

TRIBAL CODE

CHAPTER 95:

ARBITRATION ORDINANCE

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HISTORY NOTE:

Resolution 99-92 , adopted June 22, 1999, adopts Tribal Code Chapter 95: Arbitration Ordinance, effective immediately.

TRIBAL CODE

CHAPTER 95:

ARBITRATION ORDINANCE

95.101 Scope of Ordinance.

This Ordinance applies to any written contract, agreement or other instrument entered into by: (a) the Sault Ste. Marie Tribe of Chippewa Indians (“the Tribe”), or (b) any governmental or business instrumentality of the Tribe, or (c) 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 controversy arising out of such contract, agreement or other instrument, or any other controversy existing between them at the time of the agreement.

95.102 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 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 controversy existing between them at the time of the agreement, shall be valid, irrevocable, and specifically enforceable.

95.103 Law to be Applied.

(1) In any contract, agreement or instrument described in 95.101 of this Ordinance, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument 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 hereto, provided that the subject matter of the contract, agreement, instrument or controversy, and at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

(2) In any Tribal Court proceeding under this Ordinance, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall be effective to 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.

(3) In any Tribal Court proceeding under this Ordinance, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal 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 Michigan, including any applicable choice of law principles, provided that such law does not conflict with this Ordinance or other applicable tribal law.

95.104 Stay of Proceedings and Order to Proceed with Arbitration.

(1) If any action for legal or equitable relief or other proceeding is brought in Tribal Court by any party to any contract, agreement or instrument described in Section 95.101 of this Ordinance, the Tribal Court shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

(2) A party to any contract, agreement or instrument described in Section 95.101 of this Ordinance claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal 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 arbitrator(s).

95.105 Advice of the Court.

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question 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 arbitrator(s) in rendering any award.

95.106 Time Within Which Award Shall be Rendered.

(1) If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty 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.

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

95.107 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgement.

(1) 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 Tribal Court for an order confirming the award.

(2) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk: (a) the agreement to arbitrate; (b) the selection or appointment, if any, of the arbitrator(s); (c) any written agreement requiring the reference of any question as provided in Section 5; (d) each written extension of the time, if any, within which to make the award; (e) the award; (f) each notice and other paper used upon an application to confirm; and (g) a copy of each order of the Tribal Court upon such an application.

(3) An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The 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 the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the specific enforcement thereon in the manner provided by law.

95.108 Arbitration Award Not Appealable.

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Ordinance enforcing an agreement to arbitrate or an award issued by an arbitrator.

95.109 Jurisdiction of the Tribal Court

(1) The Tribal Court shall have jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 95.101 of this Ordinance; provided that if the Tribe or an instrumentality of the Tribe is a party thereto, the Tribe or such instrumentality has explicitly waived the defense of sovereign immunity in the contract, agreement or other instrument.

(2) The jurisdiction of the Tribal Court under this Ordinance shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the parties to such contract, agreement, or other instrument, shall have explicitly consented in such contract, agreement or other

instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1 of this Ordinance shall be valid and enforceable in accordance with its terms, and the parties thereto shall not be obligated to exhaust remedies in Tribal Court before proceeding in such state or federal court.

95.110 Requirement of Independent Agreement for Arbitration of Waiver of Immunity

This ordinance is intended to provide a mechanism for arbitration in cases in which the Tribe or a Tribal instrumentality has both agreed to arbitration and has waived its immunity from suit. Neither the ordinance nor any of its provisions constitutes an agreement to arbitration or a waiver of immunity, in and of itself.