

## **ARBITRATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA**

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### **CHAPTER ONE GENERAL PROVISIONS**

**Article 1** The law is formulated with a view to ensure fair and timely arbitration of economic disputes, reliable protection to legitimate rights and interests of parties concerned and a healthy development of the socialist market economy.

**Article 2** Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration.

**Article 3** The following disputes cannot be put to arbitration:

1. Disputes arising from marriage, adoption, guardianship, bringing up of children and inheritance.
2. Disputes that have been stipulated by law to be settled by administrative organs.

**Article 4** In settling disputes through arbitration, an agreement to engage in arbitration should first of all be reached by parties concerned upon free will. Without such an agreement, the arbitration commission shall refuse to accept the application for arbitration by any one single party.

**Article 5** Whereas the parties concerned have reached an agreement for arbitration, the people's court shall not accept the suit brought to the court by any one single party involved, except in case where the agreement for arbitration is invalid.

**Article 6** The members of the arbitration commission shall be chosen by the parties concerned. Arbitration shall not be subject to the jurisdiction of administrative departments at any level and region.

**Article 7** Arbitration shall be made based on true facts and relative laws to give out a fair and reasonable settlement for parties concerned.

**Article 8** Arbitration shall be conducted independently according to law, free from interference of administrative organs, social groups or individuals.

**Article 9** The arbitration award is final. After the award is given, the arbitration commission or the people's court shall not accept the re- application of the suit concerning the same dispute by any of the parties concerned. Whereas the award cancelled or put in void under a rule by the people's court, the parties concerned for the dispute may reach another agreement for arbitration and apply for arbitration or bring a suit in the people's court.

## **CHAPTER TWO ARBITRATION COMMISSION AND ARBITRATION ASSOCIATION**

**Article 10** An arbitration commission may be set up in the domicile of the people's governments of municipalities under the direct jurisdiction of the central government (hereinafter referred to as "municipalities"), provinces and autonomous regions or in other places according to needs. It shall not be set up according to administrative levels. An arbitration commission shall be set up by the relevant departments and chambers of commerce under the coordination of the people's governments of the cities prescribed in the preceding paragraph. The establishment of an arbitration commission shall be registered with the judicial administrative departments of provinces, autonomous regions and municipalities.

**Article 11** An arbitration commission shall meet the following requirements:

1. It shall have its own name, residence and statute.
2. It shall have necessary property.
3. It shall have its own members.
4. It shall have appointed arbitrators.

The statute of an arbitration commission shall be formulated according to this law.

**Article 12** An arbitration commission shall be composed of a chairman, two to four vice-chairmen and 7 to 11 members. The chairman, vice-chairmen and members of an arbitration commission shall be experts in law and economy and trade with practical work experience. Of the composition of an arbitration commission, experts in law, economy and trade shall be no less than two-thirds.

**Article 13** Members of an arbitration commission shall be appointed from among the people who are fair and justice.

An arbitrator shall meet one of the following requirements:

1. At least eight years of work experience in arbitration.
2. At least eight years of experience as a lawyer.
3. At least eight years of experience as a judge.
4. Engaging in law research and teaching, with a senior academic title.

An arbitration commission shall prepare the list of arbitrators according to different specialities.

**Article 14** An arbitration commission shall be independent of any administrative organ, without any subordinate relationship with administrative organs. Neither would there be any subordinate relations thereof.

**Article 15** The China Arbitration Association is an institutional legal person with all the separate arbitration commissions as its members. The statute of the China Arbitration Association shall be formulated by the national congress of the association. The China Arbitration Association is a self-disciplinary organization for arbitration commissions to supervise over the latter and their members and arbitrators therein. The China Arbitration Association shall formulate arbitration rules according to this law and the civil procedure law.

### **CHAPTER THREE AGREEMENT FOR ARBITRATION**

**Article 16** An agreement for arbitration shall include the arbitration clauses stipulated in the contracts or other written agreements for arbitration reached before or after a dispute occurs.

An arbitration agreement shall contain the following:

1. The expression of application for arbitration.
2. Matters for arbitration.
3. The arbitration commission chosen.

**Article 17** An agreement for arbitration shall be invalid in one of the following cases:

1. The matters agreed for arbitration exceed the scope of arbitration provided by law.
2. Agreements concluded by people being incapable or restricted in civil acts.
3. An agreement forced upon a party by the other party by means of coercion.

**Article 18** Whereas an agreement for arbitration fails to specify or specify clearly matters concerning arbitration or the choice of arbitration commission, parties concerned may conclude a supplementary agreement. If a supplementary agreement cannot be reached, the agreement for arbitration is invalid.

**Article 19** The effect of an agreement for arbitration shall stand independently and shall not be affected by the alteration, dissolution, termination or invalidity of a contract. An arbitration tribunal has the right to establish the validity of a contract.

**Article 20** Whereas parties concerned have doubt on the validity of an agreement for arbitration, a request can be made to the arbitration commission for a decision or to the people's court for a ruling. If one party requests the arbitration commission for a decision while the other party requests the people's court for a ruling, the people's court shall pass a ruling. A doubt to the effectiveness of an arbitration agreement, should be raised before the first hearing at the arbitration tribunal.

### **CHAPTER FOUR ARBITRATION PROCEDURE**

#### **SECTION ONE APPLICATION AND ACCEPTANCE**

**Article 21** The parties concerned should meet the following requirements in applying for arbitration:

1. There is an agreement for arbitration.

2. There are specific requests for arbitration and facts and reasons.
3. The matters to be put to arbitration shall fall into the limits of the authority of the arbitration commission.

**Article 22** In applying for arbitration, the parties concerned shall submit the agreement and the application for arbitration and their copies.

**Article 23** The application for arbitration shall specify the following matters:

1. Name, sex, age, profession, work unit and residence of parties concerned; the name, residence of legal persons or other organizations and the name and position of the legal representatives or principal leading members.
2. The claimant's claim and the facts and evidence on which the claim is based.
3. Evidence and sources of evidence and name and residence of witnesses.

**Article 24** An arbitration commission shall accept the application within five days after the application is received if it deems the application conforming to requirements and notify the parties concerned. If it deems the application uncomformable to requirements, it shall notify the parties concerned in writing and state the reasons.

**Article 25** After an arbitration commission has accepted an arbitration application, it shall deliver the arbitration rules and the list of the panel of arbitrators to the claimant within the time limit prescribed in the arbitration rules and send the copies of the arbitration application and the arbitration rules and the list of the panel of arbitrators to the respondent. After the respondent has received the copy of the application for arbitration, the aforesaid respondent shall file a counter-claim with the arbitration commission. After the arbitration commission has received the counter-claim of the respondent, it shall deliver the counter-claim to the claimant within the time limit set in the arbitration rules. If a respondent fails to submit a counter-claim, it does not affect the arbitration proceedings.

**Article 26** When parties concerned have reached an agreement for arbitration but one party brings a suit in the people's court without notifying the court that there is an agreement for arbitration and, after the people's court has accepted the case, the other party submits the agreement for arbitration before the opening of the arbitration tribunal, the people's court shall reject the suit, except in the case that the agreement for arbitration is invalid. If the other party fails to raise objection to the acceptance of the case by the court before first hearing, it shall be regarded as having forfeited the agreement for arbitration and the people's court shall continue the hearing.

**Article 27** A claimant may give up or alter its claims. The respondent may acknowledge or refute the claims and has the right to raise counter-claims.

**Article 28** Whereas due to the acts of the other party or other reasons, the arbitration award cannot be or is hard to be executed, the parties concerned may apply for putting the property under custody. Whereas a claimant has applied for a custody to the property, the arbitration commission shall, according to the relevant provisions of the Civil Procedure Law, submit the application of the claimant to the people's court. Whereas there are errors in the application, the claimant shall compensate to the respondent for the losses arising from the custody to the property.

**Article 29** The parties concerned or legal attorneys may entrust lawyers or other attorneys to handle matters relating to arbitration. In the case where lawyers or other attorneys are entrusted with the handling of arbitration matters, the attorneys shall produce a power of attorney to the arbitration commission.

## SECTION TWO COMPOSITION OF ARBITRATION TRIBUNAL

**Article 30** An arbitration tribunal may be composed of three arbitrators or one arbitrator. In the case of three arbitrators, there should be a chief arbitrator.

**Article 31** Whereas the parties concerned agree that the arbitration tribunal is composed of three arbitrators, each of them shall choose one arbitrator or entrust the appointment to the chairman of the arbitration commission, with the third arbitrator jointly chosen by the parties concerned or appointed by the chairman of the arbitration commission jointly entrusted by the two parties. The third arbitrator shall be the chief arbitrator. Whereas the parties concerned agree to have the arbitration tribunal composed of one arbitrator, the two parties shall jointly choose the arbitrator or entrust the choice of the arbitrator to the chairman of the arbitration commission.

**Article 32** Whereas the parties concerned fail to decide on the composition of the arbitration tribunal or fail to choose arbitrators within the time limit prescribed in the arbitration rules, the chairman of the arbitration commission shall make the decision.

**Article 33** After the formation of an arbitration tribunal, the arbitration commission shall notify in writing the composition of the arbitration tribunal matters.

**Article 34** An arbitrator shall be withdrawn and the parties concerned have the right to request withdrawal, whereas:

1. The arbitrator is a party involved in the case or a blood relation or relative of the parties concerned or their attorneys.
2. the arbitrator has vital personal interests in the case.
3. the arbitrator has other relations with the parties or their attorneys involved in the case that might effect the fair ruling of the case.
4. the arbitrator meets the parties concerned or their attorneys in private or has accepted gifts or attended banquets hosted by the parties concerned or their attorneys.

**Article 35** In requesting for withdrawal, the parties concerned shall state reasons before the first hearing of the tribunal. If the reasons are known only after the first hearing, they may be stated before the end of the last hearing.

**Article 36** The withdrawal of an arbitrator shall be decided upon by the chairman of the arbitration commission. Whereas the chairman of the arbitration commission serves as an arbitrator, the withdrawal shall be decided upon collectively by the arbitration commission.

**Article 37** Whereas an arbitrator is withdrawn or unable to perform his duty due to other reasons, another arbitrator shall be chosen or appointed according to the relevant provisions of this law. Whereas re-selection or re-appointment of an arbitrator is made due to withdrawal, the parties concerned may apply for the re-

start of the arbitration proceedings, but the final decision shall be made by the arbitration tribunal. The arbitration tribunal may also make its own decision as to whether or not the arbitration proceedings will restart.

**Article 38** Whereas a case provided for in 4. of Article 34 of this law is found with an arbitration and the case is very serious or a case provided for in 6. of Article 58 of this law is found with an arbitrator, the arbitrator shall bear the legal responsibility according to law and the arbitration commission shall remove him from the panel of arbitrators.

### **SECTION THREE HEARING AND RULING**

**Article 39** An arbitration tribunal shall hold oral hearings to hear a case. Whereas the parties concerned agree not to hold oral hearings, the arbitration tribunal may give the award based on the arbitration application, claims and counter-claims and other documents.

**Article 40** The arbitration tribunal may not hear a case in open sessions. But when parties concerned agree to have the case heard in open sessions, the hearing may be held openly, except cases that involve State secrets.

**Article 41** The arbitration commission shall notify the parties concerned the date of hearing within the time limit prescribed in the arbitration rules. With justifiable reasons, a party concerned may request the postponement of the hearing within the time limit set in the arbitration rules. Whether or not the hearing is postponed shall be decided upon by the arbitration tribunal.

**Article 42** Whereas a claimant is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may be regarded as a withdrawal of claims. Whereas a respondent is absent from the hearing without justifiable reasons after receiving the written notice or withdraws from hearing half way without the prior permission by the arbitration tribunal, it may give the award by default.

**Article 43** The parties concerned shall provide evidence to support their respective claims. Whereas an arbitration tribunal deems it necessary to collect evidence, it may collect it on its own initiative.

**Article 44** Whereas an arbitration tribunal deems it necessary to have the specialized issues appraised, it may submit them to the appraisal department chosen by the parties concerned by agreement or to the appraisal department designated by the arbitration tribunal. At the request of the parties concerned or of the arbitration tribunal, the appraisal department shall send appraisers to the hearing. Parties concerned may, with the permission of the arbitration tribunal, raise questions to the appraisers.

**Article 45** Evidence shall be produced during the course of hearing and the parties concerned may question or substantiate their evidence.

**Article 46** Whereas evidences are vulnerable to be destroyed or missing and would be heard to be recovered, the parties concerned may apply to put the evidences on custody: When a party applies for custody of evidences, the arbitration commission shall submit the evidences of the party concerned to the people's court at the place where the evidences are obtained

**Article 47** The parties concerned have the right to debate during the process of hearing. At the end of the debate, the chief arbitrator or the sole arbitrator shall ask the parties concerned for the final statement.

**Article 48** The arbitration tribunal shall record the hearings in writing. Whereas the parties concerned or other people involved in the arbitration find something in their statements left out in the recording or misrecorded, they have the right to apply for correction. Whereas corrections are not made, the application shall be recorded. The written records of the hearings shall be signed or affixed with seals by the arbitrators, minute keepers, the parties concerned and other people participating in the arbitration.

**Article 49** After the parties have applied for arbitration, they may reach reconciliation on their own initiative. Whereas a reconciliation agreement has been reached, a request may be made to the arbitration tribunal for an award based on the reconciliation agreement or the application for arbitration may be withdrawn.

**Article 50** Whereas the parties concerned have gone back on their word after they have reached a reconciliation agreement, they may apply for arbitration according to the arbitration agreement.

**Article 51** The arbitration tribunal may reconcile a case before passing the award. Whereas the parties concerned accept the reconciliation effort of their own accord, the arbitration tribunal may conduct the reconciliation. Should the reconciliation fail, the arbitration tribunal shall pass the ruling in time. Whereas an agreement is reached through reconciliation, the arbitration tribunal shall compile the reconciliation document or make an award based on the results of the agreement. The document of reconciliation and the arbitral award are equally binding legally.

**Article 52** The document of reconciliation shall specify the arbitration claims and the result of the agreement between the parties concerned. The document of reconciliation shall be signed by the arbitrator and affixed with the seal of the arbitration commission before being delivered to the parties concerned. The document of reconciliation becomes legally binding immediately upon received by parties concerned. If any party concerned has gone back on his word after receiving the document of reconciliation, the arbitration tribunal shall make a timely ruling.

**Article 53** An arbitral award shall be decided by the majority of the arbitrators and the views of the minority can be written down in the record. Whereas a majority vote cannot be reached, the award shall be decided based on the opinion of the chief arbitrator.

**Article 54** The arbitral award shall specify the arbitration claims, facts in disputes, reasons for the award, result of the award, arbitration expenses and date of the award given. Whereas parties concerned object to the specification of the facts in dispute and reasons for the ruling, such specification and reasons may be omitted. The arbitral award shall be signed by arbitrators and affixed with the seals of the arbitration commission. An arbitrator holding differences of views may sign or may not sign the award.

**Article 55** In arbitrating disputes, the arbitration tribunal may pass the ruling on part of the facts that have already been made clear.

**Article 56** An arbitration tribunal should correct the errors involving context or computation and add things that have been omitted in the rulings in the arbitral

award. The parties concerned may apply for correction with the arbitration tribunal within 30 days after the receipt of the award.

**Article 57** The arbitral award takes legal effect upon its issuing.

#### **CHAPTER FIVE APPLICATION FOR CANCELLING ARBITRAL RULING**

**Article 58** If parties concerned have evidences to substantiate one of the following, they may apply for the cancellation of arbitral award with the intermediate people's court at the place where the arbitration commission resides.

1. There is no agreement for arbitration.
2. The matters ruled are out the scope of the agreement for arbitration or the limits of authority of an arbitration commission.
3. The composition of the arbitration tribunal or the arbitration proceedings violate the legal proceedings.
4. The evidences on which the ruling is based are forged.
5. Things that have an impact on the impartiality of ruling have been discovered concealed by the opposite party.
6. Arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

The people's court shall form a collegial bench to verify the case. Whereas one of the aforesaid cases should be found, arbitral award should be ordered to be cancelled by the court.

Whereas the people's court establishes that an arbitral award goes against the public interests, the award should be cancelled by the court.

**Article 59** An application filed by the parties concerned for the cancellation of an arbitral award should be sent within six months starting from the date of receipt of the award.

**Article 60** The people's court should rule to cancel the award or reject the application within two months after the application for cancellation of an award is received.

**Article 61** After the people's court has accepted an application for the cancellation of an arbitral award and deems it necessary for the arbitration tribunal to make a new award, it shall notify the arbitration tribunal for a new ruling within a certain limit of time and order the termination of the cancellation procedure. In the case when the arbitration tribunal refuses a new ruling, the people's court shall rule that the cancellation procedure be restored.

#### **CHAPTER SIX ENFORCEMENT**

**Article 62** The parties concerned shall execute the arbitral award. If one of the parties refuses to execute the award, the other party may apply for enforcement with the people's court according to the relevant provisions of the Civil Procedure Law. The people's court with which the application is filed should enforce it.

**Article 63** If the respondent has produced evidences to substantiate one of the following cases provided for in the second paragraph of Article 217 of the Civil

Procedure Law, the award shall not be enforced after the verification by the collegiate bench of the people's court.

**Article 64** Whereas one party applies for an enforcement while the other applies for a cancellation of a award, the people's court shall order the termination of the performance of the award. Whereas the people's court has ordered the cancellation of an award, it should also order the termination of performance of the award. Whereas an application for the cancellation of an award is rejected, the people's court shall order the restoration of the performance of the award.

### **Chapter Seven Special Provision on Arbitration Involving Foreign Interests**

**Article 65** The provisions in this chapter apply to arbitration of disputes arising from foreign economic cooperation and trade, transportation and maritime matters. Matters not covered by this chapter shall be handled according to other relevant provisions of this law.

**Article 66** Foreign arbitration commissions may be formed by the China International Chamber of Commerce. A foreign arbitration commission is composed of a chairman, a number of vice-chairmen and members. The chairman, vice-chairmen and members of a foreign arbitration commission shall be appointed by the China International Chamber of Commerce.

**Article 67** Members of a foreign arbitration commission may appoint arbitrators from among foreign nationals with specialized knowledge in law, economy and trade, science and technology.

**Article 68** Whereas the parties involved in a foreign arbitration case apply for the custody of evidences, the foreign arbitration commission shall submit the application to the intermediate people's court at places where the evidences are produced.

**Article 69** The foreign arbitration tribunal may write down its hearings on records or summary of records. The records shall be signed or affixed with the seals of the parties concerned and other people participating in the arbitration.

**Article 70** Whereas the claimant has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the People's court shall form a collegiate bench to verify the facts and order the cancellation of the award.

**Article 71** Whereas the respondent has produced evidences to substantiate one of the cases as provided for in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall form a collegiate bench to verify the facts and order the non-performance of the award.

**Article 72** Whereas a party involved in a foreign arbitration case applies for the enforcement of the award that has taken legal effect, the party shall apply directly with a foreign law court with the jurisdiction for recognition and enforcement if the party that should implement the award or its property is not in the territory of the People's Republic of China.

**Article 73** The rules for foreign arbitration shall be formulated by the China International Chamber of Commerce according to this law and the relevant provisions of the Civil Procedure Law.

## CHAPTER EIGHT SUPPLEMENTARY PROVISIONS

**Article 74** Whereas there is a limited effective period for the arbitration stipulated in the law, the limit shall apply. Whereas there is not a limited effective period for the arbitration stipulated by the law, the provisions about limits for proceedings shall apply.

**Article 75** Before the China Arbitration Association has formulated arbitration rules, arbitration commissions may formulate interim rules for arbitration according to this law and the relevant provisions of the Civil Procedure Law.

**Article 76** Parties concerned shall pay arbitration fees according to provisions. The schedule of arbitration fees shall be submitted for approval by the pricing administrative department.

**Article 77** The arbitration of labor disputes and disputes arising from the farm work contract inside the collective agricultural organizations shall be formulated separately.

**Article 78** Whereas the relevant arbitration regulations formulated before the enforcement of this law come into conflict with the provisions of this law, the provisions of this law shall prevail.

**Article 79** The arbitration organization set up in cities where the people's governments of the municipalities, provinces and autonomous regions are located and other cities which have districts shall be reorganized according to the relevant provisions of this law. Those not reorganized shall be terminated in one year's time starting from the date of the implementation of this law. Other arbitration organizations set up before the implementation of this law and are not in conformity to the provisions of this law shall be terminated starting from the date of the implementation of this law.

**Article 80** The law shall be implemented starting from September 1, 1995.

### Annex: Relevant Provisions of the Civil Procedure Law

**Article 217** Whereas the party against whom the application is made provides evidences which have proved that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, order not to perform the arbitration award:

1. The parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement for arbitration;
2. Matters proposed for arbitration are out of scope of the agreement for arbitration or the limits of authority of the arbitration agency;
3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the legal procedure;
4. The main evidences are not sufficient to substantiate the facts;
5. There are errors in the cited law; or
6. The arbitrators committed acts of malpractice for personal benefits and perverted the law in the arbitration of the case.

**Article 260** Whereas the person against whom the application is made provides evidences which prove that the arbitration award made by the foreign affairs arbitration agency of the People's Republic of China involves any of the following

circumstances, the people's court shall, after examination and verification by a collegial panel, order to stop the execution of the award:

1. The parties concerned have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement for arbitration;
2. The person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he is not held responsible;
3. The composition of the arbitration division or the procedure for arbitration is not in conformity with the rules of arbitration; or
4. Matters for arbitration are out of the scope of the agreement for arbitration or the limits of authority of the arbitration agency.