

China - Arbitration Law, 1994

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Arbitration Law of the People's Republic of China 1
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Chapter 1 - General Provisions 2

Article 1 3

This Law is formulated in order to ensure the impartial and prompt arbitration of economic disputes, to protect the legitimate rights and interests of the parties and to safeguard the sound development of the socialist market economy. 4

Article 2 5

Contractual disputes and other disputes over rights and interests in property between citizens, legal persons and other organizations that are equal subjects may be arbitrated. 6

Article 3 7

The following disputes may not be arbitrated: 8

(1) Marital, adoption, guardianship, support and succession disputes; 9

(2) administrative disputes that shall be handled by administrative organs as prescribed by law. 10

Article 4 11

The parties submission to arbitration to resolve their dispute shall be on the basis of both parties free will and an arbitration agreement reached between them. If a party applies for arbitration in the absence of an arbitration agreement, the arbitration commission shall not accept the case. 12

Article 5 13

If the parties have concluded an arbitration agreement and one party institutes an action in a peoples court, the peoples court shall not accept the case, unless the arbitration agreement is null and void. 14

Article 6

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The arbitration commission shall be selected by the parties through agreement.

16

In arbitration, there shall be no jurisdiction by level and no territorial jurisdiction.

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Article 7

18

In arbitration, disputes shall be resolved on the basis of facts, in compliance with the law and in an equitable and reasonable manner.

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Article 8

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Arbitration shall be carried out independently according to law and shall be free from interference of administrative organs, public organizations or individuals.

21

Article 9

22

A system of a single and final award shall be practiced for arbitration. If a party applies for arbitration to an arbitration commission or institutes an action in a peoples court regarding the same dispute after an arbitration award has been made, the arbitration commission or the peoples court shall not accept the case.

23

If an arbitration award is set aside or its enforcement is disallowed by the peoples court in accordance with the law, a party may apply for arbitration on the basis of a new arbitration agreement reached between the parties, or institute an action in the peoples court, regarding the same dispute.

24

Chapter II - Arbitration Commissions and the Arbitration Association

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Article 10

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Arbitration commissions may be established in municipalities directly under the Central Government and in cities that are the seats of the peoples governments of provinces or autonomous regions. They may also be established in other cities divided into districts, according to need. Arbitration commissions shall not be established at each level of the administrative divisions.

27

Peoples governments of the cities referred to in the preceding paragraph shall arrange for the relevant departments and chambers of commerce to organize arbitration commissions in a unified manner.

28

The establishment of an arbitration commission shall be registered with the administrative department of justice of the relevant province, autonomous region or municipality directly under the Central Government.

29

Article 11

30

An arbitration commission shall meet the conditions set forth below:

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(1) To have its own name, domicile and charter;

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(2) To have the necessary property;

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(3) To have the personnel that are to form the commission; and

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(4) To have appointed arbitrators.

35

The charter of an arbitration commission shall be formulated in accordance with this Law.

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Article 12

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An arbitration commission shall be composed of one chairman, two to four vice chairmen and seven to eleven members.

38

The offices of chairman, vice chairman and members of an arbitration commission shall be held by experts in the field of law, economy and trade and persons with practical working experience. Experts in the field of law, economy and trade shall account for at least two thirds of the people forming an arbitration commission.

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Article 13

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An arbitration commission shall appoint its arbitrators from among righteous and upright persons.

41

An arbitrator shall meet one of the conditions set forth below:

42

(1) To have been engaged in arbitration work for at least eight years;

43

(2) To have worked as a lawyer for at least eight years;

44

(3) To have served as a judge for at least eight years;

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(4) To have been engaged in legal research or legal education, possessing a senior professional title; or

46

(5) To have acquired the knowledge of law, engaged in the professional work in the field of economy and trade, etc., possessing a senior professional title or having an equivalent professional level.

47

An arbitration commission shall have a register of arbitrators in different specializations.*

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Article 14

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Arbitration commissions shall be independent from administrative organs and there shall be no subordinate relationships between arbitration commissions and administrative organs. There shall also be no subordinate relationships between arbitration commissions.

50

Article 15

51

China Arbitration Association is a social organization with the status of a legal person. Arbitration commissions are members of China Arbitration Association. The charter of China Arbitration Association shall be formulated by its national congress of members.

52

China Arbitration Association is a self-disciplined organization of arbitration commissions. It shall, in accordance with its charter, supervise arbitration commissions and their members and arbitrators as to whether or not they breach discipline.

53

China Arbitration Association shall formulate rules of arbitration in accordance with this Law and the relevant provisions of the Civil Procedure Law.

54

Chapter III - Arbitration Agreement

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Article 16

56

An arbitration agreement shall include arbitration clauses stipulated in the contract and agreements of submission to arbitration that are concluded in other written forms before or after disputes arise.

57

An arbitration agreement shall contain the following particulars:

58

- (1) an expression of intention to apply for arbitration;
- (2) matters for arbitration; and
- (3) a designated arbitration commission.

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Article 17

62

An arbitration agreement shall be null and void under one of the following circumstances:

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- (1) The agreed matters for arbitration exceed the range of arbitrable matters as specified by law;
- (2) One party that concluded the arbitration agreement has no capacity for civil conducts or has limited capacity for civil conducts; or
- (3) One party coerced the other party into concluding the arbitration agreement.

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Article 18

67

If an arbitration agreement contains no or unclear provisions concerning the matters for arbitration or the arbitration commission, the parties may reach a supplementary agreement. If no such supplementary agreement can be reached, the arbitration agreement shall be null and void.

68

Article 19

69

An arbitration agreement shall exist independently. The amendment, rescission, termination or invalidity of a contract shall not affect the validity of the arbitration agreement.

70

The arbitration tribunal shall have the power to affirm the validity of a contract.

71

Article 20

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If a party challenges the validity of the arbitration agreement, he may request the arbitration commission to make a decision or apply to the peoples court for a ruling. If one party requests the arbitration commission to made a decision and the other party applies to the peoples court for a ruling, the peoples court shall give a ruling.

73

A party's challenge of the validity of the arbitration agreement shall be raised prior to the arbitration tribunals first hearing.

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Chapter IV - Arbitration Procedure

75

Section 1 - Application and Acceptance

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Article 21

77

A partys application for arbitration shall meet the following requirements:

78

(1) There is an arbitration agreement;

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(2) There is a specific arbitration claim and there are facts and reasons therefor; and

80

(3) The application is within the scope of the arbitration commissions acceptability.

81

Article 22

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To apply for arbitration, a party shall submit to the arbitration commission the written arbitration agreement and a written application for arbitration together with copies thereof.

83

Article 23

84

A written application for arbitration shall specify the following particulars;

85

(1) The name, sex, age, occupation, work unit and domicile of each party, or the name and domicile of legal persons or other organizations and the names and positions of their legal representatives or chief responsible persons;

86

(2) the arbitration claim and the facts and reasons on which it is based; and

87

(3) the evidence, the source of the evidence and the names and domiciles of witnesses.

88

Article 24

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When an arbitration commission receives a written application for arbitration and considers that the application complies with the conditions for acceptance, it shall accept the application and notify the party within five days from the date of receipt. If the arbitration commission considers that the application does not comply with the conditions for acceptance, it shall inform the party in writing of its rejection of the application and explain the reasons for rejection within five days from the date of receipt.

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Article 25

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After an arbitration commission accepts an application for arbitration, it shall, within the time limit specified in the rules of arbitration, deliver a copy of the rules of arbitration and the register of arbitrators to the claimant, and serve one copy of the application for arbitration together with the rules of arbitration and the register of arbitrators on the respondent.

92

After receiving the copy of the application for arbitration, the respondent shall submit a written defense to the arbitration commission within the time limit specified in the rules of arbitration. After receiving the written defense, the arbitration commission shall serve a copy thereof on the claimant within the time limit specified in the rules of arbitration. Failure on the part of the respondent to submit a written defense shall not affect the progress of the arbitration proceedings.

93

Article 26

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If the parties have concluded an arbitration agreement and one party has instituted an action in a people's court without declaring the existence of the arbitration agreement and, after the people's court has accepted the case, the other party submits the arbitration agreement prior to the first hearing, the people's court shall dismiss the case unless the arbitration agreement is null and void. If, prior to the first hearing, the other party has not raised an objection to the people's court's acceptance of the case, he shall be deemed to have renounced the arbitration agreement and the people's court shall continue to try the case.

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Article 27

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The claimant may renounce or alter its arbitration claim. The respondent may accept or refuse an arbitration claim and shall have the right to make a counter-claim.

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Article 28

98

A party may apply for property preservation if it may become impossible or difficult for the party to execute the award due to an act of the other party or other causes.

99

If a party applies for property preservation, the arbitration commission shall submit the party's application to the people's court in accordance with the relevant provisions of the Civil Procedure Law.

100

If an application for property preservation has been wrongfully made, the applicant shall compensate the person against whom the application has been made for any loss incurred from property preservation.

101

Article 29

102

A party or statutory agent may appoint a lawyer or other agent to carry out arbitration activities. To appoint a lawyer or other agent to carry out arbitration activities, a power of attorney shall be submitted to the arbitration commission.

103

Section 2 - Formation of Arbitration Tribunal

104

Article 30

105

An arbitration tribunal may be composed of either three arbitrators or one arbitrator. An arbitration tribunal composed of three arbitrators shall have a presiding arbitrator.

106

Article 31

107

If the parties agree that the arbitration tribunal shall be composed of three arbitrators, they shall each appoint or entrust the chairman of the arbitration commission to appoint one arbitrator. The parties shall jointly select or jointly entrust the chairman of the arbitration commission to appoint the third arbitrator who shall be the presiding arbitrator.

108

If the parties agree that the arbitration tribunal shall be composed of one arbitrator, they shall jointly appoint or jointly entrust the chairman of the arbitration commission to appoint the arbitrator.

109

Article 32 110

If the parties fail to agree on the method of formation of the arbitration tribunal or to select the arbitrators within the time limit specified in the rules of arbitration, the arbitrators shall be appointed by the chairman of the arbitration commission. 111

Article 33 112

After the arbitration tribunal has been formed, the arbitration commission shall notify the parties in writing of the tribunals formation. 113

Article 34 114

In one of the following circumstances, the arbitrator must withdraw, and the parties shall also have the right to challenge the arbitrator for a withdrawal: 115

(1) The arbitrator is a party in the case or a close relative of a party of an agent in the case; 116

(2) The arbitrator has a personal interest in the case; 117

(3) The arbitrator has other relationship with a party or his agent in the case which may affect the impartiality of arbitration; or 118

(4) The arbitrator has privately met with a party or agent or accepted an invitation to entertainment or gift from a party or agent. 119

Article 35 120

If a party challenges an arbitrator, he shall submit his challenge, with a statement of the reasons therefor, prior to the first hearing. If the matter giving rise to the challenge becomes known after the first hearing, the challenge may be made before the conclusion of the final hearing of the case. 121

Article 36 122

The decision as to whether or not the arbitrator should withdraw shall be made by the chairman of the arbitration commission. If the chairman of the arbitration commission serves as an arbitrator, the decision shall be made collectively by the arbitration commission. 123

Article 37 124

If an arbitrator cannot perform his duties due to his withdrawal or for other reasons, a substitute arbitrator shall be selected or appointed in accordance with this Law. 125

After a substitute arbitrator has been selected or appointed on account of an arbitrators withdrawal, a party may request that the arbitration proceedings already carried out should be carried out anew. The decision as to whether to approve it or not shall be made by the arbitration tribunal. The arbitration tribunal may also make a decision of its own motion as to whether or not the arbitration proceeding already carried out should be carried out anew. 126

Article 38 127

If an arbitrator is involved in the circumstances described in item (4) of Article 34 of this Law and the circumstances are serious or involved in the circumstances described in item (6) of Article 58 128

of this Law, he shall assume legal liability according to law and the arbitration commission shall remove his name from the register of arbitrators. 129

Section 3 - Hearing and Award 130

Article 39 131

Arbitration shall be conducted by means of oral hearings. If the parties agree to arbitration without oral hearings, the arbitration tribunal may render an arbitration award on the basis of the written application for arbitration, the written defense and other material. 132

Article 40 133

Arbitration shall be conducted in camera. If the parities agree to public arbitration, the arbitration may be public unless State secrets are involved. 134

Article 41 135

The arbitration commission shall notify the parties of the date of the hearing within the time limit specified in the rules of arbitration. A party may, within the time limit specified in the rules of arbitration, request a postponement of the hearing if he has justified reasons therefor. The arbitration tribunal shall decide whether or not to postpone the hearing. 136

Article 42 137

If the claimant fails to appear before the arbitration tribunal without justified reasons after having been notified in writing or leaves the hearing prior to its conclusion without 138

the permission of the arbitration tribunal, he may be deemed to have withdrawn his application for arbitration.

If the respondent fails to appear before the arbitration tribunal without justified reasons after having been notified in writing or leaves the hearing prior to its conclusion without the permission of the arbitration tribunal, a default award may be made. 139

Article 43 140

Parties shall provide evidence in support of their own arguments. 141

The arbitration tribunal may, as it considers necessary, collect evidence on its own. 142

Article 44 143

If the arbitration tribunal considers that a special issue requires appraisal, it may refer the issue for appraisal to an appraisal department agreed on by the parties or to an appraisal department designated by the arbitration tribunal. 144

If requested by a party or required by the arbitration tribunal, the appraisal department shall send its appraiser to attend the hearing. Subject to the permission of the arbitration tribunal, the parties may question the appraiser. 145

Article 45 146

The evidence shall be presented during the hearings and may be examined by the parties. 147

Article 46 148

Under circumstances where the evidence may be destroyed or lost or difficult to obtain at a later time, a party may apply for preservation of the evidence. If a party applies for preservation of the evidence, the arbitration commission shall submit his application to the basic peoples court in the place where the evidence is located. 149

Article 47 150

The parties shall have the right to carry on debate in the course of arbitration. At the end of the debate, the presiding arbitrator or the sole arbitrator shall solicit final opinions from the parties. 151

Article 48 152

The arbitration tribunal shall make records of the hearings in writing. The parties and 153

other participants in the arbitration shall have the right to apply for supplementation or correction of the record of their own statements if they consider that such record contains omissions or errors. If no supplementation or corrections are to be made, their application therefor shall be recorded.

the record shall be signed or sealed by the arbitrators, the recordist, the parties and other participants in the arbitration. 154

Article 49 155

After an application for arbitration has been made, the parties may settle their dispute on their own. If the parties have reached a settlement agreement, they may request the arbitration tribunal to make an arbitration award in accordance with the settlement agreement; alternatively, they may withdraw their application for arbitration. 156

Article 50 157

If a party repudiates the settlement agreement after the application for arbitration has been withdrawn, he may apply for arbitration again in accordance with the arbitration agreement. 158

Article 51 159

The arbitration tribunal may carry out conciliation prior to giving an arbitration award. The arbitration tribunal shall conduct conciliation if both parties voluntarily seek conciliation. If conciliation is unsuccessful, an arbitration award shall be made promptly. 160

If conciliation leads to a settlement agreement, the arbitration tribunal shall make a written conciliation statement or make an arbitration award in accordance with the result of the settlement agreement. A written conciliation statement and an arbitration award shall have equal legal effect. 161

Article 52 162

A written conciliation statement shall specify the arbitration claim and the results of the settlement agreed upon between the parties. The written conciliation statement shall be signed by the arbitrators, sealed by the arbitration commission, and then served on both parties. 163

The written conciliation statement shall become legally effective immediately after both parties have signed for receipt thereof. 164

If the written conciliation statement is repudiated by a party before he signs for receipt thereof, the arbitration tribunal shall promptly make an arbitration award. 165

Article 53

166

The arbitration award shall be made in accordance with the opinion of the majority of the arbitrators. The opinion of the minority of the arbitrators may be entered in the record. If the arbitration tribunal is unable to form a majority opinion, the arbitration award shall be made in accordance with the opinion of the presiding arbitrator.

167

Article 54

168

An arbitration award shall specify the arbitration claim, the facts of the dispute, the reasons for the decision, the results of the award, the allocation of arbitration fees and the date of the award. If the parties agree that they do not wish the facts of the dispute and the reasons for the decision to be specified in the arbitration award, the same may be omitted. The arbitration award shall be signed by the arbitrators and sealed by the arbitration commission. An arbitrator with dissenting opinions as to the arbitration award may sign the award or choose not to sign it.

169

Article 55

170

In arbitration proceedings, if a part of the facts involved has already become clear, the arbitration tribunal may first make an award in respect of such part of the facts.

171

Article 56

172

If there are literal or calculation errors in the arbitration award, or if the matters which have been decided by the arbitration tribunal are omitted in the arbitration award, the arbitration tribunal shall make due corrections or supplementation. The parties may, within 30 days from the date of receipt of the award, request the arbitration tribunal to make such corrections or supplementation.

173

Article 57

174

The arbitration award shall be legally effective as of the date on which it is made.

175

Chapter V - Application for Setting Aside Arbitration Award

176

Article 58

177

A party may apply for setting aside an arbitration award to the intermediate peoples court in the place where the arbitration commission is located if he can produce evidence which proves that the arbitration award involves one of the following circumstances;

178

- (1) There is no arbitration agreement; 179
- (2) The matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration commission; 180
- (3) The formation of the arbitration tribunal or the arbitration procedure was not in conformity with the statutory procedure; 181
- (4) The evidence on which the award is based is forged; 182
- (5) The other party has withheld the evidence which is sufficient to affect the impartiality of the arbitration; or 183
- (6) The arbitrators have committed embezzlement, accepted bribes or done malpractice for personal benefits or perverted the law in the arbitration of the case. 184

The Peoples court shall rule to set aside the arbitration award if a collegial panel formed by the peoples court verifies upon examination that the award involves one of the circumstances set forth in the preceding paragraph. 185

If the peoples court determines that the arbitration award violates the public interest, it shall rule to set aside the award. 186

Article 59 187

A party that wishes to apply for setting aside the arbitration award shall submit such application within six months from the date of receipt of the award. 188

Article 60 189

The peoples court shall, within two months from the date of accepting an application for setting aside an arbitration award, rule to set aside the award or to reject the application. 190

Article 61 191

If, after accepting an application for setting aside an arbitration award, the peoples court considers that the case may be re-arbitrated by the arbitration tribunal, it shall notify the tribunal that it shall re-arbitrate the case within a certain time limit and shall rule to stay the setting-aside procedure. If the arbitration tribunal refuses to re-arbitrate the case, the peoples court shall rule to resume the setting-aside procedure. 192

Chapter VI - Enforcement 193

Article 62 194

The parties shall perform the arbitration award. If a party fails to perform the arbitration 195

award, the other party may apply to the peoples court for enforcement in accordance with the relevant provisions of the Civil Procedure Law. The peoples court to which the application has been made shall enforce the award.

Article 63

196

If the party against whom the enforcement is sought presents evidence which proves that the arbitration award involves one of the circumstances set forth in the second paragraph of Article 217

197

of the Civil Procedure Law, the peoples court shall, after examination and verification by a collegial panel formed by the peoples court, rule to disallow the award.

198

Article 64

199

If one party applies for enforcement of the arbitration award and the other party applies for setting aside the arbitration award, the peoples court shall rule to suspend the procedure of enforcement.

200

If the peoples court rules to set aside the arbitration award, it shall rule to terminate the enforcement procedure. If the peoples court rules to reject the application for setting aside the arbitration award, it shall rule to resume the enforcement procedure.

201

Chapter VII - Special Provisions for Arbitration Involving Foreign Elements

202

Article 65

203

The provisions of this Chapter shall apply to the arbitration of disputes arising from economic, trade, transportation and maritime activities involving a foreign element. For matters not covered in this Chapter, the other relevant provisions of this Law shall apply.

204

Article 66

205

Foreign-related arbitration commissions may be organized and established by the China Chamber of International Commerce.

206

A foreign-related arbitration commission shall be composed of one chairman, a certain number of vice chairmen and members.

207

The chairman, vice chairmen and members of a foreign-related arbitration commission may be appointed by the China Chamber of International Commerce.

208

Article 67 209

A foreign-related arbitration commission may appoint arbitrators from among foreigners with special knowledge in the fields of law, economy and trade, science and technology, etc.. 210

Article 68 211

If a party to a foreign-related arbitration applies for preservation of the evidence, the foreign-related arbitration commission shall submit his application to the intermediate peoples court in the place where the evidence is located. 212

Article 69 213

A foreign-related arbitration tribunal may enter the details of the hearings in written records or make written minutes thereof. The written minutes may be signed or sealed by the parties and other participants in the arbitration. 214

Article 70 215

If a party presents evidence which proves that a foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 260 of the Civil Procedure Law, the peoples court shall, after examination and verification by a collegial panel formed by the peoples court, rule to set aside the award. 216

Article 71 217

If the party against whom the enforcement is sought presents evidence which proves that the foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 260 of the Civil Procedure Law, the peoples court shall, after examination and verification by a collegial panel formed by the peoples court, rule to disallow the enforcement. 218

Article 72 219

If a party applies for enforcement of a legally effective arbitration award made by a foreign-related arbitration commission and if the party against whom the enforcement is sought or such party's property is not within the territory of the Peoples Republic of China, he shall directly apply to a competent foreign court for recognition and enforcement of the award. 220

Article 73 221

Foreign-related arbitration rules may be formulated by the China Chamber of International commerce in accordance with this Law and the relevant provisions of the Civil Procedure Law. 222

Chapter VIII - Supplementary Provisions 223

Article 74 224

If prescription for arbitration is provided by law, such provisions shall apply. In the absence of such provisions, the prescription for litigation shall apply to arbitration. 225

Article 75 226

Prior to the formulation of rules of arbitration by China Arbitration Association, arbitration commissions may formulate provisional rules of arbitration in accordance with this Law and the relevant provisions of the Civil Procedure Law. 227

Article 76 228

Parties shall pay arbitration fees according to regulations. 229

Measures for charging arbitration fees shall be submitted to the price control authorities for examination and approval. 230

Article 77 231

Regulations concerning arbitration of labor disputes and agricultural contractors contract disputes arising within the agricultural collective economic organizations shall be formulated separately. 232

Article 78 233

If regulations governing arbitration promulgated prior to the implementation of this Law contravene the provisions of this Law, the provisions of this Law shall prevail. 234

Article 79 235

Arbitration institutions established prior to the implementation of this Law in the municipalities directly under the Central Government, in the cities that are the seats of the peoples governments of provinces or autonomous regions and in other cities divided 236

into districts shall be reorganized in accordance with this Law. Those of such arbitration institutions that have not been reorganized shall terminate upon the end of one year from the date of the implementation of this Law.

Other arbitration institutions established prior to the implementation of this Law that do not comply with the provisions of this Law shall terminate on the date of the implementation of this Law.

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Article 80

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This Law shall come into force as of September 1, 1995.

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