

ALTERNATIVE DISPUTE RESOLUTION BILL OF BHUTAN 2011

PREAMBLE

In order to encourage alternative resolution of disputes through arbitration and negotiated settlement; to establish institutions and procedures for arbitration and negotiated settlement; to ensure that arbitration and negotiated settlements are conducted in accordance with the wills of the parties; to create certainty amongst the parties engaging in alternative dispute resolution; and to provide for the recognition and enforcement of arbitral awards and outcomes of negotiated settlements;

Parliament of Bhutan during its Session, do hereby enact the Alternative Dispute Resolution Bill on..... Day of theMonth of ...Year corresponding to the.....Day of theMonth of the year 2011 as follows:

CHAPTER I PRELIMINARY

Short title, extent and commencement

1. This Act shall:
 - (1) Be called the Alternative Dispute Resolution Act of Bhutan 2011;
 - (2) Come into force on the ... Day of the ... Month of the ... of the Bhutanese Calendar corresponding to ... Day of the ... Month of 200...; and
 - (3) Extend to the whole of the Kingdom of Bhutan or otherwise within the jurisdiction of Bhutan.

Scope

2. This Act shall apply to:
 - (1) Domestic arbitration and international commercial arbitration and negotiated settlements conducted within the Kingdom of Bhutan;
 - (2) Recognition and enforcement of arbitral awards including foreign arbitral award;
and

- (3) Any other matter connected with or incidental to arbitration and negotiated settlements.

Saving

3. This Act shall not affect any provisions of laws in force in Bhutan relating to alternative dispute resolutions.

Construction

4. In this Act, the singular shall mean plural wherever applicable.

CHAPTER II BHUTAN ALTERNATIVE DISPUTE RESOLUTION CENTRE

Establishment of the Centre

5. There shall be a Centre established in the name as Bhutan Alternative Dispute Resolution Centre, which is an independent and non-governmental body, having a distinct legal personality, and capable of doing all such things and entering into all transactions as are incidental or conducive to the exercise or performance of its functions under this Act.
6. Notwithstanding anything contained in the Civil Society Organization Act, establishment of the Centre shall be governed by this Act.

Administration of the Centre

7. There shall be a Chief Administrator to administer the affairs and business of the Centre and frame policy related thereto.

Appointment of Chief Administrator

8. The National Judicial Commission shall appoint a person who has knowledge on alternative dispute resolution as the Chief Administrator of the Centre.
9. In exercising functions under this Act, the Centre shall act independently and shall not be subject to the direction or control of any other person or authority.

Qualification of Chief Administrator

10. A person shall be qualified for appointment as a Chief Administrator if he or she is:
- (1) A citizen of Bhutan;
 - (2) Possesses a university degree; and
 - (3) Has work experience of minimum of ten years.

Disqualification

11. The National Judicial Commission shall not appoint a person as Chief Administrator if he or she is:
- (1) Physically or mentally incompetent;
 - (2) Terminated from public service; or
 - (3) Convicted and sentenced to imprisonment.

Tenure of Chief Administrator

12. The Chief Administrator shall hold office for five years and may be eligible for reappointment for one more term.

Removal of Chief Administrator

13. The National Judicial Commission may remove the Chief Administrator from the office:
- (1) If disqualified under section 11 of this Act;
 - (2) Upon finding inefficient or incapable of performing his or her duty; or
 - (3) Upon finding misbehavior or irregularity in the discharge of his or her functions.

Resignation of Chief Administrator

14. The Chief Administrator may resign from his or her office by submitting a resignation in writing to the Chairperson of the National Judicial Commission one month in advance.

Service Condition of other employees

15. The Centre, in consultation with the National Judicial Commission, shall frame rules relating to:
- (1) Appointment of employees of the Centre;
 - (2) Terms and conditions of employees;
 - (3) Qualifications required thereof of such employees;
 - (4) Entitlements and other benefits of the employees including the Chief Administrator;
and
 - (5) Such other service conditions under this Act.

Functions of the Centre

16. The Centre shall serve as a neutral, efficient and reliable dispute resolution service centre and shall:
- (1) Carry out administrative and secretarial functions as may be appropriate for the dispute resolution proceeding at the request of the parties;
 - (2) Facilitate the dispute resolution proceeding by providing required facilities for the conduct of such a proceeding at the request of the parties;
 - (3) Appoint an arbitrator, if the Centre has been so requested, where parties fail to agree on the appointment of the arbitrator or have not designated an appointing authority or the designated appointing authority fails to appoint;
 - (4) Provide expertise in the field of alternative dispute resolutions to the stakeholders;
 - (5) Provide training to the people who are involved in the Alternative Dispute Resolution;
 - (6) Register the arbitration and maintain record of the arbitral award;
 - (7) Certify an arbitrator who is trained by the Centre;
 - (8) Accredite other qualified arbitrators;

- (9) Facilitate negotiated settlement as deemed appropriate;
- (10) Disseminate information to the public on alternative dispute resolution; and
- (11) Perform such other functions assigned to it by this Act or any other law incidental thereto.

Powers of the Centre

17. Subject to the provisions of this Act, the Centre may:
 - (1) Lay down procedure to administer arbitration and negotiated settlement when the parties have agreed to refer it to the Centre;
 - (2) Levy fees for services provided by the Centre;
 - (3) Levy fees on arbitrators certified by it;
 - (4) Levy fees on arbitrators listed with it;
 - (5) Issue guidelines and optional models or specimens for the drawing up of arbitration clauses and agreements;
 - (6) Lay down a code of ethics for arbitrators and negotiators listed with the Centre;
 - (7) Provide for the determination and prescription of a schedule of fees for arbitrators;
 - (8) Establish regional Centres as deemed appropriate; and
 - (9) Provide for any other matter in connection with which rules may be made under any provisions of this Act.

List of arbitrators

18. The Centre shall maintain and update lists of arbitrators for domestic arbitration and international commercial arbitration, and an arbitrator may be listed in both.
19. The Centre shall ensure that the list under section 18 of this Act contains persons from various relevant fields.

Removal from the list

20. A person may be removed from the list by the Centre at any time in accordance with the rules for delisting.
21. A person may at any time delist himself or herself by informing the Centre in writing. Provided that any such delisting shall not be deemed to exclude the arbitrator from any arbitration proceedings in which he or she has already been appointed.

Finance of the Centre

22. The finance of the Centre may consist of:
 - (1) Fees charged for the services provided under this Act;
 - (2) Donations, grants, subsidies, financial assistance, bequests and other transfers of funds or other property, whether public or private; or
 - (3) Grant from the government, as may be made.

Exemption from taxes

23. Notwithstanding anything contained in the tax laws of the Kingdom of Bhutan, the Centre shall be exempted from payment of income tax.

Accounting and reporting System

24. The financial and procurement procedures of the Centre shall be subject to the financial rules and regulations of the Royal Government of Bhutan.

Annual Audit

25. The Royal Audit Authority shall conduct an annual audit of the Centre.

Accountability

26. The Chief Administrator shall submit a report, including financial and other affairs of the Centre to the National Judicial Commission annually, which shall be made available in the public domain.

**CHAPTER III
GENERAL PROVISIONS ON ARBITRATION**

Scope

27. Unless otherwise provided, the provisions under Chapters III, IV, V, VI, VII, VIII, IX, X and XI of this Act shall apply to both domestic arbitration and international commercial arbitrations.

Communication

28. Any exchange of communication pertaining to the arbitration shall be in writing.
29. Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his or her place of business, habitual residence or mailing address.
30. If the addressee's place of business, habitual residence or mailing address cannot be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or through any other means which provides a record of the attempt to deliver it.
31. The communication shall be deemed to have been received on the day it is so delivered.
32. Sections 28, 29, 30 and 31 of this Act shall not apply to written communications served or exchanged by the judicial authority.

Waiver of right to object

33. A party who knows that any provision or requirement under this Chapter has not been complied with by the other party, the Centre or arbitral tribunal and yet proceeds with the arbitration without promptly stating his or her objection to such non-compliance, shall be deemed to have waived right to object.

Arbitration agreement

34. For the purpose of this Chapter:

- (1) “Arbitration agreement” means an agreement in writing between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement;
- (3) An arbitration agreement is in writing if it is:
 - (a) Contained in a document signed by the parties;
 - (b) An exchange of letters, telex, telegrams, emails or other means of communication which provide a record of the agreement; or
 - (c) An exchange of statements of claims and defences in which the existence of an agreement is alleged by one party and not denied by the other;
- (4) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Court intervention

35. In matters governed by this Act, no court shall intervene except to the extent provided by this Act.

Referral to arbitration by a court

36. In an action before court which is subject to an arbitration agreement, if a party applies for arbitration not later than when submitting his or her opening statement, the court shall direct the parties to arbitrate, unless it finds that the agreement is null and void or incapable of being performed.
37. If any party files petition before the court after commencement of the arbitral proceeding, the court before which an action is brought shall dismiss the petition and direct the parties to continue with the arbitration, unless it finds that the agreement is null and void or incapable of being performed.
38. If the court finds that arbitration agreement is null and void or incapable of being performed under section 37 of this Act, it shall continue with the hearing and direct the parties to discontinue arbitral proceeding.

Arbitration reference and appeal

39. If a party is aggrieved by the order of the court under sections 36, 37 and 38 of this Act, he or she may appeal to the higher court within ten days of the receipt of such order.

Interim measure by Court

40. It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.
41. If a party is aggrieved by an order issued under section 40 of this Act, he or she may appeal to the higher court within ten days of the receipt of order.

42. If the court grants interim measures under section 40 of this Act before the commencement of arbitration, it shall direct the party to take effective steps for the appointment of the arbitral tribunal in accordance with the procedure specified in Chapter IV, within a period of fifteen days from the date of such direction.

Arbitration agreement not to be discharged by death

43. An arbitration agreement shall not be discharged by the death of the party and shall be enforced by or against the legal heir or successor of the estate of the deceased party.

44. The authority of an arbitrator shall not be revoked by the death of any party by whom he or she was appointed.

45. Nothing in sections 43 and 44 of this Act shall affect the operation of any law by which a substantive right or obligation is extinguished by death.

Domestic Arbitration

46. “Domestic arbitration” shall mean an arbitration to which all parties are:

- (1) Citizens of the Kingdom of Bhutan; or
- (2) Body corporate, a company, business entity or an association which is incorporated in, or whose central management and control is exercised in Bhutan.

International commercial arbitration

47. “International commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered commercial and where at least one of the parties is:

- (1) A citizen of the country other than Bhutan;

- (2) A body corporate, a company, business entity or an association which is incorporated in the country other than Bhutan or whose central management and control is exercised in any country other than Bhutan; or
- (3) The Government of a foreign country.

Exclusion from domestic arbitration

48. The matters which shall not be subject to domestic arbitration shall include:
- (1) Disputes relating to rights and liabilities which give rise to or arise out of criminal offences;
 - (2) Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;
 - (3) Guardianship;
 - (4) Insolvency and winding up;
 - (5) Testamentary;
 - (6) Subject of inheritance;
 - (7) Subject of taxation; or
 - (8) Such other matters which are against public policy, morality or any other existing provisions of the law for the time being in force in Bhutan.

Subject matter of international commercial arbitration

49. For the purpose of international commercial arbitration, only those disputes arising from relationships of commercial nature, whether contractual or not, shall be arbitrated.

Provided that no arbitration shall be permitted on matter of insolvency and winding up, subject of taxation and other matters which are against public policy, morality or any other existing provisions of the law in force in Bhutan.

**CHAPTER IV
COMPOSITION OF ARBITRAL TRIBUNAL**

Number of arbitrators

50. The parties are free to agree on the number of arbitrators provided that such number shall not be even.
51. If the parties fail to agree on the number of arbitrators, the arbitral tribunal shall consist of three arbitrators.

Nationality of arbitrators

52. Unless otherwise agreed by the parties, no person shall be precluded by reason of his or her nationality from acting as arbitrator for international commercial arbitration.
53. In the case of domestic arbitration, the arbitrator shall be a citizen of Bhutan.

Appointment of arbitrators

54. The parties are free to agree on the procedures for the appointment of the arbitrator or arbitrators in accordance with this Act.
55. If the parties fail to agree on the number of arbitrators, within thirty days of receipt of a request by any party, the Centre shall appoint three arbitrators, in consultation with the parties.
56. In an arbitral proceeding with three arbitrators, each party shall appoint an arbitrator each and the two arbitrators thus appointed shall appoint the third arbitrator from the list maintained by the Centre or any other person who shall act as the presiding arbitrator.

57. If more than three arbitrators have been provided for, each party shall appoint the same number of arbitrators. The arbitrators thus appointed shall appoint another arbitrator from the list maintained by the Center or any other person who shall act as the presiding arbitrator.
58. If a party fails to appoint an arbitrator within thirty days of a receipt of a written request to do so from the other party, the Centre shall, upon request by a party, appoint the arbitrator.
59. Upon appointment of the arbitrators by the parties, if the arbitrators do not communicate to the parties regarding the appointment of the presiding arbitrator within thirty days of their appointment, the Centre shall, upon request by a party, appoint the presiding arbitrator.
60. A party may request the Centre to appoint the arbitrators, where the parties have agreed on the appointment procedures, and
 - (1) The party fails to act as required under such procedure;
 - (2) The parties or the arbitrators are unable to reach an agreement in accordance with such procedure; or
 - (3) A third party fails to perform any function entrusted to it under such procedure within thirty days on receipt of a written notice.
61. Section 60 of this Act shall not apply if the agreed appointment procedures between the parties provide for the other means for securing the appointment.
62. While appointing the arbitrators, the Centre shall consider qualifications required of the arbitrator by the agreement of the parties and relevant qualifications to secure the appointment of independent and impartial arbitrators.

63. A decision by which an arbitrator is appointed shall not be subject to appeal before the Centre or any court.
64. The parties may appoint arbitrators from the list of arbitrators maintained by the Centre or any other arbitrator of the party's choice.

Acceptance by the arbitrators

65. Unless the parties have agreed otherwise, each arbitrator, within seven days of communication of nomination, shall communicate his or her acceptance to whoever nominated him or her. If within the fixed period, an acceptance is not communicated, the arbitrator shall be deemed to have not accepted his or her nomination.

Conflict of interest

66. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence or circumstances which may be in conflict with the agreement of the parties.
67. During the arbitral proceedings, an arbitrator shall, without delay, disclose any circumstances under section 66 of this Act to the parties.

Grounds for challenging arbitrators

68. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she doesn't possess qualifications agreed to by the parties.
69. A party may challenge an arbitrator appointed by him or her, or in whose appointment he or she has participated, only for reasons of which he or she becomes aware after the appointment has been made.

Challenge procedure

70. The parties may agree on a procedure to challenge an arbitrator. If the parties fail to agree, the party who intends to challenge an arbitrator shall notify in writing of his or her challenge within fifteen days after the appointment of the challenged arbitrator is notified to that party or within fifteen days after the circumstances mentioned in section 68 of this Act is known to that party.
71. The other party, the arbitrator who is challenged, and other members of the arbitral tribunal shall be notified of the challenge.
72. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. In the case of a sole arbitrator, the Centre at the request of any party shall decide on the challenge.
73. The party, who is aggrieved by the decision of the arbitral tribunal or Centre on the challenge under section 72 of this Act may, within 10 days of receipt of the decision, appeal to the High Court.
74. Upon appeal under section 73 of this Act, the High Court shall decide and direct the parties to either continue with the arbitral proceeding with the appointed arbitrators or substitute the arbitrator.

Termination of the arbitrator

75. The mandate of an arbitrator may be terminated if:
 - (1) He or she is unable to perform functions;
 - (2) He or she is unable to perform functions without delay;
 - (3) He or she withdraws from the office;

- (4) The parties agree to terminate; or
 - (5) In other cases of termination of the arbitrator.
76. Unless otherwise agreed by the parties, if controversy arises under section 75 of this Act, a party may apply to the Centre to decide on the termination and the decision of the Centre shall be final and binding and no judicial review shall be allowed.

Appointment of substitute arbitrator

77. A substitute arbitrator shall be appointed according to the agreed procedure of appointment of arbitrators if the arbitrator is terminated under section 75 of this Act.
78. The arbitral tribunal, when reconstituted, shall determine whether and to what extent the previous proceedings may stand.
79. The reconstitution of the arbitral tribunal shall not affect the right of a party to challenge the previous proceeding on any ground which had arisen before the arbitrator ceased to hold office.
80. Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the substitution of an arbitrator shall not be invalid solely due to a change in the composition of arbitral tribunal.

Registration of arbitration with the Centre

81. Upon appointment of arbitrators, the arbitration shall be registered with the Centre by the arbitral tribunal having due regard to confidentiality of arbitration.

CHAPTER V
JURISDICTION OF ARBITRAL TRIBUNAL

Competence to rule on jurisdiction

82. The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and 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; and
 - (2) A decision that the contract is null and void shall not necessarily invalidate the arbitration clause.
83. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the first pleading on the substance of the dispute.
84. A party shall not be precluded from challenging the jurisdiction of the arbitral tribunal merely on the grounds that the party appointed or participated in the appointment of an arbitrator.
85. 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.
86. Notwithstanding sections 83 and 85 of this Act, the arbitral tribunal may admit the plea later in the proceeding if the delay is justified.
87. If the arbitral tribunal rules on a plea that it has jurisdiction, any party, within 10 days of receipt of decision, may appeal to the High court to decide the matter.

CHAPTER VI CONDUCT OF PROCEEDING

Notice of arbitration

88. Unless otherwise agreed by the parties, the arbitral proceedings for a particular dispute shall commence on the date on which a notice of arbitration for that dispute is received by the respondent.
89. The notice of arbitration may include:
- (1) A demand that the dispute be referred to arbitration;
 - (2) The names and addresses of the parties;
 - (3) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
 - (4) A reference to the contract out of which the defined legal relationship in respect to which the dispute arises;
 - (5) The general nature of the claim and an indication of the amount involved, if any;
 - (6) The relief or remedy sought;
 - (7) A proposal as to the number of arbitrators if the parties have not previously agreed thereon;
 - (8) The proposals for the appointment of arbitrators; and
 - (9) The notification of the appointment of an arbitrator.

Representation by lawyer

90. The parties to the arbitration may be represented or assisted by persons of their choice or a lawyer.

Equal treatment

91. The arbitral tribunal shall act fairly and impartially and shall give each party an equal and reasonable opportunity of presenting his or her case.

Confidentiality

92. The arbitrators, parties and Centre, if applicable, shall maintain the confidentiality of information coming to their knowledge in the course of the arbitral proceedings, unless required to reveal such information before the court of law.

Determination of procedures

93. Unless otherwise provided in this Chapter, the arbitral tribunal may not be bound by the Civil and Criminal Procedure Code of the Kingdom of Bhutan and the Evidence Act of the Kingdom of Bhutan.
94. Subject to the provisions of this Chapter, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the arbitral proceedings.
95. If the parties fail to agree on the arbitral procedures, the arbitral tribunal may conduct the arbitral proceedings in such manner it deems appropriate.
96. The power of the arbitral tribunal to determine arbitral procedures includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Seat of the arbitration

97. Unless otherwise agreed by the parties, the seat of arbitration shall be at the premises determined having regard to the circumstances of the arbitration by the Centre.
98. Notwithstanding section 97 of this Act, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

Language of the arbitral proceeding

99. The parties are free to agree on the language to be used in the arbitral proceeding. If the parties fail to agree, the arbitral tribunal shall determine the language to be used in the arbitral proceeding.
100. The agreement or determination on the language of arbitral proceedings, unless otherwise specified therein, shall apply to any written statement by a party, any hearing or arbitral award, decision or other communication of the arbitral tribunal.
101. The arbitral tribunal may order that any documentary evidence be accompanied by a translation into the language agreed upon by the parties or determined by the arbitral tribunal.

Claim

102. Within the period of time agreed by the parties, or failing such agreement as determined by the arbitral tribunal, the claimant shall submit his or her statement of claim in writing to the other party and the arbitral tribunal, and may include:
 - (1) The names and addresses of the parties;
 - (2) A statement of facts supporting the claim;
 - (3) The points at issue;
 - (4) The relief or remedy sought;
 - (5) The statements, documents or other evidence to the arbitral tribunal.

Counter-claim and defense

103. Within the period of time agreed by the parties, or failing such agreement as determined by the arbitral tribunal, the respondent after receipt of the copy of the statement of claim from the arbitral tribunal or the claimant under section 102 of this Act, shall submit his or her statement of defense in writing to the claimant and the arbitral tribunal, and may include:
- (1) A reply to the statement of claim;
 - (2) Any counter-claim;
 - (3) Statement of facts and legal points supporting the reply and the counter-claim; and
 - (4) The statements, documents or other evidence to the arbitral tribunal.
104. A party may amend or supplement the claim or defense during the course of the arbitral proceeding, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay.

Oral hearings and proceedings with written submissions

105. Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether to hold the hearings in the form of oral hearings or in written submissions. Where the parties have not excluded an oral hearing, the arbitral tribunal shall hold such a hearing at an appropriate stage of the arbitral proceeding if so requested by a party.
106. The parties shall be given notice in advance of any hearing and of any meeting of the arbitral tribunal.

Disclosure of all statements, documents and other evidence to both parties

107. Any statement or document submitted to the arbitral tribunal by a party shall be communicated to the other party by the arbitral tribunal, and any expert report or evidentiary document on which the arbitral tribunal may rely its decision, shall be communicated to the parties.

Powers of the arbitral tribunal upon default of the parties

108. Unless otherwise agreed by the parties, if without sufficient cause, in the opinion of the arbitral tribunal:

- (1) The claimant fails to communicate his or her statement of claim in time, the arbitral tribunal shall terminate the arbitral proceedings;
- (2) The respondent fails to communicate his or her statement of defense in time, the arbitral tribunal shall continue the arbitral proceedings without treating such failure as an acceptance or admission of the facts alleged by the claimant; or
- (3) Any party fails to appear at a hearing or produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and make an award on the evidence before it.

Power to appoint expert

109. The arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

110. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods or any other property that he or she may require of them.

111. Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written report, participate in a hearing where the parties may question him or her and the parties may present other expert witnesses in order to testify on the points at issue.
112. Sections 109, 110 and 111 of this Act shall be understood as being without prejudice to the power of the parties, unless otherwise agreed, to submit expert reports by experts freely appointed by them.

Assistance of court

113. The arbitral tribunal or a party with the approval of the arbitral tribunal may request assistance of any competent court of the Kingdom of Bhutan to take evidence or summon and direct witness to testify in accordance with the applicable laws on evidence.
114. The court may, in accordance with the applicable laws, issue order on the request made under section 113 of this Act.

Closure of hearings

115. The arbitral tribunal may enquire parties if they have any further proof to offer or witnesses to produce or submissions to make and, if there are none, it shall declare the hearings closed.

CHAPTER VII INTERIM MEASURES

Arbitral tribunal to order interim measures

116. At any time before the settlement of dispute or final arbitral award is rendered, the arbitral tribunal may grant an interim measure that may order a party to:

- (1) Maintain or restore the status quo pending determination of the dispute;
- (2) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (3) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (4) Preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions for granting interim measures

117. The party, which request an interim measure shall satisfy the arbitral tribunal that:

- (1) Harm not adequately reparable by an award of damages is likely to result if the measure is not granted and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (2) There is a reasonable possibility that the requesting party will succeed on the merits of the claim.

118. The determination on the possibility under section 117(2) of this Act shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

119. With regard to a request for an interim measure under section 116(4) of this Act, the requirements in sections 117 and 118 of this Act shall apply only to the extent the arbitral tribunal considers appropriate.

Modification, suspension, and cancellation

120. The arbitral tribunal may modify, suspend, or cancel the interim measure on:

(1) The application of a party; or

(2) Its own initiative, but only in exceptional circumstances after giving prior notice to the parties.

121. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

Disclosure of material circumstances

122. The arbitral tribunal may require a party to promptly disclose a material change in the circumstances upon which an interim measure was requested or granted.

Cost and damages

123. An applicant for an interim measure is liable for any costs and damages caused to any party by the measure if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted or issued.

124. The arbitral tribunal may award costs and damages at any time during the arbitral proceedings.

Recognition and enforcement of interim measures

125. Unless otherwise provided by the arbitral tribunal, an interim measure granted by an arbitral tribunal shall be recognized as binding and enforced upon application to the competent court, irrespective of the country in which it was granted subject to the provisions of section 127 of this Act.
126. The party who seeks or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

Grounds for refusing recognition or enforcement

127. The recognition or enforcement of an interim measure may be refused at the request of the respondent if the court is satisfied that:
- (1) The refusal is warranted on the grounds set out in section 152 of this Act; or
 - (2) The interim measure has been suspended or cancelled by the arbitral tribunal or, if so empowered, by the competent court of the country in which the arbitration took place or under the law of which that interim measure was granted.

Appeal from recognition or enforcement of interim measure

128. An appeal against a decision on recognition or enforcement of interim measure by a competent court may be submitted to the High Court within 10 days from the delivery of such decision on recognition or enforcement.

CHAPTER VIII MAKING OF AWARD

Applicable substantive law

129. In domestic arbitration, the arbitral tribunal shall apply the substantive law of Bhutan to decide the dispute submitted for arbitration.

130. For the purpose of international commercial arbitration, the arbitral tribunal shall apply, subject to the provisions of this Act, the substantive law agreed by the parties as applicable to substance of the dispute.

131. If the parties fail to agree on the applicable laws, the arbitral tribunal shall apply the law determined by the conflict of law rules that it considers appropriate.

132. The arbitral tribunal shall decide the dispute in accordance with the terms of the contract and shall take into account the relevant applicable trade usages.

Decision by arbitral tribunal

133. Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any award or the decision of the arbitral tribunal shall be made with a simple majority.

134. Notwithstanding section 133 of this Act, if authorized by the parties or by all members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator alone.

Settlement

135. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral 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.

136. An award on agreed terms shall be made in accordance with the provisions of sections 37, 38 and 39 of this Act and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Award

137. After completion of the submission of the parties, the arbitral tribunal shall render award in writing and shall be signed by the arbitrator.

138. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature shall be stated.

139. The award shall contain the reasons, date and the seat of the arbitral tribunal, and each party and the Centre shall be given a copy of the award.

Cost of Arbitration

140. Unless otherwise agreed by the parties, the arbitral award may provide for the costs of the arbitration as the arbitral tribunal considers just and appropriate taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

Fees of arbitrator

141. The parties to the arbitration shall jointly and severally pay such reasonable or agreed fees and expenses to the arbitrators.

Cost of aborted arbitration

142. Unless otherwise agreed by the parties to the arbitration agreement, where arbitration is commenced but for any reason the arbitration fails, the court may, on the application of a party, make such orders in relation to the costs of the arbitration as it deems just.

**CHAPTER IX
TERMINATION OF ARBITRAL PROCEEDINGS**

Termination of the arbitral proceedings

143. The arbitral proceedings shall be terminated:

- (1) On the day of the final award or an order of the arbitral tribunal;
- (2) If the claimant withdraws his or her claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her part in obtaining a final award in the dispute;
- (3) If the parties agree on the termination of the arbitral proceedings; or
- (4) If the arbitral tribunal finds that the continuation of the arbitral proceedings has for any other reason become unnecessary or impossible.

144. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of the sections 145, 146, 147, 148, and 149 of this Act. In such cases, the arbitral tribunal's mandate will be terminated when the respective decision is rendered.

Correction, clarification and award

145. Within ten working days of receipt of the award, unless another period of time has been agreed upon by the parties, any party, with notice to the other party, may request the arbitral tribunal to:

- (1) Correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
- (2) Clarify a point or a specific part of the award; or
- (3) Make an additional arbitral award as to claims presented in the arbitral proceedings and not resolved in the award.

146. If the arbitral tribunal considers that the request made under section 145 of this Act is justified, it shall make the corrections or give the requested clarification within ten days, in case of domestic arbitration award, from the receipt of the request and the corrections and/or clarifications shall form part of the arbitral award.

147. If the arbitral tribunal considers the request made under section 145(3) of this Act to be justified, it shall make the additional arbitral award within twenty days from the receipt of such request.

148. Within ten days of the award, the arbitral tribunal on its own motion, may correct any of the errors referred to under section 145(1) of this Act.

149. Where the arbitration is international commercial arbitration, the duration of ten and twenty days provided under sections 146 and 147 of this Act, shall be twenty and forty working days respectively.

150. The provisions of sections 137, 138, and 139 of this Act shall apply to arbitral decisions relating to the correction, clarification or the issue of a supplement to the award.

CHAPTER X RECOURSE AGAINST ARBITRAL AWARD

Application to set aside the award

151. Any recourse to the High Court against an arbitral award may be made only by an application for setting aside such award in accordance with section 152 of this Act.

Grounds for setting award aside

152. An arbitral award may be set aside by the High Court if:
- (1) The party making the application alleges and proves that:
 - (a) A party to the arbitration agreement was under some incapacity to enter the arbitration agreement;
 - (b) The arbitration agreement was not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Kingdom of Bhutan;
 - (c) A party making an application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise impeded from presenting his or her case;
 - (d) 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;
 - (e) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or with this Act; or

(2) The court finds that:

(a) The subject-matter of the dispute is not capable of settlement by arbitration;
or

(b) The award is manifestly contrary to the public policy of the Kingdom of
Bhutan.

153. If a ground for setting aside an award concerns only part of the arbitral award, only that part may be set aside.

154. An application for setting aside an award may not be made after thirty working days for domestic arbitration and ninety working days for international commercial arbitration have elapsed from the date on which the party making that application had received the arbitral award or if a request had been made under section 151 of this Act, from the date on which that request had been disposed of by the arbitral tribunal.

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months it may entertain the application within a further period of fifteen days, but not thereafter.

155. The High Court may, on a recourse under section 151 of this Act :

(1) Confirm the award; or

(2) Set aside the award in whole or in part and itself determine the matter.

156. An appeal from setting aside or refusing to set aside an arbitral award under section 155 of this Act shall lie to the Supreme Court of Bhutan.

CHAPTER XI
RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

Nationality of the Award

157. The award of an arbitral tribunal shall have the nationality of the country in which the place of arbitration is situated.

Enforcement of domestic Award

158. Where the time for making an application to set aside arbitral award under section 154 of this Act has expired or application under section 151 of this Act is dismissed by the High Court, the award shall have a binding force of judgment and shall be enforced by the court in accordance with the provisions of the Civil and Criminal Procedure Code of Bhutan as if it were a decree of the Court.

159. An appeal shall lie to the higher court against the decision of the court under section 158 of this Act.

Recognition and enforcement of foreign award

160. The recognition of foreign award shall be governed by any international conventions, multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Kingdom of Bhutan.

161. A foreign award shall be recognized as binding and shall be enforced in the Kingdom of Bhutan by the High Court in accordance with the Civil and Criminal Procedure Code unless the High Court establishes, upon a request by the opposing party the existence of a ground referred to in section 152 of this Act, or if it finds that the award has not yet become binding on the parties or is set aside or suspended by a court of the country in which, or under the law of which, that award was made.

162. The party relying on an award or applying for its enforcement shall submit a duly certified copy of the award and of the arbitration agreement if the agreement is in writing. The documents may, if necessary, be accompanied by a duly certified translation into Dzongkha.

Appeal on recognition or enforcement

163. An appeal against a decision rendered by the High Court under section 161 of this Act, may be submitted to the Supreme Court of the Kingdom of Bhutan within 10 working days from the delivery of such decision on recognition

CHAPTER XII NEGOTIATED SETTLEMENT

Application

164. This Chapter shall apply to both domestic and international negotiated settlement.

Domestic negotiated settlement

165. For the purpose of domestic negotiated settlement, the parties may resort to negotiated settlement in accordance with the laws in force in Bhutan.

International negotiated settlement

166. For the purpose of international negotiated settlement, only those disputes arising from relationships of commercial nature, whether contractual or not, shall be negotiated.

Provided that no negotiated settlement shall be permitted on matter of insolvency and winding up, subject of taxation or other matters which are against public policy, morality or any other existing provisions of the law in force in Bhutan.

Resort to arbitral or judicial proceedings

167. During the negotiated settlement proceeding, the parties shall not initiate any arbitral or judicial proceedings in respect of a dispute that is the subject of the negotiated settlement process. Provided that a party may initiate arbitral or judicial proceedings, where in his or her opinion, such proceedings are necessary to preserve his or her rights.

Parties to act in good faith

168. The parties shall participate in the negotiated settlement proceeding in good faith with the intention to settle the dispute.

Adjournment of court proceedings

169. At any stage of the court proceedings, the parties may pursue negotiated settlement and the court shall adjourn the proceedings upon request of the parties.

Disclosure and inadmissibility of information

170. The parties or any other third person, including those involved in the administration of the negotiated settlement proceeding, shall maintain confidentiality with respect to all events that transpired during the settlement proceedings and shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony as to:

- (1) Views expressed by a party in the course of the negotiated settlement proceedings;
- (2) Statements or admissions made by a party in the course of the negotiated settlement proceedings;
- (3) Proposals or the views expressed by the negotiator;
- (4) The fact that a party had or had not indicated willingness to accept a proposal; or
- (5) A document prepared solely for the purposes of the negotiated settlement processes.

171. There shall be no stenographic or audio or video recording of the negotiated settlement proceedings.

Inapplicability of laws

172. The negotiated settlement proceeding may not be bound by the provisions of the Civil and Criminal Procedure Code and the Evidence Act.

Role of the Conciliator or Mediator

173. Any person who facilitates conciliation, mediation or other forms of settlement of dispute:

- (1) Shall not impose his or her views or solution to the parties;
- (2) Shall assist and facilitate the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute; and
- (3) May explain to the parties the merits and drawbacks of resorting to the formal legal proceedings.

174. The third party who facilitates settlement of dispute shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

Settlement agreement

175. When there is a possibility of settlement which may be acceptable to the parties, the negotiator may:

- (1) Formulate the terms of settlement and suggest them to the parties for their observations; and
- (2) After receiving the observations of the parties, reformulate the terms of a possible settlement.

176. The negotiated settlement shall be by voluntary consent and if the parties reach an agreement on the dispute, it shall be signed by the parties and the negotiators without alteration of the agreed terms and conditions.

177. The conciliator or mediator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

Enforcement of Settlement Agreement

178. The settlement agreement shall be enforced by the court of competent jurisdiction in accordance with the laws in force in Bhutan.

Termination of negotiated settlement proceeding

179. The negotiated settlement proceeding shall be terminated:

- (1) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
- (2) By a declaration of the negotiator, after consultation with the parties, to the effect that further efforts at negotiation are no longer justified, on the date of the declaration;
- (3) By a written declaration of the parties addressed to the negotiator to the effect that the negotiation proceedings are terminated, on the date of the declaration; or
- (4) By a written declaration of a party to the other party and the negotiator, if appointed, to the effect that the negotiation proceedings are terminated, on the date of the declaration.

CHAPTER XIII MISCELLANEOUS

Amendment

180. The amendment of this Act by way of addition, variation or repeal may be effected by Parliament, subject to the requirement that any amendment shall not undermine the effectiveness of the alternative dispute resolution.

Rule making power

181. The Centre in consultation with the National Judicial Commission may, from time to time, frame rules for the effective administration of the alternative dispute resolution or as it deems necessary to carry out and give effect to this Act.

Authoritative text

182. In instances of a difference in the meaning between the Dzongkha and English text of this Bill, each text shall be regarded as equally authoritative.

Definitions

183. In this Act unless context otherwise requires,-

- (1) “Arbitration” shall refer to the process by which an arbitrator appointed by parties or by the Centre, as the case may be, adjudicates the disputes between the parties and gives an award by applying the provisions of this Act insofar as they refer to arbitration;
- (2) “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators appointed in accordance with the provisions of this Act;
- (3) “Award” refers to the final decision of the arbitral tribunal on the merit of the dispute;
- (4) “Centre” means the Bhutan Alternative Dispute Resolution Centre;

- (5) “Commercial” includes all matters arising from relationships of a commercial nature whether contractual or not and shall mean to include, but are not limited to the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road;
- (6) “Costs” means charges relating to:
- (a) The fees and expenses of the arbitrators, negotiators and witnesses;
 - (b) Legal fees and expenses;
 - (c) Any administration fees of the institution supervising the arbitration and negotiated settlement; and
 - (d) Any other expenses incurred in connection with the arbitral proceedings, arbitral award and negotiated settlement proceedings.
- (7) “Court” means the Dungkha and District courts in the Kingdom of Bhutan;
- (8) “Employee” means the employee of Bhutan Alternative Dispute Resolution Centre;
- (9) “Foreign award” means an award which is made outside the Kingdom of Bhutan.
- (10) “High Court” means High Court of the Kingdom of Bhutan;
- (11) “Negotiated settlement” means a process, whether referred to by the expression ‘conciliation’, ‘mediation’ or an expression of similar import, whereby parties request negotiator to assist the parties to settle dispute arising out of or relating to a contractual or other legal relationship, amicably.