

Chapter 94

ARBITRATION*

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*Cross reference—Civil procedure, ch. 1.

Sec. 94-1. Scope of chapter.

This chapter applies to any written contract, agreement or other instrument entered into by the Eastern Band of Cherokee Indians (the "Tribe") by any instrumentality of the Tribe or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument, or any other claim, dispute or controversy existing between them at the time of the agreement.

(Ord. No. 356, 11-7-1996)

Sec. 94-2. Agreements to arbitrate are enforceable.

An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement shall be valid, irrevocable and enforceable.

(Ord. No. 356, 11-7-1996)

Sec. 94-3. Law to be applied and jurisdiction.

(a) In any contract, agreement or instrument described in section 94-1 of this chapter, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have come into contact with the jurisdiction so selected.

(b) In any proceeding under this chapter, whenever the contract, agreement or other instrument sets forth a choice of law provisions, the Cherokee Court shall apply the procedural rules of the Cherokee Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Cherokee Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

(c) In any proceeding under this chapter, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Cherokee Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of North Carolina, including any applicable choice of law principles, provided that such law does not conflict with this chapter or other applicable Tribal law.

(d) The Cherokee Court (Court of Indian Offenses of the Tribe as any successor court of the Tribe having civil jurisdiction) shall have jurisdiction to decide any action for legal or equitable relief or other proceedings brought by any party to any contract, agreement or instrument described in section 94-1 of this chapter.

(e) Any application to the Cherokee Court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions except as otherwise herein expressly provided.

(Ord. No. 356, 11-7-1996)

Sec. 94-4. Stay of proceeding and order to proceed with arbitration.

(a) If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in section 94-1 of this chapter, the Cherokee Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been completed in compliance with the agreement.

(b) A party to any contract, agreement or instrument described in section 94-1 of this chapter claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Cherokee Court for an order directing the parties to proceed with the arbitration in compliance with the agreement. In such event, the Cherokee Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrators.

(Ord. No. 356, 11-7-1996)

Sec. 94-5. Advice of the court.

At any time during an arbitration, upon request of all parties to the arbitration, the arbitrators may make application to the Cherokee Court for advice on any questions of Tribal or state law arising in the course of the arbitration, provided that such parties shall agree in writing that the advice of the court shall be final, as to the question presented, and that it shall bind the arbitrators in rendering any award.

(Ord. No. 356, 11-7-1996)

Sec. 94-6. Time within which award shall be rendered.

(a) If the time within which an award is to be rendered has not been fixed in the arbitration agreement, the arbitrators shall render the award within 30 days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(b) An arbitration award shall be in writing and signed by the arbitrators. The arbitrators shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

(Ord. No. 356, 11-7-1996)

Sec. 94-7. Application for order confirming award; record to be filed with Clerk of Court; effect and enforcement of judgement.

(a) At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Cherokee Court for an order confirming the award.

(b) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of Cherokee Court for entry of judgment thereon, file the following papers with the Clerk:

- (1) The agreement to arbitrate;
- (2) The selection or appointment, if any, of the arbitrators;
- (3) Any written agreement requiring the reference of any questions as provided in section 94-5;
- (4) Each written extension of the time, if any, within which to make the award;
- (5) The award;
- (6) Each notice and other paper used upon an application to confirm the award; and
- (7) A copy of each order of the Cherokee Court upon such an application.

(c) An arbitration award shall not be subject to review or modification by the Cherokee Court, but shall be confirmed strictly as rendered by the arbitrators. Judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all provisions of law relating to, a judgment in a civil action, and it may be enforced as if it was rendered in a civil action in the Cherokee Court. When the award require the performance of any act other than the payment of money, the Cherokee Court may direct the enforcement thereof in the manner provided by law.

(d) An arbitration award may be vacated by the Cherokee Court upon application of a party to the arbitration who serves notice of the motion upon the adverse party or the attorney for the adverse party within three months after written notice of the award has been received by the adverse party but only if:

- (1) The award was procured by corruption, fraud or undue means;
- (2) Where there was evident partiality or corruption in the arbitrators, or any of them;

