The revised Law of Mongolia on Arbitration ("Arbitration Law") was approved by the Parliament of Mongolia on 26 January 2017 and entered into force on 27 February 2017.

With the adoption of the revised Arbitration Law, Parliament repealed the 2013 Law of Mongolia on Arbitration and introduced certain amendments to several pieces of legislation.

The purpose of the new law is stated as to "regulate relations concerning the arbitration of disputes in conformity with international standards". The revised Arbitration Law has been drafted on the basis of the 1985 UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law"), with a few variations.

The law applies to arbitration proceedings if the seat of arbitration is Mongolia. Only the provisions of the Arbitration Law concerning interim measures, court assistance in taking evidence, and the recognition and enforcement arbitral awards apply to arbitration conducted outside of Mongolia.

1. Features of the Arbitration Law

The Arbitration Law:

1. distinguishes international arbitration from domestic arbitration, and slightly different regulation is provided for each type of arbitration;
2. recognises the record of the contents of the agreement to arbitrate in any form as equivalent to written agreement to submit to arbitration;
3. clarifies the criteria and procedures applicable to the appointment of arbitrators;
4. introduces new provisions on interim measures and preliminary orders;
5. distinguishes the concept of place of arbitration from place of arbitral hearings;
6. clarifies the grounds for setting aside and refusing to recognise or enforce arbitral awards in line with the UNCITRAL Model Law;
7. broadens the powers of arbitrators, such as determining place of arbitration or making decisions based on ex aequo et bono or as amiable composituer (i.e. relying on fairness and ethical standards without resorting to specific laws if expressly authorised to do so);
8. removes procedures relating to the recognition and enforcement of arbitral awards,
and introduces detailed procedures into the Civil Procedure Code of Mongolia, enacted on 10 January 2002 ("Civil Procedure Code");
9. expands the provisions relating to confidentiality by clarifying permitted disclosures;
10. introduces a new section on the validity of arbitration agreements and arbitration proceedings in the event of the insolvency of a disputing party; and
11. clarifies court proceedings concerning applications to set aside an arbitral award by way of making an amendment to the Civil Procedure Code.


2.1 Interim Measures
The revised Arbitration Law provides comprehensive regulation on interim measures that may be granted by arbitral tribunals and broadens the types of interim measures parties may seek.

The previous Arbitration Law provided that an arbitral tribunal may order a party to a dispute to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute at the request of the other party. However, the law did not specify the "measures" to be taken nor, the "procedures" to be followed. The interim measures had to be undertaken with assistance of the courts and were restricted to a limited number.

Under the revised Arbitration Law, an interim measure is defined as any of the following temporary measures to which an arbitral tribunal may order a party to adhere prior to the issuance of the final award:

1. maintain or restore the status quo pending determination of the dispute;
2. take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
3. provide a means of preserving assets out of which a subsequent award may be satisfied; or
4. preserve evidence that may be relevant and material to the resolution of the dispute.

A party requesting an interim measure must prove or satisfy the following conditions:

1. that harm not adequately reparable by an award of damages is likely to result if the measure is not granted, 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;
2. that there is a reasonable possibility that the requesting party will succeed on the merits of the claim; and
3. that the request for interim measures is clear, understandable and enforceable.

The party requesting the interim measure is liable for any resulting costs or losses if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted.
As such, an arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

An interim measure issued by an arbitral tribunal is to be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforceable upon application to the competent court, irrespective of the country in which it was issued. The recognition or enforcement of an interim measure may only be refused by courts based on the specific grounds specified in the Arbitration Law.

2.2 Preliminary Orders
With respect to interim measures, the revised Arbitration Law provides that arbitration tribunals may grant a preliminary order directing a party not to frustrate the purpose of the interim measure requested if a party requests so.

The same conditions which need to be satisfied by a party seeking interim measures must be proven or satisfied a party seeking a preliminary order. In this regard, the arbitral tribunal may require the party applying for a preliminary order to provide security in connection with the order.

As provided under the UNCITRAL Model Law, a preliminary order expires 20 days after the date on which it was issued and the arbitral 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.

A preliminary order does not constitute an award and therefore not enforceable by a court.

2.3 Bankruptcy
The revised Arbitration Law provides that where a party to a contract containing an arbitration provision becomes insolvent and the receiver or administrator does not refute the contract, the arbitration clause in such contract shall be enforceable.

Further, a court may, if appropriate in the circumstances, direct any dispute relating to insolvency to be referred to arbitration if:

1. the matter is one to which the arbitration provisions applies;
2. the respondent entered into an arbitration provisions prior to the commencement of the insolvency proceedings; and
3. the receiver or administrator did not disclaim the contract containing the arbitration provisions.

2.4 Recognition and Enforcement of Arbitral Awards
Under the previous Arbitration Law, the process for recognition and enforcement of an arbitral award involved the court reviewing and finding the request to enforce the arbitral award to be "reasonable". The Supreme Court of Mongolia interpreted "reasonable" to mean circumstances
where no proceedings to overturn the award have been initiated and the possibility to initiate such proceedings has become time barred. Further, an application for enforcement of an arbitral award needed to be submitted to the court within three years of the issue date of the arbitral award. Thus, under the previous Arbitration Law, those wishing to enforce an arbitral award in Mongolia had a “window” of three months to three years after the issue of the award. The revised Arbitration Law removes this window.

3. Amendments to Other Legislation

In relation to the approval of the revised Arbitration Law, certain amendments have been made to several laws. These are:

- Amendments to the Civil Procedure Code

  A new chapter on court intervention in arbitration proceedings was included in the Civil Procedure Code.

  Under the amendment, a disputing party or an arbitral tribunal may submit their application or request (other than application for setting aside an arbitral award) to the respective courts specified in the Arbitration Law and the courts must consider the matter in question within 14 days of receipt of such application or request.

  In terms of an application for setting aside an arbitral award, the amendment specifies the information and documents to be included in the application and the procedures to be followed.

  An application for setting aside an arbitral award must be considered by the court within 30 days of receipt of an application. The amendment contemplates that there will be a hearing with the hearing date and location required to be notified to the parties in advance.

- Amendments to other laws

  With the approval of the revised Arbitration Law, minor amendments were introduced to 15 other laws such as the Petroleum Law, the Land Law, the Concession Law and the Law on Widespread Minerals, to allow disputes to be resolved by arbitration, if specifically agreed by the relevant parties.

  Further, the Criminal Code was amended so that submission of false evidence and giving false testimony during arbitral proceedings are now criminal offences. Further, arbitrators will be subject to criminal sanctions if they abuse or act in excess of their official position or authority.

4. Conclusion
It is commendable that the Government of Mongolia has taken initiatives to improve the legislative framework for resolving disputes by arbitration that will contribute to a strong and competent arbitration practice in Mongolia. In our view, it is important that this initiative is supported by the further development of arbitral institutions, professionals, practice and case-law.

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