


Arbitration Law of the People's Republic of China

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Chapter I General Provisions

Article 1 This Law is formulated for the purpose of ensuring the impartial and prompt arbitration of economic disputes, protecting the legitimate rights and interests of the parties, and guaranteeing the sound development of the socialist market economy.

Article 2 Disputes arising out of contracts and other disputes relating to rights and interests in property between citizens, legal persons and other organizations that are equal subjects may be submitted to arbitration.

Article 3 Disputes coming under the following categories shall not be submitted to arbitration:

- (1) disputes arising from marriage, adoption, guardianship, support and inheritance;
- (2) administrative disputes that, according to law, should be handled by administrative authorities.

Article 4 The parties' submission to arbitration to settle their dispute shall be on the basis of both parties' free will and an arbitration agreement reached between them. Failing an arbitration agreement, the Arbitration Commission shall not accept the application for arbitration submitted by either of the parties.

Article 5 In case of an arbitration agreement, a suit brought before a people's court by either of the parties to the arbitration agreement shall not be accepted, except the arbitration agreement is null and void.

Article 6 The Arbitration Commission shall be selected by the parties by agreement. In arbitration, there shall be no level competency, nor territorial jurisdiction.

Article 7 In arbitration, disputes shall be settled on the basis of facts, in conformity with law and in a just and reasonable manner.

Article 8 The arbitration shall be conducted independently by virtue of law, and shall not be subject to interference by any administrative agency, public organization or individual.

Article 9 The arbitral award shall be final. Once an arbitral award has been made, neither the Arbitration Commission nor the people's court shall accept the application for arbitration submitted, or the suit brought, by either of the parties as to the same dispute. Where an arbitral award has been ordered to be rescinded or not to be executed by a

people's court according to law, either of the parties may submit the dispute to arbitration according to the arbitration agreement reconcluded between them, or bring a suit before a people's court.

Chapter II Arbitration Commissions and the Arbitration Association

Article 10 An Arbitration Commission may be set up in the capital city of a province, autonomous region or municipality directly under the Central Government, and also in other cities divided into districts if the circumstances require, with no need to set up at every administrative level. In setting up an Arbitration Commission, the people's government of the city as mentioned in the preceding paragraph shall arrange for the departments concerned and the relevant chambers of commerce to organize such Commission in a unified manner. For setting up an Arbitration Commission, the registration procedure shall be completed with the judicial administration of the province, autonomous region or municipality under the Central Government.

Article 11 An Arbitration Commission shall meet the following requirements:

- (1) has its own name, domicile and constitution;
- (2) has the necessary property;
- (3) has the personnel constituting the Commission; and
- (4) has appointed arbitrators.

The constitution of an Arbitration Commission shall be formulated in accordance with this Law.

Article 12 An Arbitration Commission shall be composed of one Chairman, two to four Vice-Chairmen and seven to eleven members. The posts of Chairman, Vice-Chairman and member of an Arbitration Commission shall be held by specialists in the fields of law, economy and trading and persons with practical experience. The specialists in law and in economy and trading shall not be less than two-thirds of the personnel of an Arbitration Commission.

Article 13 An Arbitration Commission shall appoint their arbitrators from among persons who are just and upright. An arbitrator shall have one of the following qualifications:

- (1) has been engaged in arbitration for eight years or more;
- (2) has practised law as a lawyer for eight years or more;
- (3) has served as a judge for eight years or more;
- (4) has been engaged in legal research or legal education and has a senior professional title; or
- (5) with an acquaintance with law, has been engaged in the professional work of economy and trading, etc. and has a senior professional title or has attained the equivalent professional level.

An Arbitration Commission shall draw up rolls of arbitrators according to different professions.

Article 14 Arbitration Commissions shall be independent of administrative agencies and there shall be no subordinate relationship between an Arbitration Commission and any administrative agency, nor that between the different Arbitration Commissions.

Article 15 China Arbitration Association shall be a social organization with the status of a legal person. All Arbitration Commissions shall be members of China Arbitration Association. The constitution of China Arbitration Association shall be formulated by the National Congress of the Members. China Arbitration Association shall be a self-

disciplining organization of Arbitration Commissions, and it shall conduct supervision over the undisciplined activities of Arbitration Commissions and their members and arbitrators. China Arbitration Association shall formulate arbitration rules in accordance with the relevant provisions of the Civil Procedure Law and this Law.

Chapter III Arbitration Agreement

Article 16 The term "arbitration agreement" shall mean either an arbitral clause in a contract or any arbitration agreement in other writing form concluded before or after the dispute arising. An arbitration agreement shall contain the following particulars:

- (1) the express intention of arbitration;
- (2) matters that may be submitted to arbitration; and
- (3) the Arbitration Commission appointed.

Article 17 An arbitration agreement shall be null and void if it comes under any of the following circumstances:

- (1) the agreed matters for arbitration are beyond the arbitral scope provided for by law;
- (2) one or more parties of the arbitration agreement are persons having no capacity for civil conduct or persons with limited capacity for civil conduct; or
- (3) the arbitration agreement was concluded as a result of coercion.

Article 18 Where they have not or not expressly appointed the matters for arbitration or the Arbitration Commission in their arbitration agreement, the parties may make an additional agreement; failing the additional agreement, the arbitration agreement shall be null and void.

Article 19 An arbitration agreement shall be independent of contracts, and no modification, rescission, termination or invalidation of a contract shall affect the effect of the arbitration agreement. The Arbitration Tribunal shall be entitled to confirm the effect of a contract.

Article 20 Where any party challenges the effect of an arbitration agreement, he may either submit it to the Arbitration Commission for a decision or bring it before the people's court for an order. If one party submits it to the Arbitration Commission for a decision while the other one brings it before the people's court for an order, the people's court shall rule an order. The party who intends to challenge the effect of the arbitration agreement shall put forward his challenge before the first hearing of the Arbitration Tribunal.

Chapter IV Arbitration Proceedings

Section 1 Application and Acceptance

Article 21 Where any party intends to submit a dispute to arbitration, the following requirements shall be met:

- (1) there is an arbitration agreement;
- (2) he has a concrete claim, together with facts and grounds; and
- (3) the dispute is within the arbitral scope of the Arbitration Commission.

Article 22 In applying for arbitration, a party shall submit to the Arbitration Commission the arbitration agreement, an application for arbitration and its duplicates.

Article 23 An application for arbitration shall include the following particulars:

- (1) the name, sex, age, occupation, place of work and domicile of the parties, or if the party is a legal person or other organizations, its name and domicile, and the name and position of its legal representative or of the person in charge;
- (2) the arbitration claim and the facts and grounds on which the claim is based; and
- (3) the evidence and its source, as well as the names and domiciles of witnesses.

Article 24 Within 5 days after receiving an application for arbitration, the Arbitration Commission shall, if it deems that the requirements for acceptance have been satisfied, accept the application and notify the party, or if it deems that the requirements for acceptance have not been satisfied, notify the party in writing that the application has been rejected and provide due explanation.

Article 25 After accepting the application, the Arbitration Commission shall, within the time limits as provided for by the arbitration rules, serve the Claimant with the arbitration rules and the roll of arbitrators, and serve the Respondent with a duplicate of the application for arbitration, as well as the arbitration rules and the roll of arbitrators. After receiving the duplicate of the application for arbitration, the Respondent shall, within the time limits as provided for by the arbitration rules, submit his defence to the Arbitration Commission. After receiving the defence, the Arbitration Commission shall, within the time limits as provided for by the arbitration rules, serve the Claimant with a duplicate of the defence. Failure by the Respondent to file a bill of defence shall not prevent the arbitration proceedings from being carried out.

Article 26 In the event that a party, despite of the existence of an arbitration agreement, brings a lawsuit before a people's court without a statement of the existence of the agreement, and the people's court has accepted it as a case, if the other party submits the arbitration agreement before the first hearing of the court, the people's court shall reject the suit with the exception that the arbitration agreement is null and void; if the other party does not raise any challenge to the jurisdiction of the court before the first hearing, he shall be deemed to have abandoned the arbitration agreement, and the people's court shall continue its proceedings.

Article 27 The Claimant may abandon or modify his claim. The Respondent may either accept or refuse the claim, and he shall be entitled to file his counter-claim.

Article 28 Where it becomes impossible or difficult to execute an arbitral award because of the acts of the other party or for other reasons, a party may apply for economic preservative measures. Where a party applies for economic preservative measures, the Arbitration Commission shall refer it to the people's court in accordance with the relevant provisions of the Civil Procedure Law. If the application comes to be false, the applicant shall compensate the other party for any loss of property due to the economic preservative measures.

Article 29 A party or his agent ad litem may entrust a lawyer or other agent to act on his behalf in arbitration. Those who intend to entrust a lawyer or other agent to act on his behalf in arbitration shall submit to the Arbitration Commission a power of attorney.

Section 2 Formation of Arbitration Tribunal

Article 30 An Arbitration Tribunal may consist of either three or a sole arbitrator. Where an Arbitration Tribunal consists of three arbitrators, a presiding arbitrator shall be appointed.

Article 31 Where the parties have agreed that the Arbitration Tribunal shall be composed of three arbitrators, they shall respectively select or respectively authorize the Chairman of the Arbitration Commission to appoint an arbitrator, and the third arbitrator shall be selected jointly by the parties or be appointed by the Chairman of the Arbitration Commission with the authorization jointly by the parties. The third arbitrator shall be the presiding arbitrator. Where the parties have agreed that the Arbitration Tribunal shall be composed of a sole arbitrator, that arbitrator shall be selected jointly by the parties or be appointed by the Chairman of the Arbitration Commission with the authorization jointly by the parties.

Article 32 Where the parties, within the time limits as provided for by the arbitration rules, fail to agree on the formation of the Arbitration Tribunal or fail to select the arbitrator(s), the formation of the Arbitration Tribunal or the arbitrator(s) shall be decided or appointed by the Chairman of the Arbitration Commission.

Article 33 After an Arbitration Tribunal has been formed, the Arbitration Commission shall notify the formation of the Arbitration Tribunal in writing to the parties.

Article 34 Where any arbitrator comes under any of the following circumstances, he shall withdraw from his office, also the parties shall have the right to make a request for a withdrawal of him from his office:

- (1) he is a party or a near relative of a party or of the agent of a party to the case;
- (2) he has a personal interest in the case;
- (3) he has other relationship with a party or the agent of a party to the case that cause doubts to his impartiality; or
- (4) he has secretly met with a party or the agent of a party, or accepted lavish dinner and gift offered by a party or the agent of a party.

Article 35 The party who challenges an arbitrator shall state the reason and make a request for withdrawal before the first hearing. Where the reason for challenge becomes known after the first hearing, the request for withdrawal may be made before the end of the last hearing.

Article 36 The Chairman of the Arbitration Commission shall decide on the withdrawal of an arbitrator; the Arbitration Commission shall decide on the withdrawal of the Chairman of the Arbitration Commission as an arbitrator.

Article 37 Where an arbitrator cannot perform his functions because of his withdrawal or for other reasons, a substitute arbitrator shall be selected or appointed in accordance with the provisions of this Law. After the substitute arbitrator has been selected or appointed upon the withdrawal, the parties may request that the arbitral proceedings in progress begin anew, and the Arbitration Tribunal shall decide to permit or not; the Arbitration Tribunal may also decide of itself whether or not the arbitral proceedings shall begin anew.

Article 38 Where any arbitrator comes under the circumstances as mentioned in Item (4) of Article 34 of this Law and the case is serious, or under the circumstances as mentioned in Item (6) of Article 58 of this Law, he shall be investigated for legal responsibilities according to law, and the Arbitration Commission shall remove his name from the roll of arbitrators.

Section III Hearing and Award

Article 39 Arbitration shall be conducted by means of oral hearing. Where the parties agree to omit oral hearing, the Arbitration Tribunal may make an award according to the application for arbitration, the bill of defence and other papers.

Article 40 Arbitration shall be conducted in camera. Where the parties agree on open hearing, it may be done so, with the exception that any state secrets are involved.

Article 41 The Arbitration Commission shall, within the time limits as provided for by the arbitration rules, notify both sides of the parties the date of oral hearing. With justified reasons, a party may, within the time limits as provided for by the arbitration rules, request for an postponement of the date of oral hearing. The Arbitration Tribunal shall decide on the request.

Article 42 The Applicant who has been notified in writing to but fails to appear at the hearing without any justified reason or leaves the session in the progress of the hearing without permission of the Arbitration Tribunal shall be deemed to withdraw his application for arbitration. Where the Respondent who has been notified in writing fails to appear at the hearing without any justified reason or leaves the session in the progress of the hearing without permission of the Arbitration Tribunal, the Arbitration Tribunal may make an award by default.

Article 43 The parties shall give evidence for their own arguments. The Arbitration Tribunal may, when it considers necessary, make investigation and collect evidence on its own initiative.

Article 44 The Arbitration Tribunal may, when it considers necessary, refer a specialized issue for appraisal to an appraisal agency agreed upon by the parties or appointed by the Tribunal itself. The appraisal agency shall, on the request of the party or the demand of the Arbitration Tribunal, send an appraiser to attend the hearing. With permission of the Arbitration Tribunal, the parties may put questions to the appraiser.

Article 45 Evidence shall be presented during the hearings, and the parties may make challenges thereon.

Article 46 Under circumstances where there is a likelihood that evidence may be destroyed or lost or difficult to obtain later on, the parties may apply for the evidence to be preserved. Where a party applies for any evidence to be preserved, the Arbitration Commission shall pass the application on to the basic people's court at the place of the evidence.

Article 47 The parties shall have the right to carry on debate in the course of arbitration. The presiding arbitrator or the sole arbitrator shall, at the end of the debate, seek the final statements of the parties.

Article 48 The Arbitration Tribunal shall make a written record of the hearing. If any party or any other participant in the hearing holds that there is any omission or error in the records of his statements, he shall have the right to apply for supplement or correction. The application shall be recorded if it is rejected. The written record shall be signed or sealed by the arbitrator(s), recorder, parties and any other participants in the hearing.

Article 49 The parties may make reconciliation of themselves after they have submitted their dispute to arbitration. Where a settlement is reached through reconciliation, the parties may either ask the Arbitration Tribunal to make an award according to the

agreement on reconciliation or withdraw the application for arbitration.

Article 50 Where he retracts after an agreement on reconciliation has been reached, the party may apply for arbitration again by virtue of the arbitration agreement after the original application for arbitration has been withdrawn.

Article 51 The Arbitration Tribunal may conduct conciliation first before making an award. Where the parties themselves wish to make a settlement through conciliation, the Arbitration Tribunal shall conduct conciliation. Failing settlement through conciliation, an award shall be made without delay. Where a conciliation agreement has been reached, the Arbitration Tribunal shall either draw up a conciliation statement or give an award according to the conciliation agreement. The conciliation statement and the award shall be of equal legal effect.

Article 52 The arbitral claim and the settlement agreed on by the parties shall be stated in a conciliation agreement. The conciliation statement shall be signed by the arbitrator(s) with the seal of the Arbitration Commission and then be served to both sides of the parties. The conciliation statement shall become effective as soon as both sides of the parties have signed for receipt thereof. Where any party retracts before he signs for receipt of the conciliation statement, the Arbitration Tribunal shall make an award without delay.

Article 53 The award shall be decided by the majority of the arbitrators, while the minority opinion may be put in a written record. Where no majority is obtainable, the award shall be decided by the presiding arbitrator.

Article 54 The award shall be written into the arbitral claim, the facts of the dispute, the reasons for the decisions, the result of the award, the arbitration costs to be borne and the date on which the award was made. The facts of the dispute and reasons for the award may be omitted if they are agreed to be by the parties. The award shall be signed by the arbitrator(s) with the seal of the Arbitration Commission. The arbitrator of the minority opinion may either sign or not.

Article 55 The Arbitration Tribunal may, in the process of the arbitration, make an interlocutory award first on any facts of the case if those facts are already evident.

Article 56 The Arbitration Tribunal shall correct any literal error and any error in computation, and add matters that have been adjudicated but omitted to write in the award; any of the parties may, within 30 days after receiving the award, request the Arbitration Tribunal to make a correction or addition.

Article 57 The award shall become effective as of the date of making.

Chapter V Application for Rescission of Award

Article 58 Any party who can give evidence to prove that the award comes under one of the following circumstances may apply to the intermediate people's court of the same region where the Arbitration Commission is located for rescission of the award:

- (1) there was no arbitration agreement between the parties;
- (2) the matters as to which the award was made were beyond the scope as specified in the arbitration agreement or beyond the jurisdiction of the Arbitration Commission;
- (3) the formation of the Arbitration Tribunal or the arbitral proceedings were contrary to the statutory procedure;

(4) the evidence on which the award was made was fabricated;
(5) the other party withheld some evidence and the withholding was enough to impair the impartiality of the award; or
(6) the arbitrator, while conducting arbitration of the case, asked for or accepted bribes, played favouritism and committed irregularities, or conducted arbitration by twisting the law. Where the people's court, by forming a collegial panel, verifies upon investigation that the award was made under any of the circumstances as mentioned in the preceding paragraph, it shall make an order to rescind the award. Where the people's court verifies that an award is prejudicial to the public interests, it shall make an order to rescind the award.

Article 59 The application of the parties for rescission of an award shall be put forward within a period of six months after receiving the award.

Article 60 the people's court shall make an order to rescind the award or to reject the application within a period of two months after accepting an application for rescission of an award.

Article 61 After accepting an application for rescission of an award, if the people's court holds that it may be rearbitrated by the Arbitration Tribunal, it shall notify the Arbitration Tribunal to make a rearbitration within a certain period of time limit, and in the meantime, make an order to suspend the rescission procedure. Where the Arbitration Tribunal refuses to make a rearbitration, the people's court shall make an order to resume the rescission procedure.

Chapter VI Execution

Article 62 The parties shall perform the award. Where any party fails to perform the award, the other party may, in accordance with the relevant provisions of the Civil Procedure Law, apply to the people's court for execution. The people's court which is applied to shall make an execution.

Article 63 In case that the person against whom an application for execution is made gives evidence to prove that the award comes under any of the circumstances as mentioned in the Second Paragraph, Article 217, of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel, make an order to disallow the award.

Article 64 In case that one party applies for execution of an award while the other one applies for rescission of the award, the people's court shall make an order to suspend the execution. Where it makes an order to rescind an award, the people's court shall make an order to terminate the execution. Where the application for rescission of an award is ordered to be rejected, the people's court shall make an order to resume the execution.

Chapter VII Special Provisions for Foreign-related Arbitration

Article 65 Arbitration of disputes arising from foreign-related economic relations and trading, transport and maritime activities shall apply the provisions of this Chapter. Failing provisions in this Chapter, the other relevant provisions of this Law shall apply.

Article 66 Foreign-Related Arbitration Commissions may be organized and established by China Chamber of International Commerce. A Foreign-Related Arbitration Commission shall be composed of one Chairman, several Vice-Chairmen and members. The Chairman, Vice-Chairmen and members of a Foreign-related Arbitration Commission may be appointed by China Chamber of International Commerce.

Article 67 A Foreign-Related Arbitration Commission may engage arbitrators from among foreign persons with specialized knowledge of law, economics and trading, and science and technology, etc.

Article 68 Where a party to a foreign-related arbitration applies for the evidence to be preserved, the Foreign-Related Arbitration Commission shall pass the application on to the intermediate people's court at the place of the evidence.

Article 69 The Arbitration Tribunal for foreign-related arbitration may make a written record of the hearing or of the main points thereof, and the main points may be signed or sealed by the parties and other participants in the arbitration.

Article 70 Where any party gives evidence to prove that the award of the foreign-related arbitration comes under any of the circumstances as mentioned in the First Paragraph, Article 260, of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel, make an order to rescind the award.

Article 71 Where the person against whom an application for execution is made gives evidence to prove that the award of the foreign-related arbitration comes under any of the circumstances as mentioned in the First Paragraph, Article 260, of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel, make an order to disallow the award.

Article 72 For applying for execution of a legally effective award made by an Foreign-Related Arbitration Commission, a party shall, where the person against whom the application is to be made or that person's property is not within the territory of the People's Republic of China, directly apply for recognition and execution to a jurisdictional foreign court.

Article 73 Foreign-related arbitration rules may be formulated by China Chamber of International Commerce in accordance with the relevant provisions of this Law and of the Civil Procedure Law.

Chapter VIII Supplementary Provisions

Article 74 Where any provisions of law have been made to the limitation of arbitration, those provisions shall apply. Failing such provisions, the limitation of action shall apply to arbitration.

Article 75 Before the arbitration rules have been made by China Arbitration Association, the Arbitration Commission may, in accordance with the relevant provisions of this Law and of the Civil Procedure Law, make interim arbitration rules.

Article 76 Parties shall pay arbitration fees according to stipulations. Measures for charging arbitration fees shall be submitted to the pricing administration for verification and approval.

Article 77 Regulations concerning arbitration of labour disputes and agricultural contractual disputes arising between contractors and rural economic collectives shall be formulated separately.

Article 78 Where any provisions concerning arbitration made before the enforcement of this Law conflict with provisions of this Law, this Law shall prevail.

Article 79 Any arbitration institution that is established in the capital city of province, autonomous region or municipality directly under the Central Government or in any other city divided into districts before the enforcement of this Law shall be re-organized in accordance with the relevant provisions of this Law; those which are not re-organized shall close down upon the expiration of a period of one year from the effective date of this Law. Any other arbitration institutions established before the enforcement of this Law which fails to accord with the provisions of this Law shall close down on the effective date of this Law.

Article 80 This Law shall become effective on September 1, 1995.

Annex: The Relevant Articles of the Civil Procedure Law

Article 217 If a party against whom the application is made furnishes proof that the arbitration award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, make a written order not to allow the enforcement:

- (1) the parties have had no arbitration clause in their contract, nor have subsequently reached a written agreement on arbitration;
- (2) the matters dealt with by the award fall outside the scope of the arbitration agreement or are matters which the arbitral organ has no power to arbitrate;
- (3) the composition of the arbitration tribunal or the procedure for arbitration contradicts the procedure prescribed by the law;
- (4) the main evidence for ascertaining the facts is insufficient;
- (5) there is definite error in the application of the law; or
- (6) the arbitrators have committed embezzlement, accepted bribes or done malpractice for personal benefits or perverted the law in the arbitration of the case.

Article 260 A people's court shall, after examination and verification by a collegial panel of the court, make a written order not to allow the enforcement of the award rendered by an arbitral organ of the People's Republic of China handling cases involving foreign element, if the party against whom the application for enforcement is made furnishes proof that:

- (1) the parties have not had an arbitration clause in the contract, nor have subsequently reached a written arbitration agreement;
- (2) the party against whom the application for enforcement is made was not given notice for the appointment of an arbitrator or for the inception of the arbitration proceedings or was unable to present his case due to causes for which he is not responsible;
- (3) the composition of the arbitration tribunal or the procedure for arbitration was not in conformity with the rules of arbitration; or
- (4) the matters dealt with by the award fall outside the scope of the arbitration agreement or which the arbitral organ was not empowered to arbitrate.

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