

Part II: Study on Dispute Resolution Process in Specific Cases

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PART TWO

Study on Dispute Resolution Process in Specific Cases

A. Dispute Resolution Process in of Consumer Protection

The article 34 of the Law on the Protection of Consumer Rights and Interests provides that “In case of disputes with business operators over consumer rights and interests, consumers may settle the disputes through the following approaches:

1. To consult and conciliate with business operators;
2. To make a request to consumer associations for mediation;
3. To appeal to relevant administrative departments;
4. To apply to arbitrate organs for arbitration according to the arbitrage agreements with business operators;
5. To institute legal proceedings in the people’s court.

1. To consult and conciliate with business operators

According to the relevant provisions of the General Principles on Civil Law and the Law on the Protection of Consumer Rights and Interests, the consumer may, on the basis of the principle of autonomy of the party, consult with the business operators so as to reach a reconciliation agreement in his favor promptly and economically before he takes other strategies of struggle, in case the dispute arises on the consumer rights and interests. For instance, in accordance with article 44 of the Law on the Protection of Consumer Rights and Interests, “Business operators shall, if the commodities or services they supply have caused damage to the properties of consumers, bear civil liabilities by means of repair, remanufacture, replacement, return of goods, makeup for the short commodities, return of payment for goods and services, or compensation for losses and so on as demanded by consumers. ”But if the business operators satisfy the concerning demands by the consumers, there is no necessity for the consumers to appeal to relevant administrative departments or institute legal proceedings.

2. To make a request to consumer associations for mediation

Consumer associations are public organizations formed according to law to exercise

social supervision over commodities and services and to protect the legitimate rights and interests of consumers. Under article 32 of the Law on the Protection of Consumer Rights and Interests, the consumer associations are authorized to accept complaints of consumers and offer investigations and mediations with respect to issues of complaints. During the course of dispute mediation, the consumer associations shall follow the general principles and guidance provided in Civil Procedure Law of our state and try to make both parties concerned to reach an agreement on the basis of ascertained facts and strictly in accordance with the law. The mediation by the consumer associations shall not last too long without a final settlement.

3. To appeal to relevant administrative departments

In China, it is usually the administrative departments for industry and commerce that accept the appeals on the disputes over the consumer rights and interests. In accordance with article 50 of the Law on the Protection of Consumer Rights and Interests, if the administrative departments for industry and commerce find out that business operators are under any circumstance that violates the law, they shall give business operators a punishment decision. Any business operator who is not satisfied with the decision on punishment may apply to the organ at the next high level for reconsideration within 15 days from the date of receipt of the decision; and the person who is not satisfied with the reconsideration decision may bring a lawsuit in the people's court within 15 days from the date of receipt of the reconsideration decision; or he may take legal proceedings directly in the people's court.

4. To apply to arbitrate organs for arbitration

After the dispute arises on consumer rights and interests, if an arbitration agreement has been reached between the consumers and business operators, the party concerned shall apply to arbitrate organs for arbitration according to the arbitration agreement; both parties can also reach an arbitration agreement on the basis of the principle of consultation after the dispute arises. If any party is not satisfied with the arbitration award after the arbitration rendered by the arbitrate organ, it may bring a lawsuit in the people's court.

5. To institute legal proceedings in the people's court

After the dispute arises on consumer rights and interests, the party concerned may institute legal proceedings in the people's court if one of the following circumstances occurs:

- (1) No reconciliation agreement can be reached between both parties;
- (2) Or the consumer associations fail to mediate between both parties;

(3) Or any of parties is not satisfied with the decision on the dispute settlement by administrative departments for industry and commerce;

(4) Or any of parties is not satisfied with the arbitration award rendered by the arbitrate organ.

Besides, the party concerned may take legal proceedings directly in the people's court.

B. Dispute Resolution Process in Labor Disputes

Article 79 of Labor Law provides that "After a labor dispute arises, the parties may apply to the labor dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests arbitration, that party may apply to the labor dispute arbitration committee for arbitration. Either party may also directly apply to the labor dispute arbitration committee for arbitration. If any party is not satisfied with the decision of arbitration, the party may bring a lawsuit to the people's court." In accordance with the provision, there are three approaches to settle labor disputes: mediation, arbitration and bringing a lawsuit to the court.

1. Mediation on labor disputes

In accordance with article 80 of Labor Law, a labor dispute mediation committee may be established within the employing Unit. The committee shall be composed of representatives of the staff and workers, the employing Unit, and the trade union. The chairmanship of the committee shall be assumed by a representative of the trade union. If an agreement is reached through mediation in the case of a labor dispute, it shall be implemented by the parties.

2. Arbitration on labor disputes

According to article 81 and 82 of Labor Law, a labor dispute arbitration committee shall be composed of representatives of the administrative department of labor, representatives from the trade union at the corresponding level, and representatives of the employing Unit. The chairmanship of the committee shall be assumed by a representative of the administrative department of labor. The party that requests arbitration shall file a written application with a labor dispute arbitration committee within 60 days from the date of occurrence of labor dispute. The arbitration committee shall generally make an arbitration decision within 60 days from the date of receiving the application. If no objections have been raised, the parties must execute the arbitration decision.

3. Bringing a lawsuit

In accordance with article 83 and 84 of Labor Law, where a party to a labor dispute is not satisfied with the arbitration decision, the party may bring a lawsuit to the people's court within 15 days from the date of receiving the award of arbitration. Where a party has neither brought a lawsuit nor execute the arbitration decision within the period prescribed by law, the other party may apply to the people's court for enforcement.

4. Settlement of disputes on collective contract

According to article 84 of Labor Law, where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned the administrative department of labor under the local people's government may coordinate with the parties and organizations concerned in settling the dispute; where a dispute arises from the fulfillment of a collective contract and no settlement can be reached through consultation by the parties concerned, the parties may apply to the labor dispute arbitration committee for arbitration. If any party is not satisfied with the arbitration decision, it may bring a lawsuit to the people's court within 15 days from the date of receiving the award of arbitration.

C. Dispute Resolution Process in Environment Problems

In accordance with relevant laws and regulations in China, there are many ways to settle disputes on the protection of environment, which can be summarized as following:

1. Settlement through consultation between both parties

With regard to this approach, no such provisions are explicitly stipulated by laws relating to environmental protection, nor is such practice prohibited by law. In practice, however, it is often the common case to settle disputes through consultation between parties on public hazards.

2. Mediation

It means the competent department of environmental protection administration will intervene and mediate the dispute between the parties concerned, which is explicitly stipulated by laws relating to environmental protection. For instance, the article 41 of

Environmental Protection Law of People's Republic of China provides that "A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses. A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. Here, the stipulation of "settled" is usually understood as "settled through mediation" and settled at the request of the parties concerned as well. In the light of this exact provision, a large number of civil disputes on environmental protection have been settled by the competent departments of environmental protection administration at all levels in China.

Besides, the approach to settle disputes on pollution through mediation by the competent departments of environmental protection administration and supervision is also applicable to cases involving foreign elements.

The procedures by which the departments of environmental protection administration and supervision settle disputes on public hazards through mediation can be summarized as following steps:

- (1) An application for mediation is made by the parties concerned;
- (2) To accept and investigate the case ,including hearing the statements of both parties, making on-site inspections, and conducting monitoring activities and technological appraisalment;
- (3) to conduct mediation in order to make both parties reach an agreement;
- (4) the parties concerned may bring a lawsuit in the people' court if the mediation fails, which means to settle the disputes through civil procedures.

In addition, what should be further pointed out is that the competent departments of environmental protection administration can do more than settle the disputes on compensation for damages through mediation in dispute settlement. They are also empowered to take corresponding coercive measures including ordering the enterprise concerned to suspend its operation ,or to eliminate or control the pollution, or to move away or transfer its production within a specified period of time.

3. Arbitration

In accordance with the Arbitration Rules of Maritime Arbitration Commission of China which was established by China Committee of Promoting International Trade, the Maritime Arbitration Commission of China settles disputes on damage caused by maritime

environmental pollution by means of arbitration. The Commission accepts cases at the request of one of the parties under the arbitration agreement agreed upon between parties either before or after the dispute arises, and settle them independently and impartially so as to protect the legitimate rights and interests of the parties. The arbitration award is final, and neither of the parties may bring a lawsuit before a court any more, nor can either of them apply to other organs for an amendment of the arbitration award. The arbitration shall be executed automatically by both parties after it is rendered. Where one of the parties do not implement the arbitration award, the other party may apply to a people's court in China for enforcement in accordance with relevant provisions of China law, or it may apply to a competent foreign court for enforcement under International Treaty on Acknowledgement and Execution of Foreign Arbitration Award in 1958 or other international treaties that China has signed or acceded to.

4. Bringing a lawsuit

In accordance with article 41 of Environmental Protection Law of People's Republic of China, the parties who suffered environmental pollution may directly bring a lawsuit before the people's court for compensation for the damage; they can also firstly apply to the competent department of environmental protection administration for mediation, and bring a lawsuit to the people's court secondly in case the mediation fails.