Mediation and Arbitration of Labor Disputes Law of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

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

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

Article 3: The resolution of labor disputes shall be based on facts and shall follow the principles of lawfulness, fairness, timeliness, and emphasis on mediation, so as to protect the legitimate rights and interests of the parties involved in accordance with the law.

Article 4: Where a labor dispute arises, the employee may negotiate with the employer and may request the trade union or a third party to assist in the negotiation and a settlement agreement may be reached.

Article 5: Where a labor dispute arises and the parties are unwilling to negotiate, or negotiation fails, or the settlement agreement is not performed, the parties may apply to a mediation organization for mediation. Where the parties are unwilling to mediate, or mediation fails, or the mediation agreement is not performed, the parties may apply to the labor dispute arbitration commission for arbitration. Where a party disagrees with the arbitration award, it may file a lawsuit with the people's court, except as otherwise provided by this Law.

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Article 6: Where a labor dispute arises, the parties shall bear the burden of proof for their own claims. Where the evidence relevant to the disputed matter is in the possession and control of the employer, the employer shall provide such evidence. Where the employer fails to provide it, it shall bear the adverse consequences.

Chapter II — Mediation

Article 7: Employers shall establish labor dispute mediation committees. Labor dispute mediation committees shall be composed of employee representatives, employer representatives, and trade union representatives. The chairperson of the labor dispute mediation committee shall be a trade union representative.

Article 8: The functions of a labor dispute mediation committee shall include: (1) mediating labor disputes within the employer; (2) urging the parties to perform mediation agreements; and (3) conducting labor law publicity and education within the employer.

Article 9: When mediating a labor dispute, the mediator shall fully hear the statements of both parties, ascertain the facts, distinguish right from wrong, and conduct patient persuasion and guidance to help the parties reach an agreement.

Article 10: Where a labor dispute mediation agreement is reached between the parties with the mediation of the labor dispute mediation committee, it shall be performed by both parties. Where the mediation agreement is not performed, either party may apply for arbitration in accordance with the law.

Article 11: The labor dispute mediation committee shall complete the mediation within 15 days from the date of receipt of the mediation application. Where no mediation agreement is reached within the prescribed time limit, either party may apply for arbitration in accordance with the law.

Article 12: Grassroots people's mediation organizations may also mediate labor disputes. The mediation of labor disputes shall not be conducted in public without the consent of the parties, except where the parties agree to public mediation or where the law provides otherwise.

Chapter III — Arbitration

Article 13: Labor dispute arbitration commissions shall be established by the people's governments of provinces and autonomous regions, and may also be established by the people's governments of cities divided into districts and counties as needed. Labor dispute arbitration commissions shall be composed of representatives of the labor administrative authorities, trade unions, and employer organizations.

Article 14: Labor dispute arbitration commissions shall perform the following duties: (1) appointing and dismissing arbitrators; (2) accepting and hearing labor dispute cases; (3) supervising the arbitration activities of arbitrators; and (4) other duties prescribed by law.

Article 15: Arbitrators shall meet the following conditions: (1) having passed the national unified legal profession qualification examination and obtained legal profession qualifications; (2) having been engaged in legal work for at least five years; or (3) having served as a judge, prosecutor, or legal expert.

Article 16: The parties may apply for arbitration to the labor dispute arbitration commission at the place where the employment contract is performed or where the employer is domiciled. Where the place of performance is different from the place of domicile, the parties may choose either place.

Article 17: The time limit for applying for arbitration of a labor dispute shall be one year, calculated from the date on which the party knew or should have known that its rights had been infringed. The time limit for arbitration shall be interrupted upon: (1) one party claiming its rights against the other party; (2) one party applying for relief to a relevant authority; or (3) the other party agreeing to perform its obligations.

Article 18: An application for arbitration shall be submitted in writing together with copies corresponding to the number of respondents. Where there are genuine difficulties in submitting a written application, an oral

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application may be made, which shall be recorded in a transcript by the labor dispute arbitration commission and notified to the respondent.

Article 19: An application for arbitration shall include the following particulars: (1) the name, gender, age, occupation, work unit, and domicile of the employee, and the name and domicile of the employer; (2) the arbitration claim and the facts and grounds on which it is based; and (3) the evidence and the source of evidence, and the names and domiciles of witnesses.

Article 20: The labor dispute arbitration commission shall, within five working days from the date of receipt of the arbitration application, decide whether to accept it. If it decides to accept the application, it shall notify the applicant; if it decides not to accept it, it shall notify the applicant in writing with reasons.

Article 21: After accepting an arbitration application, the labor dispute arbitration commission shall serve a copy of the arbitration application on the respondent within five working days. The respondent shall submit a statement of defense within 10 working days from the date of receipt of the copy of the arbitration application.

Article 22: The labor dispute arbitration commission shall hear the arbitration case by forming an arbitration tribunal consisting of three arbitrators and shall appoint one of them as the chief arbitrator. For simple labor dispute cases, one arbitrator may be appointed to hear the case alone.

Article 23: Arbitrators shall recuse themselves under any of the following circumstances, and the parties shall have the right to apply for the recusal of an arbitrator: (1) the arbitrator is a party to the case or a close relative of a party or its agent; (2) the arbitrator has an interest in the case; (3) the arbitrator has another relationship with a party to the case or its agent that may affect fair adjudication; or (4) the arbitrator meets privately with a party or its agent or accepts gifts or other benefits.

Article 24: The arbitration tribunal shall hear the arbitration case in public, except where the parties agree not to have it heard in public or where the law provides that it shall not be heard in public.

Article 25: The applicant may withdraw the arbitration application before the award is rendered. Where the respondent raises a counterclaim, it may be heard jointly.

Article 26: The arbitration tribunal shall conduct mediation prior to rendering an award. Where a mediation agreement is reached, the arbitration tribunal shall prepare a mediation statement, which shall become legally effective upon acknowledgement of service by both parties. Where mediation fails or one party reneges before the mediation statement is served, the arbitration tribunal shall render an award promptly.

Article 27: The arbitration tribunal shall render an award within 45 days from the date of acceptance of the arbitration application. Where an extension is required due to the complexity of the case, the period may be extended by 15 days with the approval of the director of the labor dispute arbitration commission. Where the case is not concluded within the prescribed time limit, the parties may file a lawsuit with the people’s court.

Article 28: The arbitration award shall specify the arbitration claim, the facts in dispute, the reasons for the award, the result 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.

Article 29: The arbitration award shall be final and take effect upon issuance for the following labor dispute cases: (1) disputes concerning labor remuneration, medical expenses for work-related injuries, economic compensation, or damages in an amount not exceeding the local monthly minimum wage standard multiplied by 12; and (2) disputes arising from the implementation of State labor standards concerning working hours, rest and leave, and social insurance. The employee may file a lawsuit with the people’s court within 15 days if dissatisfied, but the employer may only apply to the intermediate people’s court for revocation of the award.

Article 30: Where the parties have objections to an arbitration award other than those specified in Article 47 of this Law, they may file a lawsuit with the people’s court within 15 days from the date of receipt of the

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award. Where no lawsuit is filed within the prescribed time limit, the award shall become legally effective.

Article 31: Where the parties fail to perform an effective mediation statement or arbitration award within the prescribed period, the other party may apply to the people's court for enforcement in accordance with the Civil Procedure Law. The people's court receiving the application shall enforce it in accordance with the law.

Chapter IV — Supplementary Provisions

Article 32: The arbitration of labor disputes shall not charge fees. The funding for labor dispute arbitration commissions shall be guaranteed by the fiscal budget.

Article 33: The State Council shall formulate rules for the implementation of this Law.

Article 34: This Law shall enter into force as of May 1, 2008.

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