CIETAC (CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION)

CIETAC Case No. X20130713

SHAANXI CULTURAL HERITAGE PROMOTION CENTER V. CHINA INSTITUTE IN AMERICA, TSX OPERATING COMPANY, LLC D/B/A DISCOVERY TIMES SQUARE MUSEUM

ARBITRATION AWARD

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31 March 2014

Tribunal:
Liang Hua (Sole arbitrator)

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Arbitration Award

[1]. China International Economic and Trade Arbitration Commission (hereinafter referred to as the "CIETAC") has accepted the dispute case under No. DR-120228/C-USA-NTS LOAN AGREEMENT OF THE EXHIBITION ENTITLED "CHINA'S TERRACOTTA ARMY" JOINTLY ORGANIZED BY SHAANXI CULTRURAL HERITAGE PROMOTION CENTER PEOPLE'S REPUBLIC OF CHINA AND CHINA INSTITUTE IN AMERICA DISCOUVERY TIMES SQUARE MUSEUM THE UNITED STATES OF AMERICA (hereinafter referred to as the "Agreement") in accordance with the arbitration clauses under the Agreement and the written application for arbitration with China Institute in America as the First Respondent (hereinafter referred to as the "First Respondent") and Discovery Times Square Museum as the Second Respondent (hereinafter referred to as the "Second Respondent") submitted by the Claimant to the CIETAC on September 11, 2013. The case number is X20130713.

[2]. The provisions for foreign-related arbitration of the Arbitration Rules of the China International Economic and Trade Arbitration Commission (hereinafter referred to as the "Arbitration Rules") that came into force on May 1, 2012 may apply to the arbitration proceedings of this case. As the amount in dispute in this case does not exceed RMB 2 million, subject to Article 54 of the Arbitration Rules, the provisions of Chapter Four "Simplified Procedure" of the Arbitration Rules shall apply to the proceedings of this case; and other matters that are not specified in that chapter shall be comply with other chapters of the Arbitration Rules.

[3]. On September 26, 2013, the Secretariat of the CIETAC delivered to the Respondents by EMS the Notice of Arbitration, Arbitration Rules and Panel of Arbitrators to the Claimant and the Respondents respectively, together the Application for Arbitration and its annexes submitted by the Claimant. The EMS receipts show that the mails have been properly served to the Claimant and the Respondents.

[4]. As the two parties failed to jointly appoint or entrust the Chairman of the CIETAC to appoint a sole arbitrator within the specified period, the Chairman appointed Ms. Hua Liang as the sole arbitration of this case in accordance with the Arbitration Rules. After Arbitrator Hua Liang signed the Declaration, an Arbitral Tribunal was formed to hear the case.

[5]. The Secretariat of the CIETAC and the Arbitral Tribunal decided to hear the case in Beijing on December 10, 2013. The Secretariat of the CIETAC mailed the Notice of Formation of Arbitral Tribunal and the Notice of Hearing to both parties on November 11, 2013. The EMS receipts show that the above materials have been properly served to the Claimant and the Respondents.

[6]. On December 10, 2013, the Arbitral Tribunal heard this case in Beijing as scheduled. The Claimant and the First Respondent have appointed attorneys to appear in the court, and the Second Respondent was absent. During the trial, the Claimant and the First Respondent stated the facts of the case, produced the originals of relevant evidence, and argued about relevant facts and legal issues. The Arbitral Tribunal conducted investigations and arranged for cross-examination by both parties in respect of the evidence involved.

[7]. After trial, the Arbitral Tribunal, via the Secretariat, informed the Second Respondent of the

hearing, and also informed it that if it needed to submit any comments or request hearing the case again, it shall propose within the specified period. The Second Respond did not submit any materials within the specified period. The Claimant and the First Respondent submitted supplementary evidence and written comments after the hearing, and expressed their cross-examination opinions in writing on the other party's supplementary evidence. The Secretariat of the CIETAC forwarded the parties' supplementary materials to the other parties and the Arbitral Tribunal.

[8]. Due to the needs of the arbitration proceedings, upon request by the Arbitral Tribunal, the Secretary-General of the CIETAC decided to extend the period for rendering the award to March 31, 2014.

[9]. During the arbitration proceedings of this case, all notices have been effectively served by the Secretariat of the CIETAC to the Claimant and the Respondents in accordance with Article 8 of the Arbitration Rules.

[10]. This case has now been concluded after trial. The Arbitral Tribunal made this award according to the laws based on the situations investigated during the hearing and the existing written supporting materials submitted by the Claimant and the First Respondent The facts of the case, the comments of the Arbitral Tribunal and the award are described as follows:

I. Facts of the Case

[11]. The Claimant and the Respondents in this case signed the Agreement on April 19, 2012. It is covenanted to jointly hold an exhibition named "China's Terracotta Army" (in Chinese:??????)in Discovery Times Square Museum in New York, the USA, from April 27, 2012 to August *26, 2012,* According to the Agreement, the Claimant shall provide the Respondents 111 pieces (sets) of exhibits, and the Respondents shall pay the Claimant a loan fee totaling US$ 360,000, to be paid in three installments.In addition, the parties also agreed that for the small items for sale made according to the exhibit images provided by the Claimant and also to be sold by the Respondents, the Respondents would pay 8% of net sales revenue to the Claimant as royalty fee within 14 days after the closing day of the exhibition. As the Respondents failed to do so according to laws, the Claimant filed arbitration claims as follows:

1. The Respondents shall pay the Claimant $108,000 of the third installment of loan fee;

2. The Respondents shall compensate the Claimant RMB 50,000 of attorneys' fees.

3. The Respondents shall compensate the Claimant travel costs incurred by the latter for this case.

4. The Respondents shall bear the arbitration fee of this case.

[12]. Facts and reasons on which the Claimant's arbitration claims are based:

(1) The Agreement in this case is a result satisfactory to both parties, has expressed the true intention of both parties, and also complies with the requirements of the laws of China. Therefore,

this Agreement is legitimate and valid;

The exhibits under the Agreement are national cultural heritage of China, and are subject to strict protection under the laws of China. The Second Respondent first proposed its intention of cooperation on December 28, 2010, and it made a formal invitation to the Claimant and its supervisor competent authorities in May 2011. Finally the parties formally signed the Agreement on April 19, 2012, and the exhibition was successfully held in New York, the USA from April 27, 2012 to August 26, 2012. The time spanned nearly two years. During this period, the parties have, via mails, faxes, letters and other forms, made a great deal of negotiations and modifications with respect to, among other things, the contents of the agreement, including but not limited to qualification of the party to the contract, exhibition period, exhibits, and contracts. The Claimant has also stressed many times that contracts with cultural heritage as exhibits were different from ordinary contracts. Though the Claimant was a party to the contract, some terms of the contract, especially exhibition period, qualification of the exhibition organizer, exhibition venue planning and others shall be subject to the approval of the superior competent authorities. The Respondents showed their understandings and consents.

Based on this, the Claimant, as Party A, and the Respondents, jointly as Party B, executed the Agreement in this case, providing that an exhibition titled "China's Terracotta Army" cultural heritage would be held in the Discovery Times Square Museum in New York, the USA from April 27, 2012 to August 26, 2012. According to the provisions of Article 25 of the Contract Law of the People's Republic of China, "A contract is formed when the acceptance becomes effective." Article 44 provides that: "A contract legally formed shall become effective upon its formation." Therefore, the Agreement in this case is legitimate and effective.

(2) The Claimant has fulfilled all of its obligations under the Agreement according to the provisions of the Agreement.

The Claimant has supplied to the Respondents 111 pieces (sets) of exhibits under the Agreement, and reported to such competent authorities for cultural heritage as the State Administration for Cultural Heritage and Shanxi Administration Division of Review of Import and Export of National Cultural Heritage of China; appointed personnel to check and deliver exhibits in Xi’an, China, make delivery directory, and supervise packing of exhibits before transportation, unpacking and inspection after transportation to ensure the arrival of the exhibits to the venue before the opening; and assisted the Respondents' personnel in successfully completing all the preparations prior to the exhibition. On April 27, 2012, the exhibition was opened as scheduled. New York Times and many other media have given in-depth reports and comments on the exhibition. Until then, the Claimant has completed its obligations under the Agreement. The Claimant has not violated the laws of China or the Agreement during the course of performing the Agreement.

(3) The Respondents had several violations against the Agreement during the course, and refused to pay the third installment of loan fee up to present since the closing of the exhibition, having seriously violated the provisions of the Agreement and prejudiced the Claimant's legitimate rights and interests.

Article 9.3 of the Agreement sets forth that: "Upon the invitation of Party B, Party A shall arrange for two 4-person working parties (including 1 interpreter) to travel to the United States to supervise and guide Party B's exhibition layout and removal from the opening to the closing of the exhibition. The second working party (for removal) stayed in the USA for 14 days (including the travel),

assisting Party B with removal of the exhibits. The itinerary arrangement as well as activity arrangement and reception standards of the working parties during their stay in the USA were determined by the parties through negotiations." As time should be set aside for processing visas, on May 4, 2012, the Claimant sent the first mail to the Respondents, requesting them to provide a letter of removal. However, the Respondents delayed in sending the letter of removal to the Claimant, causing the Claimant's personnel for removal rushed to the USA embarrassedly. The Respondents have violated the Agreement.

Meanwhile, Section 2.2.3 of Article 10 of the Agreement provides that: "Party B shall pay Party A the third installment totaling $108,000 within 14 days after closing of the exhibition." The closing time of the exhibition as agreed on by the parties was August 26, 2012, so the Respondents shall pay to the Claimant the third installment before September 9, 2012. However, the Respondents have failed to perform their obligations of paying the last installment of the loan fee, which has seriously prejudiced the Claimant's legitimate rights and interests.

(4) The arbitration claims of the Claimant shall be supported according to Article 60 of the Contract Law of the People's Republic of China: "The parties shall fully fulfill their respective obligations as contracted." Article 107 specifies that: "Either party that fails to perform its obligations under the contract or fails to perform them according to the contract shall bear the liability for breach of contract by continuing to perform such obligations, taking remedial measures, or compensating for loss"; Article 109 provides that: "If either party fails to pay charges or remuneration, the other party may demand the payment"; Article 112 provides that: "Where either party fails to perform its obligations under the contract or does not perform its obligations as contracted, such party shall compensate the loss of the other party if there are any after the performance of obligations or the adoption of remedial measures. So far, the Respondents have not paid the Claimant the third installment of loan fee, and the Claimant has suffered loss including the arbitration fee for claiming such payment, attorneys' fee of RMB 50,000, travel costs and the interest of such loan fee.

[13]. The First Respondent defended as follows:

(1) The First Respondent is a reputable non-profit organization,

and has always been a bridge between the Eastern and Western cultural exchange. It has for many years been dedicated to the promotion of the cultural exchanges between China and the USA, from the referral of Mei Lanfang, the Peking Opera master, to make his debut in the United State in the early years, to receiving Chinese students and scholars to study the western culture in the USA in the early stage, having established very high social reputations. In consideration of the First Respondent's good social reputations, in order to meet the requirements of the State Administration for Cultural Heritage for the approval of export of cultural heritage and improve the cultural quality of the exhibition of China's Terracotta Army, the Claimant and the Second Respondent, through the cultural counsellor of the Consulate of the People's Republic of China in New York, sent an invitation to the First Respondent for participating in the exhibition of the China's Terracotta Army.

(2) The First Respondent became a party to the Agreement only for the purpose of meeting the requirements of the State Administration for Cultural Heritage for export of cultural heritage for exhibition.

After receiving the Letter of the State Administration for Cultural Heritage on Temporary Disagreement with Holding the Exhibition of China's Terracotta Army in New York, the USA (BanBo Letter [2012] No. 82), the Claimant and the Second Respondent realized that in order to meet the approval requirements of the State Administration for Cultural Heritage and to ensure successful export of the cultural heritage for exhibition, they must invite a renowned non-profit organization as a co-American party to the Agreement, thereby applying again to the State Administration for Cultural Heritage for export of cultural heritage for exhibition. The State Administration for Cultural Heritage replied by approving the exhibition of China's Terracotta Army in the USA.

It was seen from the above facts that from the stage applying to the State Administration for Cultural Heritage for holding the Terracotta Army exhibition, the role of the First Respondent was to satisfy the formal requirements of the State Administration for Cultural Heritage for a non-profit organization to approve export of cultural heritage for exhibition. In other words, to satisfy this formal approval requirements of the State Administration for Cultural Heritage, the First Respondent became a cooperative party to the Terracotta Army exhibition. Likewise, to satisfy this formal approval requirements of the State Administration for Cultural Heritage, the First Respondent became an American party to the Agreement. The First Respondent was not an actual American party to the Agreement, and the Second Respondent who actually took full responsibility for the exhibition, was the sole and actual American party to the Agreement.

(3) The First Respondent did not participate in the development and amendment of the Agreement

First, the First Respondent did not participate in the early-stage negotiations and communications. The Second Respondent sent a letter to the Claimant on May 10, 2011, proposing its idea of holding a Terracotta Army exhibition in the USA. Then the Second Respondent and the Claimant held many times of negotiations and communications with respect to the exhibition, without the knowledge or participation of the First Respondent.

Second, the First Respondent did not get involved in the determination of the terms of the Agreement. In order to satisfy the approval requirements of the State Administration for Cultural Heritage for export of cultural heritage for exhibition, the then Chairman Mr. James Sanna of the Second Respondent, through the cultural counsellor of the Consulate of the People's Republic of China in New York, contacted and invited the First Respondent to become the American party to the Agreement. At that time, the Claimant and the Second Respondent have negotiated and determined the exhibition fee, exhibition period and other terms of the Agreement without the knowledge of the First Respondent.

Finally, after execution of the Agreement, the First Respondent did not participate in the extension of the term or reduction of royalty fee under the Agreement. After the execution of the Agreement, the Second Respondent, without discussions with the First Respondent, sent a letter to the Claimant unilaterally, requesting to extend the exhibition period to September 3, 2012. In the same way, the Claimant unilaterally decided to reduce the royalty fee of the Second Respondent without discussions with the First Respondent. In fact, before the Claimant requested the First Respondent to intercede for mediation when the Second Respondent delayed in the payment of the third installment of the loan fee, neither the Claimant nor the Second Respondent has ever conducted any negotiations or communications with the First Respondent about the performance and amendment of the Agreement.

In summary, as the First Respondent neither participated in the development or amendment

of the Agreement, nor undertook the expression of intention of the contractual obligation, it became an American party to the Agreement only for the satisfaction of the approval of the State Administration for Cultural Heritage. According to Article 55 of the General Principles of the Civil Law, a civil juristic act shall meet the requirements that the intention expressed is true. As the parties to the Agreement did not invite the First Respondent to undertake the intention expression of the contractual obligations, the obligations set forth in the Agreement shall be binding upon the Claimant and the Second Respondent only, but not upon the First Respondent.

(4) The First Respondent had no actual obligations or rights under the Agreement, or received no actual economic benefits.

First, from the provisions of the Agreement, Party B shall be responsible for the exhibition publicity, exhibits check and delivery and return, transportation of exhibits, insurance for exhibits, arrangement of travel of the Chinese party to the USA, payment of exhibition fee, and so on. As Terracotta Army is an important cultural heritage of China, it imposes very high requirements to the venue, equipment and personnel of the exhibition organizer, and only the Second Respondent, as a professional exhibition organizer, has corresponding venue, equipment and personnel to complete the above exhibition. The First Respondent has no such ability to implement or get involved in any exhibition affairs under the Agreement. During the entire exhibition of Terracotta Army, the exhibition work was actually and solely completed by the Second Respondent, and the Claimant did not raise any objection to the Agreement. It is thus clear that the Claimant actually recognized the fact that the Second Respondent was the actual and sole performer of the Agreement, and the First Respondent did not have actual obligations or rights under the Agreement.

In addition, the First Respondent actually received no economic benefits under the Agreement. After the Terracotta Army exhibition was held in the Discovery Times Square Museum possessed by the Second Respondent, all the incomes from tickets and souvenirs of this exhibition were put into the pocket of the Second Respondent. The First Respondent did not receive any economic benefits, including tickets or souvenirs, related to the performance of the Agreement. In other words, the First Respondent did not share the responsibilities or interests with the Second Respondent like the Claimant alleged. Instead, the Second Respondent exclusively pocketed all the economic benefits related to the Terracotta Army exhibition.

In summary, according to Article 5 of the Contract Law of the People's Republic of China, the parties shall observe the principle of equity in defining each other’s rights and obligations. The first Respondent had no actual obligations or rights under the Agreement, and has received no actual economic benefits. Therefore as the Second Respondent enjoyed all the rights of the American party under the Agreement, it shall bear all the obligations of the American party under the Agreement.

(5) The Claimant shall have known and agreed that the First Respondent will not bear any responsibilities related to Terracotta Army exhibition or the Agreement.

First, on February 29, 2012, the First and Second Respondents executed an Indemnification Agreement, which confirmed the fact that the First Respondent would not assume any responsibilities, including the payment of exhibition fee. The Claimant shall have known the fact of the existence of thelndemnification Agreement.

Second, according to the evidence submitted by the Claimant, as the Chinese party to the Agreement, experienced the whole process for the Terracotta Army to travel to the USA for exhibition, especially the whole examination and approval process of the cultural heritage department. It fully knew that the participation of the First Respondent was solely for satisfying the approval requirements of the cultural heritage department to promote the cooperation between the Claimant and the Second Respondent.

At last, in the entire course of performance of the Agreement, when extension of exhibition, reduction of royalty fee and dispute of the third installment of the loan fee occurred, the Claimant has always directly communicated with the Second Respondent, and has never treated the First Respondent as a joint member to Party B. It only later requested the First Respondent for coordination and mediation. It is quite evident that the Claimant fully understood the First Respondent's passive position under the Agreement and in the whole exhibition process. It also knew the fact that the First Respondent did not bear any liabilities under the Agreement. It is understood by all the parties that the First Respondent would not bear any contractual responsibilities under the Agreement.

In summary, the First Respondent held that it shall not undertake relevant responsibilities in the Claimant's arbitration claims, and the Claimant's arbitration claims in respect of the First Respondent shall be dismissed.

The Second Respondent in this case neither appear in the court, nor submitted any defense opinions.

II. Comments of the Arbitral Tribunal

[14]. As after effective notice, the Second Respondent did not appear in the court, this case was heard by default in accordance with the Arbitration Rules. After having fully reviewed the evidence submitted by the Claimant and the First Respondent and the attorney's opinions, combining the hearing, the Arbitral Tribunal reached opinions as follows:

(1) Laws applicable to and language of the Agreement in this case

The Agreement in this case has Chinese and English versions. Article 14 of the Agreement sets forth that these two versions have the equal legal force. Articles 13 of the Agreement of the Chinese and English versions specifically provide that this case shall be governed by the laws of the People's Republic of China. Therefore, this case shall be governed by the laws of the People's Republic of China, and the contract terms shall be interpreted by referring to two versions.

(2) Execution and validity of the contract in this case

On April 19, 2012 the Claimant and the Respondents executed the Agreement in this case which has Chinese and English versions. The Claimant, represented by Director Yani Pang, the First Respondent, represented by Chairman Sara McCaplin, and the Second Respondent, represented by Chairman/ CEO James Sanna, signed both the Chinese and English versions. The attorney for the Claimant showed the original contract in the court, to which the First Respondent showed no

objection. The Second Respondent also showed no objection to this submission during the course of hearing. The Agreement in this case has legal form and well-defined contents and relevant terms; moreover it does not violate the mandatory provisions of the laws and administrative regulations of the People's Republic of China, and the signing parties have corresponding capacities for civil rights and acts. In view of this, the arbitral tribunal determined that the Agreement was formed by law and was legitimate and valid, and could be used as the basis for the trial of this case.

(3) The performance of the contract in this case, main points in dispute and undertaking of the liabilities for breach of contract

The parties executed the Agreement on April 19, 2012, providing that the parties would cooperate in organizing the exhibition titled "China's Terracotta Army" in Discovery Times Square Museum in New York, the USA.

The Claimant alleged that it has fully performed its contractual obligations. For this, the Claimant submitted several messages during the course of concluding and performing the agreement by the parties, the official letter on check and delivery of relevant exhibits for the China's Terracotta Army exhibition in the USA, the special report by the New York Times and other American media, and the settlement documents of the payment of the first two installments of loan fee by the Second Respondent. The First Respondent showed no objection to these, and the Second Respondent showed no different views. In view of this, the Arbitral Tribunal determined that the Claimant has fulfilled its obligations under the Agreement.

The Claimant alleged that during the performance of the contract, the Second Respondent delayed in issuing the letter of exhibition removal because it wanted to extend the exhibition period, and issued an unqualified letter of exhibition removal after having been urged by the Claimant many times, causing the Claimant's personnel for removal to fail to reach the USA in time, and bringing a great threat to the safety of the cultural heritage. The Claimant was forced to give up the royalty fee during the exhibition period, in exchange for the closing of the exhibition on time. The cultural heritage finally returned to China as scheduled. After the closing of the exhibition, the Claimant has urged the payment many times, but the Second Respondent clearly expressively refused to pay the third installment of $108,000, and claimed that the Claimant had given up such part of right. The Claimant tried to claim such payment via the First Respondent, but without any result. As a result, the Claimant issued the correspondence between it and the Second and the First Respondents, the attorney's letter sent by the Claimant's attorney to two Respondents, and the replies of two Respondents as evidence.

The First Respondent alleged in its defense that: It had no objection to the execution or performance of the contract; but it became a party to the contract just for the satisfaction of the approval requirements of the State Administration for Cultural Heritage; it neither got involved in the negotiations or development of the Agreement, nor bear the contractual obligations or actually performed the Agreement or received any benefits from the Terracotta Army exhibition. Moreover, prior to the execution of the Agreement, the Claimant should have known and agreed the fact that the First Respondent would not undertake any responsibility under the Agreement or the Terracotta Army exhibition. Therefore, the dispute in this case had nothing to do with the First Respondent, and the Claimant's arbitration claims shall be dismissed. To this end, the First Respondent submitted the introduction of its institution in Chinese and English, the agreement between the Respondents and relevant letters.

The key focuses of the parties to this case were: First, Whether the First Respondent should pay the third installment of exhibition fee; second, whether the Second Respondent could refuse to pay the third installment because its royalty fee is insufficient to cover its loss; third, whether the First Respondent should bear the equal obligation of payment with the Second Respondent, and whether the agreement between the Respondents could be a sufficient reason to defend against the Claimant's claims for payment. Upon trial, the Arbitral Tribunal found that:

1. The exhibition period specified in the Agreement in this case was from April 27, 2012 to August 26, 2012. Regarding the exhibition fee, Section 2.3, Article 10 of the Agreement provided that:"Party B (two Respondents, note by the Arbitral Tribunal) will pay Party A (the Claimant, note by the Arbitral Tribunal) a sum of $360,000 of loan fee in three installments"; Section 2.3.3, Article 10 of the Agreement provided that:"Party B shall pay Party A the third installment totaling $ 108,000 (30% of the total loan fee) within 14 days following the closing of the exhibition"; Section 5, Article 10 of the Agreement provided that:"During the exhibition, for the small items for sale made based on the exhibit images provided by Party A and also to be sold by Party B, Party B will, within 14 days upon the closing of the exhibition, pay 8% of the net sales revenue to Party A as the royalty fee, together with the third installment."

2. On April 27, 2012, the exhibition was opened as scheduled. New York Times and many other media made reports, and all the exhibition periods contained in those reports were the exhibition period under the Agreement. The exhibition was closed within the specified period.

3. During the performance of the contract, the Second Respondent pointed out in a message dated July 3, 2012 that they expected to extend the period to September 2, 2012. The Claimant replied on July 3, 2012, indicating that extension of the exhibition period was impossible because it was subject to the approval of the superior department. Yani Pang, the representative contract signatory of the Claimant, sent a message to James Sanna, the representative contract signatory of the Second Respondent, on July 11, 2012, indicating once again that the exhibition period and its extension shall be subject to the examination and approval of the national competent authorities; as the Second Respondent's request for extension could not meet the required examination and approval period, the extension was impossible. Under the condition that the Second Respondent did not insist on extending the exhibition period to September 3 or 7, the Claimant was willing to reduce royalty fee payable to the Claimant in an amount similar to the Second Respondent's loss to compensate its financial loss, and expressly stated that her authority only extended to the royalty fee. James Sanna, the representative contract signatory of the Second Respondent, sent a message to Yani Pang, the representative contract signatory of the Claimant, on July 12, 2012, indicating that they would accept to reduce the royalty fee in an amount equal to their loss, and they would not insist on extending the period from August 26 to September 3 or 7 in consideration of such reduction.

4. During the correspondence between both parties in respect of the Second Respondent's failure of payment of the third installment, the Second Respondent stated in its message dated November 20, 2012 that they have suffered a financial loss amounting to $400,000 because it missed a very important holiday week resulting from the early closing of the exhibition, and the Second Respondent considered that the amount similar to their loss shall be reduced and the royalty fee could not cover such loss. Therefore, the Second Respondent held that there should be no due and payable fee due to the financial loss suffered by it. Yani Pang, the Claimant's representative, sent a message to James Sanna, the Second Respondent's representative on November 20, 2012, indicated

once again that such removal time was decided by relevant national competent authorities, rather than by Shanxi Provincial Bureau of Cultural Heritage or the Exchange Center, prior to the execution of the contract. When the Claimant became aware of this decision from the relevant national competent authorities, the Second Respondent also agreed with this new exhibition expiration date, and thereafter signed the Agreement in this case with the Claimant according to the requirements of relevant national competent authorities. To this end, the Claimant has made a recession on the monthly loan fee. In rejecting the payment of the third installment, the Second Respondent used the above message sent by Yani Pang, the Claimant's representative, on July 11, 2012 as its reasons for not to make the payment.

5. Failing to receive the payment from the Second Respondent after urges, the Claimant contacted Sara McCalpin, the contract signatory of the First Respondent. In many correspondences from November 28, 2012 when she replied that she knew the situation, to January 24, 2013, Sara McCalpin expressed that she has always been discussing with James Sanna about this matter by leaving telephone messages or meeting face to face.

6. On March 1, 2013, the Claimant sent an attorney's letter to two Respondents via Shaanxi Tounif Law Firm, requesting them to pay $108,000 and an interest within 14 days after receipt of the letter.

In its reply to the Claimant's attorney's letter on March 18, 2013, the Second Respondent stated that it had the right to withhold $108,000 to compensate its loss. And gave reasons summarized below: (1) In many consultations between the Claimant and the Second Respondent with respect to the Agreement in the spring of 2012, the Claimant has agreed to continuously extend the exhibition to September 9, 2012. Then the Claimant notified the Second Respondent that the exhibition must be closed on August 26 because it shall be subject to the approval of the central cultural heritage authorities of China. This has resulted hundreds of thousands of loss to the Second Respondent.

(2) On July 11, 2012, Yani Pang, the Claimant's representative, stated in her email that in consideration of the significant shortening of the Second Respondent's exhibition period for several weeks, and the resulted hundreds of thousands dollars of loss, the Claimant agreed to reduce corresponding amount of loss from the royalty fee payable by the Second Respondent to the Claimant. The loan fee discussed many times between the Claimant and the Second Respondent means the corresponding fee that was withheld and unpaid by the Second Respondent. Though $400,000 of loss suffered by the Second Respondent were far greater than this, Mr. James Sanna of the Second Respondent still agreed with Ms. Yani Pang’s request. In its reply to the above messages, the Second Respondent specially pointed out that:"royalty fee equivalent to a similar amount of our financial loss" and has asked the Claimant for confirmation. (3) The Second Respondent was misled by the Claimant in terms of the reason for early removal. The Claimant then said that it was for the safety consideration for the upcoming 9.11 anniversary. Now the Second Respondent knew that this reason was falsified.

The First Respondent expressed in its reply to the Claimant’s attorney letter on April 5, 2013 that it was sympathy for the Claimant's situation, and meanwhile, it wanted to show the Claimant the background for its participation in the exhibition and expressed that it could not afford to pay such a high fee. Its views are summarized below: (1) The First Respondent is a non-profit organization governed by the laws and regulations of the USA, rather than a commercial entity or profit center. As the use of its raised funds are under strict supervision, it cannot satisfy the Claimant's financial claims. All the debts involved in this dispute are related to the Second Respondent. (2) Ever since it

got involved in the China's Terracotta Army exhibition in Discovery Times Square Museum in New York in 2012, it clearly expressed that it had no liability or debt relationship with the exhibition. In fact, it seems that all parties have known this, because all correspondences related to current dispute were made between the Claimant and the Second Respondent. The First Respondent did not participate in this. This dispute was a matter between them. (3) Prior to the execution of the Agreement, the First Respondent has already clearly explained to all parties that it would not bear any responsibility for debts. First, the First Respondent and the Second Respondent executed a separate agreement. It was covenanted by the parties in that agreement that despite as a co-party to the Agreement in this case, the First Respondent would not bear any joint or severable liabilities for any debt under the Agreement, including, but not limit to: (a) packing, shipment and clearance of cultural heritage; (b) insurance and safety of the cultural heritage during the transportation and exhibition; (c) the traffic, room and board arrangement of the Chinese delegation under the Agreement (including medical insurance, local traffic, diet, and similar situations); (d) any expenses in respect of the display, sales and publicity of the exhibition activities; and (e) expenses payable to relevant Chinese authorities related to the exhibition. Second, the First Respondent, through relevant department of Shanxi Provincial Bureau of Cultural Heritage, made comments on the draft Agreement, stressing that in executing the Agreement, the First Respondent shall, unlike the Second Respondent, have no relationship with the debts under the Agreement, and shall be Party C to the draft of the Agreement. However, "Unfortunately, the responsible person of Shanxi Provincial Bureau of Cultural Heritage did not accept our position in the Agreement as a Party C." At that time, the deadline of the contract execution and the completion of the packing preparation of the cultural heritage was imminent, and there was no enough time for further exchanges about this. (4) The First Respondent has met with and called Mr. James Sanna many times, indicating that the Second Respondent shall bear the responsibility for the payment of this deal. It expected to find the most friendly way to solve this dispute.

The Claimant provided the evidence related to the aforementioned facts, and the First Respondent showed no objection to the authenticity of such evidence, provided that it could not confirm the contents in the correspondences between the Second Respondent and the Claimant. The First Respondent also submitted its reply to the Claimant's attorney's letter, the contents of which consisted with the evidence submitted by the Claimant.

7. The First Respondent submitted the Indemnification Agreement executed between it and Second Respondents on February 29, 2012, explaining that according the contents of that agreement, it would not assume any responsibilities, including the payment of exhibition fee, under the Agreement in this case. The First Respondent also submitted a letter sent by it to James Sanna, the Second Respondent’s representative, on November 20, 2013. In this letter, the First Respondent stressed that the debt of loan fee was the liability between the Second Respondent and the Claimant, having nothing to do with the First Respondent; the payment under the Agreement shall be the sole responsibility of the Second Respondent who shall compensate the First Respondent for any loss suffered by the First Respondent arising from the Agreement. According to the above findings, the Arbitral Tribunal held that: First, the exhibition period under the Agreement in this case was from April 27, 2012 to August 26, 2012. The evidence showed that the Claimant has already completed its contractual obligations within the exhibition period, the exhibition has been held in the museum as contracted, and relevant media have made reports, to which the Respondents showed no objection. According to the provisions of the Agreement, the Respondents shall pay all exhibition fees, including the third installment of loan fee.

Second, in this case, the Second Respondent neither appeared in the court upon effective notice, nor submit any evidence or opinions. As mentioned earlier, according to the Second Respondent's messages and attorney's letter submitted by the Claimant, the Second Respondent did not pay the third installment mainly for two reasons: first, requesting extension of the exhibition period; and second, the Claimant has agreed to reduce its loss resulting from failure of extension from the royalty fee, and the royalty fee was not sufficient to cover its loss.

To this, the Claimant held that in the course of contract negotiation and performance, the Second Respondent knew that the contract term, exhibition fee and all other issues shall be subject to the examination and approval of the Claimants superior department, and the Claimant has never agreed to such extension; the loss arising from the failure of extension as alleged by the Second Respondent was based on the extendable period imagined by the Second Respondent, but such period did not exist at all from the official execution of the contract, and the profit for such period was groundless,

The Arbitral Tribunal held that: 1. The provision for the exhibition period in the Agreement in this case was very definite, and the Claimant has performed its contractual obligations within the specified period. Nothing in the Agreement showed that the Claimant had the obligation to extend the exhibition period. 2. For the exhibition fee, the Agreement in this case gave separate provisions for the loan fee and the royalty fee, and these two terms directed towards two clearly different concepts and contents. During the negotiations of the parties, the Claimant's representative proposed that if the Second Respondent would not insist on the request of extending the exhibition to September 3 or 7, the Claimant might reduce the payment in similar amount from the royalty fee due to the Claimant as a compensation, and has clearly stated that royalty fee was only within her authority. (You don't insist on the request of extending the exhibition to Sep 3 or 7, as the compensation for your financial loss, SCHPC agrees that you can reduce the payment in similar amount from the royalty fee due to SCHPC.....At this stage our center is responsible for the royalty fee. It is the best solution I can find within my authority.) The Second Respondent's representative also definitely agreed with this in his reply that the Second Respondent would not request to extend the exhibition if the Claimant agreed to reduce the royalty fee equivalent to a similar amount of its financial loss. (We would be willing to accept a reduction of the outstanding royalty fee equivalent to a similar amount of our financial loss. With the royalty fee reduction, we will no longer insist on extending the exhibition to September 3rd or 7th and will accept a closing date of August 26th.) Royalty fee was the well-defined subject matter of reduction by the parties. 3. The Second Respondent stressed that the reduction shall be the royalty fee "equivalent to its financial loss". But it failed to submit any evidence to support it. When Yani Pang, the Claimant's representative replied that the Claimant could bear the "royalty fee" "equivalent to its financial loss", the Second Respondent has informed the Claimant of its amount of loss, and did not submit any evidence to show that the Claimant should know the approximate amount of such loss. However according to normal sense, the total amount of the subject matter of the Agreement in this case, i.e. the loan fee, was $360,000, and the exhibition period under the Agreement was 4 months. The Second Respondent claimed its loss of nearly $400,000 because the exhibition could not be extended for a week or 10 days, which the Claimant could not estimate.

In summary, in their correspondences, the Second Respondent stated that the Second Respondent suffered financial loss because the exhibition could not be extended, the Claimant shall bear such loss, by means that the Claimant shall agree to reduce the loan fee and royalty fee "equivalent to its financial loss". The reason cannot be established. 1. The Second Respondent shall pay the Claimant

$108,000 of the third installment of loan fee;

Third, as for the reasons why the First Respondent held that it shall not bear the contractual obligations and therefore shall not pay relevant fees.

The First Respondent held that, the First Respondent, as a non-profit organization, became a party to the Agreement was only for the purpose of satisfying the requirements of the State Administration for Cultural Heritage for the examination and approval of export of cultural heritage for exhibition; the First Respondent did not participate in the development and amendment of the contract, and the First Respondent had neither actual obligations or rights under the contract, nor received actual economic benefits; the Claimant should have known and agreed that the First Respondent shall not bear any contractual responsibilities.

For this, the Claimant pointed out that the First Respondent, though as a non-profit organization, could not circumvent its obligations under the contract, and shall bear corresponding responsibilities as a party to the contract as it joined the contract at the invitation of the Second Respondent; in fact, the First Respondent also was involved in the early negotiations and the quantity of the exhibits; the Claimant has not been informed of the agreement executed between the Respondents, and knew nothing about such agreement.

The Arbitral Tribunal held that: 1. The Agreement in this case shall apply the laws of the People's Republic of China, and the First Respondent had no legal basis for claiming that it shall not bear the contractual obligations because it signed the commercial contract as a non-profit organization. 2. There was no special provisions in the Agreement for the First Respondent's position or whether it shall bear responsibilities; two Respondents were collectively defined as "Party B" in defining "Party A" and "Party B", and the representatives of two Respondents signed the contract as Party B, which represented the expression of their true intentions. As for the performance of the contract, both parties have the obligations to perform the contract. The First Respondent did not participate in the actual and specific issues of the exhibition, which cannot be the reason for relieving it from the contractual obligations. Though the letter dated February 25, 2013 from Mr. James Sanna, the Second Respondent's representative, to the Claimant's personnel, submitted by the First Respondent, mentioned that the First Respondent was a passive player in this dispute, and it joined because the Claimant required a not-for-profit partner, there was no evidence show that there was no special provision between the Claimant and the Respondents in respect of the First Respondent's special position during the execution and performance of the contract in this case. 3. As for the agreement (Indemnification Agreement) between the Respondents, the First Respondent had evidence neither to support that such agreement has been served to or notified to the Claimant, nor to show that the Claimant has known or recognized the existence of such agreement between the Respondents prior to the execution of the Agreement. Therefore, the Arbitral Tribunal held that the First Respondent's grounds of opposition were untenable, and it shall jointly and severally bear the payment obligations under the contract with the Second Respondent.

(4) Arbitration claims of the Claimant

Based on comments noted above, the Arbitral Tribunal supported the first claim of the Claimant, and the Respondents shall pay the third installment of loan fee to the Claimant.

As for its second claim, upon investigation, the Claimant executed an Agency Contract with Shaanxi Tounif Law Firm in respect of the dispute in this case, and paid an attorneys fee of RMB 50,000.

Shaanxi Tounif Law Firm also issued an invoice, the time and contents of which were consistent with the Agency Contract. The Arbitral Tribunal recognized this. Based on the trial of this case, the Arbitral Tribunal supported this claim of the Claimant.

As for its third claim, as the Claimant did not provide appropriate evidence to support the travel costs expended thereby for handling this case, the Arbitral Tribunal did not support it.

(5) Arbitration fee of this case

The fourth claim of the Claimant was requesting the Respondents to bear the arbitration fee. In consideration of the facts of the case and the support to the Claimant s arbitration claims, the Arbitral Tribunal supported this claim.

III. Arbitration Award

[15]. After hearing by the Arbitral Tribunal, it is ruled as follows:

(1) The Respondents shall pay the Claimant $108,000 of the third installment of loan fee;

(2) The Respondents shall compensate the Claimant RMB 50,000 of attorneys' fees.

(3) Other arbitration claims of the Claimant are dismissed.

(4) The arbitration fee of RMB 38,784 will be borne by the Respondents. The amounts payable by the Respondents have been offset by the arbitration fee prepaid by the Claimant to the CIETAC. Therefore, the Respondents shall reimburse the Claimant RMB 38,784 arbitration fee.

[16]. This arbitration award shall be the final, and become legally effective as of the date when it was rendered.