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SOCIAL RIGHTS

On 29th December 2007, the People's National Assembly in the PRC has passed a bill affecting labour law on dispute mediation and arbitration. This new bill was put into effect on 1st May 2008.

1. Mediation

Where a labour dispute arises between an employee (of Chinese or foreign nationality) and an employer (duly registered in China) due to one of the following items:

- disputes arising from the confirmation of contractual labour relations;
- disputes arising from the conclusion, performance, alteration, or termination of labour contracts;
- disputes arising from dismissal and resignation;
- disputes arising from working hours, rest days and leave days, social insurance, training, labour protection; (it is necessary to indicate that the disputes regarding housing funds are dealt with directly by the housing funds management office);

- other labour disputes prescribed by laws (such as disputes arising from collective agreements).

An application for mediation may be made by any of the parties, either to the enterprise labour dispute mediation commission, or to an external mediation commission.

The enterprise labour dispute mediation commission shall comprise enterprise representatives and employee representatives. Employee representatives shall be labour union members or appointed by all employees.

If no mediation agreement is reached within 15 days of the receipt of the mediation application by the mediation commission, the parties may apply for arbitration.

Besides, where the mediation agreement is reached and either party fails to perform the mediation agreement, the other party may apply for arbitration.

At last, where a mediation agreement is reached in respect of the payment of labour remunerations, work injury medical expenses, or economic compensations, and the employer fails to



perform the agreement, the employee may apply to the competent people's court for an execution order.

2— Arbitration

Labour dispute arbitration commissions under labour law shall comprise representatives of the labour administrative department, labour union representatives and enterprise representatives.

□ Jurisdiction

Where a labour dispute arises, the competent arbitration commission is the one either at the place where the labour contract is performed or at the place where the employing unit locates.

Where both parties apply for arbitration to two different arbitration commissions, the labour dispute shall fall within the jurisdiction of the arbitration commission at the place where the labour contract is performed.

□ Time limit for application for arbitration

The time limit for application for arbitration is one year (60 days in the previous regulations) from the date the parties know or shall have known the infringement of their rights.

Nevertheless, where a dispute arises due to labour remunerations, within the subsistence of labour relations and no interruptions have occurred, the time limit of one year is not enforceable. However,

where the labour relations are terminated and a dispute arises due to labour remunerations, the time limit of one year shall be calculated from the date of the termination of labour relations.

□ Arbitration proceedings and time limits

The applicant shall submit a written application for arbitration showing the detailed request and facts with the related supporting documents.

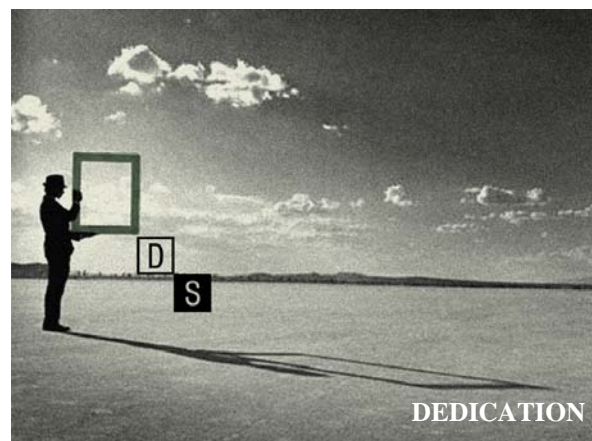
As a general rule, the applicant must show evidence of his claims.

However, the employer shall deliver to the arbitral tribunal any supporting documents in his possession.

The labour dispute arbitration commission shall, within 5 days of receipt of the arbitration application, inform the applicant that the application is accepted or not. In case it is not, it shall notify the applicant in writing and state the reason.

The labour dispute arbitration commission shall, within 5 days of acceptance of the arbitration application, inform the respondent and let him know the composition of the arbitral tribunal. The respondent can, upon receipt of the notification of the arbitration application, submit a statement of defence within 10 days.

A duplicate of the statement of defence shall be sent to the applicant.





The arbitral tribunal shall comprise three arbitrators, or one arbitrator solely for simple labour dispute cases. It would be advisable to specify that contrary to classic arbitration procedures, the arbitrators are named by the arbitration commission, not by the parties.

The arbitral tribunal shall inform both parties of the date and place of hearing at least 5 days before the hearing. Where the applicant fails to be present at the hearing, without proper reason, it will be deemed that the arbitration application is withdrawn.

The arbitral tribunal shall make an award within 45 days of the acceptance of the arbitration application by the commission.

An extension may be allowed due to complexity of the case, but the extension may not exceed 15 days.

□ Appeal proceedings

The arbitral award shall be final for the employer when stated under the following cases:

☞ Where the dispute (labour remunerations, work-related injury medical expenses, economic compensations) does not exceed the amount of 12 times the local minimum monthly wage (that is, in Beijing for instance, about 10,000 Yuan).

☞ Where the dispute arises from working hours, rest days, social insurance, and the state labour stan-

dards have been well implemented. However, the employee may appeal this decision.

Where the parties are not satisfied with the arbitral award of other labour dispute cases than those prescribed here above, they may appeal the judgement and initiate litigation to the people's court within 15 days of the receipt of the statement of award.

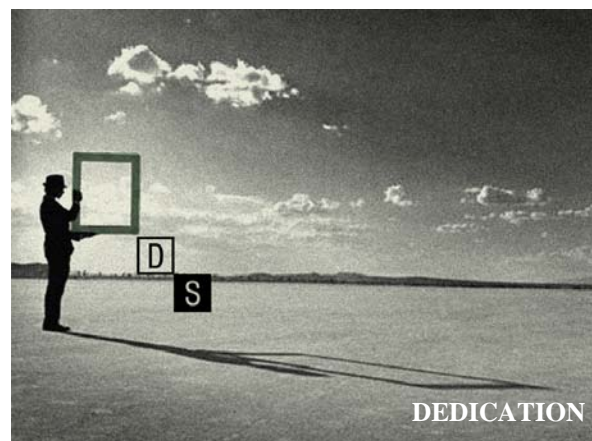
It would be important to specify that as a general rule, in the big Chinese cities, 40 to 50% of the arbitral awards are appealed in first instance, and 80% of the 1st instance judgements are appealed in 2nd instance.

OLYMPIC GAMES

The Public Security Department has recently published new regulations regarding the circulation of non-Chinese individuals, as well as their conditions of stay in China during the Olympic games. These new rules will be effective from 1st July 2008.

These rules state for instance:

- About residency in China:
 Foreigners residing at a physical person's place (Chinese or foreign) must register at the police station of the district of their place of residency within 24 hours (or 72 hours if the place of residency is located in the country side) from their arrival in China. The hotels, schools and official institutions will be



responsible for registering the visitors and guests staying at their units.

- About carrying cash when leaving China
Foreigners are allowed to leave China with US\$5,000 in cash without a special authorization. When carrying US\$5,000 to 10,000 in cash they are required to hold a permit delivered by the bank. The permit will be delivered by the local administration of the exchange control board for any amount exceeding US\$10,000.

- About the driving licence
Only physical persons holding a Chinese driving licence will be allowed to drive in China. However, the foreigners can ask for the delivery of a temporary driving licence if they comply with the following conditions: they hold a driving licence in their country of origin, their medical visit was positive, and they have successfully passed a code and driving test.

Lastly, it is necessary to indicate that from 1st July 2008 until 20th September 2008, driving restrictions will be enforced in Beijing. For instance, owners of private cars will be restricted to driving on alternate days, depending on whether the last number of their licence plate is odd or even.

Moreover, the companies and institutions registered in Beijing are strongly recommended to reduce the number of cars circulating during that period, of at least 30%.

For further information on the above or any other laws, regulations and investment issues, please contact

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