

**The Arbitration Law**  
**(The Pyidaungsu Hluttaw Law No. 5, 2016)**  
**The 10<sup>th</sup> Waning of Nadaw, 1377 M.E.**  
**(5 January, 2016)**

The Pyidaungsu Hluttaw hereby enacts this Law.

**Chapter I**  
**Title, Application and Definition**

**Title**

1. This Law shall be called **the Arbitration Law**.

**Application**

2. (a) Subject to sub-section (b), the provision of this Law shall apply to an arbitration where the place of arbitration is in the State, whether the arbitration agreement was made in the State or not.
- (b) If the place of arbitration is in any country other than the State or if the place of arbitration has not been designated or determined upon, sections 10, 11, 30, 31 and Chapter X shall apply.
- (c) The provisions of this Law shall not affect any law for the time being in force in the State by virtue of which certain disputes may not be submitted to arbitration.

**Definition**

3. The following expressions contained in this Law shall have the meanings given hereunder:
  - (a) **State** means the Republic of the Union of Myanmar;
  - (b) **Arbitration Agreement** means an agreement in writing 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;

- (c) **Arbitration** means any arbitration in which the dispute is administered by a sole arbitrator or a panel of arbitrators;
- (d) **Arbitrator** means a person or a panel of arbitrators appointed with the consent of the parties to administer the disputes by means of arbitration;
- (e) **Arbitral Award** means a decision of the arbitral tribunal. This expression also includes any interim award;
- (f) **Arbitral Tribunal** means a sole arbitrator or a panel of arbitrators;
- (g) **Court** means the District Court or High Court of the Region or High Court of the State having original civil jurisdiction to decide questions relating to arbitration as the subject-matters of a suit;
- (h) **Domestic Arbitration** means an arbitration which is not an international arbitration;
- (i) **International Arbitration** means an arbitration if:
  - (i) any party to an arbitration agreement has, at the time of the conclusion of the agreement, its place of business and commerce in any country other than Myanmar; or
  - (ii) the place of arbitration if determined in, or pursuant to, the arbitration agreement, is situated outside the country in which the parties to an arbitration agreement have their places of business; or
  - (iii) 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, is situated outside the country in which the parties to an arbitration agreement have their places of business; or
  - (iv) the parties to the arbitration agreement have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

### ***Explanation***

- (1) if a party has more than one place of business, the place of business is that which has the closest relationship to the place where the arbitration agreement is made;
- (2) if a party does not have a place of business, reference is to be made to his habitual residence;
- (j) **New York Convention** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on 10 June 1958 by the United Nations Diplomatic Conference;
- (k) **Foreign Arbitral Award** means an arbitral award made in the territory of a member country of the New York Convention other than the State pursuant to an arbitration agreement;
- (l) **Place of Arbitration** means the legal seat of the arbitration designated by the parties to the arbitration agreement, or by a person authorized by the parties, or by any arbitral tribunal, or by an arbitration institution.
- (m) **Party** means a party to an arbitration agreement;
- (n) **Legal Representative** means a person who in law represents the estate of a deceased person and includes any person who acts as an intermediary with regards to 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.

## **Chapter II**

### **Objectives**

- 4. The objectives of this Law are as follows:
  - (a) to settle the disputes of domestic and international business and commerce fairly and effectively;
  - (b) to recognize and enforce the foreign arbitral awards in settlement of disputes by means of arbitration;

- (c) to encourage the settlement of disputes by means of arbitration.

### **Chapter III**

#### **General Provisions**

#### **Receipt of Written Communications**

5. (a) Unless otherwise agreed by parties:
- (i) any written communication is deemed to have been received on the date of delivery if it is delivered to the addressee personally or at his place of business or habitual residence or mailing address;
  - (ii) if none of these places mentioned in clause (i) can be found after making a reasonable inquiry, a written communication is deemed to have been received on the date of delivery 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;
- (b) Sub-section (a) shall not apply to written communications in legal proceedings.

#### **Objection and Waiver of Right to Object**

6. (a) A party shall immediately object with regard to any of the following matters while he takes part or continues to take part in arbitral proceedings or if a time-limit to object is provided by any provisions of this Law, or the arbitration agreement, or the arbitral tribunal, the objection shall be made within such period of time :
- (i) the arbitral tribunal has no jurisdiction;
  - (ii) the arbitral proceedings have been improperly conducted;
  - (iii) there has been a failure to comply with the arbitration agreement or any provision of this Law;
  - (iv) the arbitral tribunal or the arbitral proceedings have been affected due to improper conduct.

- (b) if a party continues the arbitral proceedings without making objection under sub-section (a), it shall be deemed to have waived his right to object.

### **Limited Court Intervention**

7. Notwithstanding anything contained in any existing law, no court shall intervene in matters governed by this Law except where so provided in this Law.

### **Administrative Assistance**

8. The parties or the arbitral tribunal with the consent of the parties may arrange for administrative assistance from any suitable institution or individual to facilitate the conduct of arbitral proceedings.

## **Chapter IV Arbitration Agreement**

9. (a) In respect of arbitration agreement, the agreement in writing mentioned in sub-section (b) of Section 3 means:
- (i) the arbitration agreement shall be deemed in writing if an agreement is signed by the parties;
  - (ii) The arbitration agreement concluded by electronic communication shall be deemed in writing if the information contained therein is accessible so as to be useable for subsequent reference;
  - (iii) the arbitration agreement shall be deemed in writing if it is contained in an exchange of statement of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (b) An arbitration agreement may be stated in the form of an arbitration clause in a contract or in the form of a separate agreement.

### **Reference to Arbitration and Stay of Legal Proceedings**

10. (a) Where an action is brought before a court in respect of a matter which is the subject of an arbitration agreement, any party may apply to the court to refer the matter to arbitration not later than when submitting

his first written statement on the substance of dispute. In applying so, the court shall refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

- (b) Where an action referred to in sub-section (a) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an arbitral award may be made by the arbitral tribunal, while the dispute is pending before the court.
- (c) Where the court refused to refer the parties to arbitration, any decision made before filing a suit in respect of any matter which is the subject of an arbitration agreement shall not affect the suit.
- (d) If the court refers the parties to arbitration, the court shall make an order to stay the legal proceedings before the court.
- (e) No appeal shall lie against the decision of the court to refer the parties to arbitration on an application under sub-section (a).
- (f) An appeal may be allowed on the decision of the court refusing to refer the parties to arbitration on an application under sub-section (a).

### **Powers of Court to intervene in Arbitral Proceedings**

- 11. (a) Unless otherwise agreed by the parties, when a party applies to the court for the following matters relating to the arbitral proceedings, the court shall have the same power for making orders as any cases before it:
  - (i) taking of evidence;
  - (ii) preservation of any evidence;
  - (iii) issuance of an order in respect of the property related to any dispute in arbitration or any question arising from arbitral proceedings;
  - (iv) inspection, photographing, preservation, custody and seizure of any property under dispute;

- (v) taking sample from, observation or conducting experiment upon any property under dispute;
  - (vi) authorizing any person to enter any premises in the possession or control of a party to the arbitration for such purposes;
  - (vii) sale of any property which is the subject-matter of the arbitral proceedings;
  - (viii) granting of an interim injunction or the appointment of a receiver.
- (b) If an interim measure in the arbitral proceedings is one of urgency, the court may, on the application of a party, make the order as it thinks necessary for the purpose of preserving evidence or relevant assets.
- (c) If an interim measure in the arbitral proceedings is not one of urgency, the court shall, on the application of a party to the arbitration, take the measure with the permission of the arbitral tribunal or the written agreement of the other parties upon notice to the other parties and the arbitral tribunal.
- (d) The court shall act only in the matters in which any person authorized by the parties, or the arbitral tribunal or arbitration institution, or other institution has no power or is unable to act effectively.
- (e) An appeal may lie against the decision of the court under this section.
- (f) When the arbitral tribunal having the power to act in respect of the subject-matter of the dispute makes an order related to the order made by the court under sub-section (a), the whole or part of the order of the court shall be ceased.

## **Chapter V**

### **Composition of the Arbitral Tribunal**

#### **Number of Arbitrators**

12. (a) The parties are free to determine the number of arbitrators. However, if the number of arbitrators is more than one, it shall not be an even number.
- (b) Failing such determination as mentioned in sub-section (a), there shall be a sole arbitrator.

#### **Appointment of Arbitrators**

13. (a) Unless otherwise agreed by the parties, any nationality may act as an arbitrator.
- (b) Subject to the provisions of sub-section (d), the parties are free to agree on a procedure of appointing an arbitrator or arbitrators.
- (c) If the procedure of appointing arbitrator has been agreed by the parties, it shall be carried out according to the said procedure. If a party fails to appoint, or if the parties, or the two appointed arbitrators fails to appoint a third arbitrator, or a third party or an institution entrusted by the parties fails to perform any function, unless otherwise mentioned in the arbitration agreement for the procedure of appointing arbitrator, a party may request by an application to the Chief Justice or any person or institution designated by the Chief Justice, for the appointment of arbitrator.
- (d) If the parties fail to agree on the appointment of the arbitrator as mentioned in sub-section (b):
  - (i) in an arbitration with three arbitrators, each party shall appoint one arbitrator. The two appointed arbitrators shall appoint the third arbitrator. The third arbitrator shall act as the presiding arbitrator. If one of the parties fails to appoint the arbitrator within 30 days from the date of receipt of a request to do so from the other party, or if the two appointed arbitrators fail to

appoint a presiding arbitrator within 30 days from the date of their appointment, the appointment of the arbitrator shall be made, upon the request of a party, by the Chief Justice or by any person or institution designated by him;

- (ii) in an arbitration with a sole arbitrator, the Chief Justice or any person or institution designated by him shall, upon the request of any party, appoint the sole arbitrator if the parties fail to appoint the sole arbitrator within 30 days from the date of receipt of a request to do so from the other party.
- (e) The Chief Justice or the person or institution designated by him, in appointing an arbitrator, shall have due regard to any qualifications required of an arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (f) The Chief Justice or the person or organization designated by him may make appropriate arrangement concerning matters entrusted to him under sub-sections (c) and (d).
- (g) In case of the appointment of a sole or third arbitrator in an international arbitration, the Chief Justice or the person or institution designated by him may appoint a nationality of other country as an arbitrator other than the nationality of the parties if the parties belong to different nationalities.
- (h) With respect to matters entrusted under sub-section (c) or (d), no appeal shall lie against the decisions of the Chief Justice or the person or institution designated by him.

### ***Explanation***

The Chief Justice mentioned in this section refers to the Chief Justice of the High Court of the Region or State having jurisdiction for domestic arbitration and refer to the Chief Justice of the Union for international arbitration.

## Grounds for Challenge of an Arbitrator

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

## Procedure on Challenge

15. (a) The parties are free to agree on a procedure for challenging an arbitrator.
- (b) Failing any agreement referred to in sub-section (a), the party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of the circumstance mentioned in sub-section (c) of section 14, send a written statement of the reasons for challenge to the arbitral tribunal.
- (c) The arbitral tribunal shall, unless the challenged arbitrator under sub-section (b) withdraws from his office or the other party agrees to the challenge, decide on the challenge.
- (d) If a challenge under any procedure agreed upon by the parties is not successful or the arbitral tribunal decides under sub-section (c) against the challenge made under sub-section (b), the challenging

party may, within 30 days from the date of the decision rejecting the challenge, apply to the court to decide on the challenge.

- (e) While an application to the court under sub-section (d) is pending, the arbitral tribunal shall continue the arbitral proceedings and make an award.
- (f) Where the court sets aside the decision rejecting the challenge of the arbitral tribunal on an application made under sub-section (d), the Court may decide as to whether the challenged arbitrator is entitled to any fees.

### **Termination of Mandate of Arbitrator and Appointment of Substitute Arbitrator**

16. (a) The mandate of an arbitrator shall terminate if any of the following circumstances occurs:
- (i) an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay;
  - (ii) an arbitrator withdraws from the office or the parties agree on the termination of his mandate.
- (b) If controversy remains concerning any of the grounds specified in clause (i) of sub-section (a), unless otherwise agreed by the parties, any party may apply to a competent court to decide on the matter of the termination of the mandate of the arbitrator. No appeal shall lie against the decision of the court regarding the termination of the mandate of the arbitrator.
- (c) If an arbitrator withdraws from his office or a party agrees to terminate the mandate of an arbitrator under sub-section (a), sub-section (b) or sub-section (c) of section 15, the withdrawal or termination shall not imply an acceptance of the validity of any ground referred to in sub-section (a), sub-section (b) or sub-section (c) of section 14.
17. (a) Where the mandate of an arbitrator terminates according to the grounds mentioned in sections 15 and 16 or because of his withdrawal from the office for any other reason or because of the

revocation of his mandate by the 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 and 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 VI**

### **Jurisdiction of the Arbitral Tribunal**

#### **Competence of Arbitral Tribunal to rule on its Own Jurisdiction**

18. (a) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence and validity of the arbitration agreement. In doing so:
- (i) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract;
  - (ii) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* (as a matter of law) the invalidity of the arbitration clause.
- (b) A plea by a party that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the written statement of defence. However, such plea by the party shall not be rejected on the ground that the party has appointed, or agreed on the appointment of, an arbitrator.
- (c) As soon as the matters alleged to be beyond the scope of arbitral tribunal's mandate is raised during the course of arbitral proceedings, any party shall raise a plea.

- (d) The arbitral tribunal may, in either of the cases referred to in sub-sections (b) and (c), admit a later plea if it considers the delay justified.
- (e) The arbitral tribunal may rule on a plea referred to in sub-sections (b) and (c) either as a preliminary question or in an award on the merits. If the arbitral tribunal rules that it has jurisdiction or no jurisdiction, any dissatisfied party may, within 30 days from the date of receipt of such ruling, appeal to the court under clause (i) and clause (ii) of sub-section (d) of section 43 and clause (i) of sub-section (b) of Section 47.
- (f) The arbitral tribunal shall continue the arbitral proceedings and make an arbitral award while the application is pending in the court.

### **Power of Arbitral Tribunal to order Interim Measures**

- 19. (a) Unless otherwise agreed by the parties, the arbitral tribunal shall have the powers to make decisions and orders and give directions to any party for the following matters:
  - (i) security for costs;
  - (ii) disclosure of documents or interrogatories;
  - (iii) producing evidence by affidavit;
  - (iv) the preservation, interim custody or sale of any property under dispute;
  - (v) taking samples from, any observation or conducting experiment upon any property under dispute;
  - (vi) preservation and interim custody of any evidence;
  - (vii) requiring security for the amount in dispute;
  - (viii) issuing an interim injunction or taking other interim measures.
- (b) The arbitral tribunal may administer oaths of the parties or witnesses.
- (c) The arbitral tribunal may determine the order of examination of witnesses as it thinks fit.

- (d) The arbitral tribunal shall not order a claimant to provide security for costs referred to in clause (i) of sub-section (a) on the following ground that:
- (i) the claimant is an individual ordinary resident outside of the Republic of the Union of Myanmar;
  - (ii) the claimant is a corporation or an association incorporated or formed under the law of another country.
- (e) An application may be made to the court to enforce the decisions, orders and directions of the arbitral tribunal during the course of arbitral proceedings under section 31.

### **Immunity of Arbitrator**

20. An arbitrator shall not be liable for anything done or omitted during the course of arbitration as an arbitrator if the act or omission is done with due regard.

## **Chapter VII Conduct of Arbitral Proceedings**

### **Equal Treatment of Parties**

21. The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

### **Determination of Rules of Procedure**

22. (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 agreement referred to in sub-section (a), the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such manner as it considers appropriate.
- (c) In conducting the arbitral proceedings under sub-section (b), the arbitral tribunal may determine the admissibility, relevance, materiality and weight of any evidence.

## **Place of Arbitration**

23. (a) The parties are free to agree on the place of arbitration.
- (b) Failing such 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 the provisions of sub-sections (a) and (b), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any venue it considers appropriate for consultation among its members, for hearing witnesses, experts and the parties, or for inspection of documents, goods or other property.

## **Commencement of Arbitral Proceedings**

24. 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.

## **Language**

25. (a) The parties are free to agree on the language or languages to be used in the arbitral proceedings.
- (b) Failing agreement referred to in sub-section (a), the arbitral tribunal shall determine the language or languages to be used in arbitral proceedings.
- (c) Unless otherwise specified in the agreement under sub-section (a) or determination under sub-section (b), such agreement and determination shall apply to a written statement by any party, any hearing, arbitral award or other written communication by the arbitral tribunal.
- (d) The arbitral tribunal may order that any documentary evidence shall be accompanied by a certified translation, into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### **Particulars to be contained in Statements of Claim and Defence**

26. (a) The parties may agree and determine the required elements to be stated in the statements of claim and defence. Unless the parties have otherwise agreed, the claimant shall state the points at issue, the facts supporting his claim and the relief or remedy sought in his statement of claim and the respondent shall state his defence in respect of these particulars in his statement of defence. Such statements of claim and defence shall be submitted to the arbitral tribunal within the period of time agreed by the parties or determined by the arbitral tribunal.
- (b) The parties may submit all documents and other evidence which are considered to be relevant with their statement of claim or defence, or attach a reference to the documents or other evidence which they will submit.
- (c) Any party may amend or supplement his statement of claim or defence during the course of the arbitral proceedings unless otherwise agreed by the parties and the arbitral tribunal considers it is inappropriate to allow such amendment or supplement having regard to the delay in making it.

### **Hearings and Proceedings**

27. (a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence and oral argument, or the arbitral proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall, on the request by a party, hold such oral hearings at an appropriate stage of the arbitration.
- (b) The arbitral tribunal shall give notice in advance to the parties by giving sufficient period of time for any hearing and any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or property.
- (c) The arbitral tribunal shall communicate all written statements, documents, other information or applications supplied by a party to

the other party. Moreover, the copies of expert opinion or evidentiary documents relied by the arbitral tribunal in making its decision shall be communicated to the parties.

### **Default of a Party**

28. Unless otherwise agreed by the parties and sufficient cause is shown:
- (a) if the claimant fails to communicate his statement of claim in accordance with sub-section (a) of section 26, the arbitral tribunal shall terminate the arbitral proceedings;
  - (b) the respondent fails to communicate his statement of defence in accordance with sub-section (a) of section 26, the arbitral tribunal may continue the arbitral proceedings. However, such failure in itself shall not be treated as an admission of the claimant's allegations;
  - (c) if any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and make the arbitral award on the evidence before it.

### **Appointment of Expert by the Arbitral Tribunal**

29. Unless otherwise agreed by the parties, the arbitral tribunal may:
- (a) appoint one or more experts to report to it in respect of specific issue to be determined.
  - (b) request a party to give the expert any relevant information or to produce, or to provide access to any relevant document, goods or other property for his inspection.
  - (c) examine the expert in an oral hearing if a party so requests or the arbitral tribunal considers it necessary, after delivery of his written or oral report. In such hearing, the parties shall have the opportunity to put questions to the expert and to present evidence in order to testify on the points at issue.

### **Requesting Court Assistance in Taking Evidence**

30. (a) The arbitral tribunal or any party with the approval of the arbitral tribunal may apply to a competent court for taking evidence.
- (b) The following facts shall be specified in the application:
- (i) the name and address of the parties and the arbitrators;
  - (ii) the general nature of the claim and the relief sought;
  - (iii) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of testimony required;
  - (iv) description and type of any document to be produced or property to be inspected.
- (c) The court may, under its competence after taking the evidence in accordance with the procedure, execute the request by sending such evidence directly to the arbitral tribunal.
- (d) When making an order by the court to execute the request under sub-section (c), the court may issue a subpoena-order to the witnesses in the same manner as it may issue in suits tried before it.

### **Power of Court to Enforce Interim Award by the Arbitral Tribunal**

31. (a) Any interim award made in the State or outside the State by an arbitral tribunal in the course of arbitration is enforceable by the court in the same manner as an orders and decision of the court.
- (b) The court shall not grant to enforce the interim award made outside the State in relation to the arbitration, if the applicant has not shown proof that such award is a type of interim award that is made in the State.
- (c) The court shall enforce such interim award if leave is granted under sub-section (a).

- (d) No appeal shall lie against the decision of the court to grant or refuse for enforcement under sub-section (a).

Explanation: The interim award referred to in this section includes decisions, orders and directions by the arbitral tribunal.

## **Chapter VIII**

### **Making of Arbitral Award and Termination of Arbitral Proceedings**

#### **Applicable Law for the Disputes**

32. (a) Where the place of arbitration is in the State:
- (i) In domestic arbitration, the arbitral tribunal shall decide the dispute to be settled by arbitration in accordance with the existing substantive law of the State.
  - (ii) In International arbitration:
    - (aa) the arbitral tribunal shall decide the dispute in accordance with the law chosen by the parties;
    - (bb) the law or legal system of a designated country shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that country. It shall not be construed as referring to its conflict of laws rules;
    - (cc) if the parties have not chosen the applicable law under sub-clause (aa), the arbitral tribunal may apply the law which it considers applicable.
  - (b) If the parties have expressly authorized the arbitral tribunal, it shall decide the dispute with justice, equity, and good conscience.
  - (c) The arbitral tribunal shall decide all disputes in accordance with the terms of the contract. In deciding as such, the usage of the trade applicable to the transaction shall be taken into account.

### **Making of an award by the Arbitral Tribunal**

33. (a) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, an award shall be made by a majority of all its members.
- (b) Notwithstanding anything contained in sub-section (a), if so authorized by the parties or all members of the arbitral tribunal, arbitral procedure may be decided by the presiding arbitrator.

### **Settlement by Agreement**

34. (a) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings. Moreover, the arbitral tribunal shall, if requested by the parties or not objected to by the arbitral tribunal, record in writing the settlement in the form of an arbitral award on agreed terms of the parties.
- (b) The arbitral award on agreed terms by the parties shall be made in accordance with section 35. It shall state that it is an arbitral award.
- (c) The arbitral award on agreed terms by the parties shall have the same status and effect as any other arbitral award on the substance of the dispute.

### **Form and Contents of an Arbitral Award**

35. (a) The arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators.
- (b) For the purposes of sub-section (a), in arbitral proceedings with more than one arbitrator, if the majority of all arbitrators sign, it shall be sufficient. Provided that the reason for any omitted signature of any arbitrator shall be stated.
- (c) The reasons shall be stated in the arbitral award unless the parties have agreed that no reasons are to be stated in the award or the award made under the terms agreed by the parties.

- (d) The date on which the award is made and the place of arbitration determined in accordance with section 23 shall be stated in the arbitral award. The arbitral award shall be deemed to have been made at that place.
- (e) After the arbitral award is made, a certified copy of the award signed by the arbitrators shall be delivered to each party.
- (f) Unless otherwise agreed by the parties, the arbitral tribunal shall:
  - (i) determine the costs of an arbitration;
  - (ii) determine the amount of the costs, method of computation of the costs and method of payment of the costs for the party who is entitled to receive the costs and the party who is liable to pay the costs.

*Explanation:*

“costs” mentioned in clause (i) of sub-section (f) means an appropriate costs relating to the following matters:

- (i) fees and expenses for arbitrators and witnesses;
- (ii) fees and expenses for lawyer;
- (iii) administrative fees for the institution supervising the arbitration;
- (iv) other expenses relating to the arbitral proceedings and arbitral award.

### **Termination of Arbitration**

36. (a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal under sub-section (b).
- (b) The arbitral tribunal shall, if any of the following circumstances occurs, issue an order for the termination of the arbitral proceedings:
- (i) when the claimant withdraws his claim, the respondent has no right to object thereto and the arbitral tribunal has not recognized a

legitimate interest on his part in obtaining a final settlement of the dispute;

- (ii) the parties agree on the termination of the arbitral proceedings;
  - (iii) the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible for any other reason.
- (c) If the arbitral proceedings are terminated under sub-section (a) of section 34, the mandate of the arbitral tribunal terminates subject to the provision of section 37.

### **Correction, Interpretation of Arbitral Award, and Making Additional Award**

37. (a) A party may, within thirty days from the date of the arbitral award, unless a period of time has been agreed by the parties, with notice to the other parties, request the arbitral tribunal, to correct in the award any error in computation, any clerical or typographical errors or any errors of similar nature.
- (b) The arbitral tribunal may correct the arbitral award if it finds any errors of the type in sub-section (a) on request under sub-section (a) or on its own initiative. Such correction shall be delivered to the parties.
- (c) If agreed by the parties, a party may, within thirty days from the date of the arbitral award, with notice to the other party, request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (d) If the arbitral tribunal considers the request under sub-section (c) to be justified, it shall make the interpretation within 30 days from the date of receipt of the request. Such interpretation shall be part of the arbitral award.
- (e) Unless otherwise agreed by the parties, a party may, within thirty days of receipt of the arbitral award, with notice to the other party, request the arbitral tribunal to make an additional award as to claims

presented in the arbitral proceedings but omitted from the arbitral award.

- (f) If the arbitral tribunal considers the request under sub-section (e) to be justified, it shall make the additional award within sixty days of receipt of the request.
- (g) The arbitral tribunal may, if necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under sub-sections (b), (d) or (f).
- (h) Section 33 shall apply to a correction or interpretation of the arbitral award or to an additional award under this section.

### **Effect of an Arbitral Award**

38. Unless otherwise agreed by the parties, the arbitral award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on both parties and on any person claiming through or under them.

## **Chapter IX**

### **Power of Court in relation to Domestic Arbitration**

#### **Determination of Preliminary Issue on a Question of Law by the Court**

- 39. (a) Unless otherwise agreed by the parties, a party to the arbitral proceedings may, with notice to the arbitral tribunal and other parties, apply to the court to determine any question of law arising from the arbitral proceedings. In applying so, if the court is satisfied that it substantially affects the rights of one or more of the parties, the court may issue the preliminary decision on such question of law.
- (b) The court shall not consider an application under sub-section (a) if it is not made with the agreement of the parties or it is not made with the permission of the arbitral tribunal and the court finds that the determination of the question of law is likely to rise the costs and delay the case.
- (c) The question of law to be determined, and the grounds on which the question should be decided by the court, shall be stated in the

application under sub-section (a) except it is made with the agreement of the parties to the arbitral proceedings.

- (d) Unless otherwise agreed by parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending.

### **Enforcement of Domestic Arbitral Awards**

40. (a) A domestic arbitral award shall be enforced in the same manner as execution of a decree under the Code of Civil Procedure.
- (b) If the party against whom the application is invoked to enforce a domestic arbitral award proves that the arbitral tribunal is not competent to make an arbitral award, the court shall not enforce the domestic arbitral award.
- (c) This section shall apply to the enforcement of any domestic arbitral awards.

### **Grounds for Setting Aside Domestic Arbitral Award**

41. (a) When a party applies to the court to set aside the domestic arbitral award, the court may set aside the domestic arbitral award only if any of the following circumstances occurs:
- (i) a party to the arbitration agreement was under some incapacity under the law;
  - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the existing laws of the State;
  - (iii) 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;
  - (iv) the arbitral tribunal's award deals with a dispute not contemplated by or not falling within the terms of submission to arbitration pursuant to an arbitration agreement, or it

contains decisions on matters beyond the scope of the submission to arbitration;

***Exception***

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.

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the provisions of this Law;

***Exception***

Such agreement shall not be contrary to the provision of this Law from which the parties cannot derogate.

- (vi) the subject-matter of the dispute is not capable of settlement by arbitration under the existing law;
  - (vii) the arbitral award is contrary to the national interests of the State.
- (b) An application for setting aside an arbitral award shall not be made after the expiry of three months from the date on which the party making the application had received the arbitral award, or after the expiry of the three months from the date on which the request relating to arbitral award made under section 37 had been disposed of by the arbitral tribunal.
  - (c) On receipt of an application under sub-section (a), the court shall, where the request by a party is appropriate, adjourn the legal proceedings for a period of time determined by it. Such adjournment shall be to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

**Right to Appeal against Domestic Arbitral Award**

42. (a) Any party may, with notice to the other parties and arbitral tribunal, appeal to the court on a question of law arising out of an arbitral award made in the arbitral proceedings.
- (b) An appeal against an award may be brought under sub-section (a). However, if the parties have made a written agreement to exclude the right of appeal, no appeal shall lie under this section.
- (c) If the parties have made a written agreement to dispense with reasons for the arbitral award, no appeal shall lie under this section on such grounds.
- (d) The appeal under this section shall have effects on matters contained in Section 44.
- (e) An application for appeal under this section shall identify the question of law to be determined and state the grounds on which the appeal should be granted.
- (f) No second appeal shall lie against any decision to grant or refuse an appeal under this section.
43. (a) The court shall allow the application of an appeal if the court is satisfied with the followings grounds:
- (i) the arbitral tribunal's determination of the question will substantially affect the right of a party or the parties;
  - (ii) the determination of the arbitral tribunal on the question is obviously wrong.
- (b) On an appeal under this section, the court may make any of the following orders:
- (i) confirming the arbitral award;
  - (ii) varying the arbitral award;
  - (iii) remitting the award to the arbitral tribunal for reconsideration of the arbitral award in whole or in part;
  - (iv) setting aside the award in whole or in part.

- (c) An appeal may lie against the following orders of the court to a competent court:
  - (i) “the order refusing to refer the parties to arbitration under sub-section (f) of section 10;”
  - (ii) the order granting or refusing any interim measure under section 11;
  - (iii) the order of the court decided on question of law under sub-section (a) of section 39;
  - (iv) the order granting or refusing to set aside a domestic arbitral award under section 41.
  
- (d) The following orders of the arbitral tribunal may be appealed to a competent Court:
  - (i) the order accepting an application mentioned in sub-sections (b) and (c) of section 18;
  - (ii) the order by the arbitral tribunal that it has jurisdiction or no jurisdiction under sub-section (e) of section 18;
  - (iii) the order granting or refusing any interim measure under section 19;
  
- (e) No second appeal shall lie against any order passed in an appeal filed under this section.

### **Effect of Order of the Appellate Court on Domestic Arbitral Award**

44. Where the appellate Court makes an order relating to an arbitral award under sub-section (b) of section 43:

- (a) if the arbitral award is varied by the court, the variation shall have effect as part of the arbitral award;
- (b) if the arbitral award is remitted to the arbitral tribunal in whole or in part, for reconsideration, the arbitral tribunal shall reconsider and make a fresh award in respect of the matters remitted;

- (c) the court may stipulate an appropriate period to make a fresh award by the arbitral tribunal.

## **Chapter X**

### **Recognition and Enforcement of Foreign Arbitral Awards**

#### **Evidence to be submitted for Recognition and Enforcement of the Foreign Arbitral Award**

45. (a) The party applying for the recognition and enforcement of a foreign arbitral award shall produce the following evidence to the Court:
- (i) the original award or duly certified copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
  - (ii) the original arbitration agreement or duly certified copy thereof;
  - (iii) the evidence as may be necessary to prove that the arbitral award is a foreign arbitral award.
- (b) Where the arbitral award or arbitration agreement to be produced under sub-section (a) is in a foreign language, the party applying for enforcement of the arbitral award shall produce a translation into English, duly certified as a correct translation by a diplomatic or consular or official translator or sworn translator of the country relevant to him, or certified as correct in such other manner as may be sufficient according to the existing law of Myanmar.

#### **Recognition and Enforcement of Foreign Arbitral Award**

46. (a) The court shall presume and enforce a foreign arbitral award as if it were a decree of the court except in the case of refusal of recognition and enforcement of foreign arbitral award under sub-sections (b) and (c).
- (b) The court may refuse to recognize and enforce any foreign arbitral award, if the party against whom it is invoked can prove any of the followings:
- (i) the parties to the arbitration agreement were under some incapacity under the law applicable to them;

- (ii) the arbitration agreement is not valid under the law which the parties are subject to or, in the absence of any indication of the law applicable to the parties thereon, under the law of the country where the award was made;
  - (iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or the arbitral proceedings were not properly conducted or, was otherwise unable to present his case in the arbitral proceedings;
  - (iv) the arbitral tribunal's award deals with a dispute not contemplated by or not falling within the terms of submission to arbitration pursuant to the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration;
  - (v) 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;
  - (vi) the arbitral 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 arbitral award was made.
- (c) The court may refuse to enforce the arbitral award if it finds any of the following facts:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the State;
  - (ii) the enforcement of the arbitral award would be contrary to the national interests of the State.
- (d) Where an application for setting aside or suspension of an arbitral award has been made to a competent court referred to in clause (vi) of subsection (b), the court may adjourn its decision to enforce the arbitral award if it considers it is appropriate. Moreover, on the application of the party claiming enforcement of the arbitral award, it may pass an order to the other party to provide appropriate security.

## **Right to Appeal**

47. Any party:

- (a) has the right to appeal against the following orders passed by a competent court:
  - (i) the order refusing to refer the parties to arbitration under section 10;
  - (ii) any order made under section 11;
  - (iii) the order setting aside or refusing to set aside the foreign arbitral award under sub-sections (b) and (c) of section 46;
- (b) may appeal against the following orders of the arbitral tribunal to a competent court:
  - (i) the order of the arbitral tribunal that it has jurisdiction or no jurisdiction under sub-section (e) of section 18;
  - (ii) the order granting or refusing any interim measures under section 19.

48. Nothing in this Chapter shall prejudice the right of a person who would have obtained the right to enforce a foreign arbitral award in Myanmar or the right of a person against whom the enforcement of a foreign arbitral award has been annulled before the enactment of this law.

## **Inapplicability of the Arbitration (Protocol and Convention) Act**

49. Enforcement of foreign arbitral awards in this chapter shall not apply to the enforcement of foreign arbitral awards under the Arbitration (Protocol and Convention) Act, 1937.

## **Chapter XI Miscellaneous**

50. (a) In order to enforce an arbitral award made in a member country of the New York Convention, the Chief Justice of the Union may, by notification, appoint any officer from the Supreme Court of the Union, or any person, or any responsible person from any institution

to authenticate any arbitration agreement or arbitral award or to certify copies thereof.

- (b) A person who has been appointed under sub-section (a):
  - (i) shall comply with the rules prescribed by the Chief Justice of the Union;
  - (ii) shall not directly or indirectly disclose to any other person, without the written agreement of the parties, any facts in the arbitration agreement or arbitral award including personal information of the parties.

51. Where the arbitral award provides a sum to be paid, that sum shall, unless the arbitral award otherwise provides, carry interest at the same rate prescribed for the decree for the payment of money under the Code of Civil Procedure from the date of the arbitral award.

52. (a) The arbitral tribunal may, in respect of the claim submitted to it, fix the estimated amount of security or supplementary security as it thinks fit to be deposited for the costs referred to in sub-section (f) of section 35. Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix a separate amount of security for the claim and counter-claim.

(b) The securities referred to in sub-section (a) shall be payable in equal proportion by the parties. Where a party fails to pay his proportion, the other party may pay that share on his or her behalf. However, if the other party also fails to pay the aforesaid share in respect of the claim or counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim.

(c) If the arbitral proceedings are terminated, the arbitral tribunal shall deliver the accounts to the parties of the deposit received and shall repay any unexpended balance after deducting the expenses for the arbitral tribunal to the party or parties.

53. (a) The arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.

- (b) If any party applies to the court against an arbitral tribunal's refusal to deliver the arbitral award on the ground that a party refuses to pay the costs to the arbitral tribunal, the court may, after making inquiries as it thinks necessary, order the liable party to pay the costs to the arbitral tribunal and the arbitral tribunal delivers the arbitral award.
  - (c) An application under sub-section (b) may be made by any party unless a written agreement has been made between the parties and the arbitral tribunal in respect of the costs demanded.
  - (d) The court may take an order as it thinks fit regarding the costs of arbitration if any question arises or there is no sufficient information regarding such costs.
54. (a) An arbitration agreement shall not be terminated by the death of any party to the arbitration agreement either in respect of the deceased or any other party. However it shall be enforceable by or against the legal representative of the deceased party if any part is deceased.
- (b) The mandate of an arbitrator shall not be terminated by the death of any party who appointed that arbitrator.
55. Notwithstanding anything provided in this law, or in any other existing law, where any application concerning the arbitration agreement 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 arbitral proceedings shall be made in that court and in no other court.
56. The sections in the Limitation Act which referred to the Arbitration Act, 1944 shall be deemed as references to this law.
57. The Supreme Court of the Union may, if necessary, issue rules, regulations, by-laws, notifications, orders, directives, procedures and manuals in accordance with this law.
58. (a) Unless otherwise agreed by the parties in an arbitration agreement or other documents, the provisions of this law shall not apply to the arbitral proceedings pursuant to an arbitration agreement which were commenced before the enactment of this Law.

- (b) Subject to the provision of sub-section (a), if the arbitral proceedings have already been commenced before the enactment of this law, such arbitral proceedings shall be continued in accordance with the governing law in the arbitration agreement between the parties.

59. The Arbitration Act, 1944 is hereby repealed by this law.

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I hereby sign under the Constitution of the Republic of the Union of Myanmar.

Sd/

Thein Sein

President

The Republic of the Union of Myanmar