



INVESTMENT AND
TRADE AGENCY



**LAW ON
ARBITRATION**

Revised version
as of 26 January 2017



LAW ON ARBITRATION

26 January, 2017.

Ulaanbaatar city.

Revised version

CHAPTER ONE. GENERAL PROVISIONS

Article 1. Purpose of this law

- 1.1. The purpose of this law is to regulate relations, related to the settlement of legal disputes through arbitration in accordance with international standards.

Article 2. Scope of application

- 2.1. This law shall be applied if the location of the arbitration tribunal is in Mongolia.
- 2.2. In the provisions of this law, Articles 10, 11, 27, 28, 29, 39, 48 and 49 shall apply to arbitration proceedings, even if it is not determined by a country other than Mongolia.

Article 3. Proceedings

- 3.1. Arbitration is the settlement of an arbitration dispute by a permanent or temporary arbitration tribunal.
- 3.2. Arbitration is international if:
 - 3.2.1. at the time of the conclusion of an agreement, the parties to the arbitration agreement shall have their place of business in different states;
 - 3.2.2. the place of arbitration, if it is determined, shall be subject to an arbitration agreement;
 - 3.2.3. where a substantial part of the obligations of the commercial relationship is to be carried out or the place with which the subject-matter of the dispute is most closely linked;
 - 3.2.4. the parties have expressly agreed that the subject-matter of the arbitration agreement concern more than one country.
- 3.3. For the purposes of Paragraph 3.2 of this article:
 - 3.3.1. 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;
 - 3.3.2. if a party does not have a place of business, reference shall be made to its habitual residence.
- 3.4. Domestic arbitration shall refer to proceedings other than international arbitration.

Article 4. Receipt of written communications

- 4.1. The document is deemed to have been received on the day it is so delivered.
- 4.2. Unless otherwise agreed by the parties:
 - 4.2.1. any written documents are deemed to have been received if they are delivered to the addressee personally or if they are delivered to his/her place of business, habitual residence or postal address;

- 4.2.2. if none of the provisions of Section 4.2.1 can be found after making a reasonable inquiry, a written document is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a recording of the attempt to deliver it;
- 4.3 The provisions of Paragraphs 4.1 and 4.2 do not apply to communications in court proceedings.

Article 5. Waiver of right to object.

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

Article 6. Court intervention.

- 6.1. No court shall intervene in matters governed by this law, except where provided for in this law.
- 6.2. The functions referred to in Paragraphs 11.1, 13.4, 13.5, 15.3, 16.1, 18.7, 39.1 and Article 47 of this law shall be performed by the Civil Court of Appeals in the capital city of Mongolia, Ulaanbaatar, the place where the arbitration proceedings take place, and in the case of international arbitration, by the City Court of Civil Appeals.
- 6.3. The functions referred to in Articles 27, 29, 48 and 51 of this law shall be performed by the court in the first instance at the declared place of residence of the defendant or at the place where his/her property is situated.

Article 7. Arbitration type.

- 7.1. Arbitration shall be either permanent or temporary.
- 7.2. Permanent arbitration shall be governed by the rules of arbitration. The rules of permanent arbitration may stipulate that Paragraphs 13.4 and 16.1 of this law shall be resolved by authorized bodies.
- 7.3. In Mongolia, permanent arbitration is established under the auspices of trade producers and consumers, non-governmental organizations and professional associations, such as the Chamber of Commerce and Industry.
- 7.4. Referring in Paragraph 7.3 of this law the permanent arbitration shall have the premises and personnel to conduct the arbitration proceedings.
- 7.5. A temporary arbitration shall be established in accordance with the procedures agreed upon by the parties.

CHAPTER TWO. ARBITRATION AGREEMENT

Article 8. Form of arbitration agreement.

- 8.1. 'Arbitration agreement' shall mean 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.
- 8.2. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- 8.3. The arbitration agreement shall be in writing.
- 8.4. An agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

- 8.5. The requirements set forth in Paragraph 8.3 of this law shall be deemed to have been met in the form of information exchange, if it is possible to access and use the information contained in electronic communication.
- 8.6. '*Electronic communication*' shall mean any communication that the parties make by means of data messages.
- 8.7. '*Data message*' shall mean information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, electronic data interchange, electronic mail, and telegram telex.
- 8.8. An agreement is in writing if it is contained in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other.
- 8.9. The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.
- 8.10. An arbitration agreement shall be valid whether the main agreement between the parties is valid, whether one of the parties withdraws from the agreement or is unable to meet its obligations.
- 8.11. In the case of a dispute over consumer rights, the arbitration agreement shall be concluded in writing separately after the dispute has arisen and shall specify the jurisdiction of the arbitration proceedings.

Article 9. Disputes, subject to jurisdiction of an arbitration

- 9.1. Any dispute specified in the arbitration agreement shall be settled by arbitration, with the exception of the special jurisdiction of the court.

Article 10. Arbitration agreement and substantive claim before court.

- 10.1. 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/her 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.
- 10.2. Where an action referred to in Paragraph 10.1 of this article has been brought, arbitration proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 11. Arbitration agreement

- 11.1. As specified in Paragraph 19.2 of this law, it is not incompatible with an arbitration agreement for a party to request before or during arbitration proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER THREE. COMPOSITION OF ARBITRATION TRIBUNAL AND ITS POWER

Article 12. Number of arbitrators

- 12.1. An arbitration tribunal means one or more arbitrators resolving a dispute.
- 12.2. The parties are free to determine the number of arbitrators.
- 12.3. Failing such determination, the number of arbitrators shall be three.

Article 13. Appointment of arbitrators.

- 13.1. An arbitrator must meet the following requirements:
 - 13.1.1. special qualification requirements agreed upon by the parties;
 - 13.1.2. be independent;
 - 13.1.3. not violate the legal requirements prohibiting the holding of other jobs and positions at the same time;

- 13.2. No person shall be precluded by reason of his/her nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- 13.3. Except as referred in Paragraphs 13.5, 13.6, 13.7 and 13.8 of this law the parties shall have the right to mutually agree on the procedure for appointing an arbitrator.
- 13.4. Failing such agreement:
 - 13.4.1. 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 or other authorized person (hereinafter '*authorized person*') specified in the arbitration rules.
 - 13.4.2. in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the court or an authorized person at the request of one of the parties.
- 13.5. Any party may request the court or other authority to take the necessary measure for the appointment of an arbitrator, unless one of the following conditions arises in the procedure does not specify another method of appointing an arbitrator.
 - 13.5.1. a party fails to act as required under such procedure;
 - 13.5.2. the parties, or two arbitrators, are unable to reach an agreement expected to it under such procedure,
 - 13.5.3. a third party, including an institution, fails to perform any function entrusted to it under such procedure.
- 13.6. A decision made on the issues specified in Paragraphs 13.4 and 13.5 of this law shall be subject to no appeal.
- 13.7. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 13.8. A sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 14. Grounds for rejection of the arbitrator.

- 14.1. When a person is approached in connection with his/her possible appointment as an arbitrator, he/she shall disclose any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, from the time of his/her appointment and throughout the arbitration proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him/her.
- 14.2. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence, or if he/she does not possess qualification agreed to by the parties.
- 14.3. A party may challenge an arbitrator appointment by him/her, or in whose appointment he/she has participated, only for reason of which he/she becomes aware of after the appointment has been made.

Article 15. Challenge procedure.

- 15.1. The parties are free to agree on the procedure for challenging an arbitrator, subject to the provisions of Paragraph 15.3 of this article.
- 15.2. Failing such agreement, a party who intends to challenge an arbitrator shall, within fourteen days after becoming aware of the constitution of the arbitration tribunal or after becoming aware of any circumstance referred to in Paragraph 14.2, send a

written statement of the reasons for the challenge to the arbitration tribunal. Unless the challenge arbitrator withdraws from his office or the other party agrees to the challenge, the arbitration tribunal shall decide on the challenge within thirty days.

- 15.3. If a challenge under any procedure agreed upon by the parties or under the procedure of Paragraph 15.2. of this article is not successful, the challenging party may request, within thirty days for international arbitration, and within fourteen days for domestic arbitration after having received notice of the decision rejecting the challenge, the court or other authority to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitration tribunal, including the challenged arbitrator, may continue the arbitration proceedings and make an award.

Article 16. The arbitrator's failure or impossibility to act

- 16.1. If an arbitrator becomes *de jure* or *de facto* unable to perform his/her functions or for other reasons fails to act without undue delay, his/her mandate terminates if he/she withdraws from his/her 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 or other authority to decide on the termination of the mandate, and the decision shall be subject to no appeal.
- 16.2. If under this Paragraph, or Paragraph 15.2, an arbitrator withdraws from his/her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any grounds referred to in this article or Paragraph 14.2.

Article 17. Appointment of substitute arbitrator.

- 17.1. Where the mandate of an arbitrator terminates under Articles 15 and 16 or because of any other case of termination of his/her mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Article 18. The right of the arbitration tribunal to determine the jurisdiction of the dispute.

- 18.1. The arbitration tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- 18.2. An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitration tribunal that the contract is null and void shall not entail by the law itself the invalidity of the arbitration clause.
- 18.3. A plea that the arbitration 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/she has appointed, or participated in the appointment of an arbitrator.
- 18.4. A plea that the arbitration 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 arbitration proceedings.
- 18.5. As specified in Paragraphs 18.3 and 18.4 of this law, an arbitration tribunal may admit a later plea if it considers the delay justified.
- 18.6. The arbitration tribunal may rule on a plea referred to in Paragraphs 18.3 and 18.4 of this law either as a preliminary question or in an award on the merits.
- 18.7. If the arbitration 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 to decide the matter, which decision shall be subject to no appeal.
- 18.8. While such a request is pending, the arbitration tribunal may continue the arbitration proceedings and make an award.

CHAPTER FOUR. POWER OF ARBITRATION TRIBUNAL TO ORDER INTERIM MEASURE

Article 19. Power of the arbitration tribunal to order interim measures

- 19.1. Unless otherwise agreed by the parties, the arbitration tribunal may, at the request of a party, grant interim measures.
- 19.2. An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitration tribunal orders a party to:
 - 19.2.1. maintain or restore the status quo pending determination of the dispute;
 - 19.2.2. take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration process itself;
 - 19.2.3. provide a means of preserving assets out of which a subsequent award may be satisfied;
 - 19.2.4. preserve evidence that may be relevant and material to the resolution of the dispute.

Article 20. Conditions for interim measures.

- 20.1. The party requesting an interim measure specified in Sections 19.2.1, 19.2.2., and 19.2.3 of this law shall prove the following conditions:
 - 20.1.1. harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted;
 - 20.1.2. there is a reasonable possibility that the requesting party will succeed on the merits of the claim.
 - 20.1.3. as referred to in Paragraph 19.2 of this law shall be clear, understandable and actionable.
- 20.2. Determining the possibility specified in Section 20.1.2 shall not affect the discretion of the arbitration tribunal in making any subsequent determination.
- 20.3. With regard to a request for an interim measure under Section 19.2.4, the requirements in Sections 20.1.1 and 20.1.2 of this article shall apply only to the extent the arbitration tribunal considers appropriate.

Article 21. Application for preliminary orders and conditions for granting preliminary orders

- 21.1. Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- 21.2. The arbitration tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- 21.3. The conditions defined under Article 20 of this law shall apply to any preliminary order, provided that the harm to be assessed under Section 20.1.1, is the harm likely to result from the order being granted or not.

Article 22. Specific procedure for preliminary order.

- 22.1. Immediately after the arbitration tribunal has made a determination in respect of an application for a preliminary order, the arbitration tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the

content of any oral communication, between any party and the arbitration tribunal in relation thereto.

- 22.2. At the same time, the arbitration tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- 22.3. The arbitration tribunal shall decide promptly on any objection to the preliminary order.
- 22.4. A preliminary order shall expire after twenty days from the date on which it was issued by the arbitration tribunal. However, the arbitration tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- 22.5. A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court.
- 22.6. Such a preliminary order does not constitute an award.

Article 23. Modification, suspension and termination of preliminary decree.

- 23.1. The arbitration tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitration tribunal's own initiative.

Article 24. Financial guarantees; provision of security

- 24.1. The arbitration tribunal may require the party requesting to provide an appropriate financial guarantee/security in connection with the measure.
- 24.2. The arbitration tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitration tribunal considers it inappropriate or unnecessary to do so.

Article 25. Information disclosure.

- 25.1. The arbitration tribunal may require any party to disclose promptly any material change in the circumstances on the basis of which the measure was requested or granted.
- 25.2. The party applying for a preliminary order shall disclose to the arbitration tribunal all circumstances that are likely to be relevant to the arbitration tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case.

Article 26. Damages and cost.

- 26.1. The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitration tribunal later determines that, in the circumstances, the measure or the order should not have been granted.
- 26.2. The arbitration tribunal may award such of costs and damages specified in Paragraph 26.1 of this law at any point during the proceedings.

Article 27. Recognition and Enforcement of interim measures.

- 27.1. The parties are obliged to fulfil interim measures taken by the arbitration tribunal.
- 27.2. An interim measure issued by an arbitration tribunal shall be recognized as binding and, unless otherwise provided by the arbitration tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued.
- 27.3. The party that is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification

of the interim measure.

- 27.4 The court of the state where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security under Paragraph 27.2 of this article, if the arbitration tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 28. Grounds for refusing recognition or enforcement.

- 28.1. Recognition or enforcement of an interim measure may be refused only:
- 28.1.1. at the request of the party against whom it is invoked if the court is satisfied that:
- 28.1.1. a. such refusal is warranted on the grounds set forth in Sub-sections 49.1.1.a, 49.1.1.b, 49.1.1.c and 49.1.1.d of this law.
- 28.1.1.b. the arbitration tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitration tribunal has not been complied with; or
- 28.1.1.c. the interim measure has been terminated or suspended by the arbitrator or, where so empowered, by the court of the state in which the arbitration takes place or under the law of which that interim measure was granted;
- 28.1.2. if the court finds that:
- 28.1.2.a. the interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance;
- 28.1.2.b. any of the grounds set forth in Sub-sections 49.1.2.a or 49.1.2.b apply to the recognition and enforcement of the interim measure.
- 28.2. Any determination made by the court on any grounds in paragraph 28.1 of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Article 29. Court-ordered interim measures.

- 29.1. A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of Mongolia, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER FIVE. CONDUCT OF ARBITRATION PROCEEDINGS

Article 30. Equal treatment of parties

- 30.1. The parties shall be treated with equality and each party shall be given a full opportunity for presenting his/her case.

Article 31. Determination of rules of procedure

- 31.1. Subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitration tribunal in conducting the proceedings.
- 31.2. Failing such agreement, the arbitration tribunal may, subject to the provisions of this law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitration tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 32. Place of arbitration

- 32.1. The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitration tribunal having regard to the circumstances of the case, including the convenience of the parties.
- 32.2. Notwithstanding the provisions of Paragraph 32.1 of this article, the arbitration 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 for inspection of goods, other property or documents.

Article 33. Commencement of arbitration proceedings

- 33.1. Unless otherwise agreed by the parties, the arbitration 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 34. Language

- 34.1. The parties are free to agree on the language or languages to be used in the arbitration proceedings.
- 34.2. Failing such agreement, the arbitration tribunal shall determine the language or languages to be used in the proceedings.
- 34.3. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitration tribunal.
- 34.4. The arbitration 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 arbitration tribunal.

Article 35. Statements of claim and defense.

- 35.1. Within the period of time agreed by the parties or determined by the arbitration tribunal, the claimant shall state the facts supporting his/her claim, the points at issue and the relief or remedy sought, and the respondent shall state his/her defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements.
- 35.2. 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.
- 35.3. Unless otherwise agreed by the parties, either party may amend or supplement his/her claim or defense during the course of the arbitration proceedings, unless the arbitration tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 36. Hearings and written proceedings

- 36.1. Subject to any contrary agreement by the parties, the arbitration 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.
- 36.2. Unless the parties have agreed that no hearings shall be held, the arbitration tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- 36.3. The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitration tribunal for the purpose of inspection of goods, other property or documents.
- 36.4. All statements, documents or other information supplied to the arbitration tribunal by one party shall be communicated to the other party.

- 36.5 Any expert report or evidentiary document on which the arbitration tribunal may rely in making its decision shall be communicated to the parties.

Article 37. Default of a party

- 37.1. Unless otherwise agreed by the parties, if, without showing sufficient cause,
- 37.1.1. the claimant fails to communicate his/her statement of claim in accordance with Paragraph 35.1, the arbitration tribunal shall terminate the proceedings;
 - 37.1.2. the respondent fails to communicate his/her statement of defense in accordance with Paragraph 35.1, the arbitration tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
 - 37.1.3. any party fails to appear at a hearing or to produce documentary evidence, the arbitration tribunal may continue the proceedings and make the award on the evidence before it.

Article 38. Expert appointed by arbitration tribunal.

- 38.1. Unless otherwise agreed by the parties, the arbitration tribunal:
- 38.1.1. may appoint one or more experts to report to it on specific issues to be determined by the arbitration tribunal;
 - 38.1.2. 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.
- 38.2. Unless otherwise agreed by the parties, if a party so requests or if the arbitration tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him/her and to present expert witnesses in order to testify on the points at issue.

Article 39. Court assistance in taking evidence.

- 39.1. The arbitration tribunal or a party with the approval of the arbitration tribunal may request from a competent court assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER SIX. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 40. Rules applicable to substance of dispute.

- 40.1. The arbitration tribunal shall examine the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.
- 40.2. 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.
- 40.3. Failing any designation by the parties, the arbitration tribunal shall apply the law which it determines and considers applicable.
- 40.4. The arbitration tribunal shall only rule *ex aequo et bono*¹ or as an *amiable compositeur*² if it has been specifically approved by the parties.

¹ Latin expression, common in English language legal documents, meaning '*according to what is equitable and good: on the merits of the case*' and often used in international law when a matter is to be decided according to principles of equity rather than by points of law.' (Merriam-Webster)

² French expression, common in English language legal documents, meaning '*unbiased, independent (third) party*'.

- 40.5. In all cases, the arbitration tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 41. Arbitration cost

- 41.1. Unless otherwise agreed by the parties, the costs of arbitration are at the discretion of the arbitration tribunal, which may direct to and by whom and in what amount and in what manner those costs, or any part thereof shall be paid.
- 41.2. The cost of the arbitration includes:
- 41.2.1 the fees of arbitrators;
 - 41.2.2 the fees of a permanent arbitrator as specified in its rules
 - 41.2.3 the legal and other costs incurred by the parties in relation to arbitration, such as involving witnesses and experts, obtaining legal assistance and conducting examinations.

Article 42. Decision making by panel of arbitrators.

- 42.1. In arbitration proceedings with more than one arbitrator, any decision of the arbitration tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.
- 42.2. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitration tribunal.

Article 43. Settlement.

- 43.1. If, during arbitration proceedings, the parties settle the dispute, the arbitration tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitration tribunal, record the settlement in the form of an arbitration on agreed terms.
- 43.2. An award on agreed terms shall be made in accordance with the provisions of Article 44 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 44. Form and contents of award

- 44.1. The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitration proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitration tribunal shall suffice, provided that the reason for any omitted signature is stated.
- 44.2. The award shall state the reason 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 43.
- 44.3. The award shall state its date and the place of arbitration as determined in accordance with Paragraph 32.1. The award shall be deemed to have been made at that place.
- 44.4. After the award is made, a copy signed by the arbitrators in accordance with Paragraph 44.1 of this article shall be delivered to each party.

Article 45. Termination of proceedings.

- 45.1. The arbitration proceedings are terminated by the final award or by an order of the arbitration tribunal in accordance with Paragraph 45.2 of this article.
- 45.2. The arbitration tribunal shall issue an order for the termination of the arbitration proceedings when:
- 45.2.1. the claimant withdraws his claims, unless the respondent objects thereto and the arbitration tribunal recognizes a legitimate interest on his/her part in obtaining a final settlement of the dispute;

- 45.2.2. the parties agree on the termination of the proceedings;
- 45.2.3. the arbitration tribunal finds that continuation of the arbitration proceedings, has for any other reason become unnecessary or impossible.
- 45.3 The mandate of the arbitration tribunal terminates with the termination of the arbitration proceedings, subject to the provisions of Article 46 and Paragraph 47.4.

Article 46. Correction and interpretation of award; additional award.

- 46.1. Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties: a party, with notice to the other party, may request the arbitration tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.
- 46.2. If so agreed by the parties, a party, with notice to the other party, may request the arbitration tribunal to give an interpretation of a specific point or part of the award.
- 46.3. If the arbitration tribunal considers the request specified in Paragraph 46.1 and 46.2 to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.
- 46.4. The arbitration tribunal may correct any error of the type referred to in Paragraph 46.1 of this article on its own initiative within thirty days of the date of the award.
- 46.5 Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days of receipt of the award, the arbitration tribunal to make an additional award as to claims presented in the arbitration proceedings but omitted from the award. If the arbitration tribunal considers the request to be justified, it shall make the additional award within sixty days.
- 46.6. The arbitration tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under Paragraphs 46.1, 46.2 and 46.5 of this article.
- 46.7. The provisions of Article 44 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER SEVEN. RECOURSE AGAINST AWARD

Article 47. Application for setting aside as exclusive recourse against the arbitration award

- 47.1. Recourse to a court against an arbitration award may be made only by an application for setting aside in accordance with Paragraphs 47.2 and 47.3 of this article.
- 47.2. An arbitration award may be set aside by the court specified in Paragraph 47.5 of this article only if:
 - 47.2.1. the party making the application furnishes proof that:
 - 47.2.1.a. a party to the arbitration agreement referred to in Article 8 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 thereon, under the law of Mongolia;
 - 47.2.1.b. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his/her case;
 - 47.2.1.c. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, 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;
 - 47.2.1.d. the composition of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the parties, unless such agreement was

- in conflict with provisions of this law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this law;
- 47.2.2 the court finds that:
- 47.2.2.a. the subject-matter of the dispute is not capable of settlement by arbitration under the law of Mongolia
- 47.2.2. b. the award is in conflict with the public policy of Mongolia.
- 47.3 The parties shall submit an application for setting aside specified in Paragraph 47.1 within 30 days for domestic arbitration and within 90 days for international arbitration, after receipt of the arbitration award or after resolving the request made in accordance with Article 46.
- 47.4. The 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 it in order to give the arbitration tribunal an opportunity to resume the arbitration proceedings or to take such other action as in the arbitration tribunal's opinion will eliminate the grounds for setting aside.
- 47.5. An application for annulment of an arbitration award shall be lodged with the court referred to in Paragraph 6.2 of this law and the decision of the court which ruled on the application shall be final.

CHAPTER EIGHT. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 48. Recognition and enforcement.

- 48.1. An arbitration 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 of Article 49 and the basic arbitration award in accordance with the procedures set forth in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.
- 48.2 The party relying on the award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in a Mongolian language, the court may request the party to supply a translation thereof into a Mongolian language.

Article 49. Grounds for refusing recognition or enforcement

- 49.1. Recognition or enforcement of an arbitration award, irrespective of the country in which it was made, may be refused only:
- 49.1.1. at the request of the party against whom it is invoked, if that party furnished to the competent court where recognition or enforcement is sought proof that:
- 49.1.1.a. a party to the arbitration agreement referred to in Article 8 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 thereon, under the law of the country where the award was made;
- 49.1.1.b. the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- 49.1.1.c. the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- 49.1.1.d. the composition of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

- 49.1.1.e. the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.
- 49.1.2. if the court finds that:
 - 49.1.2.a. the subject matter of the dispute is not capable of settlement by arbitration under the law of Mongolia
 - 49.1.2.b. the recognition of enforcement of the award would be contrary to the common interests of Mongolia
- 49.2. If an application for setting aside or suspension of an award has been made to a court referred to in Section 49.1.1 of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

CHAPTER NINE. ADDITIONAL PROVISIONS

Article 50. Confidentiality

- 50.1. Unless otherwise agreed by the parties, all awards and orders made in the arbitration and all documents submitted or produced by a party in the arbitration and not otherwise in the public domain shall be kept confidential by the other parties, the arbitration tribunal and the arbitration institution, if any, except, and to the extent that disclosure may be required of a party by:
 - 50.1.1. a legal duty
 - 50.1.2. to protect or pursue a legal right
 - 50.1.3. to enforce or challenge an arbitration award in legal proceedings before a state court.

Article 51. Bankruptcy

- 51.1. The arbitration agreement shall be valid, if the bankruptcy dispute occurred in connection with one of the parties to the arbitration agreement, and the receiver and executor did not renounce the agreement.
- 51.2. A court may, if appropriate in the circumstances, direct any dispute relating to insolvency to be referred to arbitration if:
 - 51.2.1. the matter is one to which the arbitration provisions apply;
 - 51.2.2. the respondent entered into an arbitration provisions prior to the commencement of the insolvency proceedings; and
 - 51.2.3. the receiver or administrator did not disclaim the contract containing the arbitration provisions.

Article 52. Other

- 52.1. In the absence of particular norms within this law, it shall be regulated in accordance with the fundamental principles.
- 52.2. Except as provided for in Sections 37.1.1 and 45.2.1 of this law, the relevant provisions of the claim and its response shall apply to the counterclaim and its responses.
- 52.3. Except for Article 40 of this law, the right of the parties to determine a certain issue shall apply to the right of the parties to transfer the right to determine the issue to a third party, including arbitration.
- 52.4. Notwithstanding, the parties have agreed or may have reached an agreement or other agreement, the rules of arbitration referred to in the agreement shall be treated as equivalent to the agreement. The provisions of the arbitration rules agreed upon or chosen by the parties before or after the commencement of the arbitration proceedings

shall remain in force, except in cases of infringement of the mandatory provisions of this law.

M. Enkhbold.
Chairman, State Great Khural

INVESTMENT AND TRADE AGENCY