

FOREIGN TRADE ARBITRATION LAW

Chapter I General provisions

Article 1. Purpose of the Law

The purpose of this Law is to regulate relations pertaining to arbitral proceedings of suits brought by a citizen or legal entity with the purpose of defending the rights thereof and in relation to legal disputes arising from international business transactions or property relationships.

Article 2. Legislation on Arbitration and International Treaties

1. Legislation on arbitration shall consist of the Constitution, Civil Code, this Law and other laws and regulations in force which are consistent with the preceding.
2. If the international treaties to which Mongolia is a signatory provide differently than this law, then the provisions of the former shall prevail.

Article 3. Foreign Trade Arbitration

1. The Foreign Trade Arbitration shall be a legal entity of non-governmental and non-profit nature empowered to initiate and settle disputes specified by this Law.
2. The duties and functions of the Foreign Trade Arbitration shall be exercised by the Arbitration court (hereinafter referred to as "Arbitration Court") under the Mongolian National Chamber.
3. The Arbitration shall be located in Ulaanbaatar.
4. The Arbitration Court shall consist of a Chairman, General secretary, and not less than 15 arbitrators. Any citizen handling attorney activities shall not be appointed as an arbitrator.
5. The Council of the National Chamber shall appoint the Chairman of Arbitration court and arbitrators for a term of 3 years.
6. The General Secretary of the Arbitration shall be appointed by the Council.
7. The Arbitration Court Rules shall be subject to approval by the Council.

Article 4. Assistance to the Work of Arbitration

1. National Chamber shall render every assistance to ensure the smooth operation of the Arbitration Court.
2. The rate of salary of the Chairman and the General Secretary of the Arbitration Court and fees of arbitrators shall be fixed by the Council of the National Chamber.

Article 5. Treaty and/or Agreement on Arbitration

1. The parties concerned shall agree upon and include an arbitration clause in the contract or shall conclude a separate agreement on arbitration conciliation of disputes that may arise from contractual relations.
2. If an inter-governmental trade agreement provides for arbitration conciliation, an arbitration agreement shall be considered as concluded in relation to the contract concluded within the above agreement.

Article 6. Disputes Pertaining to Arbitration Conciliation

The Arbitration shall settle the following disputes within an arbitration clause or agreement:

1. Disputes arising from international economic contracts and transactions between nationals and/or legal entities of Mongolia and foreign nationals and/or juridical persons, as well as disputes preceding contract formation;
2. Disputes between national and foreign founders of an economic entity with foreign investment that operate in Mongolia;
3. Disputes between foreign legal entities.

Article 7. Referring the Dispute to the Arbitration Court

In the event of submitting an application for arbitration by any party of a legal dispute set forth in Article 6 of this law, the dispute shall be referred to the Arbitration in compliance with Article 64 of the Law of Civil procedure.

Article 8. Legal Norms and Usages of Trade to be Abided by during Arbitration Conciliation

1. While adjudicating, the laws and regulations of the country chosen by mutual agreement of the parties or international treaties shall be abided by, or if the parties have not so agreed, then laws and regulations of a country to which one of the parties belong to, or international treaties shall be abided by.
2. The Arbitration Court equally shall abide by the agreements concluded between the parties and usages of trade applicable to the particular transaction.

Article 8. Application for Arbitration, Resource to Arbitration

1. The Arbitration case (hereinafter referred to as “case”) shall be initiated upon the application for arbitration submitted by the Mongolian or foreign national, economic entity, organization or international organization as, set forth by this Law.
2. The application for arbitration shall specify the names and addresses of the parties, arbitration agreement or treaty, claim, documentary evidence on which the claim is based, the amount of claim, with the document evidencing the payment of arbitration costs enclosed therewith.
3. When the defendant files his counter-claim, if any, the latter shall conform to the requirements set forth in paragraph 2 of this Article.

Article 10. Rejection of the Application for Arbitration

1. The Application for Arbitration shall be rejected for any of the following grounds:
 - 1) The dispute does not fall within the jurisdiction of the arbitration
 - 2) The application was submitted by person lacking legal capacity or a person without representative rights;
 - 3) The relevant and valid court or arbitration award to settle the issue mentioned in the application for arbitration is available.
2. The issue of rejection of the Application of Arbitration shall be resolved by Chairman of Arbitration.

Article 11. Equality of Parties before Arbitration

The arbitrage proceedings shall be held observing the principle of equality and non-discrimination by nationality, language, race, age, sex, social origin and status, wealth, occupation held, position, religious conviction, opinions, education nationality or other status, type of ownership, power, membership, status and nationality of economic entities and organizations.

Article 12. Language of Arbitral proceedings

1. The arbitral proceedings shall be conducted in the Mongolian language.
2. When the participants in the proceeding are not familiar with the Mongolian language, the arbitral proceedings shall be translated by an interpreter. The arbitrator shall provide the participants in the proceedings with the opportunity to get acquainted with the filed documents through the help of an interpreter.
3. The arbitrator shall have a right to ask the parties to translate into Mongolian all required documents.

Article 13. Form of Arbitral Hearing, Confidentiality

1. The arbitral hearing shall be conducted in an open session.
2. When the evidencing documents are related to secrets of the state, organization, individual or commercial secrets of the parties concerned, the arbitrator may, in his own initiative or upon request of the parties, conduct a hearing in a closed session. In this event, the award shall be announced openly.
3. The Arbitral Tribunal and participants in the hearing shall maintain confidentiality of secrets they have come to know during the arbitral hearing.

Article 14. Time Limit for Proceedings

1. Unless specific timing is set forth by laws and regulations, treaties and agreements, the arbitral case shall be processed within 60 days from the date of acceptance of the application for arbitration.
2. Upon mutual agreement of the parties or in the event of valid reasons the time for proceedings may be extended by the Arbitral Tribunal on its own initiative.

Article 15. Place of Arbitration

1. The arbitration shall be held on the territory of Mongolia.
2. If the parties submit a mutually agreed request, the Arbitral Tribunal may decide to hold the arbitration on the territory of another country.

Chapter II Arbitration Composition, Powers thereof and Participants in the Hearing

Article 16. Composition of the Arbitral Tribunal, Appointment of Arbitrators

1. Unless parties have agreed that there shall be only one arbitrator, three arbitrators shall be appointed for arbitral proceedings.

2. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators shall appoint the third arbitrator who will act as the presiding arbitrator of the hearing.
3. If any of the parties fails to appoint an arbitrator within 14 days from the date of receiving a notification from the arbitration, or the two appointed arbitrators fail to appoint the third arbitrator within the specified time, the arbitrator shall be appointed by the Chairman of arbitration.

Article 17. Grounds for Challenge of Arbitrators

Any arbitrator may be challenged on the following grounds:

- 1) arbitrator is a relative of a participant of any other member of the Arbitral Tribunal;
- 2) arbitrator is a shareholder of either Claimant or Defendant or has personal interest in the case in question in any other way;
- 3) arbitrator acted as an advisor or lawyer for any of the parties concerned in relations under dispute;
- 4) any other circumstances that give rise to justifiable doubts as to the impartiality.

Article 18. Challenge of Arbitrators

1. If any arbitrator, once appointed, deems that there are grounds, as set forth in Article 17, of this Law, he shall inform thereof the appointing authority and must withdraw himself. Parties may challenge any arbitrator on such grounds.
2. An appointing party may challenge the arbitrator appointed by him for reasons he becomes aware of after the appointment has been made.
3. The decision on the challenge shall be made by other arbitrators in the Arbitral Tribunal. In case a sole arbitrator to be appointed is challenged, or two or all arbitrators are challenged, the decision shall be made by Chairman of arbitration. This shall not apply to any arbitrator who withdraws himself.

Article 19. Powers of Arbitrators

1. The Arbitral Tribunal shall have the right to issue a resolution on issues set forth in Article 55 of this Law in the course of arbitral proceedings.
2. If any of the parties considers that arbitrators have exceeded their authority in issuing a resolution, it may submit a claim at any stage of arbitral proceedings.
3. Arbitrator shall examine the claim and respond within 7 days. If any of the parties does not accept the response, it may submit a claim to the Chairman of arbitration. Submitting such a claim shall not hinder the continued arbitral proceedings. The Chairman of Arbitration shall examine the claim and respond within 7 days.

Article 20. Termination of powers of an Arbitrator

The powers of an arbitrator in respect to the specific hearing shall be terminated in the event of failure of the appointed arbitrator to perform his functions due to a certain reason, or in the event of his withdrawal on his own or being challenged by any of the parties.

Article 21. Replacement of an Arbitrator

In the event of termination of powers of an arbitrator pursuant to Article 20 of this Law, a substitute arbitrator shall be appointed pursuant to the procedure set forth by this Law.

Article 22. Composition of the Participants of the Hearing

Parties concerned, third parties and representatives thereof shall be participants in the hearing.

Article 23. Parties

1. The Claimant and the Defendant shall be the parties concerned.
2. The Claimant shall have the right to change the justification of or the application for arbitration, decrease or increase the amount of claim, or to withdraw his application for arbitration and to conciliate.
3. The Defendant shall have a right to reject the acceptance of the application for arbitration, to submit a counter-claim and to conciliate.

Article 24. Rights and Duties of Participants in the Hearing

1. Participants shall have the following rights during the course of arbitral proceedings:
 - 1) to have access to documents related to the hearing at any stage of the proceedings;
 - 2) upon the consent of Chairman of the hearing, to put forward questions to other participants;
 - 3) to ask the arbitrator to appoint an expert or to conduct an examination, to ask the adjournment of the hearing on grounds set forth by law;
 - 4) to challenge arbitrators, experts and interpreters.
2. Participants shall have the following duties during the course of arbitral proceedings:
 - 1) to provide the other party copies of the application for arbitration and other documents submitted to the Arbitration Court;
 - 2) to fulfill requirements of the Arbitration court;
 - 3) to abide by a valid arbitral award.

Article 25. Third Party

1. If a third party who participates in a contractual relations considers that his rights and interests are infringed, he may submit an independent claim and participate in the arbitral proceedings before the arbitral award is made. such person shall have the authority of a claimant.
2. A third party who has not submitted an independent claim shall participate in arbitral proceedings in the capacity of a defendant.

Article 26. Transfer of Rights During Proceedings

When it becomes impossible for any of the parties in dispute to participate in the proceeding, or in the event of death of a citizen, dissolution of a legal entity, transfer of claims and obligations to another person, the party that received such rights shall replace the party. This may be done at any stage of proceedings.

Article 27. Representation of the Parties in the Proceedings

1. The parties may participate in the proceedings themselves or through their representatives.
2. The powers of a representative shall be determined by the proxy filed pursuant to the law. The proxy may specify certain powers not to be enjoyed by the representative during the course of proceedings.

Chapter III Evidence

Article 28. Evidence

1. Any facts and documents in support of the statement of claim and statement of defence of the parties, and are of relevance for arbitral proceedings shall serve as evidence.
2. Evidence in arbitral cases shall consist of explanations of the parties, representatives thereof, and/or third parties, testimony of witnesses, written materials (contracts, agreements, protocols, specifications, payment documents, remittance documents, customs declarations for clearance of goods through the border, certificates of quality, etc...) and physical documents, expert reports, and inspection reports.

Article 29. Submission and Collection of Evidence

1. The parties, representatives thereof, and/or third parties shall have the burden of proving the facts relied on to support a claim or defence.
2. The parties, representatives thereof, and/or third parties are prohibited from submitting faulty evidence and any illegal collection of evidence. Evidence submitted in such a manner shall lose its verifying power and shall not serve as grounds for an arbitral awards.
3. Evidence may be submitted prior to or during the arbitral proceedings.
4. If the parties request to file new evidence during the course of arbitral proceedings, the hearing may be suspended and the parties shall be asked to submit new evidence, or the arbitration may take up actions pursuant to article 30 and 33 of this Law.

Article 30. Expert, Rights, and Duties thereof, Expert Report

1. Unless otherwise agreed upon by the parties, the arbitration may appoint an expert at the request of any participant in the hearing with the purpose of clarifying an issue that requires special knowledge and expertise for resolving the suit, such as in the areas of science, computation, accounting, art, culture, and technology.
2. If necessary, several experts may be appointed simultaneously who shall submit one report in the event of unanimity of their opinion. If, however, any of the experts does not agree with the opinion of other experts, he may submit a separate report.
3. The arbitration may ask the parties to submit to the expert all types of documents, information, goods and other physical items which are deemed relevant to the suit.
4. Any expert must appear at the request of the parties, or as summoned by the arbitration court, explain his evaluation, and give true and correct answers to questions put forward.
5. Any expert, if he deems it is necessary, shall have a right to get acquainted with the documents of the proceedings, and to ask the arbitration court to submit additional material.
6. An expert shall submit his evaluation in writing and sign it. The expert evaluation shall contain data about the investigation made, an evaluation made on the basis of such investigation, and answers, based upon the findings, to questions put forward by the arbitration court.

Article 31. Interpreter

1. Any participant of the hearing who is not familiar with and who is not capable of communicating in the Mongolian language shall choose his interpreter himself.
2. An interpreter must translate a claim, request, explanation, requests of the participant, arbitration proceeding, and other arbitration activity, the content of the award, and shall assist in the review of materials filed by the parties.
3. An interpreter must appear at the summons of the arbitration, and must interpret truly and correctly.

Article 32. Challenge of an Expert or an Interpreter

1. Parties may challenge an expert or an interpreter if doubt arises as to the ability of an expert to make a just evaluation, or of an interpreter to interpret truly and correctly.
2. The challenge of an expert and an interpreter shall be decided by the Arbitral Tribunal.

Article 33. Inspection

1. The arbitration may, during the proceedings, conduct an inspection of goods, property and documents with the purpose of clarifying some circumstances.
2. Inspections shall be carried out with the participation of participants in the hearing and with notes taken pursuant to Article 34 of this Law. however, the failure of any participant in the hearing to appear shall not hinder the inspection.

Article 34. Recording

1. The arbitration court shall maintain a detailed recording of arbitral proceedings and activities carried out outside of the proceedings. The minutes shall be recorded by the secretary of the hearing.
2. The minutes shall include data such as who, when and where the hearing was held or the activity, time of its beginning and ending, names, addresses of participants, order of activity, procedure, and circumstances disclosed.
3. Participants in the hearing may get acquainted with the minutes of the hearing and submit a request to introduce amendments thereto. Such amendments shall be verified by a signature of Chairman or Secretary of the hearing.
4. The minutes of the hearing and other activities shall be signed by all participants and attendants thereof.

Chapter IV Arbitration Costs

Article 35. Arbitration Costs

1. Arbitration costs shall consist of basic and additional costs.
2. Fees of arbitrators and arbitration costs paid by participants as a certain percentage of the amount of the claim shall be the basic costs.
3. The rate of basic costs shall be fixed by the Minister of Finance upon the proposal of the Chairman of Arbitration.
4. The following costs incurred during the course of certain activities of the arbitral proceedings shall be additional costs:
 - 1) travel, accommodation and boarding of an expert, fees of an expert if the work carried out by him by decision of the arbitration is not relevant to his basic duties;
 - 2) expenses incurred in connection with inspection;

- 3) expenses incurred in connection with holding the hearing in a place other than the regular location of the arbitration.

Article 36. Apportionment of Arbitration costs

1. Basic arbitration costs shall be borne by a Defendant in case the Claimant's claim is fully upheld, and by a Claimant in case of dismissal of the claim.
2. If a certain part of claim was satisfied, the basic arbitration costs shall be apportioned between the Claimant and Defendant upon adjustment of the amount of satisfied or dismissed claim.

Article 37. Payment of Additional Arbitration Costs

1. The additional arbitration costs shall be computed in the following way and shall be borne by the non-prevailing party:
 - 1) travel and accommodation expenses incurred by the expert- supported by documents verifying these expenses , boarding expenses- in compliance with relevant law and regulation of this country, and fees- based on average rates;
 - 2) expenses set forth in clauses 2, 3 of paragraph 4 of article 35 of this Law- supported by relevant documents.
2. The issue raised in paragraph 1 of this Article shall be specified in a resolution about dismissal of the claim or the award.

Article 38. Refund of Certain Part of Basic Arbitration Costs.

1. Certain parts of basic expenses, depending on expenses incurred, may be refunded, if the parties have reached a settlement agreement before the arbitration hearing, the Claimant has called back his application for arbitration, the case was dismissed because of satisfaction by the Defendant of the claim, or the case was decided by one arbitrator.
2. the issue raised in paragraph 1 of this Article shall be specified in a resolution about dismissal of the claim or in the award.

Chapter V Arbitral Proceedings

Article 39. Proceedings Procedure

1. The parties concerned may agree to set forth the arbitral proceedings procedure.
2. If the parties have not agreed on setting forth the arbitral proceedings procedure, the proceedings shall be carried out pursuant to this Law.

Article 40. Opening of Arbitration Hearing

The arbitration hearing shall be opened by the Chairman, who shall provide notice about the agenda, parties, and the summary of the dispute between the parties.

Article 41. Verification of Presence, and Rights of Participants

1. Those this at the arbitral hearing shall be recorded and their attendance reported by the Secretary of the hearing.

2. The chairman shall get acquainted with each participant and verify the credentials and proxies of position holders or representatives.

Article 42. Consequences of Default

1. The arbitration hearing shall be suspended if the parties or representatives thereof fail to appear at the arbitration hearing for good reason. If they fail to appear without good reason, the proceedings shall be resolved based on materials compiled.
2. In the event of failure of other participants appear, the Arbitral Tribunal shall decide whether to proceed with a hearing.

Article 43. Explanation of Rights and Duties to Participants in the Hearing

The Chairman of the hearing shall explain to the participants their rights and duties.

Article 44. Decision on Request Submitted by Participants in the Hearing

The Arbitral Tribunal, upon listening to the opinion of other participants, shall make an immediate decision on the request submitted by the parties or of the representatives thereof, concerning filing of new evidence and other issues related to the proceedings.

Article 45. Transfer of Case

Whereas the arbitration court must proceed with and decide the case once it has received the application for arbitration, the case may be transferred to arbitration in another country before the arbitration hearing is held, upon mutually agreed request submitted by the parties.

Article 46. Start of Hearing

1. The hearing shall start with presentation of the report about the case by the reporter.
2. The Chairman shall ask whether the Claimant supports his application for arbitration, whether the Defendant agrees with the claim, and whether the parties are willing to conciliate.

Article 47. Dismissal of Case

1. The Arbitration shall dismiss the case in the following events:
 - 1) No protest was expressed by the Defendant against withdrawal by the Claimant of his application for arbitration and the Arbitral Tribunal considered that the Defendant's legitimate interests will not be infringed;
 - 2) The parties conciliated, and the Defendant has agreed and accepted the claim of the Claimant;
 - 3) Death of a citizen or dissolution of a legal entity of any of the parties with no successor of rights thereof;
 - 4) Expiration of the period in which to make a claim.
2. The resolution passed on the issue set forth in clause 2 of paragraph 1 of this Article shall be enforced in the same way as the arbitration award.

Article 48. Examination of Evidence

1. During the hearing, explanations of witnesses and experts shall be heard and each written and physical fact and document shall be examined.
2. Participants in the hearing may address questions to witnesses and experts with the permission of the Chairman of the hearing.
3. Upon examination of the evidence, the Chairman of the hearing shall ask the participants whether any clarifications need to be made.

Article 49. Questions and Explanations by participants

1. The Claimant, the third party who participates on his side, and representatives thereof may submit a claim and verify the claim, and the Defendant, the third party who participates on his side, and representatives thereof may submit a rejection, evidence of such rejection, and may put forward questions to the other parties and provide explanations.
2. At any time during such mutual questioning and explanations the Arbitral Tribunal may put forward a question.

Article 50. Announcing an Award and closure of Hearing

Upon comprehensive examination of evidence pertaining to the case, and upon the hearing of claims and explanations of participants in the hearings, the Arbitral Tribunal shall conduct consultations and make an award which is to be announced, and shall then declare the hearing closed.

Chapter VI Arbitration Award, Effect and Enforcement of the Award

Article 51. Passing Arbitration Award

1. The arbitration shall examine the case and render an award.
2. The arbitration award shall be final and binding on the parties.
3. The arbitration award shall be based on evidence filed with the case and discussed in the course of hearing and shall be legitimate and justified.
4. The arbitral award shall be made by a majority of arbitrators in writing with all arbitrators signing the award.

Article 52. Content of Arbitration Award

1. The arbitration award shall contain the following:
 - Title of arbitration, place where and date on which the award was made
 - 1) Reasons upon which the award was made;
 - 2) Method of resolving the claim;
 - 3) Amount of arbitration costs referred to the parties.
2. Upon completion of arbitral proceedings, any one of the following awards shall be made:
 - 1) To satisfy the claim to the full extent;
 - 2) To satisfy a certain part of the claim with the remainder rejected;
 - 3) To dismiss the claim in full

Article 53. Additional Award

1. Within 60 days after the passing of the award, the arbitrator may, at his own initiative or the request of the parties, make an additional award in the following cases:
 - 1) Any claim which has not been been addressed in the award;
 - 2) The amount of cash or property to be claimed by the Claimant or the actions to be taken by the Defendant have not been designated;
 - 3) The issue of referring arbitral costs has not been resolved;
 - 4) The award needs further explanation, or an error in computation needs to be corrected;
 - 5) Participants in the hearing have turned out to be lacking legal capacity
 - 6) The arbitration dealt with a dispute, which does not fall within its jurisdiction.
2. Within 30 days after the receipt of the award any party may request the arbitration court to make an additional award in cases specified in paragraph 1 of this article. The party who made such request shall notify the other party thereof.
3. Within 30 days after making an award, the arbitration court may, on its own initiative or on the request of the parties, if it deems it justified, correct, change or interpret the award applicable to clauses 1 to 4 of paragraph 1 of this Article, or to make an additional award to annul the award applicable to clauses 5 to 6. Any additional made to correct, change, or interpret the award shall have the force similar to the previous award and shall become an integral part thereof. Where the previous has been canceled, the additional award shall be valid.
4. If necessary, the arbitration may suspend the period for making an additional award.

Article 54. Coming to Force of Arbitration Award

1. The arbitration award is effective from the date it is rendered.
2. Neither participant or successor thereof may bring a suit before an arbitration or law-court concerning the claim that has been resolved by the arbitration after the arbitration award has come into effect.

Article 55. Resolution of Arbitration, Issuing a Resolution

Resolutions of arbitration shall be issued in cases stipulated in paragraph 1 of Article 9, Article 10, paragraph 2 of Article 13, paragraph 2 of Article 14, paragraph 2 of Article 15, paragraph 3,4 of Article 16, paragraph 2, 3 of article 18, Article 25, paragraph 1 of Article 26, paragraph 4 of Article 29, paragraph 1 of Article 30, paragraph 2 of Article 32, paragraph 1 of Article 33, Article 42, 45 and 47. Resolutions of arbitration shall be issued in writing by the Arbitral tribunal, and if they have not been appointed, by the Chairman of Arbitration.

Article 56. Implementation of Arbitration award

1. The parties shall be obliged to execute the arbitration award.
2. If any of the parties fails to implement the award, a request shall be submitted to court award enforcement authority for the enforcement of the award. The original and duly certified copy of the arbitration award, and arbitration agreement or treaty shall be filed with such request.
3. The arbitration award shall be enforced through the court award enforcement procedure pursuant to Chapter 16 of the Civil Procedure Code of Mongolia.
4. The enforcement of the arbitration award in a foreign country shall be regulated by international treaties and conventions.

Chapter VII

Effect of the Law

Article 57. Effect of the Law

1. This Law shall come into force from December 15, 1995.
2. This law shall not be applicable for suits under proceedings by the date of coming into force of this Law.