

Interpretation of the Supreme People's Court concerning Some Issues on Application of the Arbitration Law of the People's Republic of China

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(Adopted at the 1375th meeting of the Judicial Committee of the Supreme People's Court on December 26, 2005, Interpretation No. 7 [2006] of the Supreme People's Court)

In accordance with the "Arbitration Law of the People's Republic of China", the "Civil Litigation Law of the People's Republic of China" and other legal provisions, we hereby give our interpretation as follows concerning some issues on application of law for the people's courts to try arbitration-related cases:

Article 1 The term "agreements for arbitration in other written forms" as prescribed in Article 16 of the Arbitration Law shall include the agreements on resorting to arbitration which are reached in the forms of contracts, letters or data message (including telegraph, telefax, fax, electronic data interchange and e-mail), etc.

Article 2 Where the parties concerned synoptically agree that the matters to be arbitrated are contractual disputes, the disputes arising out of formation, effectiveness, modification, assignment, performance, liabilities for breach, interpretation, rescission, etc. of the contract may all be ascertained as matters to be arbitrated.

Article 3 Where the name of an arbitration institution as stipulated in the agreement for arbitration is inaccurate, but the specific arbitration institution can be determined, it shall be ascertained that the arbitration institution has been selected.

Article 4 Where an agreement for arbitration only stipulates the arbitration rules applicable to the dispute, it shall be deemed that the arbitration institution is not stipulated, unless the parties concerned reach a supplementary agreement or may determine the arbitration institution according to the arbitration rules agreed upon between them.

Article 5 Where an agreement for arbitration stipulates two or more arbitration institutions, the parties concerned may choose either arbitration institution upon agreement when applying for arbitration; if the parties concerned cannot agree upon the choice of the arbitration institution, the agreement for arbitration shall be ineffective.

Article 6 Where an agreement for arbitration stipulates that the disputes shall be arbitrated by the arbitration institution at a certain locality and there is only one arbitration institution in this locality, the arbitration institution shall be deemed as the stipulated arbitration institution. If there are two or more arbitration institutions, the parties

concerned may choose one arbitration institution for arbitration upon agreement; if the parties concerned fail to agree upon the choice of the arbitration institution, the agreement for arbitration shall be ineffective.

Article 7 Where the parties concerned agree that they may either apply to the arbitration institution for arbitration or bring a lawsuit with people's court for settlement of dispute, the agreement for arbitration shall be ineffective, unless after one party applies to the arbitration institution for arbitration, the other party fails to propose any objection within the period prescribed in Paragraph 2 of Article 20 of the Arbitration Law.

Article 8 Where a party concerned is merged or divided after concluding an agreement for arbitration, the agreement for arbitration shall be binding upon the successor of its rights and obligations.

Where a party concerned has died after concluding an agreement for arbitration, the agreement for arbitration shall be binding upon the inheritor who inherits his rights and obligations in the matter to be arbitrated.

The circumstances prescribed in the preceding two paragraphs shall not be applicable if the parties concerned have otherwise agreed between each other when concluding the agreement for arbitration.

Article 9 Where the credits or debts are entirely or partially assigned, the agreement for arbitration shall be binding upon the assignee, unless the parties concerned have otherwise agreed, or the assignee explicitly objects to the assignment of the credits or debts or does not know there is a separate agreement for arbitration.

Article 10 Where a contract does not become effective or is cancelled after being formed, the effectiveness of the agreement for arbitration shall be ascertained under Paragraph 1 of Article 19 of the Arbitration Law.

Where the parties concerned reach an agreement for arbitration regarding a dispute when concluding the contract, the effectiveness of the agreement for arbitration shall not be impacted if the contract is not formed.

Article 11 Where a contract stipulates that an effective arbitration clause in another contract or document shall apply in order to settle the disputes, the parties concerned shall, when a contractual dispute arises, resort to arbitration according to the said arbitration clause.

Where a relevant international treaty applicable to contracts involving foreign interests contains an arbitration provision, the parties concerned shall, when a contractual dispute arises, resort to arbitration in accordance with the arbitration provision in the international treaty.

Article 12 A case in which a party concerned applies to the people's court for confirmation of the effectiveness of an agreement for arbitration shall be under the jurisdiction of the intermediate people's court at the locality of the arbitration institution agreed upon in the agreement for arbitration; if the arbitration institution in the agreement for arbitration is not clearly stipulated, the said case shall be under the jurisdiction of the intermediate people's court at the locality of conclusion of the agreement for arbitration or at the respondent's domicile.

A case on applying for confirmation of the effectiveness of an agreement for arbitration involving foreign interests shall be under the jurisdiction of the intermediate people's court at the locality of the arbitration institution agreed upon in the agreement for arbitration, at the locality of conclusion of the agreement for arbitration, or at the claimant's or respondent's domicile.

A case on the effectiveness of an agreement for arbitration of a maritime dispute shall be under the jurisdiction of the maritime court at the locality of the arbitration institution agreed upon in the agreement for arbitration, at the locality of conclusion of the agreement for arbitration, or at the claimant's or respondent's domicile; if there is no maritime court at the above-mentioned places, it shall be under the jurisdiction of the nearest maritime court.

Article 13 As required by Paragraph 2 of Article 20 of the Arbitration Law, if a party concerned fails to object to the effectiveness of the agreement for arbitration prior to the first hearing in the arbitral tribunal, and then applies to the people's court for confirming the agreement for arbitration as ineffective, the application shall not be accepted by the people's court.

Where, after an arbitration institution makes a decision on the effectiveness of an agreement for arbitration, a party concerned applies to the people's court for confirming the agreement for arbitration as effective or applies for revoking the arbitration institution's decision, the application shall not be accepted by the people's court.

Article 14 The term "the first hearing" as mentioned in Article 26 of the Arbitration Law shall refer to the first trial in court, which is organized by the people's court after expiry of the period for defense, excluding all procedural activities prior to the trial.

Article 15 A people's court shall, when trying a case for confirmation of the effectiveness of an agreement for arbitration, form a collegial panel to make examination, and shall inquire of the parties concerned.

Article 16 The examination of the effectiveness of an agreement for arbitration which involves foreign interests shall be governed by the laws agreed upon between the parties concerned; if the parties concerned did not agree upon the applicable laws but have agreed upon the place of arbitration, the laws at the place of arbitration shall apply; if they neither agreed upon the applicable laws nor agreed upon the place of arbitration or the place of arbitration is not clearly agreed upon, the laws at the locality of the court shall apply.

Article 17 Where a party concerned applies for revocation of an arbitral award on a ground not prescribed in Article 58 of the Arbitration Law or Article 260 of the Civil Litigation Law, the application shall not be supported by the people's court.

Article 18 The term "no agreement for arbitration" as prescribed in Item (1) of Paragraph 1 of Article 58 of the Arbitration Law shall refer to that the parties concerned did not reach an agreement for arbitration. If the agreement for arbitration is ascertained as ineffective or is revoked, it shall be deemed that there is no agreement for arbitration.

Article 19 Where a party concerned applies for revocation of an arbitral award on the ground that the matter under arbitration goes beyond the scope of the agreement for arbitration, and the application is found true from examination, the people's court shall revoke the excessive part in the arbitral award. If, however, the excessive part is inseparable from other matter under arbitration, the people's court shall revoke the arbitral award.

Article 20 The term "violation of legal procedures" as prescribed in Article 58 of the Arbitration Law shall refer to violation of the arbitration procedures prescribed in the Arbitration Law or a circumstance under which the arbitration rules chosen by the parties concerned might affect the correct award for the case.

Article 21 Where a case regarding which a party concerned applies for revoking the domestic arbitral award is under any of the following circumstances, the people's court may, in accordance with Article 61 of the Arbitration Law, notify the arbitral tribunal to arbitrate the case for a second time within a time limit:

(1) The evidence on which the arbitral award is based is forged; or

(2) The other party concealed any evidence, which is enough to impact the impartial award.

The people's court shall state in the notice the specific ground for requiring re-arbitration.

Article 22 Where an arbitral tribunal fails to begin the re-arbitration within the time limit specified by the people's court, the people's court shall rule to terminate the revocation procedures; if the re-arbitration is not begun, the people's court shall rule to resume the revocation procedures.

Article 23 Where a party concerned is dissatisfied with a re-arbitration award, it may, within six months as of service of the re-arbitration award, apply to the people's court for revocation of the re-arbitration award in accordance with Article 58 of the Arbitration Law.

Article 24 With respect to a case regarding which a party concerned applies for revocation of the arbitral award, the people's court shall form a collegial panel to try it, and inquire of the parties concerned.

Article 25 Where, after a people's court accepts the application filed by a party concerned for revocation of the arbitral award, the other party applies for enforcement of the same arbitral award, the people's court that accepts the said enforcement application shall rule to suspend the enforcement after the acceptance.

Article 26 Where, after the application filed by a party concerned to the people's court for revocation of the arbitral award is rejected, the said party proposes its demur to no enforcement in the enforcement procedures on the same ground, such a demur shall not be supported by the people's court.

Article 27 Where a party concerned did not object to the effectiveness of an agreement for arbitration in the arbitration procedures, and requests revocation of the arbitral award or proposes demur to no enforcement on the ground of ineffectiveness of the agreement for arbitration after the arbitral award is rendered, the people's court shall not support its request or demur.

Where a party concerned objects to the effectiveness of an agreement for arbitration in the arbitration procedures, but requests revocation of the arbitral award or proposes demur to no enforcement on that ground after the arbitral award is rendered, the request or demur shall be supported by the people's court if it is found from examination to conform to Article 58 of the Arbitration Law or Article 217 or 260 of the Civil Litigation Law.

Article 28 Where a party concerned requests no enforcement of a letter of arbitral reconciliation or an arbitral award rendered on the basis of the reconciliation agreement between the parties, such a request shall not be supported by the people's court.

Article 29 A case regarding which a party concerned applies for enforcement of the arbitral award shall be under the jurisdiction of the intermediate people's court at the domicile of the party under enforcement or at the locality of the properties to be enforced.

Article 30 When actually required by the trial of a case on revocation or enforcement of an arbitral award, the people's court may ask the arbitration institution to make an explanation or may consult arbitration files from the relevant arbitration institution.

The ruling rendered by a people's court in the process of handling a case involving arbitration may be served on the relevant arbitration institution.

Article 31 The present Interpretation shall come into force as of the date of promulgation.

In case any previous judicial interpretation promulgated by the present court is inconsistent with the present Interpretation, the present Interpretation shall prevail.