



## CHINA LEGAL BRIEFING 84

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### 1. *National*

*Reply to the Question of Whether People's Courts Shall Register Applications for Reopening of Annulment Procedure after Earlier Applications for Annulment of Arbitral Awards Have Been Rejected*

最高人民法院关于当事人对驳回其申请撤销仲裁裁决的裁定不服而申请再  
审，人民法院不予受理问题的批复

【*Issued By*】 Supreme People's Court

【*Subject*】 Arbitration, Annulment

【*Promulgated on*】 July 26<sup>th</sup> 2004

【*Effective From*】 July 29<sup>th</sup> 2004

【*Source*】 [www.court.gov.cn](http://www.court.gov.cn)

In a response addressed to the High Court of Shan'xi Province (陕西), the Supreme Court gave negative answer to the question of whether parties may reopen the annulment procedure after their earlier applications for annulment of arbitral awards have been rejected:

DR. URS GUT  
DR. PETER M. BELSER M.C.L.  
DR. CHRISTOPH SCHMID  
DR. PETER ALTORFER  
DR. MARCO CEREGHETTI  
BIGNIA VIELI LL.M.  
DR. MICHAEL HUBER LL.M.  
PROF. DR. DANIEL GIRSBERGER LL.M.  
FURSPR. DANIEL URECH  
GEORG ZONDLER  
DR. WOLFGANG ZÜRCHER LL.M.  
DR. CHRISTIAN WENGER LL.M.  
DR. ANDREAS HÜNERWADEL LL.M.  
DR. MARTIN HESS  
DR. PAUL THALER  
DR. URS M. WEBER-STECHER LL.M.  
DR. RUDOLF OTTOMANN  
ANDRÉ A. GIRGUIS  
DR. FRANK SCHERRER LL.M.  
DR. KRISTINA TENCHIO-KUZMICH  
LORENZ DROESE  
NATHAN KAISER  
DR. ROMAN HEIZ  
DR. MIRJAM RHEIN  
DR. MICHAEL MRÁZ  
REGULA GRUNDER LL.M.  
DR. MATTIA TONELLA  
DR. BEAT WALTI  
MICHEL POLA  
BEAT D. SPECK  
  
DR. JEAN-CLAUDE WENGER KONSULENT  
DR. LELIO VIELI KONSULENT  
DR. REMO CEREGHETTI KONSULENT  
DR. JOSEF SCHERRER KONSULENT

MARKUS HUGGER DIPL. BUCHH./CONTR.

Telefon +41 (0)1 563 33 33  
Fax +41 (0)1 563 33 66  
mail@wengerlaw.ch  
www.wengerlaw.ch

Büros Zürich  
Dufourstrasse 56 und  
Mühlebachstrasse 38  
Postfach 1285  
CH-8008 Zürich

Büro Zug  
Industriestrasse 7  
Postfach  
CH-6301 Zug

Büro China  
Room 722  
Golden Land Building  
No. 32 Liang Ma Qiao Road  
Chaoyang District  
Beijing 100016 P.R.C.

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Given the spirit of Article 9 of Arbitration Law,<sup>1</sup> People's Courts shall not register applications by parties for reopening of annulment procedure after the courts have rejected their earlier applications.

***Response to the Question of How to Determine When the Time Limit for Arbitration of Labor Dispute Starts to Run in the Case of Termination of Employment Contracts***

最高人民法院关于解除劳动合同的劳动争议仲裁申请期限应当如何起算问题的批复

**【Issued By】** Supreme People's Court

**【Subject】** Employment Dispute Settlement

**【Promulgated on】** July 26<sup>th</sup> 2004

**【Closing Date】** July 29<sup>th</sup> 2004

**【Source】** [www.court.gov.cn](http://www.court.gov.cn)

The Supreme Court, in its response to the High Court of Yun'nan Province, addressed the issue of calculating the time limit in the event that employers terminate employment contracts:

In the event that disputes arise from termination of employment contracts in accordance with Article 25 (4) of Labor Law of the PRC by employers,<sup>2</sup> the time limit for submitting the disputes to labor dispute arbitration associations by employees shall start to run from the receipt of termination notice in writing.

***Catalogue of Advantageous Industries for Foreign Investment in Central and Western Areas (2004 Version)***

中西部地区外商投资优势产业目录（2004年修订）

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<sup>1</sup> Article 9 of PRC Arbitration Law provides that:

A system of a single and final award shall be practiced for arbitration. If a party applies for arbitration to an arbitration commission or institutes an action in a peoples court regarding the same dispute after an arbitration award has been made, the arbitration commission or the peoples court shall not accept the case.

If an arbitration award is set aside or its enforcement is disallowed by the peoples court in accordance with the law, a party may apply for arbitration on the basis of a new arbitration agreement reached between the parties, or institute an action in the peoples court, regarding the same dispute.

<sup>2</sup> Article 25 provides that:

The employer can revoke labor contracts should any one of the following cases occur with its laborers:

....

(4) When they are brought to hold criminal responsibilities in accordance with law.

**【 Issued By】** Ministry of Commerce, National Development and Reform Commission

**【 Subject】** Foreign Investment

**【 Promulgated on】** July 23<sup>rd</sup> 2004

**【 Effective From】** September 1<sup>st</sup> 2004

**【 Source】** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

**【 Repeal】** Catalogue of Advantageous Industries for Foreign Investment in Central and Western Areas (2000 Version)

The 2004 Catalogue of Advantageous Industries for Foreign Investment in Central and Western Areas ("2004 Catalogue") is adopted to implement the 2002 Provisions on Guidance of Foreign Investment ("指导外商投资方向规定", "2002 Provisions", State Council, 2002), which encouraged the central and western areas of the People's Republic of China to develop their industries with comparative advantage by attracting foreign investments.

Foreign investments to industries included into the 2004 Catalogue will enjoy treatments granted to "the encouraged industries" as provided for in the 2002 Provisions and in the Circular Transmitted by the General Office of State Council on Positions of Ministry of Foreign Trade and Economic Cooperation [Ministry of Commerce at present] et al to Further Encourage Foreign Investments ("国务院办公厅转发外经贸部等部门关于当前进一步鼓励外商投资意见的通知", 1999).

Projects approved under the 2000 Catalogue shall continue enjoying the treatments provided by that Catalogue. Projects under construction, which meet the conditions of the 2004 Catalogue, may enjoy treatments under the new Catalogue.

### ***Provisions on Administration of Qualifications for Foreign Labor Service Cooperation***

对外劳务合作经营资格管理办法

**【 Issued By】** Ministry of Commerce, State Administration of Industry and Commerce

**【 Subject】** Export of Labor Services

**【 Promulgated on】** July 26<sup>th</sup> 2004

**【 Effective From】** August 25<sup>th</sup> 2004

**【 Source】** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

The Provisions applies to the administration of qualifications for foreign labor service cooperation business (including trainees) conducted by enterprises incorporated in China. For the purpose of this regulation, Foreign Labor Service Cooperation refers to economic activities in which qualified domestic enterprise legal persons conclude contracts with overseas companies, intermediate agencies and individual employers that are permitted to take in foreign labors, and recruit, select and dispatch Chinese citizens to provide labor services to foreign employers abroad, and manage these labors. Overseas enterprises, natural persons and Offices of foreign institutions at China shall not take in laborers directly in China.

Enterprises applying for licenses for foreign labor service cooperation shall satisfy the following conditions:

- An enterprise legal person duly incorporated, existing for more than 3 years, with registered capital no less than RMB 5 million or RMB 3 million in case of enterprises seating in central and western areas;
- Ratio of debt to asset no more than 50%;
- Permanent establishment with office acreage no less than 300 square meters;
- Complete management system with certification of ISO9000 quality management;
- Qualified personnel among whom no less than 5 members of staff responsible for foreign labor service have junior college or medium technical degrees; no less than 2 full time staff members responsible for training management; no less than 2 full time staff members responsible for financial matters, and at least 1 staff member in charge of legal matters.
- Established track record and provision of no less than 300 laborers to enterprises with qualification for foreign labor service cooperation in the past 3 years.

Enterprises that have obtained licenses for foreign labor service cooperation before promulgation of the Provisions shall meet the criteria set forth therein within one year after the Provisions are effective.

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