DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

MONGOLIA

CHAPTER PREPARED BY

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VERSION: 28 FEBRUARY 2022 (v01.01)

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The concept of arbitration is not new in Mongolia. Mongolia established its first arbitration court in 1960 to resolve foreign trade disputes. However, it is only in the past two decades that commercial arbitration has developed as a modern form of alternative dispute resolution method for business. Mongolia revised its arbitration legislation and enacted the revised *Arbitration Law of Mongolia* on 26 January 2017 ("**Arbitration Law**"). As a result of this revision, Mongolia is now a jurisdiction that has adopted the UNCITRAL Model Law.[1]

Key places of arbitration in the jurisdiction?	Ulaanbaatar.
Civil law / Common law environment? (If mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Under the Arbitration Law, the parties, arbitral tribunals and arbitral institutions are obligated to keep confidential all arbitral awards, orders and information exchanged between parties, unless parties agree otherwise.
Requirement to retain (local) counsel?	It is common to retain local counsel but there is no legal requirement.
Ability to present party employee witness testimony?	Parties may submit witness testimonies of their employees. It is in the arbitral tribunal's discretion to then weigh such evidence.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Parties can hold meetings and hearings outside of the seat of the arbitration. Meetings and hearings can be held remotely if allowed by the applicable arbitration rules, or agreed upon by the parties.
Availability of interest as a remedy?	The Arbitration Law is silent on this matter. Subject to the substantive law applicable to the dispute, parties have a right to claim interest as a remedy. Under Mongolian law a party can claim simple interest as a remedy if the other party is in breach of its monetary payment obligation.[2]
Ability to claim for reasonable costs incurred for the arbitration?	Parties may claim for reasonable costs incurred in the arbitration proceedings. Unless parties agree otherwise, it is in the arbitral tribunal's full discretion to decide on the allocation of costs.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Mongolian-qualified lawyers are permitted to enter into contingency fee arrangements, save for disputes involving one's personal status (e.g., adoption, divorce etc.) and criminal cases[3] - which, as explained below, are not arbitrable disputes in Mongolia. Third-party funding is not expressly regulated under the Arbitration Law but the Regulations for Lawyers' Professional Activities provide that Mongolian-qualified lawyers have an obligation to maintain

1 Available at: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

2 Article 222.5, the Civil Code of Mongolia.

3 Clause 2.4(7), Regulations for Lawyers' Professional Activities by Mongolian Bar Association.

	their professional independence from a third-party that is funding the lawyer's fees.[4]
Party to the New York Convention?	Yes, Mongolia became a State party to the New York Convention in 1994 (with common declarations in respect of reciprocity and commercial disputes).
Party to the ICSID Convention?	Yes, Mongolia became a Contracting State to the ICSID Convention in 1991.
Compatibility with the Delos Rules?	Compatible.
Default time-limitation period for civil actions (including contractual)?	Under Mongolian law, the limitation periods for bringing claims are as follows:[5] 3 years for a claim related to contractual obligations; 6 years for a claim related to contractual obligations regarding immovable property; 3 years for a claim related to obligations to be performed within a fixed period; and 5 years for a claim related to obligations arising from damage caused to others' property. Unless otherwise specified by the Civil Code of Mongolia, the general time-limitation period of 10 years[6] would apply for claims other than the above.
Other key points to note?	Following the adoption of the Arbitration Law, bankruptcy issues became arbitrable under Mongolian law, regardless of whether the bankruptcy issue is a "core" issue or not, subject to certain conditions.
World Bank, Enforcing Contracts: *Doing Business* score for 2020, if available?	Mongolia scored 61.4.
World Justice Project, Rule of Law Index: *Civil Justice* score for 2020, if available?	Mongolia is ranked 68th out of 126 countries with a score of 0.53.

4 Clause 6.4(3), the Regulations for Lawyer's Professional Activities by Mongolian Bar Association.

5 Article 75.2, the Civil Code of Mongolia.

6 Article 75.1, the Civil Code of Mongolia.

ARBITRATION PRACTITIONER SUMMARY

The *Arbitration Law of Mongolia* of 26 January 2017 ("**Arbitration Law**") adopted the wording of the UNCITRAL Model Law with very few deviations, including its amendments of 2006, to ensure predictable a legal framework for arbitration in Mongolia. The Arbitration Law applies to both domestic and international arbitrations seated in Mongolia.

Date of arbitration law?	The Arbitration Law was enacted on 26 January 2017 and came into force on 27 February 2017.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The Arbitration Law is based on the 1985 UNCITRAL Model Law, as amended in 2006, with only a few minor deviations such as slightly different procedural requirements for domestic arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	For domestic arbitration, first instance civil courts and the courts of civil appeals handle jurisdictional challenges, and assistance in collecting relevant evidence and handle the annulment and enforcement of arbitral awards. For international arbitration, the Court of Civil Appeals in Ulaanbaatar performs most court functions relating to arbitration.
Availability of *ex parte* pre-arbitration interim measures?	The court may issue an order for pre-arbitration interim measures, and applications for such order can be made ex parte.
Courts' attitude towards the competence-competence principle?	The arbitration tribunal may rule on its own jurisdiction.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes, it is possible. A typical practice of domestic arbitration in Mongolia is that the arbitral tribunal renders a ruling on issues, including jurisdiction, immediately after a hearing with the parties and verbally conveys such ruling to the parties. The detailed reasons for the tribunal's decision are then given in writing afterwards.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Only annulment on grounds similar to those for refusing recognition and enforcement of arbitral awards under the New York Convention.
Do annulment proceedings typically suspend enforcement proceedings?	Yes, if the annulment proceedings have been commenced at the seat of the arbitration, the Mongolian courts are likely to suspend the recognition of the award.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There is no publicly available case where a Mongolian court has recognized and enforced a foreign arbitral award that was annulled by the court of the seat of the arbitration.

If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	Unless the circumstances relating to the decision to conduct remote hearings violate the equal treatment of the parties and their opportunity to present their case, such decision would not affect the recognition or enforceability of the award.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Resolution of disputes by arbitration initiated by investors, whether investment treaty or commercial arbitration, against the state and the state-owned entities are handled by the Government of Mongolia in accordance with Procedures of Preventing, Amicable Settlement and Resolution of Disputes at Foreign Arbitration and Foreign Courts, enacted by the Cabinet of Mongolia on 7 June 2017, as amended. Based on public information, we are not aware of any case where a public body challenged or refused the enforcement of a foreign arbitral award rendered against it.
Is the validity of blockchain-based evidence recognised?	There are no publicly available court decisions regarding the validity of blockchain-based evidence.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	While there is no precedent, theoretically, blockchain arbitration agreements can be recognized as valid under the Arbitration Law. However, arbitral awards recorded on blockchain may not satisfy the requirement of the Arbitration Law for it to be in writing and signed.
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	There are no publicly available court decisions regarding the enforcement of blockchain awards, or involving blockchain arbitration agreements. The courts may consider a blockchain arbitration agreement as an original if it is authenticated by evidence examination at a hearing. As for blockchain arbitral awards, it is unlikely for the courts to recognize it as original as they must be in writing and signed by the arbitrator(s).
Other key points to note?	An agreement to arbitrate consumer disputes can only be made after the dispute has risen.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version? What key modifications if any have been made to it?

The Arbitration Law is substantially based on the UNCITRAL Model Law, including its amendments in 2006, by strictly following its wording, with very few amendments.

Unlike the UNCITRAL Model Law, which only applies to international commercial arbitration, the Arbitration Law applies to both international and domestic arbitration. Article 3.2 of the Arbitration law adopts the UNCITRAL Model Law definition of an "international arbitration." An arbitration that does not fall within the ambit of the Article 3.2 definition is regarded as a domestic arbitration under the Arbitration Law.

Although the principles, standards and substantive requirements for both types of arbitration remain the same, the Arbitration Law sets out slightly different procedural requirements for international and domestic arbitration. For example, in respect of international arbitration, a party may submit its application to set aside an arbitral award to the court within 90 days of the date on which the award was received, whereas the corresponding time limit for domestic arbitration is 30 days.[7]

Further, in international arbitration, the Court of Civil Appeals in Ulaanbaatar performs most court functions relating to arbitration, including dealing with all applications to challenge arbitrators and set aside arbitral awards.[8] This exclusive jurisdiction of the Court of Civil Appeals in Ulaanbaatar is intended to facilitate the development of judicial expertise in international arbitration within the judiciary.

1.2 When was the arbitration law last revised?

The Arbitration Law was passed by the Parliament of Mongolia on 26 January 2017, replacing the previous arbitration legislation of 2003. The Arbitration Law came into effect on 27 February 2017. As as of the date of publication, no amendment has been made to the Arbitration Law since 2017.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

There are no express regulations or established practice on this issue. However, Mongolian courts tend to apply the substantive law of the underlying contract. In the event the parties did not choose the substantive law of the contract, Mongolian courts determine the governing law of the underlying contract in accordance with the conflict of law rules set forth in Article 549 of the Civil Code of Mongolia.[9] Parties are free to contract out of the conflict of laws rules under Mongolian law.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

In line with the Model Law, the Arbitration Law establishes that in the absence of express agreement by the parties, the tribunal shall determine the seat of the arbitration.

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7 Article 34.3 of the Model Law.

8 Article 6.2, the Arbitration Law.

9 Article 549.4 provides the conflict of law rules setting out that the governing law of the specific types of contracts, such as sale and purchase agreement, lease agreement and loan agreement shall be determined to be the law of the place where the seller, lessor and the lender resides, respectively.

There are no publicly available court decisions where the courts have reviewed an arbitral tribunal's determination of the seat or regarding the interpretation of arbitration agreements with references to a "venue" or "place" of arbitration without proving an express designation of the seat.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes. The concept of separability of an arbitration agreement is expressly recognised in Article 8.10 of the Arbitration Law.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement must be in writing. This requirement is satisfied if the arbitration agreement is contained in an exchange of letters, telefaxes, telegrams or other means of electronic communications.[10] Further, the arbitration agreement will be deemed to be in writing if it is contained in an exchange of statements of claim and of defence in which the existence of an agreement is alleged by one party and not denied by the other.[11] Moreover, in line with the Model Law, a reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing.[12]

With respect to consumer rights disputes, the Arbitration Law stipulates that an arbitration agreement is enforceable only if it is made in writing by the parties after the dispute has arisen and the seat of arbitration is specified in such agreement.[13]

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

In principle, arbitration agreements only bind the persons which are parties to it. However, in certain circumstances, a third party who is not a signatory to an arbitration agreement may be bound by the arbitration agreement as a matter of law. These circumstances include when the third party is the successor or assignee of the signatory, or the third party is the "alter ego" of the signing party through the piercing of the corporate veil.[14]

2.6 Are there restrictions to arbitrability?

Yes. These are explained in greater detail below.

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Under the Arbitration Law, any dispute that is referred to in an arbitration agreement is arbitrable unless such dispute falls within the exclusive jurisdiction of the court.[15] There are several restrictions to arbitrability applicable to specific domains.

Pursuant to the Civil Procedure Code of Mongolia, in respect of international disputes, the following matters fall within the exclusive jurisdiction of the Mongolian courts and therefore cannot be subject to arbitration:[16]

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10 Article 8.7, the Arbitration Law, which is consistent with Article 7.4 of Model Law.

11 Article 8.8, the Arbitration Law.

12 Article 8.9, the Arbitration Law.

13 Article 8.11, the Arbitration Law.

14 Under the Company Law of Mongolia, the piercing of corporate veil is possible if (i) the subsidiary becomes insolvent due to the decision of the parent company; or (ii) assets contributed to the company by a shareholder is not distinguished from the personal property of such shareholder.

15 Article 9.1, the Arbitration Law.

16 Article 190, the Civil Procedure Code of Mongolia.

(a) disputes relating to the ownership, possession and use of immovable property located in the territory of Mongolia;
(b) disputes relating to the reorganisation or liquidation of legal entities established under Mongolian law and disputes arising out of resolutions and decisions made by those legal entities, their branches and representative offices;
(c) disputes relating to the validity of registrations made by Mongolian courts and other public administration offices;
(d) disputes relating to the validity of registration of patents, trademarks and other IP rights by a Mongolian administrative office and disputes relating to the application of registration of IP rights;[17] and
(e) disputes relating to the enforcement of court judgments in Mongolia or disputes relating to requests for enforcement.

Further, Mongolia became a State Party to the New York Convention in 1995, which it ratified subject to declarations regarding the reciprocity and commercial reservations. These declarations were applied to be consistent with Mongolian law, whereby issues of a non-commercial nature, such as the status of a person and matrimonial disputes, fall exclusively within the jurisdiction of the courts.

In addition, the courts have final and exclusive jurisdiction over standard labour disputes such as wrongful termination, transfer, disciplinary punishment and employer's claims for compensation for damages under the *Labour Law of Mongolia*. As for collective disputes, a non-binding labour arbitration is a mandatory step before the parties resort to the court.

With respect to arbitrability of bankruptcy issues, if all the following conditions are satisfied, the court may refer any and all disputes involving bankruptcy issues, whether or not the bankruptcy issue is a "core" issue, for determination by arbitration if:

(a) there is an arbitration agreement in respect of the dispute;
(b) the party subject to the bankruptcy proceedings entered into the arbitration agreement before the bankruptcy proceedings commenced; and
(c) the administrator or trustee did not reject the contract containing the arbitration agreement.[18]

2.6.2 Do these restrictions relate to specific persons (*i.e.*, State entities, consumers etc.)?

No. There are no restrictions relating to specific persons.

However, it should be noted that although consumer disputes are arbitrable, the arbitration agreement for such disputes are enforceable only if it is made in writing by the parties after the dispute has arisen.[19]

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Consistent with the Model Law, if a dispute which is the subject of an arbitration agreement is brought before domestic courts, the court must dismiss the action unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.[20]

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17 General commercial disputes with regards to copyrights and patents that are not related to the validity of the registration are arbitrable.

18 Article 5.1, the Arbitration Law.

19 Article 8.11, the Arbitration Law

20 Article 10.1, the Arbitration Law.

Where an action referred to above is pending before the court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made.[21]

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Mongolia does not have a tradition of anti-suit injunctions. It is highly unlikely that Mongolian courts would respect injunctions by arbitrators enjoining parties to refrain from initiating, or to halt or withdraw litigation proceedings. Instead, an arbitral tribunal may commence and continue arbitration proceedings and make an arbitral award even while a suit pertaining to the action is pending before a Mongolian court.[22]

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders but not only)

Mongolian courts will not issue anti-suit injunctions restraining proceedings seated outside Mongolia. Pursuant to Article 29.1 of the Arbitration Law, Mongolian courts may grant interim measures in relation to arbitral proceedings regardless of where the seat of the arbitration is located.

4. The conduct of proceeding

4.1 Can parties retain foreign counsel or be self-represented?

Parties can be represented by foreign counsel or be self-represented and it is common for the parties of international arbitration disputes to retain foreign counsel.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

An arbitrator may be challenged only if circumstances that give rise to justified doubts as to his/her impartiality or independence exists, or if he/she does not possess qualifications agreed to by the parties.[23] The parties are free to agree on specific procedures for challenging an arbitrator. In the absence of such agreement, a challenge shall be submitted to the Tribunal first and if it is unsuccessful, the challenging party may file a complaint to the court. If the challenge is raised in international arbitration proceedings, the complaint must be submitted to the Court of Civil Appeals in Ulaanbaatar City within 30 days. For domestic arbitration, the timeline for such complaint is shorter and must be filed within 14 days.

An arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A failure to comply with such duty may, but does not automatically, justify a challenge regarding the arbitrator. Whether such failure to disclose would constitute a justifiable doubt as to the arbitrator's impartiality or independence will depend on the circumstances and facts. For instance, in a recent ruling of the Court of Civil Appeals, the court accepted a challenge that was raised on the ground that the arbitrator was employed by the same organization as another member of the tribunal and that he failed to disclose such fact. The court ruled that since the arbitrators had been working together for over a decade, such circumstances give rise to justifiable doubts as to his impartiality and also noted that the arbitrator failed to disclose it.

21 Article 10.2, the Arbitration Law.

22 Article 10.2, the Arbitration Law.

23 Article 14.2 of the Arbitration Law.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Under the Arbitration Law, consistent with the Model Law, courts assist in the constitution of the arbitral tribunal in the following circumstances:

(a) where the parties have agreed to have three arbitrators, and one party has appointed its arbitrator, but the other party has not appointed its own arbitrator within 30 days from the request by the other party to appoint the same;
(b) where the parties have agreed to have three arbitrators, and each party appointed an arbitrator, but the two appointed arbitrators have not appointed the third arbitrator within 30 days; and
(c) where an authorised person (arbitral institution or other competent person) has failed to perform its function to appoint the arbitrator(s).[24]

When appointing an arbitrator, courts should have due regard to any qualifications prescribed by the agreement of the parties and shall consider such potential arbitrators' independence and impartiality. In case of appointment of an arbitrator in international arbitration proceedings, the Arbitration Law provides that courts should appoint an arbitrator of a nationality other than the parties' nationalities to the extent possible.[25]

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

As mentioned above, Mongolian courts may issue interim measures in connection with arbitrations regardless of the seat of such arbitration.[26] The courts shall issue interim measures in accordance with the Arbitration Law and the Civil Procedure Code, and these include measures for the detention of property, orders for specific performance, injunctions, freezing bank accounts and orders for security in the amount of the claim.[27] Mongolian courts may consider ex parte requests with respect to interim measures relating to provisional seizure or preventing disposition of certain property.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Pursuant to Article 30.1 of the Arbitration Law, arbitrators must ensure equal treatment of the parties and must give them a full opportunity to present their cases.

Parties are free to determine the procedures to be followed by the arbitral tribunal. Absent such determination, the arbitral tribunal shall conduct the arbitration proceedings as it considers appropriate.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Article 50.1 of the Arbitration Law provides that, unless otherwise agreed by the parties, the arbitral tribunal and the parties to the arbitration shall be obliged to keep arbitral awards, decisions and information exchanged during the arbitration proceedings confidential. If a disclosure was made for the purpose of pursuing or enforcing a legal right, making an application to the court to enforce or challenge an award; or if a party was legally obligated to do so, it is not considered to be a breach of confidentiality.

4.5.2 Does it regulate the length of arbitration proceedings?

There is no express provision on the duration of arbitration proceedings in the Arbitration Law.

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24 Article 13.5, the Arbitration Law.

25 Article 13.8, the Arbitration Law.

26 Article 29.1, the Arbitration Law.

27 Article 69.1, the Civil Procedure Code.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

In principle, the arbitral tribunal may meet at any place it considers appropriate for oral hearings and consultation among its members, or inspection of goods, other property and documents.[28]

The Arbitration Law does not contain express regulations with respect to remote hearings. The Courts are likely to consider the decision to hold remote hearings to fall within the procedural authority of the tribunal to conduct the arbitration as it deems appropriate.[29] If the tribunal decides to hold remote hearing regardless of the objections of one party, the courts will consider whether such decision violates the principle of equal treatment and the right to be heard. If the tribunal is expressly granted this power under the applicable arbitration rules, it is unlikely that such decision would affect the recognition or enforcement of the award.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

The Arbitration Law mirrors the Model Law and unless otherwise agreed by the parties to the arbitration, the arbitral tribunal may, at a request of a party, grant preliminary orders and interim measures of protection as the tribunal may consider necessary in respect of the subject matter of the dispute.[30] The conditions for granting such interim measures include:

(a) if the measure is not ordered, harm not adequately reparable by an award of damages is likely to result and such harm substantially overweighs the harm that is likely to result to the party against whom the measure is directed;
(b) the requesting party has a reasonable possibility of succeeding on the merits of the claim; and
(c) the request for the interim measures is clear and measurable.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

According to Article 31.2 of the Arbitration Law, arbitral tribunals are entitled to determine the admissibility, materiality, relevance and weight of the evidence. The Arbitration Law does not contain any restrictions on the presentation of testimony by a party employee.

4.5.6 Does it make it mandatory to hold a hearing?

Unless it would contradict the parties' agreement, the arbitral tribunal shall decide whether to hold oral hearings or whether the proceedings shall be conducted on the basis of received documents and other materials.[31] However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal must hold a hearing at an appropriate stage of the arbitration proceedings, if so requested by a party.[32]

4.5.7 Does it prescribe principles governing the awarding of interest?

There is no provision in the Arbitration Law as to whether the parties are entitled to recover interest and such issue should be resolved in accordance with the substantive rules applicable to the dispute.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Article 41.1 of the Arbitration Law provides that, unless the parties agree otherwise, the arbitral tribunal shall decide the allocation of the costs, the amount and payment procedures thereto. The arbitration costs include

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28 Article 32.2, the Arbitration Law.

29 Article 31.2, the Arbitration Law.

30 Article 19, the Arbitration Law.

31 Article 36.1, the Arbitration Law.

32 Article 36.2, the Arbitration Law.

(i) fees and expenses of arbitrators; (ii) administration fees of the arbitral institution; and (iii) fees and expenses incurred in relation to witnesses and experts, as well as legal services for the arbitration.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

There are no express provisions in the Arbitration Law and other related laws to exempt arbitrators from civil liability. Accordingly, in theory, arbitrators may be held liable if they breach their obligations, however there iare no court decisions on this point.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Arbitrators and parties could potentially commit bribery and corruption offences. Apart from such situations, there are no particular concerns in respect of arbitration.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Article 44.2 of the Arbitration Law allows parties to waive the requirement for an award to provide reasons.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

The Arbitration Law is silent on this matter. The question of whether parties may waive the right to seek the annulment of the award has not been tested under Mongolian law.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements of note.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No. The Arbitration Law does not permit a party to appeal an arbitral award.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Mongolia is a State party to the New York Convention. The grounds for refusing recognition or enforcement provided in the Arbitration Law are the same as those under the Convention. A party seeking to enforce an arbitral award needs to apply to the first instance civil court having jurisdiction over the respondent or the respondent's assets for an enforcement decision. The court will then issue an enforcement decision unless it finds any of the grounds for refusal. The enforcement application must include an original copy of the award or a duly certified copy of the award. If the award is not in the Mongolian language, a Mongolian language translation of the award must be appended. The Arbitration Law does not provide any distinction between local and foreign awards.

With respect to time limits, the Law on Enforcement of Court Decisions provides for a three-year statute of limitations for the commencement of enforcement proceedings of arbitral awards.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

In principle, the courts will only issue an enforcement decision after the time limit for filing an application for annulment has expired to ensure that the enforceability of an award is not challenged. If an award or a court

decision to enforce the award is appealed due to newly discovered circumstances, a judge is entitled to suspend the enforcement proceedings pursuant to Article 27.1.3 of the Law on Enforcement of Court Decisions.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

There are no publicly available cases where the courts in Mongolia have enforced a foreign arbitral award that has been annulled at its seat.

5.8 Are foreign awards readily enforceable in practice?

Foreign arbitral awards are enforced unless there are grounds for refusal.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

In accordance with the Regulation for the Lawyers' Professional Activities issued by the Mongolian Bar Association, Mongolian-qualified lawyers are permitted to enter into contingency fee arrangements, save for cases in respect of personal status (matrimonial disputes etc.) and criminal cases. Such contingency fee cannot exceed 30% of the overall service result.

As for third-party funding, there are no express regulations under Mongolian law. However, in accordance with the Regulations for the Lawyers' Professional Activities, Mongolian-qualified lawyers have an obligation to maintain their independence from undue influence from persons paying the lawyer's professional fees.

7. Arbitration and blockchain

7.1 Is the validity of blockchain-based evidence recognised?

Blockchain technology and blockchain-based transactions are fairly new concepts in Mongolian court proceedings. There are currently no court decisions involving blockchain-based evidence recorded in the public database of court decisions. Accordingly, the courts have not yet addressed the issue of the validity of blockchain-based evidence.

Pursuant to the *Guideline on Written and Physical Evidence in Civil Proceedings* issued by the Supreme Court of Mongolia on 10 October 2008, computer data is considered as written evidence. The guideline further states that such evidence must be transcribed into writing and authenticated by evidence examination. Therefore, in theory, if the blockchain-based evidence can be authenticated by such examination, it can be recognized in court proceedings. However, as the interpretation of the guideline does not envisage how such examination will be conducted to validate blockchain-based evidence, the recognition of such evidence will likely depend on the level of understanding and discretion of the presiding judge.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

In line with the Model Law, the Arbitration Law recognises that an arbitration agreement satisfies the writing requirement if it is contained in an exchange of electronic communications and if the information contained therein is accessible.[33] However, in addition to the writing requirement, smart agreements recorded on a blockchain still present additional factors to take into consideration such as identity and legal capacity of the

[33] Article 8.5, the Arbitration Law.

parties. As such, the validity of smart arbitration agreements is still unclear at this point as there are no public court decisions addressing the validity of blockchain-based arbitration agreements and awards.

As for arbitral awards recorded on a blockchain, the Arbitration Law requires that arbitral awards be made in writing and signed by the arbitrator(s).[34] Accordingly, the current view is that an arbitral award recorded on a blockchain would not satisfy these requirements.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

As mentioned above, an argument can be made that a blockchain arbitration agreement would satisfy the written form requirement under the Arbitration Law. Such an agreement could further be authenticated as an original by evidence examination at the hearing in the presence of the parties and at least two witnesses.

As for blockchain based arbitral awards, it is unlikely that the courts would consider it to have satisfied the legal requirements under the Arbitration Law, as the Arbitration Law explicitly states that the arbitral awards must be "made in writing" and "signed".

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

In accordance with the Arbitration Law, arbitral awards must be made in writing and signed by the arbitrator(s).[35] Further, the *Law of Mongolia on Digital Signature* ("**Digital Signature Law**") sets forth that digital signatures authenticated by a certificate shall be equally valid as conventional signatures.[36] The Digital Signature Law also states that digital signatures issued in accordance with the laws of foreign countries can be used in Mongolia.[37] Therefore, an arbitral award bearing digital signatures would be considered as an original for the purposes of recognition and enforcement.

Considering the above, awards signed electronically by inserting an image of a signature would not be considered to have been duly signed. Accordingly, it is highly likely that such awards will not be considered as originals by the court.

8. Is there likely to be any significant reform of the arbitration law in the near future?

There are no official discussions to make any significant reforms to the Arbitration Law in the near future.

9. Compatibility of the Delos Rules with local arbitration law

In our view, the Arbitration Law is compatible with the Delos Rules.

However, a few provisions of the Delos Rules may give rise to some concerns depending on the relevant circumstances of the case. In particular, Article 7.4(b) of the Delos Rules states that the tribunal shall have the power to limit the length of the submissions. If one party objects to such decision, Mongolian courts may consider this to have violated the principle of equal treatment and the parties' right to present their case.

10. Further reading

Nominchimeg Odsuren "*Country Update – Mongolia*" Asian Dispute Review, Volume 21, Issue 1, pp 31-37.

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34 Article 44.1, the Arbitration Law.

35 Article 44.1, the Arbitration Law.

36 Article 6.1, the Digital Signature Law.

37 Article 17.1, the Digital Signature Law.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

In the past few years, commercial arbitration has been consistently growing as an alternative dispute resolution means in Mongolia. Most of the domestic cases are managed by the Mongolian International Arbitration Centre ("MIAC"), which provides secretarial and other logistical services to the parties.

Leading national, regional and international arbitral institutions based out of the jurisdiction, *i.e.* with offices and a case team?	The most well-known arbitral institution based in Mongolia is MIAC.[38] MIAC managed 231 cases between 2017-2019, and in 2020 it celebrated its 60-year anniversary of its establishment.
Main arbitration hearing facilities for in-person hearings?	Most in-person hearings for cases managed by MIAC are held at its facilities, which are located in the Mongolian National Chamber of Commerce and Industry's Building in Ulaanbaatar.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	ϕ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	ϕ
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	ϕ
Other leading arbitral bodies with offices in the jurisdiction?	Arbitration Centre of Ulaanbaatar City's Chamber of Commerce is also another growing arbitral institution in Mongolia.[39]

38 http://www.arbitr.mn/.

39 https://www.ubchamber.mn/pages/615.