WORKING DRAFT[1]

LAW OF MONGOLIA

[Date] Ulaanbaatar

ARBITRATION

CHAPTER ONE

GENERAL PROVISIONS

Article 1. Purposes of Law

1.1 The purposes of this Law are:

1.1.1 to regulate the resolution of disputes by means of international and domestic arbitration in Mongolia;

1.1.2 to encourage the use of arbitration as an agreed method for fair resolution of disputes by an impartial and independent tribunal without unnecessary delay or expense;

1.1.3 to ensure that the parties are free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

1.1.4 to limit the scope for intervention by the courts in arbitration, except as so provided in this Law;

1.1.5 to promote consistency between the international and domestic arbitral regimes in Mongolia, except as so provided in this Law;

1.1.6 to facilitate the recognition and enforcement of arbitration agreements and arbitral awards;

1.1.7 to promote international consistency of arbitral regimes based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 and amended on 7 June 2006; and

1.1.8 to continue to give full force and effect to the Government of Mongolia's obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations on 10 June 1958.

Article 2. Legislation governing arbitration

2.1 The legislation governing arbitration shall consist of the Constitution of Mongolia, the Civil Code, the Law on Civil Procedure, the Law on Execution of Court Decisions and this Law and other legislative acts adopted in conformity with the above-mentioned laws.

2.2 If an international treaty to which Mongolia is a party is inconsistent with this Law, the provisions of the international treaty shall prevail.

[1] This working draft of the Arbitration Law has been prepared by the Arbitration Working Group of the Ministry of Justice (MoJ) with support from the USAID-funded Business Plus Initiative project. The MOJ has not officially reviewed and accepted this version.

Article 3. Scope of application of the law

3.1 This Law applies to an arbitration if the place of arbitration is in Mongolia.

3.2 Articles 12, 13, 29, 30, 31, 41, 50, 51 and 52 also apply if the place of arbitration is not in Mongolia or has not yet been determined.

Article 4. Definitions and rules of interpretation

4.1 For the purposes of this Law:

4.1.1 "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

4.1.2 "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

4.1.3 "court" means a body or organ defined in article 3.1.1 of the Law on the Courts of Mongolia;

4.1.4 "domestic arbitration" means any arbitration that is not an international arbitration as defined in article 4.1.5;

4.1.5 "international arbitration" means any arbitration where:

4.1.5.1 the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

4.1.5.2 one of the following places is situated outside the State in which the parties have their places of business:

(a) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(b) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

4.1.6 for the purposes of article 4.1.5:

4.1.6.1 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;

4.1.6.2 if a party does not have a place of business, reference is to be made to his habitual residence.

4.2 Where a provision of this Law, except article 42, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

4.3 Where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

4.4 Where a provision of this Law, other than in articles 39.1.1 and 47.2.1, refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 5. International origin and general principles

5.1 In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

5.2 Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 6. Receipt of written communications

6.1 Unless otherwise agreed by the parties:

6.1.1 any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

6.1.2 the communication is deemed to have been received on the day it is so delivered.

6.2 Article 6.1 does not apply to communications in court proceedings.

Article 7. Waiver of right to object

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 his 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 his right to object.

Article 8. Extent of court intervention and designation of courts for certain functions

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

8.2 The functions referred to in articles 15.4, 15.5, 17.3, 18, 20.3, 29, 41 and 50.1 shall be performed by the Court of Civil Appeals. For international arbitration, such functions shall be performed exclusively by the Court of Civil Appeals in Ulaanbataar.

CHAPTER TWO

ARBITRATION AGREEMENT

Article 9. Definition and form of arbitration agreement

9.1 “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

9.2 The arbitration agreement shall be in writing.

9.3 An arbitration 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.

9.4 The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

9.5 Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

9.6 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.

Article 10. Arbitrability

10.1 Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration agreement is contrary to public policy or, under any other law, such a dispute is not capable of determination by arbitration.

10.2 The following categories of disputes are not capable of determination by arbitration:

10.2.1 family disputes;

10.2.2 employment and labor disputes, with the exception of disputes under a “Contract” as defined in article 22 of the Law on Labor;

10.2.3 disputes relating to rights *in rem* in land owned by a Mongolian citizen; and

10.2.4 disputes relating to rights *in rem* and tenancies held by Mongolian citizen in residential real property as defined in article 3.1.1 of the Law on Housing.

Article 11. Consumer Disputes

11.1 An arbitration agreement shall be enforceable against a consumer only if concluded by separate written agreement entered into by the consumer and the other party to the contract after a dispute has arisen.

11.2 The consumer shall, prior to concluding the arbitration agreement, receive written legal advice from a qualified Mongolian lawyer on the relevant differences between arbitral and court proceedings.

11.3 The place of the arbitral tribunal must be stipulated in the arbitration agreement, and the arbitral tribunal may only convene at a different place for an oral hearing or for the taking

of evidence, if agreed by the consumer, or if serious difficulties hinder the taking of evidence at the place of the arbitral tribunal.

11.4 For the purposes of setting aside or seeking recognition or enforcement of the arbitral award, the requirements of this article 11 shall be treated as if they were requirements of the arbitration agreement.

Article 12. Arbitration agreement and substantive claim before court

12.1 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 first statement on the substance of the dispute, refer the parties to arbitration and stay the action before the court unless it finds that the agreement is null and void, inoperative or incapable of being performed.

12.2 Where an action referred to in article 12.1 has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 13. Arbitration agreement and interim measures by court

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

CHAPTER THREE

COMPOSITION OF ARBITRAL TRIBUNAL

Article 14. Number of arbitrators

14.1 The parties are free to determine the number of arbitrators.

14.2 Failing such determination, the number of arbitrators shall be three.

Article 15. Appointment of arbitrators

15.1 The parties are free to appoint any person as an arbitrator, subject to:

15.1.1 specific qualifications agreed by the parties;

15.1.2 the requirements of impartiality and independence resulting from article 16; and

15.1.3 any law that prohibits a person from engaging in secondary professional activities.

15.2 No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

15.3 The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of articles 15.5 and 15.6.

15.4 Failing such agreement,

15.4.1 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;

15.4.2 in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court.

15.5 Where, under an appointment procedure agreed upon by the parties,

15.5.1 a party fails to act as required under such procedure, or

15.5.2 the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

15.5.3 a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

15.6 A decision on a matter entrusted by articles 15.4 or 15.5 to the court shall be subject to no appeal. The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. For international arbitration, the court shall, in the case of a sole or third arbitrator, take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 16. Grounds for challenge

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

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

Article 17. Challenge procedure

17.1 The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of article 17.3.

17.2 Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 16.2, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

17.3 If a challenge under any procedure agreed upon by the parties or under the procedure of article 17.2 is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 18. Failure or impossibility to act as arbitrator

18.1 If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.

18.2 If, under this article 18 or article 17.2, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article 18 or article 16.2.

Article 19. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under articles 17 or 18 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER FOUR

JURISDICTION OF ARBITRAL TRIBUNAL

Article 20. Competence of arbitral tribunal to rule on its jurisdiction

20.1 The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

20.2 A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

20.3 The arbitral tribunal may rule on a plea referred to in article 20.2 either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question either that it has jurisdiction or that it does not have 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; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER FIVE

INTERIM MEASURES AND PRELIMINARY ORDERS

Section 1. Interim measures

Article 21. Power of arbitral tribunal to order interim measures

21.1 Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

21.2 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 arbitral tribunal orders a party to:

21.2.1 Maintain or restore the status quo pending determination of the dispute;

21.2.2 Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

21.2.3 Provide a means of preserving assets out of which a subsequent award may be satisfied; or

21.2.4 Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 22. Conditions for granting interim measures

22.1 The party requesting an interim measure under articles 21.2.1, 21.2.2 and 21.2.3 shall satisfy the arbitral tribunal that:

22.1.1 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; and

22.1.2 There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

22.2 With regard to a request for an interim measure under article 21.2.4, the requirements in articles 22.1.1 and 22.1.2 shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 23. Applications for preliminary orders and conditions for granting preliminary orders

23.1 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.

23.2 The arbitral 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.

23.3 The conditions defined under article 22 apply to any preliminary order, provided that the harm to be assessed under article 22.1.1 is the harm likely to result from the order being granted or not.

Article 24. Specific regime for preliminary orders

24.1 Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral 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 arbitral tribunal in relation thereto.

24.2 At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

24.3 The arbitral tribunal shall decide promptly on any objection to the preliminary order.

24.4 A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, 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.

24.5 A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 25. Modification, suspension, termination

The arbitral 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 arbitral tribunal's own initiative.

Article 26. Provision of security

26.1 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

26.2 The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 27. Disclosure

27.1 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

27.2 The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral 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. Thereafter, article 27.1 shall apply.

Article 28. Costs and damages

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 arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 29. Recognition and enforcement

29.1 An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 30.

29.2 The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

29.3 The court may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral 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 30. Grounds for refusing recognition or enforcement

30.1 Recognition or enforcement of an interim measure may be refused only:

30.1.1 At the request of the party against whom it is invoked if the court is satisfied that:

30.1.1.1 Such refusal is warranted on the grounds set forth in articles 51.1.1.1, 51.1.1.2, 51.1.1.3 or 51.1.1.4; or

30.1.1.2 The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

30.1.1.3 The interim measure has been terminated or suspended by the arbitral tribunal 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; or

30.1.2 If the court finds that:

30.1.2.1 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; or

30.1.2.2 Any of the grounds set forth in article 51.1.2.1 or 51.1.2.2, apply to the recognition and enforcement of the interim measure.

30.2 Any determination made by the court on any ground in article 30.1 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.

Section 5. Court-ordered interim measures

Article 31. Court-ordered interim measures

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. For international arbitration, the court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER SIX

CONDUCT OF ARBITRAL PROCEEDINGS

Article 32. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 33. Determination of rules of procedure

33.1 Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

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

Article 34. Place of arbitration

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

34.2 Notwithstanding the provisions of article 34.1, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 35. Commencement of arbitral proceedings

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

Article 36. Language

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

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

Article 37. Statements of claim and defence

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

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

Article 38. Hearings and written proceedings

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

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

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

Article 39. Default of a party

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

39.1.1 the claimant fails to communicate his statement of claim in accordance with article 37.1, the arbitral tribunal shall terminate the proceedings;

39.1.2 the respondent fails to communicate his statement of defence in accordance with article 37.1, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

39.1.3 any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 40. Expert appointed by arbitral tribunal

40.1 Unless otherwise agreed by the parties, the arbitral tribunal

40.1.1 may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

40.1.2 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.

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

Article 41. Court assistance in taking evidence

41.1 The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court assistance in taking evidence.

41.2 The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER SEVEN

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 42. Rules applicable to substance of dispute

42.1 The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

42.2 Failing any designation by the parties, the arbitral tribunal shall apply the rules of law it considers appropriate given all of the circumstances of the dispute.

42.3 The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

42.4 In all cases, the arbitral 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 43. Arbitration costs

43.1 Unless otherwise agreed by the parties, the costs of an arbitration shall be in the discretion of the arbitral tribunal who may direct to and by whom and in what amount and what manner those costs or any part thereof shall be paid.

43.2 The costs of the arbitration may include without limitation: (a) the fees and expenses incurred by a party or for which a party may be liable in relation to the conduct of the arbitration, including for legal representation, witnesses, experts and any other costs, fees or expenses; (b) the fees and expenses of the arbitrator(s); and (c) the fees and expenses of the arbitral institution or appointing authority.

Article 44. Decision-making by panel of arbitrators

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

Article 45. Settlement

45.1 If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

45.2 An award on agreed terms shall be made in accordance with the provisions of article 46 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 46. Form and contents of award

46.1 The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

46.2 The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 45.

46.3 The award shall state its date and the place of arbitration as determined in accordance with article 34.1. The award shall be deemed to have been made at that place.

46.4 After the award is made, a copy signed by the arbitrators in accordance with article 46.1 shall be delivered to each party.

Article 47. Termination of proceedings

47.1 The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with article 47.2.

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

47.2.1 the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

47.2.2 the parties agree on the termination of the proceedings;

47.2.3 the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

47.3 The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 48 and 49.4.

Article 48. Correction and interpretation of award; additional award

48.1 Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

48.1.1 a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

48.1.2 if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request 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.

48.2 The arbitral tribunal may correct any error of the type referred to in article 48.1.1 on its own initiative within thirty days of the date of the award.

48.3 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 arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

48.4 The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under articles 48.1 or 48.3.

48.5 The provisions of article 46 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER EIGHT

RECOURSE AGAINST AWARD

Article 49. Application for setting aside as exclusive recourse against arbitral award

49.1 Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with articles 49.2 and 49.3.

49.2 An arbitral award may be set aside by the court specified in articles 49.5 and 49.6 only if:

49.2.1 the party making the application furnishes proof that:

49.2.1.1 a party to the arbitration agreement referred to in article 9 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; or

49.2.1.2 the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

49.2.1.3 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; or

49.2.1.4 the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

49.2.2 the court finds that:

49.2.2.1 the subject-matter of the dispute is not capable of settlement by arbitration under the law of Mongolia; or

49.2.2.2 the award is in conflict with the public policy of Mongolia.

49.3 An application for setting aside may not be made after one month has elapsed from the date on which the party making that application had received the award or, if a request had been made under article 48, from the date on which that request had been disposed of by the arbitral tribunal.

49.4 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 arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

49.5 For domestic arbitration, an application for setting aside an arbitral award shall be brought directly before the Court of Civil Appeals and there shall be no further appeal from or recourse against the decision on an application for setting aside under this article 49.

49.6 For international arbitration, an application for setting aside an arbitral award shall be brought directly before the Supreme Court and there shall be no further appeal from or recourse against the decision on an application for setting aside under this article 49.

CHAPTER NINE

RECOGNITION AND ENFORCEMENT OF AWARDS

Article 50. Recognition and enforcement

50.1 An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article 50, article 51 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations on 10 June 1958.

50.2 The party relying on an award or applying for its enforcement shall supply the original award or duly certified copy thereof. If the award is not made in an official language of Mongolia, the party shall supply a translation thereof into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 51. Grounds for refusing recognition or enforcement

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

51.1.1 at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

51.1.1.1 a party to the arbitration agreement referred to in article 9 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; or

51.1.1.2 the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

51.1.1.3 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; or

51.1.1.4 the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

51.1.1.5 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; or

51.1.2 if the court finds that:

51.1.2.1 the subject-matter of the dispute is not capable of settlement by arbitration under the law of Mongolia; or

51.1.2.2 the recognition or enforcement of the award would be contrary to the public policy of Mongolia.

51.2 If an application for setting aside or suspension of an award has been made to a court referred to in article 51.1.1.5, 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.

Article 52. Limitation period for recognition and enforcement

52.1 No application under for recognition or enforcement, or both, of an arbitral award shall be made after five years from:

52.1.1 the date on which the time limit expired for the commencement of proceedings at the place of arbitration to set aside the award, if no such proceedings were commenced; or

52.1.2 the date on which proceedings at the place of arbitration to set aside the award concluded, if such proceedings were commenced.

CHAPTER TEN

ADDITIONAL PROVISIONS

Article 53. Confidentiality

53.1 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 arbitral tribunal and the arbitral institution, if any, except and to the extent that disclosure may be required of a party by:

53.1.1 a legal duty, or

53.1.2 protect or pursue a legal right, or

53.1.3 enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

53.2 The court shall conduct any proceedings under this Law in public unless the court makes an order that the whole or any part of the proceedings must be conducted in private.

53.3 The court may make an order under article 53.2:

53.3.1 on the application of any party to the proceedings; and

53.3.2 only if the court is satisfied that the public interest in having the proceedings conducted in public is outweighed by the interests of any party to the proceedings in having the whole or any part of the proceedings conducted in private.

Article 54. Bankruptcy

54.1 Where a party to a contract containing an arbitration agreement is a bankrupt and the person having jurisdiction to administer the property of the bankrupt does not disclaim the contract, the arbitration agreement shall be enforceable by or against that person.

54.2 The competent court for the bankruptcy proceedings may, if appropriate in the circumstances, direct any matter in connection with or for the purpose of bankruptcy proceedings to be referred to arbitration if:

54.2.1 the matter is one to which the arbitration agreement applies;

54.2.2 the arbitration agreement was made by a person who has been adjudged a bankrupt before the commencement of the bankruptcy proceedings; and

54.2.3 the person having jurisdiction to administer the property does not disclaim the contract containing the arbitration agreement.

Article 55. Liability of arbitrator

An arbitrator shall not be liable for any act or omission in respect of anything done or omitted to be done in the discharge of his functions as an arbitrator unless the act or omission is shown to have been in bad faith.

[SIGNATURE]