



BRIEFING NOTE

THE NEW ARBITRATION LAW OF MONGOLIA

Introduction

On 26 January 2017, the Parliament of Mongolia enacted a new Arbitration Law and the official version was published on 17 February 2017. As explained in Article 1, the purpose of the new Arbitration Law is “to regulate the arbitration of disputes in accordance with international standards.” To achieve this purpose, the Parliament of Mongolia adopted the latest version of the UNCITRAL Model Law on International Commercial Arbitration (the “UNCITRAL Model Law”), including all 2006 amendments, for both international and domestic arbitration. The new Arbitration Law enacts the UNCITRAL Model Law in full, departing from its text only where necessary to do so in view of the particularities of the Mongolian legal system, while also implementing certain innovations inspired by a range of different international sources. This places Mongolia at the forefront of international best practice in the field of international arbitration.

Developing the New Arbitration Law

Initial work on reforming the legislative framework for arbitration dates back to 2013, when the Ministry of Justice of Mongolia engaged the services of the Business Plus Initiative (“BPI”), a project funded by the U.S. Agency for International Development and operated locally by its contractor, Chemonics International Inc. BPI was requested to provide support to a Working Group of the Ministry of Justice in relation to the preparation of a new draft Arbitration Law. BPI subsequently selected MDSKhanLex LLP as local counsel in Mongolia and Sidley Austin LLP as international counsel to provide specialist advice and technical assistance in relation to the drafting process. Over the following years, MDSKhanLex and Sidley Austin worked closely with the Ministry of Justice’s Working Grouping, other relevant government agencies and a wide range of stakeholders in developing the draft Arbitration Law.

The formal legal basis for developing the new Arbitration Law was approved by Parliament Order No. 45 of 9 September 2016. Under the “Action Plan of the Government of Mongolia for 2016 – 2020,” Parliament called for the reform of civil court proceedings as well as arbitration, including steps to improve the competitiveness of arbitration in the country.

On 30 September 2016, the Minister of Justice and Home Affairs of the new Government of Mongolia passed the draft Arbitration Law to Parliament. During the following weeks, Working Groups at the Ministry of Justice and Home Affairs and Parliament carried out further reviews and revisions to the draft legislation. The new Arbitration Law, together with consequential amendments to other laws, were then enacted at the Parliamentary session of 26 January 2017. In accordance with Mongolian law and practice, the new Arbitration Law will come into force ten days after its publication in the Gazette “*Turiin medeelel*” by the Secretariat of Parliament.

Advances and Innovations in the New Arbitration Law

The new Arbitration Law brings a number of significant advances and innovations, including:

- Any dispute may be determined by arbitration, subject to (a) other domestic statutory provisions specifying that particular disputes fall within the exclusive jurisdiction of the court, and (b) certain consumer protection mechanisms contained in the new Arbitration Law (Articles 8, 9).

- The scope of possible intervention by the court is expressly limited, and designed to support the arbitral process and functioning of the arbitral tribunal (Articles 6, 10, 11, 13, 15, 16, 18, 29, 39, 47).
- For international arbitration, many court functions, including all applications to set aside arbitral awards, will be performed exclusively by the Court of Civil Appeals in the capital city of Mongolia, Ulaanbaatar (Article 6.2). This limits the levels of appeal and thus improves time and cost efficiency. In particular, there is no further appeal from set-aside decisions by the Court of Civil Appeals in Ulaanbaatar. In addition, this provision is intended to facilitate the development of judicial expertise in international arbitration within the Court of Civil Appeals in Ulaanbaatar.
- In order to increase the competitiveness of services provided by arbitral institutions, and in accordance with principles of freedom of contract, civil law and the market, the new Arbitration Law does not establish or advocate the use of any particular arbitration institution. Rather, it specifies certain minimum administrative conditions for an organization to operate as an arbitral institution (Article 7).
- In keeping with the 2006 amendments to the UNCITRAL Model Law, an arbitration agreement must be in writing to be valid, but this requirement is satisfied if the content of the arbitration agreement is recorded in any form, including electronic communications (Article 8).
- The new Arbitration Law enshrines the impartiality and independence of arbitrators, both as prerequisites to party appointments and where appointments fall to the court. An arbitrator may be challenged only if circumstances exist which give rise to justifiable doubts as to impartiality or independence (Article 13).
- The arbitral tribunal is empowered to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. This is consistent with the UNCITRAL Model Law and the internationally accepted principle of *kompetenz-kompetenz* (Article 18).
- In an innovation that differs from the UNCITRAL Model Law, a party may seek recourse to the designated Court of Civil Appeals in respect of an arbitral tribunal's decision to uphold or decline jurisdiction. These court decisions are not subject to appeal (Article 18.7).
- The arbitral tribunal is vested with broad power to grant interim measures and preliminary orders in accordance with the significant amendments on these matters made to the UNCITRAL Model Law in 2006 (Articles 19–28).
- Unless otherwise agreed by the parties, the costs of arbitration are in the discretion of the arbitral 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 (Article 41).
- The grounds for applications to set aside an arbitral award are limited to those under the UNCITRAL Model Law (such as a party's incapacity, invalidity of the arbitration agreement, improper constitution of the arbitral tribunal, serious procedural error, jurisdictional error, and public policy). As noted above, court decisions on such applications are not subject to appeal (Article 47).
- 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 must be kept confidential, subject to the usual exceptions to confidentiality obligations (Article 50).

Improving the Legal Environment for Business and Investment

The adoption of a new state-of-the-art Arbitration Law, consistent with international best practice, represents an important facet of the Government of Mongolia's efforts to modernize the country's legal infrastructure, facilitate commerce and attract foreign direct investment. By providing an effective and trustworthy mechanism for dispute resolution and facilitating the recognition and enforcement of domestic and foreign arbitral awards in Mongolia, the new Arbitration Law will contribute significantly to providing a more secure legal environment for both domestic businesses and foreign investors.

MDSKhanLex and Sidley Austin have been actively involved in this initiative from the start, from concept, through development, drafting and enactment. It has been a privilege for our two law firms to work together in supporting the Ministry of Justice and Home Affairs in this important initiative to further the rule of law and contribute to the country's economic development.

For more information on the local and international aspects of the new Arbitration Law, please contact:

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About MDSKhanlex LLP

MDSKhanLex LLP (www.khanlex.mn) is the largest law partnership in Mongolia. The firm assists both local businesses and foreign investors by blending knowledge of international legal best practices with our broad local expertise. MDSKhanLex places a heavy focus on understanding a client's business needs and finding practical solutions to meet such needs. Our clients include State-Owned Enterprises, government agencies, public and private companies, funds, and multilateral organizations. We have handled everything from major projects and financing transactions, to cross-border disputes for such clients. Together with Sidley Austin, we have published the only book on Project Finance dedicated to the Mongolian market (in English and Mongolian). For more information about MDSKhanLex, please contact Mr. Maizorig Janchivdorj (maizorig@mdsa.mn) or Mr. Enkhbat Batsukh (enkhbat@mdsa.mn).

About Sidley Austin LLP

Sidley Austin LLP (www.sidley.com) is a premier global law firm, with over 1,900 lawyers in 20 offices worldwide. Sidley's multi-faceted experience with Mongolia-related matters spans a variety of industries and legal disciplines, including banking, capital markets, infrastructure, mining, energy and industrial projects, real estate, private equity, and cross-border disputes. Sidley was named in the **2016 U.S. News – Best Lawyers “Best Law Firms”** survey as **International Firm of the Year for Dispute Resolution, Energy Practice of the Year**, and **USA Law Firm of the Year**, all in 2016. Our clients include Mongolian SOEs, public and private companies, foreign companies, funds and multilateral institutions, for whom we have handled major investments and development projects, achieved landmark international litigation and arbitration victories, and negotiated successful financings, restructuring and workouts. Sidley lawyers have worked on some of the most significant projects, transactions and disputes relating to Mongolia that have been prominently featured in the global press and international legal publications. For more information regarding Sidley's Mongolia practice, please contact Mr. Ayaz Shaikh (ashaikh@sidley.com) or Mr. David Roney (droney@sidley.com).

Sidley provides advice on matters relating to Mongolia from the perspective of international counsel. We rely on local counsel in Mongolia, including MDSKhanLex, for advice as to matters of Mongolian law and practice.

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