, unless the arbitral panel considers it inappropriate to allow such amendment, having regard to the delay in making it.

Article 32: Hearings and Written Proceedings

Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of materials, goods, other property or documents.

All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 33: Default of a Party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

- (a) the claimant fails to communicate his statement of claim in accordance with Article 31(1) of this Law, the arbitral panel shall terminate the proceedings.
- (b) the respondent fails to communicate his statement of defense in accordance with Article 31(1) of this Law, the arbitral panel shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) Any party fails to appear at a hearing, or fails to produce documentary evidence, the arbitral panel may continue the proceedings and make the award on the evidence before it.

Article 34: Expert Appointed by Arbitral Tribunal

Unless otherwise agreed by the parties, the arbitral tribunal,

- (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (b) may require a party to give the expert any relevant information, or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

Unless otherwise agreed by the parties, if a party so requests, or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing, at which the parties have the opportunity to put questions to him and to present expert witnesses to testify on the points at issue.

Article 35: Court Assistance in Taking Evidence

The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from a competent Court (Commercial, or Appeal, or Supreme) assistance in taking evidence. The Court (Commercial, or Appeal, or Supreme) may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VII

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 36: Rules Applicable to Substance of Dispute

The Arbitral Tribunal shall apply applicable rules during the arbitration proceedings:

- (1) The parties shall be free to agree upon the rules of law to be applied by arbitral tribunal to the merits of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (2) Failing such an agreement by the parties, the arbitral tribunal shall apply the law that it considers appropriate.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or *as amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall take into account all the provisions of the arbitration agreement and also the usages of the trade and customs applicable to the transaction.

Article 37: Decision Making by Panel of Arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal may be made by a majority of all its members.

Article 38: Settlement

Upon request by both parties, prior to commencement of formal arbitration proceedings, the arbitral tribunal may confer with the parties for the purpose of exploring whether the possibility exists of a voluntary settlement of the parties' dispute:

- (1) if the parties determines that it does, the arbitral tribunal shall assist the parties in any manner it deems appropriate.
- (2) If the parties settle the dispute prior to commencement of the formal arbitral proceedings, or in the course thereof, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, may record the settlement in the form of an arbitral award on agreed terms.
- (3) An award on agreed terms shall be made in accordance with the provisions of Article 39 of this Law, and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 39: Form and Content of Award

The arbitral tribunal form and content of award shall contain as follows:

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 38 of this law.
- (3) The award shall allocate among the parties the costs of the arbitration, including the arbitrator(s) fee(s) and incidental expenses, in the manner agreed by the parties, or in the absence of such agreement, as the arbitrators deem appropriate. If the parties have so agreed, or the arbitrators deem it appropriate, the award may also provide for recovery by the prevailing party of reasonable counsel fees.
- (4) The award shall state its date and the place of arbitration as determined in accordance with Article 28(1) of this law. The award shall be deemed to have been made at that place.
- (5) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this Article shall be delivered to each party.

Article 40: Termination of Proceedings

The arbitral Proceedings are terminated by the final award, an agreed settlement, or by an order of the arbitral tribunal in accordance with Paragraph (2) of this Article.

The arbitral tribunal shall issue an order for the termination of the arbitral Proceedings when:

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of Articles 41 and 42(4) of this Law.

Article 41: Correction and Interpretation of Award; Additional Award

The correction and interpretation of award shall determine as follows:

- (1) Within thirty (30) days of the receipt of the award, unless another period of time has been agreed upon by the parties
 - (a) with notice to the other party, a party may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any other errors of a similar nature.
 - (b) with notice to the other party, a party may request the arbitral tribunal to give an interpretation or amplification of a specific point or part of the award. If the arbitral tribunal considers the request justified, it shall provide the interpretation or amplification within thirty days of receipt of the request. The interpretation or amplification shall form part of the award;
- (2) Within no later than thirty (30) days after the issuance of award by the arbitral tribunal, the arbitration may correct the errors stated in paragraph 1(a) of this Article at its own initiatives.
- (3) unless otherwise agreed by the parties, within no later than thirty (30) days after receiving an award as to the claims, the party who has notified another party may request for additional awards presented in the arbitral proceeding but omitted from the award. If the arbitral tribunal considers the request justified, it shall make the additional award within thirty (30) days of receipt of the request.
- (4) if it is required and by notifying the parties, the arbitral tribunal may extend the period of time with which it shall make a correction, interpretation, amplification, or additional award under paragraph (1) and (3) of this Article.
- (5) The provisions of Article 39 of this Law shall apply to a correction, interpretation or amplification, or an addition to the award.

CHAPTER VIII

**COUNTER CLAIM, RECOGNITION, AND ENFORCEMENT
OF ARBITRAL AWARD**

Article 42: Application for Setting Aside as Exclusive Recourse Against Arbitral Award

The jurisdiction over counter claim, recognition, and enforcement of arbitral award shall rest with the Appellate Court of the Kingdom of Cambodia.

Article 43: Conclusive Jurisdiction

The Supreme Court of Cambodia shall be the final jurisdiction to try counter claim of the party who is not satisfying with the decision of the Appellate Court within fifteen (15) days.

SECTION I

RECOURSE AGAINST ARBITRAL AWARDS

Article 44: Application for Setting Aside as Exclusive Recourse Against Arbitral Award

The party may file an application for setting aside as exclusive recourse against arbitral award as follows:

- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this Article.
- (2) An arbitral award may be set aside by the Appeal Court and Supreme Court only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in Article 7 of this Law was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing, any indication by the parties, under the law of the Kingdom of Cambodia; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator(s) or of the arbitral proceedings, or was otherwise unable effectively present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
 - (b) the Appeal Court and Supreme Court finds that
 - (i) the subject matter of the dispute is, not capable of settlement by arbitration under the law of the Kingdom of Cambodia; or
 - (ii) The recognition of the award would be contrary to public policy of the Kingdom of Cambodia
- (3) An application for setting aside may not be made after thirty (30) days have elapsed from the date on which the party making that application had received the award or, if a request had been made under Article 41 of this article within thirty (30) days, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The Appeal Court and Supreme Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by the Appeal Court and Supreme Court, in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

SECTION II

RECOGNITION AND ENFORCEMENT OF AWARDS

Article 45: Recognition and Enforcement

An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this Article and Article 44 of this Law.

The party relying on and award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 7 of this Law or a duly certified copy thereof. If the award or agreement is not made in Khmer, the party shall supply a duly certified translation thereof into Khmer.

Article 46: Grounds for Refusing Recognition or Enforcement

Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

- (a) At the request the party against whom it is invoked, if that party furnishes to the Appeal Court where recognition or enforcement is sought proof that:
 - (i) A party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing, any indication by the parties, under the law of the Kingdom of Cambodia; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator(s) or of the arbitral proceedings, or was otherwise unable effectively present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) The composition of the arbitral panel or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the where the arbitration took place; or
 - (v) The award has not yet become binding on the parties in the country in which, or under the law of which, that award was made, or the award has been set aside or suspended by a court in the country which the award was made; or
- (b) the Appeal Court finds that
 - (i) the subject matter of the dispute is, not capable of settlement by arbitration under the law of the Kingdom of Cambodia; or
 - (ii) The recognition of the award would be contrary to public policy of the Kingdom of Cambodia.

If an application for setting aside or suspension of an award has been to a court referred to in paragraph (1)(a)(v) of this Article, the court where recognition or enforcement is sought may, if it consider it proper, adjourn its decision and may also, on the application of the party claiming recognition of the award, order the party to provide appropriate security.

CHAPTER IX

FINAL PROVISIONS

Article 47: Abrogation

Any provisions in commercial arbitration sector that are contrary to this Law shall be abrogated.

This Law is enacted by the National Assembly of the
Kingdom of Cambodia on the _____ of _____, 2005
at its _____ Session of the 3rd Legislature.