

Alternative Dispute resolution – Arbitration

General understanding of the Arbitration: Civil court lawsuits and trials are the traditional method for resolving disputes. However, concerns about court congestion and delays, rising litigation costs, and the negative psychological and emotional impact of litigation have increased the use of alternative dispute resolution (ADR) techniques such as mediation, arbitration etc. Arbitration is one of the more frequently used ADR processes. However, any person or legal entity which is to choose arbitration for dispute resolution, the understanding of arbitration is important to know and aware the procedure to follow.

Arbitration is the formal alternative to litigation resettlement. In this process, the disputing parties present their case to a neutral third party or arbitrator, who renders a decision. Arbitration is generally considered a more efficient process than court because it is quicker, less expensive, and provides greater flexibility of process and procedure. The parties often select the arbitrator and exercise control over certain aspects of the arbitration procedure. Arbitrators typically have more expertise in the specific subject matter of the dispute than do judges. They may also have greater flexibility in decision-making.

Typically, a party initiates the arbitration process by sending the other party a written demand for arbitration. The demand generally describes the parties, the dispute, and the type of relief sought. The opposing party usually responds in writing, indicating whether they believe the dispute is arbitrable. If the dispute is arbitrable, the parties then select an arbitrator or panel of arbitrators.

In most jurisdictions, the format for arbitration is similar to a trial. The parties make opening and closing arguments, present testimony and witnesses, and offer documents. The evidentiary rules, however, are not applicable and the discovery and cross-examination opportunities are limited.

The well-known regional arbitrations are Hong Kong International Arbitration Center (HKIAC), the Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA) and the International Chamber of Commerce (ICC) etc.

The brief introduction and model clauses to use of highly ranked arbitrations including ICC, SIAC and HKIAC follows. The introduction of Mongolian International and National Arbitration and current legislation of arbitration is briefly summarized.

Dispute resolution by the International Chamber of Commerce (ICC)

ICC International Court of Arbitration is the world's leading arbitral institution. Since 1923, ICC has been helping to resolve difficulties in international commercial and business disputes to support trade and investment.

ICC performs an essential role by providing individuals, businesses and governments alike with a variety of customizable services for every stage of their dispute.

Although ICC is called a court in name, they do not make formal judgments on disputed matters. Instead, they exercise judicial supervision of arbitration proceedings. Their responsibilities include:

- confirming, appointing and replacing arbitrators, as well as deciding on any challenges made against them;
- monitoring the arbitral process to make certain that it is performed properly and with the required speed and efficiency necessary;
- scrutinizing and approving all arbitral awards to reinforce quality and enforceability;
- setting, managing and — if necessary — adjusting fees and advances; and
- overseeing emergency proceedings before the start of the arbitration.

Standard ICC Arbitration Clause

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

Parties are free to adapt the clause to their particular circumstances. For instance, they may wish to stipulate the number of arbitrators given that the ICC Arbitration Rules contain a presumption in favour of a sole arbitrator. Also, it may be desirable for them to stipulate the place and language of the arbitration and the law applicable to the merits. The ICC Arbitration Rules do not limit the parties' free choice of the place and language of the arbitration or the law governing the contract.

When adapting the clause, care must be taken to avoid any risk of ambiguity. Unclear wording in the clause will cause uncertainty and delay and can hinder or even compromise the dispute resolution process.

Parties should also take account of any factors that may affect the enforceability of the clause under applicable law. These include any mandatory requirements that may exist at the place of arbitration and the expected place or places of enforcement.

ICC Arbitration without Emergency Arbitrator

If the parties wish to exclude any recourse to the Emergency Arbitrator Provisions, they must expressly opt out by adding the following wording to the clause above:

The Emergency Arbitrator Provisions shall not apply.

Expedited Arbitration

The ICC Arbitration Rules provide for use of an expedited procedure in lower-value cases. If parties wish to exclude the application of the Expedited Procedure Provisions, they must expressly opt out by adding the following wording to the clause above:

The Expedited Procedure Provisions shall not apply.

Parties wishing to avail themselves of the expedited procedure in higher-value cases should expressly opt in by adding the following wording to the clause above:

The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.

If parties wish the ceiling for the application of the Expedited Procedure Rules to be higher than that specified in those Rules, the following wording should be added to the clause above:

The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US\$ [specify amount] at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules.

Multi-tiered Clauses

ICC Arbitration may be used as the forum for final determination of a dispute following an attempt at settlement by other means such as mediation. Parties wishing to include in their contracts a tiered dispute resolution clause combining ICC Arbitration with ICC Mediation should refer to the standard clauses relating to the ICC Mediation Rules.

Other combinations of services are also possible. For instance, arbitration may be used as a fallback to expertise or dispute boards. Also, parties who resort to ICC Arbitration may wish to provide for recourse to the ICC International Centre for ADR for the proposal of an expert if an expert opinion is required in the course of the arbitration.

Other recommendations

The parties may also wish to stipulate in the arbitration clause:

- the law governing the contract;
- the number of arbitrators;
- the place of arbitration; and/or
- the language of the arbitration.

The standard clause can be modified in order to take account of the requirements of national laws and any other special requirements that the parties may have. In particular, parties should always check for any mandatory arbitration. For example, it is prudent for parties wishing to have an ICC Arbitration in Mainland China or in Russia to include in their arbitration clause an explicit reference to the ICC International Court of Arbitration.

The following language is suggested for this purpose:

“All disputes arising out of or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

Make special arrangements where the contract or transaction involves more than two parties.

English and French are the Court’s official working languages of ICC. However, they can administer cases in any language and communicate in all major languages, including Arabic, Chinese, German, Italian, Portuguese, Russian and Spanish.

Dispute resolution by the Singapore International Arbitration Centre (SIAC)

Since commencing operations in 1991 as an independent, not-for-profit organization, SIAC has established a track record for providing best in class arbitration services to the global business community. SIAC arbitration awards have been enforced in many jurisdictions including Australia, China, Hong Kong SAR, India, Indonesia, Jordan, Thailand, UK, USA and Vietnam, amongst other New York Convention signatories. SIAC is a global arbitral institution providing cost-competitive and efficient case management services to parties from all over the world.

In May 2018, the prestigious Queen Mary University of London and White & Case International Arbitration Survey (QMUL Survey) ranked SIAC as the 3rd most preferred arbitral institution in the world, making SIAC the most preferred arbitral institution based in Asia.

What Singapore Has to Offer on ADR:

- An independent neutral third-country venue consistently ranked 7th for the least corrupt public sector in the world in the Corruption Perceptions Index 2016. Singapore is also consistently ranked no. 1 for the least corrupt public sector in Asia in the [Corruption Perceptions Index](#).
- A strong multicultural society, with excellent legal and technological expertise as well as language fluency.
- A central location in Southeast Asia with 6,600 scheduled flights a week to 320 cities.
- An open economy and business environment that is host to over 7,000 multinational firms.
- The [UNCITRAL Model Law](#) is the cornerstone of [Singapore's legislation on international commercial arbitration](#) which is regularly updated to incorporate internationally accepted codes and rules for arbitration.
- A party to the [1958 New York Convention](#) (on enforcement of arbitration awards). Singapore arbitration awards are enforceable in over 150 countries worldwide.
- A strong tradition of the rule of law, supported by a highly skilled judiciary that receives top rankings in international surveys.
- The courts offer maximum judicial support of arbitration and minimum intervention granting parties full and consistent support in the conduct of international arbitration.
- Parties have a freedom of choice of counsel in arbitration proceedings regardless of

geographical origin.

- There is no restriction on foreign law firms engaging in and advising on arbitration in Singapore.
- Non-residents do not require work permits to carry out arbitration services in Singapore.
- There are excellent facilities and services to support the conduct of arbitration at [Maxwell Chambers](#), Asia's first fully-integrated dispute resolution complex with state-of-the-art hearing facilities.
- Lower costs than in almost any other major center of arbitration.
- Third party funding allowed in the field of international arbitration and related proceedings.

SIAC Model Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].

The Tribunal shall consist of _____ arbitrator(s).

The language of the arbitration shall be _____. This contract is governed by the laws of _____.

UNCITRAL Model Clause

For parties adopting the UNCITRAL Arbitration Rules, we recommend that they adopt the following:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in Singapore in accordance with the UNCITRAL Arbitration Rules for the time being in force.

The arbitration shall be administered by Singapore International Arbitration Centre ("SIAC") in accordance with its Practice Note on UNCITRAL cases.

The appointing authority shall be the President or Vice-President of SIAC Court of Arbitration.

The number of arbitrators shall be _____. (Should be odd number of 1 or 3)

The language to be used in the arbitral proceedings shall be _____.

Expedited procedure model clause

In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Rule 5.2 of the SIAC Rules.

The seat of the arbitration shall be [Singapore]. The Tribunal shall consist of one arbitrator.

The language of the arbitration shall be _____.

Parties who have an arbitration agreement may wish to refer their dispute to mediation, either before they commence arbitration or in the course of the arbitration.

"Arb-Med-Arb" is a process whereby a dispute is first referred to arbitration before mediation is attempted. If parties are able to settle their dispute through mediation, their mediated settlement may be recorded by the Tribunal in the form of a consent award. The consent award is generally accepted as an arbitral award, and, subject to any local legislation and/or requirements, is generally enforceable in more than 150 countries under the New York Convention. If parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings.

Under the SIAC-SIMC(Singaporean International Mediation Center) Arb-Med-Arb Protocol, the arbitrator(s) and the mediator(s) will be separately and independently appointed by SIAC and SIMC respectively, under the applicable arbitration rules and mediation rules of each institution. Unless the parties otherwise agree, the arbitrator(s) and the mediator(s) will generally be different persons.

Singapore Arb-Med-Arb Model Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].

The Tribunal shall consist of _____ arbitrator(s).

The language of the arbitration shall be _____.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

Hong Kong International Arbitration Centre (HKIAC)

Hong Kong is ranked among the top five seats of arbitration worldwide. HKIAC has founded in 1985, HKIAC is an independent and not-for-profit organization. HKIAC is a one-stop shop which handles arbitration, mediation, adjudication and domain name cases. HKIAC plays a leading role in developing innovative arbitration practices. Its practices have received numerous GAR (Global Arbitration review) awards and nominations for best innovation.

With offices in Hong Kong, Shanghai and Seoul, the Secretariat comprises individuals from diverse backgrounds, including nationals of Hong Kong, New Zealand, Morocco, mainland China, Singapore, Germany, Australia and Canada. Secretariat members are qualified in both civil and common law jurisdictions and speak 10 languages. A Secretariat member can be appointed as tribunal secretary under HKIAC's detailed guidelines on the use of tribunal secretaries.

HKIAC's 2013 Administered Arbitration Rules are the most modern and comprehensive set of rules on the market. The adoption of the Rules was nominated by GAR as one of the best developments of 2013.

Key features include:

- **Structure for Payment of Arbitrator's Fees:** HKIAC is the first institution to expressly provide parties with a choice between paying arbitrators based on hourly rates (capped at HK\$6,500/hour) or the amount in dispute. HKIAC has also introduced standard terms and conditions for all arbitrators appointed under the Rules.
- **Complete Mechanisms for Complex Arbitrations:** comprehensive provisions on joinder, consolidation and the ability to commence a single arbitration under multiple contracts allow HKIAC to deal effectively and cost efficiently with arbitrations involving multiple parties or multiple contracts.
- **Availability of Emergency Arbitration:** the Rules provide for emergency arbitrator procedures allowing parties to apply for enforceable urgent interim relief before the tribunal is constituted.

- Arbitrations under the Rules have a median duration of 12.43 months (mean: 14.63 months) and median arbitration costs of US\$40,671 (mean: US\$106,503). These numbers are reduced by roughly half in expedited proceedings under the Rules.

HKIAC is excellently placed to deal with disputes arising from all international transactions. It also enjoys a particular advantage in relation to disputes involving Chinese parties. Hong Kong's proximity to the mainland ensures that HKIAC benefits from an excellent knowledge of China, including its commercial, regulatory and legal environments. Cases can be dealt with in Chinese, English or on a bilingual basis.

HKIAC has the largest caseload involving Chinese parties among all international arbitral institutions.

HKIAC maintains a strong record of enforcement in China. Over the past seven years, the Chinese courts have only refused to enforce one HKIAC award.

Arbitration under the HKIAC Administered Arbitration Rules

Parties to a contract who wish to have any future disputes referred to arbitration under the HKIAC Administered Arbitration Rules may insert in the contract an arbitration clause in the following form:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

The law of this arbitration clause shall be ... (Hong Kong law or can be optional).

The seat of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or can be optional)."

Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the HKIAC Administered Arbitration Rules, may agree to do so in the following terms:

"We, the undersigned, agree to refer to arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules any dispute, controversy, difference or claim (including any dispute regarding non-contractual obligations) arising out of or relating to:

(Brief description of contract under which disputes, controversies, differences or claims have arisen or may arise).

The law of this arbitration agreement shall be ... (Hong Kong law or optional).

The seat of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or optional)

Signed: _____ (Claimant)

Signed: _____ (Respondent)

Date: _____ "

Arbitration administered by HKIAC under the UNCITRAL Rules

Parties to a contract who wish to have any future disputes referred to arbitration administered by the HKIAC under the UNCITRAL Rules may insert in the contract an arbitration clause in the following form:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted, as modified by the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules.

The law of this arbitration clause shall be ... (Hong Kong law or optional).

The place of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or optional)."

Ad hoc arbitration under the UNCITRAL Rules

Parties to a contract who wish to have any future disputes referred to arbitration under the UNCITRAL Rules may insert in the contract an arbitration clause in the following form:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted.

The law of this arbitration clause shall be ... (Hong Kong law or optional).

The appointing authority shall be ... (Hong Kong International Arbitration Centre).

The place of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or optional)."

Domestic Arbitration under the HKIAC Domestic Arbitration Rules

Parties to a contract who wish to have any future disputes referred to arbitration under the Domestic Arbitration Rules of the HKIAC may insert in the contract an arbitration clause in the following form:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration pursuant to the HKIAC Domestic Arbitration Rules in force when the Notice of Arbitration is submitted.

*The law of this arbitration clause shall be ... (Hong Kong law or optional). **

The seat of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or optional)."

Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the HKIAC Domestic Arbitration Rules, may agree to do so in the following terms:

"We, the undersigned, agree to refer to arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Domestic Arbitration Rules any dispute, controversy, difference or claim (including any dispute regarding non-contractual obligations) arising out of or relating to:

(Brief description of contract under which disputes, controversies, differences or claims have arisen or may arise).

The law of this arbitration agreement shall be ... (Hong Kong law or optional).

The seat of arbitration shall be ... (Hong Kong).

The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language or optional).

Signed: _____ (Claimant)

Signed: _____ (Respondent)

Date: _____ "

Mongolian International and National Arbitration (MINA)

Mongolian International and National Arbitration attached to Mongolian National Chamber of Commerce and Industry has commenced its operation in 1960 and it is a permanent arbitration in Mongolia which recognized internationally. The arbitration has its branches in 21 aimags which are administrative unit under the law of Mongolia. Currently, local 51 arbitrators with qualification of the law, economics, finance and mining and 11 foreign arbitrators (from the Russian Federation, the People's Republic of China, Federal Republic of Germany, Japan, Hong Kong and Poland) are working at the Arbitration. You may have detailed information from <http://www.arbitr.mn/> which is available in English.

MINA Model clause

All disputes arising out of or in connection with this contract or related to its violation, termination or nullity shall be finally settled in the Mongolian International and National Arbitration Center at the Mongolian National Chamber of Commerce and Industry in Mongolia under its Rules on Arbitration in Mongolia.”

The new Arbitration Law, together with consequential amendments to other laws, was then enacted at the Parliamentary session of 26 January 2017. After adoption of new law, 76 cases have been resettled by MINA.

According to statistics from MINA, 130 cases have been resettled by MINA from 2017 to 2018. The participants of the cases were 2 foreign individual, 7 foreign companies and 22 foreign invested companies. The remained or 99 domestic companies have been a party to the arbitration dispute.

For international dispute, 5 individual and legal entity from the Republic of China and 3 legal entities from Russia and 1 individual from the US have participated to the arbitration dispute.

What Mongolia Has to Offer on ADR:

- Mongolia is bordered by Russia to north and China to the south. This unique geographic location provides an opportunity to supply any products produced in Mongolia to two huge markets of the world. Since ancient times, Mongolia has been a transit trade route. Today, it still remains as an open and safe transit route.
- Mongolia achieved tangible results in trade liberalization. Mongolia's accession to the World Trade Organization (WTO) in January 1997 highlights its relative success in pursuing economic reforms and developing a new trade regime in line with international trading principles. It's allowed Mongolia to become a part of global trade regime, access full information on WTO member countries, benefit from human resource development in trade field, etc.
- On 1 July 2014, the Parliament of Mongolia adopted the *Law of Mongolia on Glass Account* ("**Account Law**") in an attempt to ensure the efficient and proper use of state and local government funds, the transparency of decisions and actions concerning budget management and public overview of the same for fighting with or reducing the corruption in public sector. The Glass Account Law entered into force on 1 January 2015.
- Mongolia has had a favorable approach to signing international bilateral and multilateral agreements. To-date it has signed Investment Protection and Promotion Agreements with 43 countries.

- Mongolia respectively signed “Agreement on Avoidance of Double Taxation” with 26 countries.
- A party to the 1958 New York Convention (on enforcement of arbitration awards). Singapore arbitration awards are enforceable in over 150 countries worldwide.

Brief summary of the Arbitration law of Mongolia

The Law on Arbitration, 2003, was amended several times and revoked by adoption of the revised Arbitration Law in 2017. The newly revised Arbitration law consists of 9 chapters and 52 articles bringing in several changes and introducing new provisions which are in line with the 1985 UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law"). Now, the arbitral tribunal holds more power which offers more effective enforcement through provisions of temporary measures and preliminary orders.

Amended provisions

The purpose of the revised law is to regulate relations pertaining to arbitration of legal disputes in accordance with international best practice. The law distinguishes disputes to be settled in arbitration from disputes at courts. While the law applies to all arbitration proceedings in Mongolia, the Articles 10, 11, 27, 28, 29, 39, 48, 49 apply to arbitration held outside of Mongolia or when arbitral jurisdiction is not clear.

Judicial intervention in arbitration is limited. Courts shall involve in the following situations:

- before and during arbitral proceedings to enforce the arbitration award;
- when parties do not agree on the procedures to appoint an arbitrator;
- when one party fails to appoint an arbitrator;
- when parties or two arbitrators do not agree on the procedures to appoint the third arbitrator;
- when the arbitral institution or authorized person to appoint an arbitrator fail to do so.

The law clarifies the form of arbitration agreement in accordance with the UNCITRAL Model Law since in the previous law, it was provided for that arbitration agreements had to be done only in writing form yet it did not explain what should have been considered to be in writing. Now, it is stated that an arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement has been concluded orally, by conduct, or by other means.

The one revision that is worth mentioning is the clarification on interim measures and preliminary orders. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures. In this part, besides what an interim measure is, what conditions for granting interim measures are and what procedures to be followed are broadly described and all related terms are formulated. In addition, arbitral tribunal may grant preliminary orders directing a party not to frustrate the purpose of the interim measure

requested if a party requests so. The new law also sheds light on the conditions for granting preliminary orders and specific regime for preliminary orders.

In the previous law, the costs of arbitration was decided solely by the arbitral tribunal, the revised law includes a condition that “unless otherwise agreed by the parties” which restricts the power of the arbitral tribunal and parties have a saying in cost determination and it also describes what costs are included in costs of arbitration.

The grounds for refusal of an arbitral award consist of a party's proof of incapacity of a party, invalidity of the arbitration agreement, not receiving proper notice of the appointment of an arbitrator or of the arbitral proceedings, award decisions on matters beyond the scope of the submission to arbitration, and improper constitution of the arbitral tribunal, and of a court's finding that the subject-matter of the dispute is to be settled by court under the state law or the recognition or enforcement of the award would be contrary to the state public policy.

Furthermore, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding in Mongolia and, upon application in writing to the competent court, shall be enforced subject to grounds for refusal under the UNCITRAL Model Law. Court decisions on such applications are not subject to appeal.

New provisions

Arbitration is defined as “arbitral proceedings conducted by institutional or ad hoc arbitration to resolve disputes”. Furthermore, the definitions of domestic and international arbitration were added showing a clear distinction between them.

Arbitration in Mongolia will be divided into 2 types: institutional and ad hoc arbitration and institutional arbitration may be established by only the Mongolian National Chamber of Commerce and Industry, Ulaanbaatar Chamber of Commerce, Customer and Trade Unions and other professional associations.

While the previous law stated that anyone could be appointed as an arbitrator except for listed professions, the new one removed the list and includes qualifications that a potential arbitrator ought to possess. Furthermore, an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence from the time of his appointment and throughout the arbitral proceedings since these doubts can be reasons for an arbitrator to be challenged besides the reason of not possessing qualifications agreed to by the parties and related laws.

The other important addition is that the arbitral tribunal may rule on its own jurisdiction and the existence or validity of the arbitration agreement. An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; thus, a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

The law also introduces provisions on the validity of arbitration agreements and arbitration proceedings when a disputing party is in process of bankruptcy.

Lastly, if the arbitral tribunal rules that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the designated court to decide the matter, of 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.

Conclusion

The revised law helps create an environment and opportunities to settle commercial disputes among domestic and international businesses in arbitration speedily. With the implementation of this law, time and cost of dispute resolutions in arbitration becomes less than before and it will decrease costs of doing business in Mongolia. On the other hand it also helps reduce the burden of Mongolian courts. Furthermore, foreign investors are assured that foreign arbitration award will be enforced in Mongolia which creates a favorable legal environment for foreign businesses to invest in Mongolia. Therefore, the revised law contributes to the improvement of Mongolian legal and business environment.

If you need more information or have any inquiry, please feel free to contact V. Bolormaa, Partner and Advocate of Absolute Advocates Law Firm by bvolodya@gratanet.com or 976 99085031.