Labor Dispute Mediation and Arbitration Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purpose of fairly and timely resolving labor disputes, protecting the lawful rights and interests of the parties concerned, and promoting harmonious and stable labor relations.

Article 2 — This Law applies to the following labor disputes arising between employers and workers within the territory of the People's Republic of China: (1) disputes arising from the confirmation of a labor relationship; (2) disputes arising from the conclusion, performance, modification, rescission, or termination of a labor contract; (3) disputes arising from dismissal, removal, resignation, or voluntary departure; (4) disputes arising from working hours, rest and leave, social insurance, welfare benefits, training, or occupational protection; (5) disputes arising from labor remuneration, medical expenses for work-related injuries, economic compensation, or compensation; and (6) other labor disputes provided for by laws or regulations.

Article 3 — Labor disputes shall be resolved in accordance with the principles of truth-seeking, fairness, timeliness, and emphasis on mediation, and the lawful rights and interests of the parties concerned shall be protected in accordance with the law.

Article 4 — Where a labor dispute arises, a worker may have consultations with the employer, or may invite a trade union or a third party to jointly consult with the employer, with a view to reaching a settlement agreement.

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Article 5 — Where a labor dispute arises, if the parties are unwilling to engage in consultations, or consultations fail, or a settlement agreement is reached but not performed, the parties may apply for mediation to a mediation organization. If the parties are unwilling to mediate, or mediation fails, or a mediation agreement is reached but not performed, the parties may apply for arbitration to a labor dispute arbitration commission. If a party is dissatisfied with the arbitral award, the party may bring a lawsuit in a people's court, except as otherwise provided by this Law.

Article 6 — Where a labor dispute arises, the parties shall be responsible for adducing evidence in support of their own claims. Where evidence relevant to the disputed matter is under the control of the employer, the employer shall provide such evidence. If the employer fails to provide such evidence, it shall bear any adverse consequences.

Chapter II — Mediation

Article 7 — The parties concerned in a labor dispute may apply for mediation to the following mediation organizations: (1) a labor dispute mediation committee of the enterprise; (2) a basic-level people's mediation organization established in accordance with the law; or (3) an organization with labor dispute mediation functions established in a township or urban neighborhood.

Article 8 — A labor dispute mediation committee of an enterprise shall be composed of employee representatives and enterprise representatives. Employee representatives shall be elected by the trade union members or by all employees through recommendation; enterprise representatives shall be designated by the person in charge of the enterprise. The chairperson of the labor dispute mediation committee of the enterprise shall be elected by the members of the trade union or by both parties through recommendation.

Article 9 — The parties concerned in a labor dispute to be mediated shall have a mediator who is impartial and upright, maintains close ties with the masses, is enthusiastic about mediation work, and possesses a certain level of legal knowledge, policy level, and cultural attainment.

Article 10 — Where a party applies for labor dispute mediation, a written application may be submitted, or an oral application may be made. Where an oral application is made, the mediation organization shall record on the spot the basic information of the applicant, the subject matter of the dispute applied for mediation, the reasons for the application, and the time of the application.

Article 11 — When mediating a labor dispute, a mediation organization shall fully hear the facts asserted by both parties and exercise patience in explaining matters, and assist the parties in reaching an agreement.

Article 12 — Upon reaching a mediation agreement through mediation, a mediation document shall be prepared. The mediation document shall set forth the requests for mediation, the facts of the dispute, and the results of mediation. The mediation document shall be signed or sealed by the mediator, and affixed with the seal of the mediation organization. The mediation document shall be delivered to both parties. The mediation document shall be binding on both parties once signed and accepted by both parties.

Article 13 — Where a settlement agreement is reached through consultations, the parties may apply to the labor dispute arbitration commission for confirmation of the effectiveness of the agreement. Upon receipt of the application, the labor dispute arbitration commission shall review the legality of the agreement. If the settlement agreement is lawful, the commission shall issue a mediation document. The mediation document shall become legally effective upon service on both parties.

Article 14 — Where a mediation agreement is reached but a party fails to perform the agreement within the agreed time limit, the other party may apply for arbitration in accordance with the law.

Article 15 — Labor dispute mediation organizations shall provide mediation services free of charge and shall accept no fees from the parties.

Chapter III — Arbitration

Article 16 — Labor dispute arbitration commissions shall be established in accordance with the principles of overall planning and rational layout, and in meeting actual needs. The people's governments of provinces and autonomous regions may decide on the establishment of such commissions in cities and counties in accordance with the law. Labor dispute arbitration commissions in municipalities directly under the central government or in districts of municipalities directly under the central government shall be responsible for labor dispute cases within their respective jurisdictions.

Article 17 — A labor dispute arbitration commission shall be composed of representatives from the labor administrative department, trade unions, and enterprises. The number of members of a labor dispute arbitration commission shall be an odd number. The administrative affairs of a labor dispute arbitration commission shall be undertaken by the labor administrative department.

Article 18 — A labor dispute arbitration commission shall appoint arbitrators who meet the following requirements: (1) have passed the national unified legal professional qualification examination and have obtained the legal professional qualification; (2) have engaged in adjudication work for at least five years as a judge; (3) have engaged in legal research or teaching work and possess intermediate or higher professional titles; or (4) possess legal knowledge, have engaged in human resources management or trade union work or other professional work for at least five years, and possess intermediate or higher professional titles.

Article 19 — The functions of a labor dispute arbitration commission are: (1) to appoint and remove arbitrators; (2) to accept and handle labor dispute cases; (3) to discuss major or difficult labor dispute cases; and (4) to supervise arbitration activities. A labor dispute arbitration commission shall establish a roster of arbitrators. An arbitrator shall be fair, upright, and meet any of the conditions specified in Article 18 of this Law.

Article 20 — The labor dispute arbitration commission shall accept labor dispute cases in a timely manner and complete the case handling within the statutory time limit. The labor dispute arbitration commission shall provide legal advisory services to the parties concerned and guide them in protecting their rights in accordance with the law.

Article 21 — Labor dispute arbitration shall be under the jurisdiction of the labor dispute arbitration commission at the place where the labor contract is performed or where the employer is domiciled. Where both parties apply for arbitration to the labor dispute arbitration commissions at the place where the labor contract is performed and at the place where the employer is domiciled, the labor dispute arbitration commission at the place where the labor contract is performed shall have jurisdiction.

Article 22 — The parties in a labor dispute case shall be the worker and the employer. Where a labor dispute arises between a labor dispatch entity or a host entity and a worker, the labor dispatch entity and the host entity shall be the joint parties.

Article 23 — A third party who has an interest in the outcome of the handling of a labor dispute case may apply to participate in the arbitration proceedings, or may be notified by the labor dispute arbitration commission to participate in the arbitration proceedings.

Article 24 — A party may entrust an agent to participate in arbitration proceedings. The agent shall submit to the labor dispute arbitration commission a power of attorney signed or sealed by the principal, which shall specify the matters entrusted and the scope of authority.

Article 25 — Where a worker who has lost all or part of civil capacity is represented by his or her statutory agent in arbitration proceedings, or where a worker who has died is represented by his or her close relatives or agent in arbitration proceedings, the relevant provisions concerning labor dispute arbitration shall apply.

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Article 26 — An application for labor dispute arbitration shall be submitted in writing and include copies corresponding to the number of respondents.

Article 27 — The limitation period for applying for arbitration of a labor dispute shall be one year. The limitation period for arbitration shall be calculated from the date on which a party knew or ought to have known that its rights had been infringed. The limitation period for arbitration shall be interrupted where a party makes a claim to the other party, applies for remedy to the relevant authority, or the other party agrees to perform its obligations. The limitation period shall be recalculated from the time of the interruption. Where a party is unable to apply for arbitration within the limitation period for arbitration due to force majeure or other legitimate reasons, the limitation period for arbitration shall be suspended and resumed upon the elimination of the reason for suspension. The limitation period for arbitration shall not apply to disputes arising from the non-payment of labor remuneration during the continuance of the labor relationship. However, where the labor relationship is terminated, the application shall be made within one year from the date of termination of the labor relationship.

Article 28 — Where a party applies for arbitration, it shall submit a written application for arbitration and copies thereof corresponding to the number of respondents. The application for arbitration shall specify the following matters: (1) the name, gender, age, occupation, work unit, and domicile of the worker, and the name and domicile of the employer and the name and position of its legal representative or principal responsible person; (2) the claims in the arbitration and the facts and grounds on which the claims are based; and (3) the evidence and sources of evidence, and the names and domiciles of witnesses. Where it is genuinely difficult for the party to prepare a written application, an oral application may be made, which shall be recorded by the labor dispute arbitration commission and notified to the other party.

Article 29 — Upon receipt of an application for arbitration, the labor dispute arbitration commission shall, within five days, decide whether to accept it. Where the commission decides to accept the application, it shall serve a notice of acceptance on the applicant. Where the commission decides not to accept the application, it shall serve a written notice of non-acceptance on the applicant, stating the reasons for non-acceptance.

Article 30 — Where the labor dispute arbitration commission accepts an application for arbitration, it shall serve a copy of the application for arbitration on the respondent within five days. The respondent shall, within ten days of receipt of the copy of the application for arbitration, submit a statement of defense to the labor dispute arbitration commission. After receiving the statement of defense, the labor dispute arbitration commission shall serve a copy of the statement of defense on the applicant within five days. Failure by the respondent to submit a statement of defense shall not affect the arbitration proceedings.

Article 31 — Labor dispute arbitration shall be conducted by an arbitral tribunal composed of three arbitrators, with one arbitrator serving as the chief arbitrator. For simple labor dispute cases, a sole arbitrator may be designated by the labor dispute arbitration commission to conduct the arbitration.

Article 32 — The labor dispute arbitration commission shall, within five days of accepting an application for arbitration, notify the parties in writing of the composition of the arbitral tribunal.

Article 33 — Under any of the following circumstances, an arbitrator shall withdraw, and the parties shall also have the right to apply, orally or in writing, for the withdrawal of the arbitrator: (1) the arbitrator is a party to the case or a close relative of a party or agent; (2) the arbitrator has an interest in the case; (3) the arbitrator has another relationship with a party or agent to the case that may affect the fair handling of the case; or (4) the arbitrator has privately met with a party or agent or accepted an invitation to dinner or a gift from a party or agent. A party shall submit its reasons when applying for the withdrawal of an arbitrator. Where a party applies for the withdrawal of an arbitrator after the commencement of the hearing, the application shall be submitted before the conclusion of the court debate.

Article 34 — The withdrawal of an arbitrator shall be decided by the labor dispute arbitration commission. Where the labor dispute arbitration commission receives an application for withdrawal, it shall make a

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decision within five days and notify the parties orally or in writing.

Article 35 — Where an arbitrator commits any of the acts specified in Article 33(4) of this Law, or accepts a bribe, engages in malpractices for personal gain, or perverts the law in rendering an award, the arbitrator shall bear legal liability in accordance with the law. The labor dispute arbitration commission shall remove such arbitrator from its roster.

Article 36 — Where the arbitral tribunal is to conduct a hearing, it shall notify both parties in writing of the date and place of the hearing five days before the hearing. Where a party has a legitimate reason for requesting a postponement of the hearing, the party may request such postponement three days before the hearing; the arbitral tribunal shall decide whether to approve the postponement. Where the applicant receives a written notice to appear at the hearing and fails to appear at the hearing without a legitimate reason, or withdraws from the hearing without the permission of the arbitral tribunal, the application for arbitration may be deemed withdrawn. Where the respondent receives a written notice to appear at the hearing and fails to appear at the hearing without a legitimate reason, or withdraws from the hearing without the permission of the arbitral tribunal, an award by default may be rendered.

Article 37 — The arbitral tribunal shall take minutes of the hearing. The applicant and the respondent shall have the right to express their opinions on the facts and reasons in the dispute, and to argue and present rebuttals. At the conclusion of the debate, the chief arbitrator or sole arbitrator shall solicit the final opinions of the parties. Upon verification by the parties and other participants in the arbitration proceedings that the records are free from errors or omissions, the parties shall sign or affix their seals to the records. Any errors or omissions in the records shall be corrected or supplemented.

Article 38 — The parties concerned shall have the right to engage in debate and cross-examination. Before the debate by the parties, the chief arbitrator or sole arbitrator shall inform the parties of their rights and obligations in the hearing, question the parties, and decide whether to conduct an in-court mediation.

Article 39 — Where a party has provided evidence, the arbitral tribunal shall verify the evidence submitted by the party when handling the case. Where there is no evidence submitted by the parties, or the evidence is insufficient to prove the facts claimed, the party bearing the burden of proof shall bear the adverse consequences. Where the evidence relevant to the dispute is under the control of the employer, the employer shall provide such evidence within the time limit specified by the arbitral tribunal. Where the employer refuses to provide such evidence, it shall bear the adverse consequences.

Article 40 — The arbitral tribunal shall conduct a hearing for a labor dispute case after recording the case on the record. However, if the parties agree to resolve the case without a hearing, the arbitral tribunal may make an award on the basis of the written application for arbitration, the statement of defense, and other materials.

Article 41 — When handling a labor dispute case, the arbitral tribunal shall first conduct mediation. Before rendering an award, the arbitral tribunal shall conduct mediation first. Where a mediation agreement is reached through mediation, the arbitral tribunal shall prepare a mediation document. The mediation document shall set forth the arbitration claims and the results of the agreement between the parties. The mediation document shall be signed by the arbitrators and affixed with the seal of the labor dispute arbitration commission. The mediation document shall be served on both parties. The mediation document shall become legally effective upon service on both parties. Where mediation fails or the mediation document is repudiated by a party before its service, the arbitral tribunal shall render an award in a timely manner.

Article 42 — When deliberating a case, the arbitral tribunal shall render an award on the basis of the majority opinion. The minority opinion of the arbitrators shall be recorded in the record. Where the arbitral tribunal is unable to form a majority opinion, the award shall be rendered on the basis of the opinion of the chief arbitrator. The award shall specify the arbitration claims, the facts in dispute, the reasons for the award, the outcome of the award, and the date of the award. The award shall be signed by the arbitrators and affixed with the seal of the labor dispute arbitration commission. An arbitrator who holds a dissenting opinion may

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sign or choose not to sign the award. In a case where a sole arbitrator conducts the arbitration, the award shall be rendered by the sole arbitrator.

Article 43 — An arbitral award shall be rendered within 45 days from the date on which the labor dispute arbitration commission accepts the application for arbitration. Where an extension is necessary due to the complexity of the case, an extension may be approved by the labor dispute arbitration commission, and the parties shall be notified in writing; however, the extension shall not exceed 15 days. Where an award is not rendered within the time limit, the parties may bring a lawsuit with respect to the labor dispute in a people's court. When making an award, the arbitral tribunal shall first rule on the part of the facts that is already clear. If the dispute involves the recovery of labor remuneration, medical expenses for work-related injuries, economic compensation, or compensation, and the facts are clear, the arbitral tribunal may, upon application by the party, render an award for partial enforcement and transfer the case to the people's court for enforcement.

Article 44 — The following arbitral awards shall be final, and the award shall become legally effective as of the date it is rendered: (1) an award involving claims for labor remuneration, medical expenses for work-related injuries, economic compensation, or compensation in an amount not exceeding the local monthly minimum wage standard multiplied by 12 months; and (2) an award involving disputes over working hours, rest and leave, or social insurance, where the applicable standard is prescribed by the State. However, if a worker disagrees with an arbitral award under the preceding paragraph, the worker may bring a lawsuit in a people's court within 15 days of receipt of the award. If an employer disagrees with the award and has evidence to prove that the award falls under any of the circumstances specified in Article 45 of this Law, the employer may, within 30 days of receipt of the award, apply to the intermediate people's court at the place where the labor dispute arbitration commission is located for revocation of the award. If the award is revoked, the parties may bring a lawsuit in a people's court.

Article 45 — An employer may, within 30 days of receipt of an arbitral award under Article 44 of this Law, apply to the intermediate people's court at the place where the labor dispute arbitration commission is located for revocation of the award, if the employer has evidence to prove that: (1) the applicable law or regulation is clearly erroneous; (2) the labor dispute arbitration commission has no jurisdiction; (3) the statutory procedures have been violated, which may affect the fair handling of the case; (4) the evidence on which the award is based is forged; (5) the other party has concealed evidence that is sufficient to affect the fair rendering of the award; or (6) the arbitrator has accepted a bribe, engaged in malpractices for personal gain, or perverted the law in rendering the award. Upon examination and verification by a collegial panel of the people's court that the award falls under any of the circumstances specified in the preceding paragraph, the court shall rule to revoke the award. Where the award is revoked by a ruling of the people's court, the parties may bring a lawsuit with respect to the labor dispute in a people's court within 15 days of receipt of the ruling.

Article 46 — Where a party concerned is dissatisfied with an arbitral award in a labor dispute case other than those provided for in Article 44 of this Law, the party may bring a lawsuit in a people's court within 15 days of receipt of the award. If the party does not bring a lawsuit within the time limit, the award shall become legally effective.

Article 47 — A party shall perform an award or mediation document that has become legally effective within the time limit specified. Where a party fails to perform within the time limit, the other party may apply to the people's court for enforcement in accordance with the relevant provisions of the Civil Procedure Law. The people's court accepting the application shall enforce the award or mediation document in accordance with the law.

Chapter IV — Supplementary Provisions

Article 48 — Where a labor dispute arises between a public institution and its staff members governed by the civil servant system, the relevant provisions of the Civil Servant Law shall apply. Where a labor dispute arises between a public institution and its staff members who have entered into employment contracts, this Law shall apply. Where there are otherwise provisions in laws, administrative regulations, or the State Council, such provisions shall prevail.

Article 49 — Labor dispute arbitration shall not accept fees from the parties. The funding for labor dispute arbitration commissions shall be guaranteed by the government treasury.

Article 50 — This Law shall enter into force on May 1, 2008.

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