

*[Note: This is not an official English translation. In preparing this draft English translation before an English translation is officially published, we have followed a policy to do a word for word translation. However, in some cases in which the Myanmar language is unclear but similar to the UNCITRAL Model Law, we have used words from the UNCITRAL model law, assuming that was the intention of the drafters.]*

## **ARBITRATION LAW**

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

The Pyidaungsu Hluttaw hereby enacts the following Law:

#### **Chapter 1 Title, Scope of Application and Definition**

##### **Title**

1. This Law shall be called the Arbitration Law.

##### **Scope of Application**

2. (a) Subject to sub- section (b), an Arbitration Agreement whether executed in the State or in any other country, the place where legal implementation of arbitration is in the State, the provisions of this Law shall be applicable.  
(b) If the place of arbitration is at any other country, which is apart from the State, or place of arbitration is not specified or not determined, section 10,11,30, 31 and Chapter 10, shall be applicable.  
(c) If any other existing law in force in the State is restricted on the settlement of dispute by means of arbitration, the provisions of this Law shall not be binding upon such law.

##### **Definitions**

3. The expressions contained in this law shall have the same meaning 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 arise or which may arise between them in respect of legal relationship, whether contractual or not;
  - (c) “**arbitration**” means any arbitration administered by an arbitrator or arbitral tribunal;
  - (d) “**Arbitrator**” means a person or a panel of arbitrators appointed with the consent of the parties to administer the disputes by arbitration;
  - (e) “**award**” means a decision of the arbitral tribunal and 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 State or Region of original jurisdiction, having jurisdiction to decide the questions in dispute of the arbitration as if they are exercising its original civil jurisdiction;
- (h) “**domestic arbitration**” is an arbitration which is not an international arbitration;
- (i) “**international arbitration**” means:
  - (1) if, at the time of execution of the arbitration agreement, if one of the party’s place of business and trading activity is situated in another country other than Myanmar; or
  - (2) if the place stated in the arbitration agreement or the place to conduct arbitration in accordance with the arbitration agreement is situated outside the country in which the parties have their place of business; or
  - (3) if, among the commercially related business obligations, any place where a substantial part of the obligations is to be performed or the closest place connected to the subject matter of the dispute is situated outside the country in which the parties have their place of business; or
  - (4) if the parties of the arbitration agreement have expressly agreed that the subject matter relates to more than one country; such arbitration shall mean International Arbitration

**Explanatory note:**

- 1. If the place of business of a party is more than one place, the place of business of the party shall be that which is the closest to the place of execution of the arbitration agreement;
- 2. If a party does not have a place of business, reference to his place of business shall be its permanent residing place.

- (j) “**New York Convention**” means the convention relating to the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Diplomatic Conference held on 1958 June 10 at New York;
- (k) “**foreign arbitral award**” means an award made in the territory of the New York Convention member states other than the State in accordance with the arbitration agreement;
- (l) “**place of arbitration**” means a place where the arbitration is administered legally which is determined by the persons in dispute of an arbitration agreement or a person authorized by the person in dispute or arbitral tribunal or arbitration institution;
- (m) “**party**” means a party to an arbitration agreement; and
- (n) “**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.

**Chapter 2**  
**Aim**

- 4. Aims of this Law are as follows:

- (a) to settle domestic commercial disputes and international commercial disputes in a fair and effective manner;
- (b) to settle disputes by means of arbitration, and to recognize and enforce the foreign award; and
- (c) to encourage settlement of disputes by means of arbitration.

### **Chapter 3 General Principles**

#### **Receipt of written communications**

5. (a) Unless otherwise agreed by the parties:
- (1) any written communication is deemed to have been received on the date of delivered, if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence, or mailing address;
  - (2) if none of those described in subsection (1) can be found after making a reasonable inquiry, a written communication is deemed to have been received on the day it is so delivered, 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) The provisions of this article do not apply to communications in court proceedings.

#### **Objection and Waiver of right to object**

6. (a) A party who is involving in the arbitration proceeding or on processing the arbitration shall object without undue delay or if a time is provided by this Law or arbitration agreement or arbitral tribunal, within such period of time:
- (1) Arbitral tribunal has no jurisdiction;
  - (2) Procedural defect in arbitration process;
  - (3) Failure to comply with the arbitration agreement or provisions of this Law;
  - (4) Detrimental impact on the arbitral tribunal or arbitration due to procedural defect.
- (b) proceed with the arbitration without stating his objection under subsection (a), shall be deemed to have waived his right to object.

#### **Extent of court intervention**

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

#### **Administrative assistance**

8. The parties, or the arbitration tribunal with the agreement of the parties, may make arrangements to acquire assistance from any suitable institution or person to facilitate administration of the arbitral process.

### **Chapter 4 Arbitration Agreement**

9. (a) Relating with the arbitration agreement, writing agreement under section 3, subsection (b) means:

- (1) an arbitration agreement shall be deemed in writing if it is signed by the parties;
  - (2) if the information contained in electronic communication is accessible so as to be useable for subsequent reference, such arbitration agreement by means of electronic communication shall be deemed in writing.
- (b) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

#### **Refer to Arbitration and stay of suit before court**

10. (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 requests not later than when submitting his written statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed;
- (b) where an action referred to in subsection (a) of this article, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court;
- (c) If the court refuses to refer the parties to arbitration, any decision making before filing a suit relating to any matter of the arbitration contained in the arbitration agreement, shall not effect to the suit;
- (d) the court shall order to stay the suit before the court, if the court refers the parties to arbitration;
- (e) No appeal shall be allowed against the court decision which refers to arbitration under subsection (a);
- (f) Appeal shall be allowed relating to the court decision refusing to refer to the arbitration.

#### **Power of the Court to intervene in Arbitration**

11. (a) Unless otherwise agreed by the parties, if a party requests the court, the court shall have power to make decision as its own jurisdiction for:
- (1) taking evidence;
  - (2) the preservation any evidence;
  - (3) pass an order related to the property in disputes in arbitration or any property which is related to the subject-matter of the dispute;
  - (4) inspection, taking photo for evidence, preservation and seizure of the property which is related to the dispute;
  - (5) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
  - (6) allow to enter in the premises owned by or under the control of the parties to disputes for the purpose of above mentions matters;
  - (7) sale of any property which is the subject-matter of the dispute;
  - (8) an interim injunction or appointment of a receiver;

- (b) If the interim measure is needed urgently in arbitration, the court may pass an order relating to preservation of evidence and related properties upon the application of a party as require.
- (c) If the interim measure is not needed urgently, upon the application of a party in arbitration, the court shall deal such matter after delivering a notice to the other parties and arbitral tribunal and with the approval of the arbitration tribunal or with the written consent of the other party.
- (d) The court shall only deal with the matters which the authorized person of the parties or arbitral tribunal or arbitral institution or other institution has no authority to do or not able to handle effectively.
- (e) An order made by the court shall cease to have effect in whole or in part if the arbitral tribunal makes an order which expressly relates to the order under subsection (a).

## **Chapter 5**

### **Composition of Arbitral Tribunal**

#### **Number of arbitrators**

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

#### **Appointment of arbitrators**

- 13. (a) Unless otherwise agreed by the parties, any nationality may act as an arbitrator.
- (b) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of subsection (e) of this article.
- (c) Where, an appointment procedure agreed upon by the parties, the appointment has to be made in accordance with such procedure. If a party fails to appoint or if both parties or the two arbitrators fail to agree on the third arbitrator, entrusted third party or an institution fails to perform any function and if the appointment procedure is not provided in the arbitration agreement, any party may request the Chief Justice or any person/institution selected by him to take the necessary measure.
- (d) Failing such agreement in subsection (b),
  - (1) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal. If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Chief Justice or any person/institution selected by the Chief Justice.
  - (2) in an arbitration with a sole arbitrator, the Chief Justice or any person/institution selected by him shall, upon request of a party, appoint the sole arbitrator if a party fails to appoint the sole arbitrator within thirty days of receipt of a request to do so from the other party.

- (e) The Chief Justice or any person/institution selected by him, in appointing an arbitrator, shall have due regard to the qualifications required of the arbitrator by the agreement of the parties and such considerations as being an independent and impartial arbitrator.
- (f) The Chief Justice or any person/institution selected by him may perform appropriate functions entrusted to him by subsections (c) and (d) of this section.
- (g) In appointing a sole or third arbitrator for international arbitration in which parties are of different nationalities, the Chief Justice or any person/institution selected by him may take into account appointing an arbitrator of a nationality other than those of the parties.
- (h) A decision on a matter entrusted to the Chief Justice or any person/institution selected by him by subsections (c) and (d) of this section shall be subject to no appeal.

**Explanation Notes:** The Chief Justice mentioned in this section refers to the Chief Justice of the High Court of the Region or High Court of the State within their jurisdiction for domestic arbitration and refers to the Chief Justice of the Union for the international arbitration.

#### **Grounds for challenge for arbitrator**

- 14. (a) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (b) If an arbitrator did not inform such circumstances to the parties as mentioned in subsection (a), from the time of his appointment and throughout the arbitral proceedings, he shall disclose any such circumstances to the parties without delay.
- (c) An arbitrator may be challenged only if:
  - (1) circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or
  - (2) he does not possess 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.

#### **Challenge procedure**

- 15. (a) The parties are free to agree on a procedure for challenging an arbitrator.
- (b) Failing such agreement in subsection (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 circumstance referred to in the subsection 14(c), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (c) Unless the challenged arbitrator per subsection (b) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

- (d) If a challenge under the procedure agreed upon by the parties is not successful or arbitral tribunal decides subject to the subsection (c) as there is no reason to challenge upon the procedure of subsection (b), the party who intends to challenge may apply to the court to decide upon the challenge within 30 days from the date of such decision is made.
- (e) Although the application under subsection (d) is pending in the court, the arbitral tribunal shall continue the arbitral proceedings and make an award.
- (f) If the arbitral award has been set aside subsequent to application made under subsection (d), the Court may decide whether the challenged arbitrator is entitled to any fees or not.

### **Termination of the mandate of arbitrator and appointment of substitute arbitrator**

- 16. (a) The mandate of an arbitrator shall terminate if:
    - (1) he becomes unable to perform legally and actually his functions ( as a matter of law or as a matter of fact) or for other reasons fails to act without undue delay;
    - (2) he resigns from his office or if the parties agree on the termination.
  - (b) If a controversy remains concerning matters specified in subsection (a)(1), any party may, unless otherwise agreed by the parties, apply the court to decide on the termination of the mandate of the arbitrator. The decision regarding with the termination of the mandate of arbitrator, shall be subject to no appeal.
  - (c) If, under subsection (a)(1) or subsection (c) of section 15, an arbitrator resigns from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in subsection (a)(1) or subsection (c) of section 14.
- 17. (a) Where the mandate of an arbitrator terminates under section 15 or 16, 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) If an arbitrator is replaced as per subsection (a), the former hearings may be repeated at the discretion of arbitral tribunal, unless otherwise agreed by the parties.
  - (c) If an arbitrator is replaced as per this section, the order and decision made before the substitution of the arbitrator shall not be deemed invalid due to the re-composition of the arbitral tribunal, unless otherwise agreed by the parties.

## **Chapter 6 Jurisdiction of Arbitral Tribunal**

### **Competence of arbitral tribunal to rule on its 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 or validity of the arbitration agreement. For that purpose:

- (1) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract;
  - (2) a decision by the arbitral tribunal that the contract is null and void shall not be affected the validity of arbitration clause under that contract.
- (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.
  - (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 admit a later plea referred to in subsection (b) and (c) if it considers the delay justified.
  - (e) The arbitral tribunal may rule on a plea referred to in subsections (b) and (c) as preliminary issue or as an arbitral award. If the arbitral tribunal rules that it has jurisdiction or not, any party aggrieved by the arbitral award, may appeal to the court, subject to section 43, subsection (d) (1)(2) and section 47, subsection (b) (1), within 30 days from the date of receiving of such decision.
  - (f) Although the application is pending in the court, the arbitral tribunal shall continue the arbitral proceedings and make an award.

**Power of arbitral tribunal to order interim orders**

- 19. (a) Unless otherwise agreed by the parties, an arbitral tribunal shall have powers to make decision, order and instructions to any party for:
  - (1) security for costs;
  - (2) discovery of documents and interrogatories;
  - (3) giving of evidence by affidavit;
  - (4) the preservation, interim custody or sale of any property which is part of the subject-matter of the dispute;
  - (5) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;
  - (6) the preservation and interim custody of any evidence for the purposes of the proceedings;
  - (7) securing the amount in dispute;
  - (8) an interim injunction or any other interim measure.
- (b) An arbitral tribunal may have power to administer oaths to the parties and witnesses.
- (c) An arbitral tribunal may have the power to adopt inquisitorial procedures as its consider appropriate.
- (d) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (a)(1) shall not be exercised solely because the claimant is:
  - (1) an individual ordinarily residing outside the Republic of the Union of Myanmar;

- (2) a corporation or an association incorporated or formed under the law of the other country.
- (e) All decisions, orders or instruction made by an arbitral tribunal in the course of an arbitration may apply to the court for the enforcement in accordance with the section 31.

### **Immunity of the arbitrator**

- 20. An arbitrator shall not be liable for his act or omission which is done with due care during the course of arbitration as an arbitrator.

## **Chapter 7 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 of presenting his case.

### **Determination of rules of procedure**

- 22. (a) Without contradicting the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (b) Failing such agreement as specified in subsection (a), the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate.
- (c) In conducting arbitral proceedings as per subsection (b), the power conferred upon the arbitral tribunal includes the power to 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 as specified in subsection (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 in subsections (a) and (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 goods, other property or documents.

### **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 such agreement as specified in subsection (a), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.
- (c) This agreement or determination, unless otherwise specified in subsection (a) or (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.

## **Statements of claim and defence**

26. (a) The parties may agree the particulars to be stated in the claim or defence. Failing such agreement, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars and apply to the arbitral tribunal within the period of time agreed by the parties or determined by the arbitral tribunal.
- (b) The parties may submit with their statements all documents they consider to be relevant and other evidence or may add a reference to the documents 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 such amendment having regard to the delay in making it.

## **Hearings and written proceedings**

27. (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. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (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 goods, other property or documents.
- (c) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

## **Default of a party**

28. Unless otherwise agreed by the parties, if, without showing sufficient cause:

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

**Expert appointed by arbitral tribunal**

29. (a) Unless otherwise agreed by the parties, the arbitral tribunal:
- (1) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
  - (2) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (b) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing. In doing so, the parties shall have the opportunity to put questions to the expert and to present evidence on the points at issue.

**Court assistance in taking evidence**

30. (a) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.
- (b) The application shall specify the following particulars:
- (1) the names and addresses of the parties and the arbitrators;
  - (2) the general nature of claim and the relief sought;
  - (3) the names and addresses of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;
  - (4) the document to be submitted or the description of the 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 subsection (c), issue the same processes to witnesses as it may issue in suits tried before it.

**Enforcement of interim order of the arbitral tribunal by Court**

- 31 (a) relating to arbitration, whether interim order are passed within or outside the State, Courts may enforce such interim orders passed by the arbitral tribunal as if its own order and decision.
- (b) in relation to arbitration exercised outside the State, when an applicant file the interim order for enforcement is unable to submit strong evidence that it is the same type of order exercised within the State, the Court shall not approve for enforcement.

- (c) When approval is granted according to subsection (a) the Court shall enforce such order.
- (d) There shall be no right of appeal upon the Court decision on granting approval according to subsection (a) or upon refusal.

**Explanation Note:** The interim order which refers to this section includes decision, order and instruction of the arbitral tribunal.

## **Chapter 8**

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

#### **Rules applicable to substance of dispute**

- 32. (a) If the place of arbitration is the Republic of the Union of Myanmar:
  - (1) In domestic arbitration, the arbitral tribunal shall decide the dispute which to be settled by arbitration in accordance with the substantive law in force of the Republic of the Union of Myanmar.
  - (2) In international commercial arbitration:
    - aa) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties;
    - bb) Any designation of the law or legal system of a given State shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that State and not to its conflict of laws rules;
    - cc) Failing any designation as per subsection clause (aa) by the parties, the arbitral tribunal shall apply the rules of law which it considers applicable.
- (b) The arbitral tribunal shall decide the dispute with justice, equity and good conscience if the parties have expressly authorized 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.

#### **Decision-making by panel of arbitrators**

- 33. (a) In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members.
- (b) However, notwithstanding anything contained in subsection (a), questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

#### **Settlement**

- 34. (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 award on agreed terms shall be made in accordance with the provisions of section 35 and shall state that it is an arbitral award.
- (c) Such award on agreed terms has the same status and effect as any other award on the merits of the case.

#### **Form and contents of award**

- 35. (a) The award shall be made in writing and shall be signed by arbitrator or arbitrators.
- (b) In arbitral proceedings with more than one arbitrator for the purpose of subsection (a), the signatures of the majority of all arbitrators of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (c) Unless the parties have agreed that no reasons are to be given or unless the award is an award on agreed terms, the award shall state the reasons upon which it is based.
- (d) The award shall state its date and the place of arbitration as determined in accordance with section 23. The award shall be deemed to have been made at that place.
- (e) After the 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 the party entitled to costs, the party who shall pay the costs, the amount of costs and method of determining that amount and the manner in which the costs shall be paid.

#### **Explanatory note:**

For the purpose of subsection (f) (1), “costs” means reasonable costs relating to:

- (1) fees and expenses of arbitrators and witnesses;
- (2) legal fees and expenses;
- (3) any administration fees of the institution supervising the arbitration; and
- (4) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

#### **Termination of proceedings**

- 36. (a) The arbitral proceedings shall be terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (b) of this section.
- (b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - (1) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
  - (2) the parties agree on the termination of the proceedings;

- (3) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (c) Subject to the provisions of section 37, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings pursuant to the section 34, subsection (a) and this section.

#### **Correction and interpretation of award; additional award**

37. (a) Within thirty days from the date of award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.
- (b) If the arbitral tribunal considers the request made as per subsection (a) or, its own initiative, may correct any error of the type refer to in subsection (a) and such correction shall be delivered to the parties.
- (c) 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.
- (d) If the arbitral tribunal considers the request made as per subsection (c) to be justified, it shall give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.
- (e) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- (f) If the arbitral tribunal considers the request made as per subsection (e) to be justified, it shall make the additional award within sixty days from the receipt of such request.
- (g) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under subsection (b), (d) or (e).
- (h) The provisions of section 33 shall apply to a correction or interpretation of the award or to an additional award.

#### **Effect of the Arbitral Award**

38. Unless otherwise agreed by the parties, the award made by the arbitral tribunal pursuant to the arbitration agreement, shall be final and binding on the parties and persons claiming under them respectively.

### **Chapter 9 Power of the Court relating to Domestic Arbitration**

#### **Determination of preliminary issue of law**

39. (a) Unless otherwise agreed by the parties, the Court may, on the application of a party to the arbitral proceedings who has given notice to the other parties, determine any issue of law arising in the course of the proceedings which the Court is satisfied substantially affects the rights of one or more of the parties.

- (b) The Court shall not accept and consider an application under this section unless it is made with the agreement of all parties; or it is made with the permission of the arbitral tribunal and the Court is observed that the determination of the issue is likely to incur more costs; and the application is caused delay the case.
- (c) The application of subsection (a) shall identify the issue of law to be determined and, except where made with the agreement of all parties, shall state the grounds on which should be decided by the Court.
- (d) Unless otherwise agreed by the 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 Arbitration**

- 40. (a) The domestic award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the court.
- (b) If the respondent, who applies for the enforcement of the arbitral award, proves that the arbitral tribunal is not competent to make an arbitral award, the court shall not enforce the arbitral award.
- (c) This section shall be applied for the enforcement of any domestic arbitral award.

#### **Particulars for the set aside the Domestic Arbitral award**

- 41. (a) Upon the application for setting aside by one of the party, the court may set aside the domestic arbitral award only if:
  - (1) a party to the arbitration agreement was under some incapacity; or
  - (2) the arbitration agreement is not valid under the law to which the parties have agreed or, failing any indication thereon, under the law of the Republic of the Union of Myanmar; or
  - (3) 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
  - (4) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration.

Proviso: If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

- (5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or was not in accordance with this Law.

Proviso: Such agreement was not in conflict with a provision of this Law from which the parties cannot derogate.

- (6) the subject-matter of the dispute is not capable of settlement by arbitration under the existing law; or

- (7) the award is in conflict with the national interest (public policy) of the Republic of the Union of Myanmar.
- (b) 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 award or, if a request had been made under section 37, from the date on which that request had been disposed of by the arbitral tribunal.
- (c) The court, when asked to set aside an award as per subsection (a), may, where appropriate and so requested by a party, adjourn the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

### **Appeal against Domestic Arbitration**

- 42. (a) A party in dispute may, upon notice to the other parties and to the arbitral tribunal, appeal to the Court on an issue of law arising out of an award made in the proceedings.
- (b) According to subsection (a) there is a right of appeal upon the award of the arbitration tribunal. However if there is a written agreement between the parties not to appeal, there shall be no right of appeal to the Court under this section.
- (c) If there is an agreement in writing between the parties that it is not required to write down the reasons on the award, there shall be no appeal on such ground according to this section.
- (d) Filing appeal according to this section shall be effected by the facts relating to section 44.
- (e) When filing an appeal according to this section, shall identify the issue of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.
- (f) Whether the Court accept or refuse the right of appeal under this section there shall be no second appeal.
- 43. (a) The Court, if satisfied and agree with the following facts shall accept the appeal:
  - (1) the decision of the arbitral tribunal of the issue in dispute is substantially affect the rights of a party or upon the parties ;
  - (2) the decision of the arbitral tribunal on the issue in dispute is obviously wrong.
- (b) When filing appeal according to this section, the Court can pass any of the following orders:
  - (1) Approve the award;
  - (2) Amend the award;
  - (3) To return the decision to the arbitral tribunal to review and reconsider the whole or part of the award;
  - (4) set aside the whole or part of the arbitral award.
- (c) Appeal can be filed to the Court of competent jurisdiction for following court order:

- (1) An order refusing to refer to arbitration according to section 10 subsection (f);
  - (2) An order granting or refusing to perform one of the interim measures according to section 11;
  - (3) Court order passing upon the issue of law according to section (39) subsection (a);
  - (4) An order setting aside or refusing the set aside of domestic arbitral award according to section 41.
- (d) Following orders of an arbitral tribunal can be filed for appeal to the Court of Jurisdiction:
- (1) Order accepting the application according to section 18 subsection (b) and (c);
  - (2) Order by the arbitral tribunal that it has jurisdiction or not according to section 18 (e);
  - (3) Order granting or refusing to perform the any interim measures according to section 19.
- (e) There shall be no second appeal upon the order passed from filing of appeal according to this section.

#### **Effect of the Appellate Court order upon Domestic Arbitration**

44. The appellate Court, when passing an order relating to the award according to section 43 subsection (b):
- (a) When it is decided to amend the award, such amended decision shall be effected as part of the award;
  - (b) When the Court pass the order remitting the award in whole or partial to the arbitral tribunal for reconsideration and revision the arbitral tribunal shall revise such matters and pass the decision;
  - (c) Necessary timing for the arbitral tribunal to review and pass the decision may be recommended.

### **Chapter 10 Recognition of Enforcement of Foreign Arbitral Award**

#### **Particulars to apply for recognition or enforcement of foreign arbitral award**

- 45 (a) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court:
- (1) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
  - (2) the original agreement for arbitration or a duly certified copy thereof; and
  - (3) such evidence as may be necessary to prove that the award is a foreign award.
- (b) Where the award or arbitration agreement requiring to be submitted under subsection (a) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by the ambassador or consular 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.

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

46. (a) Except the application to set aside the award is refused under subsection (b) and (c), the award shall be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the court.
- (b) The court may refuse to recognize the foreign arbitral award if the party against whom it is invoked furnishes to the court proof that:
- (1) the parties to the arbitration agreement referred was under some incapacity; or
  - (2) the said agreement is not valid under the law to which the parties have subjected to it or, failing any indication thereon, under the law of the country where the award was made;
  - (3) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (4) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; or
  - (5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (6) 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;
- (c) Enforcement of the foreign arbitral award may be refused if the court finds that:
- (1) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Republic of the Union of Myanmar; or
  - (2) the enforcement of the award would be contrary to the national interest (public policy) of the Republic of the Union of Myanmar.
- (d) If an application for setting aside or suspension of an award has been made to a competent authority referred to in subsection (b)(6) of this section, the court may, if it considers it proper, adjourn its 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 provide appropriate security.

## **Appeals**

47. Any party to dispute:
- (a) The following orders passed by a competent court may be appealed:
- (1) An order granting or refusing to take any measure under section 10;
  - (2) Any order under section 11;
  - (3) An order setting aside or refusing to set aside an award under section 46, subsection (b) and (c);
- (b) The following orders passed by arbitral tribunal may be appealed to the competent Court:

- (1) An order determining whether the arbitral tribunal has jurisdiction or not under section 18, subsection (e);
  - (2) An order granting or refusing the interim matures under section 19;
48. Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing foreign arbitral award in the Republic of the Union of Myanmar or of availing himself of such award to the enactment of this Law.

**No application of the Arbitration (Protocol and Convention) Act**

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

**Chapter 11  
Miscellaneous**

50. (a) In order to enforce the award made in contracting State of the New York Convention, the Chief Justice of the Union may appoint, by notification, any officer from the Office of the Supreme Court of the Union or any person or any individual in charge of any organization to certify or authenticate the copy of the arbitration agreement or arbitral award.
- (b) The person, who is appointed per subsection (a), shall:
- (1) comply with the rules determined by the Chief Justice of the Union ; and
  - (2) not reveal, directly or indirectly, to others any fact in the arbitral award or arbitration agreement including the personal information of the parties, without the written consent of the parties.
51. A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate applied in the decree for payment of money, from the date of the award.
52. (a) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in section 35, subsection (f), which it expects will be incurred in respect of the claim submitted to it. Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amounts of deposit for the claim and counter-claim.
- (b) The deposit referred to in subsection (a) shall be payable in equal shares by the parties. Where one party fails to pay his share of the deposit, the other party may pay that share. Where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.
- (c) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties, as the case may be.
53. (a) The arbitral tribunal shall have a lien on the arbitration for any unpaid costs.
- (b) If an arbitral tribunal refuses to deliver an award because of any party refuse to pay the costs to the arbitral tribunal, by application of other party, the Court may inquire as necessary and order that there shall be paid to the arbitral tribunal by the responsible party and Court may order the arbitral tribunal to deliver the arbitral award accordingly.

- (c) An application under subsection (b) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal.
  - (d) The Court may make such orders as it thinks fit regarding the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.
54. (a) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.
- (b) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.
55. 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.
56. The provisions under the Limitation Act which refers to the Arbitration Act (1944), shall be deemed to refer this Law.
57. The Supreme Court of the Union may issue necessary rules, regulations, by-law, notification, orders, directives, procedures and manuals, in accordance with this Law.
58. (a) Unless otherwise agreed by the parties in the arbitration agreement or other documents, the provisions of this Law shall not apply to the arbitration which commencing in accordance with the arbitration agreement before this Law had been enacted.
- (b) Subject to the provision of subsection (a), if arbitration is commencing before this Law had been enacted, pending arbitration shall be proceed in accordance with the Law selected by the parties to the arbitration agreement.
59. The Arbitration Act, 1944 is repealed by this Law.

I hereby sign in accordance with the Constitution of the Republic of the Union of Myanmar.

(S/d) Thein Sein  
President  
Republic of the Union of Myanmar