

# **DRAFT** ARBITRATION LAW

## **Preamble**

WHEREAS it is expedient to make rules respecting arbitration for the fair and efficient settlement of domestic disputes and the disputes arising in international commercial relations; taking into account implementation of foreign arbitration awards;

The Pyidaungsu Hluttaw hereby enacts this Law.

## PART I

### CHAPTER I

#### Title, Scope of Application and Definitions

1.
  - (a) This Law may be called the **Arbitration Law**.
  - (b) This Law extends to the whole of the Republic of the Union of Myanmar.
  - (c) This Law shall apply where the place of arbitration is in the Republic of the Union of Myanmar.
  - (d) This Law shall apply to all arbitration and to all proceedings relating thereto, save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between the Republic of the Union of Myanmar and any other country or countries.
  - (e) Any provisions of this Law shall not affect any other law of the Republic of the Union of Myanmar by virtue of which certain disputes may not be submitted to arbitration.
2. In this Law, the following terms shall have such meanings prescribed as follows;
  - (a) "**arbitration**" means any arbitration whether or not administered by permanent arbitral tribunal;
  - (b) "**arbitration agreement**" means an agreement referred to in section 7;
  - (c) "**arbitral award**" means a decision of the arbitral tribunal and includes interim award.

- (d) "**arbitral tribunal**" means a sole arbitrator or a panel of arbitrators;
- (e) "**Court**" means the District Court of original jurisdiction and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit.
- (f) "**international arbitration**" means an arbitration in which-
  - (i) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (ii) one of the following places is situated outside the State where the parties have their places of business;
    - (aa) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (bb) 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
  - (iii) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

## Explanation:

- (i) 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;
  - (ii) if a party does not have a place of business, reference is to be made to his habitual residence.
- (g) "**international commercial arbitration**" means an international arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in the Republic of the Union of Myanmar.
- (h) "**legal representative**" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (i) "**party**" means a party to an arbitration agreement.

## CHAPTER II

### General Provisions

3. (a) Unless otherwise agreed by the parties,-
    - (i) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
    - (ii) if none of the places referred to in clause (i) 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 by any other means which provides a record of the attempt to deliver it.
  - (b) The communication is deemed to have been received on the day it is so delivered.
  - (c) This section does not apply to written communications in respect of proceedings of a Court.
4. A party who knows that “
    - (a) any provision of this Part from which the parties may derogate, or
    - (b) 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 for stating that objection, within that period of time, shall be deemed to have waived his right to (so) object.

5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Law, no Court shall intervene except where so provided in this Law.

6. In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or Court.

### **CHAPTER III**

#### **Arbitration Agreement**

7. (a) In this Law, "arbitration agreement" means 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.
- (b) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (c) An arbitration agreement shall be in writing.
- (d) An arbitration agreement is in writing if it contains a document signed by the parties.
- (e) An arbitration agreement is in writing if it contains or refers to information from electronic communications.

#### **Explanation:**

Electronic communications can be defined as communications or exchange of information among the parties by means of electronic

communications. Electronic information sharing or communications include electronic data interchange (EDI), fax, e-mail, telegraph, telex and telecopy. In addition, it also includes information received or saved through other means of electronic communications such as magnetic and light waves.

- (f) An arbitration agreement is in writing if it contains an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
  - (g) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.
- 8.
- (a) A Court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
  - (b) The application referred to in sub-section (a) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
  - (c) Notwithstanding that an application has been made under sub-section (a) and that the issue is pending before the judicial authority, an arbitration (arbitral proceedings) may be commenced or continued and an arbitral award made.

9. (a) If a party, before or during arbitral proceedings or after the arbitration award is made but not yet confirmed, applies to a Court to take an interim measure with regard to the following cases, the Court shall have the same power to make orders as if they were existing cases on file:

- (i) Submitting evidence under oath;
- (ii) Preservation, temporary custody or sale of any goods that are the subject-matter of the arbitration agreement;
- (iii) Taking samples or experimentation of any goods that are the subject-matter of the arbitration agreement;
- (iv) Preservation and temporary custody of any given evidence;
- (v) Demanding an insurance premium for the disputed amount of money;
- (vi) Issuing temporary warrants or appointing a receiver;
- (vii) Other interim procedures the Court can fairly and easily handle.

(b) A Court shall have the power to make orders under sub-section (a) only if the arbitral tribunal lacks power to issue arbitral awards or effectively handle the case.

(c) If the arbitral tribunal, entitled with the power to handle the disputed case, makes orders stipulated in sub-section (a) and other related orders, the entire or part of the Court's orders shall be nullified.

(d) If a party applies to a Court for the appointment of a guardian for a minor or a person of unsound mind for the purpose of arbitral proceedings before or during arbitral proceedings, the Court shall make orders accordingly.

## CHAPTER IV

### Composition of Arbitral Tribunal

10. (a) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
- (b) Failing the determination referred to in sub-section (a), the arbitral tribunal shall consist of three arbitrators.
11. (a) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
- (b) Subject to sub-section (f), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
- (c) Failing any agreement referred to in sub-section (b), in an arbitration with three arbitrators,
- (i) each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator;
- (ii) if a party fails to appoint the arbitrator within thirty days from the receipt of a request to do so from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or an individual or organization appointed by him/her.
- (d) Failing any agreement referred to in sub-section (b), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or an individual or organization appointed by him/her.

(e) Where, under an appointment procedure agreed upon by the parties-

- (i) a party fails to act as required under that procedure; or
- (ii) the parties, or two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
- (iii) a third party, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Chief Justice or an individual or organization appointed by him/her to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (f) A decision on a matter entrusted by sub-section (c) or sub-section (d) or sub-section (e) to the Chief Justice or an individual or organization appointed by him/her is final.
- (g) the Chief Justice or an individual or organization appointed by him/her, in appointing an arbitrator, shall have due regard to-
  - (i) any qualifications required of the arbitrator by the agreement of the parties; and
  - (ii) other considerations as are likely to secure the appointment of an independence and impartial arbitrator.
- (h) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Chief Justice or an individual or organization appointed by him/her may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.
- (i) The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (c) or (d) or sub-section (e) to him.
- (j) (i) Where the matters referred to in sub-sections (c), (d), (e), (f), (g) and (i) arise in an international commercial arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the "Chief Justice of the Union".

(ii) Where the matters referred to in sub-sections (c), (d), (e), (f), (g) and (i) arise in the other arbitration, the reference to "Chief Justice" in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the District Court referred to in sub-section (e) of section 2 is situate and, where the High Court itself is the Court referred to in that sub-section, the Chief Justice of that High Court.

12. (a) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (b) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (a) unless they have already been informed of them by him.
- (c) An arbitrator may be challenged only if-
- (i) circumstances exist that give rise to justifiable doubts as to his independence or impartiality; or
  - (ii) he does not possess the qualifications agreed by the parties.
- (d) 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.

13.
  - (a) Subject to sub-section (d), the parties are free to agree on a procedure for challenging an arbitrator.
  - (b) Failing any agreement referred to in sub-section (a), 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 circumstances referred to in sub-section (c) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.
  - (c) Unless the arbitrator challenged under sub-section (b) withdraws from his office the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
  - (d) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (b) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
  - (e) Where an arbitral award is made under sub-section (d), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.
  - (f) Where an arbitral award is set aside on an application made under sub-section (e), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

14. (a) The mandate of an arbitrator shall terminate if-
- (i) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
  - (ii) he withdraws from his office or the parties agree to the termination of his mandate.
- (b) If a controversy remains concerning any of the grounds referred to in clause (i) of sub-section (a), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (c) If, under this section or sub-section (c) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (c) of section 12.
15. (a) Where the mandate of an arbitrator terminates under section 13 or section 14, 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.

- (b) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (a), any hearings previously held may be repeated at the discretion of the arbitral tribunal.
- (c) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

## **CHAPTER V**

### **JURISDICTION OF ARBITRAL TRIBUNAL**

- 16. (a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-
  - (i) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
  - (ii) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. However, a party shall not be precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.
- (c) 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.

(d) The arbitral tribunal may, in either of the cases referred to in sub-section (b) or sub-section (c), admit a later plea if it considers the delay justified.

(e) The arbitral tribunal shall decide on a plea referred to in sub-section (b) or sub-section (c), where the arbitral tribunal decides that it has jurisdiction, continue the arbitral proceedings and make an award.

(f) Any party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

17. (a) The arbitral tribunal may make orders or issue instructions regarding the following cases without causing damage to the power stipulated in this Law.

(i) Claiming of insurance premium for the expenses;

(ii) Disclosing or inspecting paperwork;

(iii) Submitting evidence under oath;

(iv) Preservation, temporary custody or sales of any goods that are the subject-matter of the arbitration agreement;

(v) Taking samples, examining or conducting experiments related to any goods that are the subject-matter of the arbitration agreement;

(vi) Preservation and temporary custody of evidence;

(viii) Demanding insurance premium for the disputed amount of money;

(viii) Issuing warrants or conducting other interim procedures.

- (b) Unless otherwise agreed by the parties, the arbitral tribunal may make the parties and witnesses to swear oaths.
- (c) Unless otherwise agreed by the parties, the arbitral tribunal may make appropriate investigations.

## CHAPTER VI

### CONDUCT OF ARBITRAL PROCEEDINGS

18. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.
19. (a) 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 its proceedings.
- (b) Failing any agreement referred to in sub-section (a), the arbitral tribunal may, subject to the provisions of this Law, conduct the proceedings in the manner as it considers appropriate.
- (c) The power of the arbitral tribunal under sub-section (b) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
20. (a) The parties are free to agree on the place of arbitration.
- (b) Failing any agreement referred to in sub-section (a), 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.
- (c) Notwithstanding sub-section (a) or sub-section (b), 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 documents, goods, or other property.

21. 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.

22. (a) The parties are free to agree on the language or languages to be used in the arbitral proceedings.

(b) Failing any agreement referred to in sub-section (a), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.

(c) The agreement or determination, unless otherwise specified **in sub-section (a) or sub-section (b)**, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(d) 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.

23. (a) 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 point 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 those statement.

- (b) 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.
  - (c) 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 the amendment or supplement having regard to the delay in making it.
24. (a) Unless otherwise agreed 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.
- Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held.
- (b) 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 documents, goods or other property.
  - (c) All statements, documents or other information supplied to or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

25. Unless otherwise agreed by the parties, where, without showing sufficient cause,-

- (i) the claimant fails to communicate his statement of claim in accordance with sub-section (a) of section 23, the arbitral tribunal shall terminate the proceedings;
- (ii) the respondent fails to communicate his statement of defence in accordance with sub-section (a) of section 23, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (iii) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

26. (a) Unless otherwise agreed by the parties, the arbitral tribunal may-

- (i) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and
  - (ii) 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.
- (b) 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 an oral hearing where the parties have the opportunity to put questions to him and to present expert witness in order to testify on the points at issue.

27. (a) The arbitral tribunal or a party with the approval of the arbitral tribunal may apply to the District Court for assistance in taking evidence.
- (b) The application shall specify-
- (i) the names and addresses of the parties and the arbitrators;
  - (ii) the general nature of the claim and the relief sought;
  - (iii) the evidence to be contained, in particular,-
    - (aa) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;
    - (bb) the description of any document to be produced or property to be inspected.
- (c) The Court may, within its competence and according to its rules on taking evidence, execute the request that the evidence be provided directly to the arbitral tribunal.
- (d) The Court may, while making an order under sub-section (c), issue the same processes to witnesses as it may issue in suits tried before it.
- (e) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

**CHAPTER VII**  
**MAKING OF ARBITRAL AWARD AND TERMINATION OF**  
**PROCEEDINGS**

28. (a) Where the place of arbitration is in the Republic of the Union of Myanmar,-
- (i) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in the Republic of the Union of Myanmar;
  - (ii) in international commercial arbitration,-
    - (aa) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;
    - (bb) 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;
    - (cc) failing any designation of the law under clause (aa) by the parties, the arbitral tribunal shall apply the rules of law it considers applicable.

- (b) The arbitral tribunal shall decide *ex aequo et bono* or as (amiable compositeur) only if the parties have expressly authorised it to do so.
  - (c) 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.
  
- 29.
  - (a) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.
  - (b) Notwithstanding sub-section (a), if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.
  
- 30.
  - (a) 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.
  - (b) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

- (c) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.
- 31.
- (a) An arbitral award shall be made in writing and shall be signed by the member or members of the arbitral tribunal.
  - (b) For the purposes of the sub-section (a), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient, provided that the reason for any omitted signature is stated.
  - (c) The arbitral award shall state the reasons upon which it is based, unless-
    - (i) the parties have agreed that no reasons are to be given, or
    - (ii) the award is an arbitral award on agreed terms under section 30.
  - (d) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
  - (e) After the arbitral award is made, a signed copy shall be delivered to each party.

- (f) Unless otherwise agreed by the parties,-
  - (1) the costs of an arbitration shall be fixed by the arbitral tribunal;
  - (2) the arbitral tribunal shall specify-
    - (aa) the party entitled to costs,
    - (bb) the party who shall pay the costs,
    - (cc) the amount of costs or method of determining that amount, and
    - (dd) the manner in which the costs shall be paid.

**Explanation**

"Costs" referred in clause (1) means reasonable costs relating to-

- (i) the fees and expenses of the arbitrators and witnesses,
  - (ii) legal fees and expenses,
  - (iii) any administration fees of the institution supervising the arbitration, and
  - (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.
32. (a) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (b).

- (b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-
    - (i) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute,
    - (ii) the parties agree on the termination of the proceedings, or
    - (iii) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
  - (c) Subject to section 33 and sub-section (d) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.
33. (a) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-
- (i) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature;
  - (ii) 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.
- (b) If the arbitral tribunal considers the request made under sub-section (a) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the

request and the interpretation shall form part of the arbitral award.

- (c) The arbitral tribunal may correct any error of the type referred to in clause (i) of sub-section (a), on its own initiative, within thirty days from the date of the arbitral award.
- (d) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (e) If the arbitral tribunal considers the request made under sub-section (d) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.
- (f) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (b) or sub-section (e).

- (g) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

## **CHAPTER VIII**

### **RECOURSE AGAINST ARBITRAL AWARD**

- 34. (a) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (b) and sub-section (c).
- (b) An arbitral award may be set aside by the Court only if-
  - (i) the party making the application furnishes proof that-
    - (aa) a party to the arbitration agreement was under some incapacity; or
    - (bb) the arbitration award is not valid under the arbitration law which the parties are bound to comply with or there is no such law or if not legal under an existing law for the time being in force in the Union of Myanmar ; or
    - (cc) 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
    - (dd) the arbitral 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(ee) 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

(ii) the Court finds that-

(aa) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(bb) the arbitral award is in conflict with the public policy of the Union of Myanmar.

**Explanation:**

Without prejudice to the generality of sub-clause (bb), for the avoidance of any doubt, that an award is in conflict with the public policy of the Union of Myanmar if making of the award was induced or affected by fraud or corruption or was in violation of natural justice.

- (c) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (d) On receipt of an application under sub-section (a), the Court may, where it is appropriate and it is so requested by a party, adjourn the 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 opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

## CHAPTER IX

### FINALITY AND ENFORCEMENT OF ARBITRAL AWARDS

35. An arbitral award shall be final and binding on the parties and persons claiming under them respectively.

36. Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of the Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

## CHAPTER X

### APPEALS

37. (a) An appeal shall lie from the following orders to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-
- (i) granting or refusing to grant any measure under section 9;
  - (ii) setting aside or refusing to set aside an arbitral award under section 34.
- (b) An appeal shall also lie to a Court from an order of the arbitral tribunal-
- (i) accepting the plea referred in sub-section (b) or sub-section (c) of section 16; or
  - (ii) granting or refusing to grant an interim measure under section 17.
- (c) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

## CHAPTER XI

### SUPPLEMENTARY PROVISIONS

38. (a) In order to confirm arbitral awards among signatory member countries relating to a contractual agreement stipulated in the first, second and third schedules from supplementary provisions, the Union Supreme Court Chief Justice or an official from the Union Supreme Court shall issue arbitral awards or make orders to provide signature to verify the arbitral awards or endorse the validity of the copied awards.
- (b) An official appointed pursuant to sub-section (a) shall:
- (i) comply with regulations by the Union Supreme Court Chief Justice;
  - (ii) not directly or indirectly disclose personal data of the parties or the arbitration award or any information related to the arbitration award to a third party without the knowledge of the parties.
39. Unless the amount of money to be compensated for the arbitration award is specified, the Court may order payment of interest based on the money decree, starting from the date the arbitration award is issued.
40. (a) For the claims applied to the arbitration relating to the expenses stipulated in section (31) sub-section (f), the arbitral tribunal shall accordingly determine the appropriate amount of insurance premium or supplementary insurance to be paid.

If, however, a reciprocal claim is made in addition to the claim, the arbitral tribunal may determine separate insurance premiums for the claim and the reciprocal claim.

(b) The parties shall make payments of the insurance premium stipulated in sub-section (a) in equal ratios.

However, if a party failed to make his due share of payment, the other party may make that payment.

In addition, if the other party failed to pay the aforementioned dues for either a claim or a reciprocal claim, the arbitral tribunal may suspend or cease the proceeding for issuing an arbitration award accordingly.

(c) In the case that the arbitration proceeding is ceased, the arbitration tribunal shall not only provide financial reports related to the insurance premium but also refund unused balance of the insurance premium.

41. (a) Subject to the provisions of sub-section (b) and to any provision the contrary to the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.
- (b) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks, fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.
- (c) An application under sub-section (b) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the

arbitral tribunal shall be entitled to appear and be heard on any such application.

- (d) The Court may make such orders as it thinks fit relating the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

42. (a) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(b) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(c) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

43. (a) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.

(b) Where a person who has been determined as insolvent had, before the commencement of the insolvency proceedings, become a party to a arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (a) does not apply, any other party or the receiver may apply to the Court having jurisdiction in the insolvency proceedings

for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the Court may, if it is of the opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

- (c) In this section the expression "receiver" includes an Official Assignee.

44. Notwithstanding anything contained elsewhere in this Law or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Law has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

- 45. (a) The Limitation Act, shall, apply to arbitrations as it applies to proceedings in court.
- (b) For the purposes of this section and the Limitation Act, an arbitration shall be deemed to have commenced on the date referred in section 21.
- (c) Where an arbitration agreement to submit further disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as

the justice of the case may require, extend the time for such period as it thinks proper.

- (d) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

## PART II

### CHAPTER XII

#### ENFORCEMENT OF FOREIGN AWARDS

46. In this Chapter, ‘foreign award’ means an arbitral award on differences between persons arising out of legal relations, whether contractual or not, considered as commercial under the law in force in the Union of Myanmar,

- in pursuance of an agreement in writing for arbitration to which the Conventions set forth in the First, Second and Third Schedules apply, and
- in one of the such territories as the President of the Union, being satisfied that reciprocal provisions have been made may, by notification in the Gazette, declare to be territories to which the said Conventions applies.

47. Notwithstanding anything contained in this Law (PART I) or in the Code of Civil Procedure, a Court, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 46, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

48. Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Republic of the Union of Myanmar and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

49. (a) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court-
- (i) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
  - (ii) the original agreement for arbitration or a duly certified copy thereof; and
  - (iii) such evidence as may be necessary to prove that the award is a foreign award.
- (b) If the award or agreement to be produced under sub-section (a) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in the Republic of the Union of Myanmar.

50. (a) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that:

(i) the parties to the agreement referred to in section 44 were, under the law applicable to them, 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

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

(iii) the award deals with a difference 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 enforced; or

(iv) the composition of the arbitral authority 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

(v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(b) Enforcement of an arbitral award may also be refused if the court finds that-

(i) the subject -matter of the difference is not capable of settlement by arbitration under the law of the Republic of the Union of Myanmar; or

(ii) the enforcement of the award would be contrary to the public policy of the Republic of the Union of Myanmar.

(c) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (v) of sub-section (a) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

51. Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court and enforced accordingly.

52. (a) The following orders can be appealed to the court that has been given authority by law or the court that has been given authority to hear an appeal hearing:

(i) the order to refuse an arbitration award given to the applicant under section 47;

(ii) the order to refuse a foreign arbitration award under section 50.

(b) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court of the Union.

53. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award or of availing himself in the Republic of the Union of Myanmar, of any award if this Chapter had not been enacted.

### CHAPTER XIII

#### MISCELLANEOUS

54. The Supreme Court of the Union may issue necessary rules, regulations, by-laws, notifications, orders, directives and procedures, consistent with this Law as to all proceedings before the Court under this Law.

55. The Arbitration (Protocol and Convention) Act, 1937 and the Arbitration Act, 1944 are hereby repealed by this Law.

I signed this into Law according to the Constitution of the Union of Myanmar.

Thein Sein

President

Union of Myanmar

