

Title 3 – Tribal Court

Chapter 7 - Arbitration Of Disputes

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Legislative History

Enacted:

Ordinance Related to the Arbitration of Disputes, Ord. 229 (04/05/05), BIA (04/20/05)

Editor's Note: Ord. 229, as enacted, contained typographical errors and 2 sections entitled "Severability". Section .180, as enacted, has been removed. It read as follows:

3-07.180 Severability.

The provisions of this Chapter are severable. If a court of competent jurisdiction should hold any provision of this Chapter invalid, such ruling shall not affect the validity of any other provision, such that the remaining provisions shall have full force and effect.

3-07.010 Purpose and Authority.

(A) *Purpose.* It is the purpose and policy of this Ordinance to authorize the arbitration of disputes in contractual agreements and to provide for the enforcement of agreements to arbitrate, and resulting arbitration awards, by the Tribal Court.

- (B) *Authority.* This Ordinance is enacted by the Tribal Senate of the Swinomish Indian Tribal Community pursuant to the Authority conferred upon the Tribal Senate in Article VI, Section I of the Constitution of the Tribe.

[History] Ord. 229 (04/05/05).

3-07.020 Scope of Ordinance.

This Ordinance applies to any written contract, agreement or other instrument entered into by the Tribe, by any subdivision, instrumentality or affiliate of the Tribe or by any dependent or independent instrumentality or agency thereof, 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. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Ordinance are hereby repealed to the extent of any such inconsistency. The Tribal Senate reserves the right to repeal or amend this Ordinance at any time, provided that no such repeal or amendment shall be effective as to any written contract, agreement or other instrument described in this Section 2 entered into prior to the date of adoption of such amendment or repeal.

[History] Ord. 229 (04/05/05).

3-07.030 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, 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.

[History] Ord. 229 (04/05/05).

3-07.040 Law to be Applied.

- (A) In any contract, agreement or instrument described in Section 2 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 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 some contact with the jurisdiction so selected.
- (B) In any proceeding in the Tribal Court relating to a contract, agreement or instrument described in Section 2 of 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 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 in the Tribal Court relating to a contract, agreement or instrument described in Section 2 of this Ordinance, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribe, including any applicable choice of law principles.

[History] Ord. 229 (04/05/05).

3-07.050 Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration.

- (A) If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to any contract, agreement or instrument described in Section 2 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.
- (B) If any party to any contract, agreement or instrument described in Section 2 of this Ordinance, claiming the failure, neglect or refusal of another party thereto to proceed with an arbitration thereunder, makes application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement, 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).

[History] Ord. 229 (04/05/05).

3-07.060 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 so long as such parties 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.

[History] Ord. 229 (04/05/05).

3-07.070 Time Within Which Award Shall be Rendered.

- (A) 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 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 arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

[History] Ord. 229 (04/05/05).

3-07.080 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

- (A) At any time 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.
- (B) Any party applying to the Tribal Court 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: (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 6; (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; and (7) a copy of each order of the Tribal Court upon such an application.
- (C) An arbitration award shall not be subject to review or modification by the Tribal Court for any reason other than (1) a determination by the Court that the issue involved is referable to arbitration according to the terms of the agreement in question or (2) in the circumstances described in 9 U.S.C. §§ 10 and 11. 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 enforcement thereon in the manner provided by law.

[History] Ord. 229 (04/05/05).

3-07.090 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.

[History] Ord. 229 (04/05/05).

3-07.100 Jurisdiction of the Tribal Court.

To the extent allowed by federal law, the jurisdiction of the Tribal Court 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 2 of 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 therein. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 2 of this Ordinance, and any waiver of the obligation of the parties to exhaust Tribal Court remedies, shall be valid and enforceable in accordance with its terms.

[History] Ord. 229 (04/05/05).

3-07.110 Appointment of Arbitrators.

- (A) Upon the application by any party to any contract, agreement or instrument described in Section 2 of this Ordinance, the Tribal Court shall appoint an arbitrator or arbitrators in any of the following circumstances:
 - (1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators;
 - (2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, but one or more of the arbitrators have not been appointed and the time within which they should have been appointed has expired; or
 - (3) When any arbitrator fails or is otherwise unable to act, and his or her successor has not been duly appointed.
- (B) In any of the circumstances described in Section 11(A) of this Ordinance, where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the Tribal Court.
- (C) Arbitrators appointed by the Tribal Court shall have the same power under this Ordinance as though their appointment had been made in accordance with the agreement to arbitrate.

[History] Ord. 229 (04/05/05).

3-07.120 Authority of Arbitrators.

- (A) An arbitrator acting pursuant to this Ordinance may administer oaths, allow discovery, order the presence of witnesses or the production of documents and things, and allow fees for such appearance or production, all as such is provided for in the Swinomish Rules of Civil Procedure.
- (B) Orders for the presence of witnesses or the production of documents or things shall be served in the same manner as a subpoena of the Tribal Court, and may be enforced by the arbitrators in the same manner that the Tribal Court would enforce an order of the Court.

[History] Ord. 229 (04/05/05).

3-07.130 Jury Trial Not Available.

All proceedings in Tribal Court under this Ordinance shall be conducted by the Court, without a jury.

[History] Ord. 229 (04/05/05).

3-07.140 Severability.

If any section or part thereof of this Ordinance or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Ordinance shall not be affected thereby and shall remain in full force and effect.

[History] Ord. 229 (04/05/05).

3-07.150 No Waiver of Sovereign Immunity.

Nothing in this Ordinance shall be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its officers, employees or agents acting within the scope of their authority.

[History] Ord. 229 (04/05/05).

3-07.160 Effective Date.

This Ordinance shall become effective immediately upon adoption by a majority vote of the Tribal Senate.

[History] Ord. 229 (04/05/05).

3-07.170 Repealer.

[reserved]

[History] Ord. 229 (04/05/05).