

The newly adopted Law on Labor Disputes Conciliation and Arbitration by the Standing Committee of the National People's Congress of China on Dec 29 2007 which will take effect on May 1, 2008 (hereinafter " Labor Disputes Arbitration Law ") is the first law that specially regulates the labor disputes between employers and employees in China. Listed below are existing rules governing settlement of labor disputes:

1. The Chapter 10 of Labor Law (1994);
2. The Regulations on Settlement of Labor Disputes (1993), promulgated by the State Council;
3. The Interpretations by the Supreme Court on Several Questions of the Application of Laws to the Trial of Labor Disputes (2001); and
4. The Interpretations (II) by the Supreme Court on Several Questions of the Application of Laws to the Trial of Labor Disputes (2006).

Following the Labor Contract Law promulgated on June 29 2007 and taking effect on January 1 2008, the Labor Disputes Arbitration Law is another important law seeking to safeguard employees' rights and interests in China, which places more burden and obligations on employers, particularly in the following aspects:

**Burden of proof.** In cases of labor disputes arbitration, the employer shall, upon request of the labor disputes arbitration tribunal and within a stated period, provide relevant evidences under his control even if such evidences may be in favor of the employee in question; Failing to do so may lead to adverse consequences on the side of the employer;

**Order of payment.** If an employer fails to duly perform his obligations under a conciliation agreement entered into by and between him and an employee in respect of payment of delayed labor remuneration, medical expenses of work-related injury, economic compensation or damages, the employee may apply to the people's court for an order of payment on the basis of such conciliation agreement;

**Advance execution.** In cases of claiming labor remuneration, medical expenses of work-related injury, economic compensation or damages, the labor dispute arbitration tribunal may, upon request of the employee in question, order the employer to make payment in advance before the final award is made;

**Disputes with staff seconded under labor service contract.** In some cases, employers prefer retaining staff by way of secondment under labor service contract aiming to reduce legal risks in respect of human resources (for example, if any labor disputes arise, it is hard for the staff seconded to raise labor arbitration against the employer directly). However, such situation will change under the Labor Disputes Arbitration Law: the employer will be asked to take part in the labor arbitration in the case of labor disputes in relation to a staff seconded under a labor service contract;

**Prescription of arbitration.** According to the Labor Law of 1994, the employee will lose the right of recovery if he fails to raise labor arbitration within 60 days starting from the date of occurrence of relevant labor dispute. Under the Labor Disputes Arbitration Law, that period is extended to 12 months counting from the date the employee knows or should have known the infringement on his or her rights and interests; and

**Final award.** With regard to cases of claiming labor remuneration, medical expenses of work-related injury, economic compensation or damages with an amount involved not exceeding 12 times of the local monthly lowest wage standard; or of disputes on ground of implementing national labor standards in respect of working hours, breaks and holidays and social insurance, awards made by the labor dispute arbitration tribunal are final to the employer who is no longer entitled to bring lawsuit to the people's court on this issue., unless the employer can prove there exist circumstances stated by law where such final award can be revoked.