

Arbitration Law Of People's Republic Of China

(Adopted at the Ninth Standing Committee Session of the Eighth National People's Congress on August 31, 1994)

Chapter I : General Principles

Article 1. This law is formulated with a view to ensuring fair and timely arbitration of disputes over economic matters, safeguarding the legitimate rights and interests of the litigants and guaranteeing the sound development of the socialist market economy.

Article 2. Disputes over contracts or other disputes involving property between civil subjects with equal status, that is, between citizens, legal persons, and other organizations, are subject to arbitration.

Article 3. Disputes over the following matters are not subject to arbitration:

- (1) disputes over marriage, adoption, custody, support and inheritance;
- (2) administrative disputes that by law should be handled by administrative organs.

Article 4. Where the litigants choose to settle their dispute through arbitration, they should reach an arbitration agreement of their own accord. When, in the absence of an arbitration agreement, a litigant applies for arbitration, the arbitration commission shall not accept it.

Article 5. Where the litigants have an arbitration agreement and one litigant brings a suit in the people's court, the people's court shall not accept it. However, exception is to be made when the arbitration agreement is invalid.

Article 6. The arbitration commission shall be chosen by the litigants by agreement. Arbitration is not subject to jurisdiction by level or territorial jurisdiction.

Article 7. Arbitration shall be carried out on the basis of act and in accordance with law to settle disputes in a fair and rational manner.

Article 8. Arbitration shall be done independently, free of interference and from administrative organs, mass organizations or individuals.

Article 9. The system of one ruling only is practised in arbitration. Where, after a ruling is made, a litigant files another application for arbitration or brings a lawsuit in the people's court over the same dispute, the arbitration commission or the people's court shall not accept it. Where a court repeals a ruling or orders it not to be executed in accordance with law, the litigants may refile an application for arbitration of the dispute pursuant with a new arbitration agreement reached between the parties or bring a suit in the people's court.

Chapter II : The Arbitration Commission And Arbitration Association

Article 10. The arbitration commission may be set up in municipalities directly under the central government or in cities where the provincial or autonomous regional people's government is seated. It may also be set up in other cities that are divided into districts. It is not to be set up at all levels of administrative divisions.

The people's government in the cities specified in the preceding paragraph shall organize relevant departments and the chambers of commerce to form the arbitration commission in a unified way. When an arbitration commission is set up, it shall register with the judicial and administrative departments of the province, autonomous region or municipalities directly under the central government.

Article 11. The arbitration commission shall have the following qualifications:

- (1) its own name, domicile and articles of association;
- (2) the required property;
- (3) members that make up the commission; and
- (4) arbitration officers retained by it.

The articles of association of the arbitration commission shall be formulated pursuant to this law.

Article 12. The arbitration commission shall consist of one director, two to four deputy directors and seven to 11 commission members.

The director, deputy directors, and members of the arbitration commission shall be held by legal, economic or trade experts and persons with working experience. Legal, economic or trade experts shall make up at least two-thirds of the arbitration commission.

Article 13. The arbitration commission shall appoint fair-minded and respectable persons as arbitration officers.

Arbitration officers shall have one of the following qualifications:

- (1) have eight years of arbitration experience;
- (2) have worked as a lawyer for eight years;
- (3) have served as a judge for eight years;
- (4) have studied law or engaged in educational work and have a senior professional title; or
- (5) have legal knowledge, worked in the fields of economics or trade, and have a senior professional title or equivalent professional expertise.

The arbitration commission shall compile the panel of arbitrators by their specialities.

Article 14. Arbitration commissions are independent from administrative organs; they are not subordinate to administrative organs. There is no affiliation among arbitration commissions themselves.

Article 15. The China Arbitration Association is a social organization as a legal person. The arbitration commissions are members of the China Arbitration Association. The articles of association of the China Arbitration Association shall be formulated by its national membership meeting.

The China Arbitration Association is an organization for enforcing self-discipline among the arbitration commissions that, pursuant to its articles of association, oversees violations of discipline by the arbitration commissions and their members and the administration officers. the China Arbitration Association shall formulate arbitration rules in accordance with the relevant provisions of this law and the Law of Civil Procedure.

Chapter III : Arbitration Agreement

Article 16. An arbitration agreement refers to an arbitration clause provided in the contract or other written agreements requesting arbitration concluded prior or subsequent to the occurrence of disputes.

An arbitration agreement shall have the following contents:

- (1) an expressed intent to request arbitration;
- (2) items for arbitration; and
- (3) the chosen arbitration commission

Article 17. An arbitration agreement shall be invalid in any of the following circumstances:

- (1) the items for arbitration agreed upon are beyond the scope of arbitration as prescribed by law;
- (2) a party to the arbitration agreement is a person having no capacity or with limited capacity for civil conduct; or
- (3) the arbitration agreement is imposed by one party on the other party by means of coercion.

Article 18. Where an arbitration agreement does not specify or clearly specify the items for arbitration or an arbitration commission, the litigants may reach a supplementary agreement. Where they fail to reach a supplementary agreement, the arbitration agreement shall be deemed invalid.

Article 19. an arbitration agreement stands on its own. Modification, rescission, termination of the contract or its being declared invalid does not affect the arbitration agreement's validity.

The arbitration tribunal has the power to confirm the validity of the contract.

Article 20. Where a litigant takes exception to the validity of the arbitration agreement, he may request that the arbitration commission make a decision or that the people's court make a judgement.

Where one litigant requests that the arbitration commission make a decision while the other litigant requests that the people's court make a judgement, the people's court shall make a judgement.

Where a litigant takes exception to the validity of the arbitration agreement, he shall raise a challenge before the arbitration tribunal starts the first hearing of the case.

Chapter IV : Arbitration Procedure

Section 1. Application and Acceptance

Article 21. The litigants requesting arbitration shall meet the following requirements:

- (1) there shall be an arbitration agreement;
- (2) there shall be a specific appeal request, facts and reasons for the appeal; and
- (3) the case shall be within the jurisdictional power of the arbitration commission.

Article 22. The litigants shall submit to the arbitration commission the arbitration agreement and application for arbitration and copies.

Article 23. The application for arbitration shall carry the following items:

- (1) the names, sex, age, profession, work units and addresses of the litigants; the names and addresses of the legal person or other organization concerned; and the names and professions of the legal representative and other principal persons in charge.

(2) arbitration requested and the facts and reasons on which the request is based; and

(3) evidence and its sources; the names and addresses of witnesses.

Article 24. When the arbitration commission has received the application, it shall accept it and so notify the litigants within five days if it deems the application meets the requirements; with respect to cases that do not meet the requirements, it shall notify the litigants in writing that the cases may not be accepted and heard along with an explanation.

Article 25. After accepting the arbitration application, the arbitration commission shall, within the period prescribed in the arbitration rules, deliver the arbitration rules and the names of the arbitration panel to the applicant; and it shall also deliver a copy of the application as well as the rules and the panel to the adverse litigant.

After receiving the copy of the arbitration application, the adverse litigant shall furnish a defence to the arbitration commission within the period prescribed in the arbitration rules. After receiving the defence, the arbitration commission shall, within the period prescribed in the arbitration rules, deliver a copy of the defence to the applicant. The absence of a defence on the part of the adverse litigant does not affect the arbitration process.

Article 26. where an arbitration agreement has already been reached and one litigant has filed a suit with the people's court but failed to state the agreement , the people's court shall reject the case it has accepted when the other litigant had submitted the arbitration agreement prior to the opening of the first court session, except when the arbitration agreement is invalid. Failure of the adverse litigant to express objection before the first court session is considered to be a waiving of the agreement and the people's court shall proceed in examining the case.

Article 27. The applicant may renounce or change the arbitration request. The adverse litigant may acknowledge or rebut the arbitration request and has the right to submit a counter-request.

Article 28. Either litigant may request protection of his property when he believes the arbitration cannot be carried out or will be carried out with difficulty owing to the other litigant's conduct or other causes.

When one litigant requests protection of his property, the arbitration commission shall submit the request to the people's court in accordance with the relevant regulations in the Law of Civil Procedure.

When the application is faulty, the applicant shall compensate the adverse litigant for the losses incurred from the protection of property.

Article 29. Either litigant or his legal representative may request a lawyer or an agent to represent him at the arbitration. When he does so, he shall submit a power of attorney to the arbitration

commission .

Section 2. The Formation of an Arbitration Tribunal

Article 30. An arbitration tribunal may be composed of three arbitrators or only one. A tribunal which is composed of three arbitrators shall have a president arbitration officer.

Article 31. Where the litigants agree that an arbitration tribunal be composed of three arbitrators, each of them shall elect his own arbitrator, or request the arbitration commission director to designate an arbitrator for him. The third arbitrator shall be selected by the litigants, or by the arbitration commission director at their request. The third arbitrator shall serve as the presiding arbitration officer.

Article 32. In the event the litigants fail to reach an agreement on the form of an arbitration tribunal, or fail to select their arbitrators within the period prescribed in the arbitration rules, the arbitration commission director shall make the decision for them.

Article 33. After an arbitration tribunal has been formed, the arbitration commission shall notify the litigants, in writing, about the formation or the tribunal.

Article 34. An arbitrator shall withdraw from serving in the tribunal when his case is one of the following, and the litigants also have the right to present a withdrawal request:

(1) where he is one of the litigants in the arbitration, or he is a close relative of any one litigant, or a relative of the attorney;

(2) where he has a vital interest in the arbitration;

(3) where he is related to the litigants, or their attorneys, in other respects in the case and the relationship may affect an impartial arbitration; or

(4) where he has had private meetings with the litigants or with their attorneys, or when he has accepted the invitation of the litigants or their attorneys, to dine, or accepted their gifts.

Article 35. Where one litigant submits a withdrawal request, he shall state the reasons, and the reasons shall be submitted prior to the opening of the first court session. When a cause of the withdrawal is not known until the first court session has been held, the cause may be submitted prior the closure of the last court session.

Article 36. The arbitration commission director shall decide whether an arbitrator should withdraw; when the arbitration commission director serves as an arbitrator, other members or the arbitration commission shall make the decision collectively.

Article 37. When an arbitrator cannot perform his duties owing to withdrawal or other causes, a new

arbitrator shall be elected or designated to take his place in accordance with this law.

After a new arbitrator has been elected or designated as a result of the withdrawal of another arbitrator, the litigants may request that the ongoing arbitration process be started anew, and the arbitration process tribunal shall decide whether or not to approve the request. The arbitration tribunal may also decide on its own whether the ongoing arbitration process should be started anew.

Article 38. Where an arbitrator has situation (4) under Article 34, and the case is serious, or where an arbitrator has situation (6) under Article 58, he shall be liable for legal responsibilities according to the law and the arbitration commission shall remove his name from the panel.

Section 3. Hearing and Ruling

Article 39. the arbitration shall be held as a tribunal. Where the litigants agree to have an open session, arbitrations may be held openly, except for cases which involve state secrets.

Article 40. Arbitrations do not proceed openly. Where the litigants agree to have an open session, arbitrations may be held openly, except for cases which involve state secrets.

Article 41. The arbitration commission shall notify both litigants of the date of the tribunal session within the period prescribed in the arbitration rules. Within the period prescribed in the arbitration rules, litigants may request a postponement of the session if any of them has a legitimate reason. The arbitration tribunal shall decide whether the session should be postponed.

Article 42. The applicant shall be considered to have withdrawn his arbitration request if he, after being notified, fails to attend the tribunal session without a legitimate reason, or if he leaves the tribunal during the session without the tribunal's approval.

If the adverse litigant, after being notified, fails to attend the tribunal session without a legitimate reason; or if he leaves the tribunal session without the arbitration tribunal's approval, a ruling can be made by default.

Article 43. Litigants shall provide evidence to support their respective stands. The arbitration tribunal may collect on its own account evidence it deems essential.

Article 44. When the arbitration tribunal maintains that a certain specialized issue must be appraised, it may also designate an appraising department to have the appraisal made.

In accordance with the request submitted by the litigants or the arbitration tribunal, the appraisal department shall send a appraiser to attend the tribunal session. With the tribunal's approval, the litigants may question the appraiser.

Article 45. The evidence shall be exhibited at the tribunal session. Litigants may cross- examine one another.

Article 46. If the evidence is perishable or if the evidence may be hard to obtain in the future, the litigants may request that the evidence be preserved. Where the litigants request preservation of the evidence, the arbitration commission shall submit the request to the grass-roots people's court of the location where the evidence is obtained.

Article 47. Either litigant has the right to debate during the arbitration process. When the debate ends, the presiding arbitration officer, or an arbitrator acting alone, shall solicit the litigants' final views.

Article 48. The arbitration tribunal shall record the session in writing. The litigants, or other arbitration participants, have the right to request corrections when they think the records of their statements are incomplete or faulty. If corrections are denied, their requests shall be stated in the record.

The written records shall be signed, or sealed, by the arbitrators, the recorders, the litigants and other arbitration participants.

Article 49. The litigants may reach a settlement by themselves after they have requested arbitration. If a settlement agreement has been reached, the litigants may request that the arbitration tribunal make a written ruling on the basis of the settlement, and they may also retract their arbitration request.

Article 50. If any litigant wants to retract the withdrawal request after a settlement agreement has been reached, they may request arbitration in accordance with the arbitration agreement.

Article 51. The arbitration tribunal may carry out mediation prior to making a ruling. The arbitration tribunal shall mediate when the litigants agree to mediation. If the mediation fails, a ruling should be made promptly.

If an agreement has been reached through mediation, the arbitration tribunal shall draw up a written mediation, which has the same legal effect as a ruling letter.

Article 52. The written mediation shall state the arbitration request and the litigants' agreement. The written mediation, after it has been signed by the arbitrators and sealed by the arbitration commission, shall be delivered to the litigants.

The written mediation becomes legally valid after it has been signed and accepted by the litigants.

If one litigant backs out prior to the signing of the written mediation, the arbitration tribunal shall make a ruling promptly.

Article 53. The ruling shall be made on the basis of the views expressed by the majority of arbitrators. The different views of the minority of arbitrators may be stated in the record. When the arbitration

tribunal fails to come up with a majority view, a ruling shall be made according to the view of the presiding arbitration officer.

Article 54. The written arbitration shall state the arbitration request, facts of the dispute, the reasons for the ruling, the result of the ruling, the arbitration expenses that have to be borne and the date of the arbitration. The written arbitration may omit the facts of dispute and the reasons for the ruling if the litigants so desire. The written mediation shall be signed by the arbitrators and sealed by the arbitration commission. The signatures of the arbitrators who hold different views are optional.

Article 55. When arbitrating a dispute, the arbitration tribunal may make a ruling on the part of dispute for which facts have been ascertained.

Article 56. The arbitration tribunal shall correct any terminological or calculation error in the written arbitration, or any ruling decision left out in the written arbitration. The litigants may request that the arbitration tribunal make corrections within 30 days after receiving the written ruling.

Article 57. The legal effects of the ruling letter begin on the day it is written.

Chapter V : Request To Repeal A Ruling

Article 58. If one litigant produces evidence to prove a ruling has one of the following, he may request that the intermediate people's court of the place where the arbitration commission is located repeal the ruling:

- (1) where there is no arbitration agreement;
- (2) where the dispute to be arbitrated is not within the scope of the arbitration agreement, or one which the arbitration commission has no authority to arbitrate;
- (3) where the formation of the arbitration tribunal or the arbitration process has violated legal procedure;
- (4) where the evidence on which the arbitration is based is counterfeited;
- (5) where one litigant has concealed evidence that could affect an impartial ruling; or
- (6) where arbitrators have solicited or accepted bribes, practised favouritism and bent the law while arbitrating a case or making a ruling.

The people's court shall repeal the ruling if a collegial panel formed by the people's court has examined the arbitration and ascertained that it has one of the situations mentioned above.

Article 59. When one party requests a repeal of the ruling, he shall do so within six months after receiving the ruling letter.

Article 60. The people's court shall decide whether to approve or reject the request to repeal the

ruling within two months after accepting the request.

Article 61. After accepting the request to repeal the ruling, if the people's court maintains that the arbitration tribunal still should arbitrate the dispute, it shall notify the arbitration tribunal to rearbitrate the dispute within a specified period and it shall also rule to terminate the repeal procedure. If the arbitration tribunal refuses to rearbitrate the dispute, the people's court shall rule that the repeal procedure be reinstated.

Chapter VI : Execution

Article 62. Litigants shall abide by the ruling. When one litigant fails to abide by the ruling, the other litigant may, in accordance with provisions in the Law of Civil Procedure, request the people's court execute the ruling, and the people's court that accepts the request shall execute the ruling.

Article 63. When the adverse litigant produces evidence proving that the ruling is one the situations stated in Section 2 of Article 217 of the Law of Civil Procedure, and the evidence has been ascertained by the collegial panel formed by the people's court, the ruling shall not be executed.

Article 64. When one litigant requests that the ruling be executed and the other litigant requests that the ruling be repealed, the people's court shall rule that the execution be terminated.

When the people's court judges that a ruling be repealed, the execution of the ruling shall be terminated. When the request to repeal the ruling has been rejected, the people's court shall judge that the ruling be executed again.

Chapter VII : Special Provisions For Arbitrations Involving Foreign Concerns

Article 65. Provisions in this chapter are applicable in the arbitration of economic, trade, transport and maritime disputes which involve foreign concerns. Other relevant provisions in this law shall be applied where there is no applicable provision in this chapter.

Article 66. A commission for arbitrations involving foreign concerns may be set up in the China International Chamber of Commerce.

This arbitration commission may be composed of one director, several deputy directors and several members.

The director, deputy directors and members may be hired by the China International Chamber of Commerce.

Article 67. This arbitration commission may hire its arbitrators from among foreign nationals who are specialized in laws, economic affairs and trade, and science and technology.

Article 68. when a litigant requests preservation of evidence in an arbitration which involves foreign concerns, the commission for arbitration involving foreign concerns shall refer the litigant's request to the intermediate people's court in the place where the evidence is located.

Article 69. The arbitration tribunal which handles arbitrations involving foreign concerns may record the proceedings of the tribunal session, or the main points of the session. The record of the main points shall be signed or sealed by the litigants and other arbitration participants.

Article 70. When one litigant produces evidence proving the ruling made by the commission for arbitration involving foreign concerns falls within one of the situations prescribed in Section 1 of Article 260 of the Law of Civil Procedure, the people's court shall repeal and the ruling after the evidence has been ascertained by the collegial panel organized by the people's court.

Article 71. When the adverse litigant produces evidence proving that a foreign affairs arbitration ruling falls within one of the situations stated in Section 1 of Article 260 of the Law of Civil Procedure, the people's court shall judge that the ruling not be executed after it has been examined and ascertained by a collegial panel organized by the court.

Article 72. If one litigant requests execution of the legally effective ruling made by the commission for arbitration involving foreign concerns, and the adverse litigant's property is not within the PRC, the litigant shall directly request acknowledgement and enforcement from the foreign court which has the jurisdiction over the property.

Article 73. The China International Chamber of Commerce may draw up the regulations for arbitrations involving foreign concerns on the basis of this law and the Law of Civil Procedure.

Chapter VIII : Supplementary Articles

Article 74. Where the law has provisions governing the validity period of an arbitration, the provisions shall be applied. If the law has no such provisions, the provisions for the validity period of lawsuits shall be used.

Article 75. Before the China Arbitration Association draws up the arbitration regulations, the arbitration commission shall draw up interim arbitration regulations on the basis of this law and the Law of Civil Procedure.

Article 76. Litigants shall pay arbitration fees according to regulations. Measures for collecting arbitration fees shall be reported to the price control authorities for approval.

Article 77. Separate regulations shall be drawn up for arbitration of labour disputes and disputes over agricultural contracts drawn up by collective agricultural economic organizations.

Article 78. When arbitration-related provisions drawn up before the implementation of this law contravene the provisions in this law, this law shall prevail.

Article 79. Arbitration institutions established by cities and other cities divided into districts - where the seats of people's governments of municipalities under the central government's direct jurisdiction,

provinces and autonomous regions are located - prior to the implementation of this law shall be reorganized according to this law; and the operation of those which are not reorganized shall be terminated one year from the day this law goes into effect.

The operation of other arbitration institutions which are established before this law goes into effect and which are not in line with this law shall be terminated when this law goes into effect.

Article 80.

This law goes into effect on September 1, 1995.