

Circular of Supreme People's Court on Implementing Convention on the Recognition and Enforcement of Foreign Arbitral Awards Entered by China

All Higher People's Courts and Intermediate People's Courts throughout the country, all maritime courts, and railway transportation intermediate courts,

It is determined at the 18th session of the Standing Committee of the 6th National People's Congress on December 2, 1986 that China shall enter the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the 1958 New York Convention) adopted in 1958 in New York. The Convention shall come into effect in China as of April 22, 1987. All Higher and Intermediate People's Courts shall immediately organize economic and civil judicial officers, executive personnel and other related personnel to diligently study this important Convention and to faithfully enforce the Convention. It is hereby notified several issues concerning the implementation of this Convention as follows:

Article 1 In accordance with the reciprocity reservation statement made by China when entering the Convention, this Convention shall apply to the recognition and enforcement of an arbitral award made in the territory of another Contracting State. Where there is any conflict between the provisions of this convention and the provisions of China's Civil Procedure Law (Trial Implementation), this Convention shall prevail.

Any arbitral award made within the territory of a Non-contracting State that needs to be recognized and enforced by Chinese Courts shall be handled in accordance with Article 204 of the Civil Procedure Law (Trial Implementation).

Article 2 In accordance with the commercial reservation statement made by China when entering the Convention, this Convention shall only apply to the disputes arising from contractual and non-contractual commercial legal relationship. "Contractual and non-contractual commercial legal relationship" specifically refers to the economic rights and obligations resulted from contract, infringement or arising according to law, such as sale of goods, lease of property, project contracting, processing, technology assignment, joint adventure, joint business operation, exploration and development of natural resources, insurance, credit, labor service, surrogate,

consultation service, marine/civil aviation/railway/road passenger and cargo transportation, product liability, environment pollution, marine accident, dispute over ownership, etc., and it does not include the dispute between foreign investors and the host government.

Article 3 In accordance with Article 4 of the 1958 New York Convention, the application to people's courts in China for recognition and enforcement of arbitration awards made within the territory of another contracting state shall be filed by one party of the arbitration award. The application of the party shall be accepted by the intermediate people's courts in the following places:

(1) Where the person subject to enforcement is a natural person, it shall be the place where his/her residence is registered or where his/her domicile is located;

(2) Where the person subject to enforcement is a legal person, it shall be the place where its principal executive office is located;

(3) Where the person subject to enforcement does not have residence, domicile or principal executive office in China but has property within the territory of China, it shall be the place where his//her/its property is located.

Article 4 After the people's court of China with jurisdiction receives the application of one party, it shall examine the arbitration award whose recognition and enforcement has been applied for; if the court believes that the circumstances listed in Subparagraph 1 and Subparagraph 2 of Article 5 of the 1958 New York Convention, it shall rule that the validity of award shall be recognized and that the award shall be enforced according to Civil Procedure Law (Trial Implementation); if the court holds that any of the circumstances listed in Subparagraph 2 of Article 5 exists, or the evidence provided by the person subject to enforcement proves that any of the circumstances listed in Subparagraph 1 of Article 5 exists, it shall dismiss the application and refuse to recognize and enforce the arbitration award.

Article 5 The arbitration awards whose recognition and enforcement are applied for to the people's court in China are confined to arbitration awards made by another contracting state after the 1958 New York Convention takes effect in China. The application shall be filed within the

time limit for enforcement provided for in Article 169 of Civil Procedure Law (Trial Implementation).

It is hereby notified for your compliance.

Attachment I Relevant Provisions Quoted from Convention on the Recognition and Enforcement of Foreign Arbitral Awards in this Circular

Article 4

(1) To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

A. The duly authenticated original award or a duly certified copy thereof;

B. The original agreement referred to in article II or a duly certified copy thereof.

(2) If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 5

(1) Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

A. The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

B. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

C. The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

D. The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

E. The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

A. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

B. The recognition or enforcement of the award would be contrary to the public policy of that country.

Attachment II Relevant Provisions Quoted from Civil Procedure Law of the People's Republic of China (Trial Implementation) in this Circular

Article 169 The time limit for the submission of an application for enforcement shall be one year, if both or one of the parties are individuals; it shall be six months if both parties are enterprises, institutions, government organs or other organizations.

Article 204 With regard to the determined judgment or ruling entrusted by a foreign court for enforcement, the people's court of China shall examine it in accordance with the international treaties concluded or acceded to by the People's Republic of China or in light of the principle of reciprocity; if the people's court finds that it does not contravene the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and social and public interests of China, it shall recognize the validity of the judgment or ruling and enforce it in accordance with the relevant provisions of this Law. Otherwise, the judgment or ruling shall be returned to the foreign court.

Attachment III Countries Acceded to Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Denmark (1,2), France (1,2), Greece (1,2), Roman Catholic Church (1,2), the United States (1,2), Austria(1), Belgium(1), Federal Republic of Germany(1), Ireland(1), Japan(1), Luxemburg(1), Holland(1), Switzerland(1), England(1), Norway(1), Australia, Finland, New Zealand(1), San Marino, Spain, Italy, Canada, Sweden, German Democratic Republic (1,2), Hungary (1,2), Poland (1,2), Romania (1,2), Yugoslavia (1,2, 3), Bulgaria(1), Czechoslovakia(1), Soviet Union, The Republic of Belarus of Soviet Union(1), Republic of Ukraine of Soviet Union(1), Botswana (1,2), Central African Republic (1,2), China (1,2), Cuba (1,2), Cyprus (1,2), Ecuador (1,2), India (1,2), Indonesia (1,2), Madagascar (1,2), Nigeria (1,2), Philippine (1,2), Trinidad and Tobago (1,2), Tunis (1,2), Guatemala (1,2), South Korea (1,2), Monaco (1,2), Kuwait (1), Morocco(1), Tanzania(1), Benin, Chile, Columbia, Democratic Kampuchea, Egypt, Ghana, Israel, Jordan, Mexico, Niger, South Africa, Sri Lanka, Syria, Thailand, Uruguay, Djibouti, Haiti, Panama, Malaysia, Singapore

Note: 1. The country makes a statement that this Convention shall only apply to the arbitration awards made within the territory of another contracting state, that is, the country makes reciprocity reservation.

2. The country makes a statement that this Convention shall only apply to the recognized disputes arising from commercial legal relationship (contractual or non-contractual), that is, the country makes commercial reservation.

3. The country makes a statement that it shall only recognize and enforce the arbitration awards made by foreign countries after the country enters this Convention.