

**TITLE 7 – BUSINESS AND COMMERCIAL CODE
CHAPTER 6- ARBITRATION**

TABLE OF CONTENTS

Section 10	Title	1
Section 20	Purpose	1
Section 30	Scope of Ordinance	1
Section 40	Agreements to Arbitrate are Enforceable.....	1
Section 50	Laws to be Applied	1
Section 60	Stay of Proceedings and Order to Proceed with Arbitration	2
Section 70	Advice to the Tribal Court	2
Section 80	Time within Which Award Shall be Rendered	2
Section 90	Application for Order Confirming Award; Record to be filed with the Tribal Court; Effect and Enforcement of Judgment.....	2
Section 100	Arbitration Award Not Appealable	3
Section 110	Jurisdiction of the Tribal Court in Actions to Which the Tribe Is a Party	3
Section 120	Severability	3
Section 130	No Waiver of Sovereign Immunity	3
Section 140	Additional Enforcement Provisions	3
Section 150	Effective Date and Repealer	4

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CHAPTER 6- ARBITRATION**

Legislative History: Enacted on March 24, 2010 by Resolution No. C03-49-10 and Ordinance No. 9-10.

Section 10 Title (7 PYTC § 6-10)

This Ordinance shall be known as the “Arbitration Ordinance.”

Section 20 Purpose (7 PYTC § 6-20)

The purpose of this Ordinance is to authorize the arbitration of disputes in contractual agreements of the Pascua Yaqui Tribe, a federally recognized Indian tribe (the “Tribe”) and to provide for the enforcement of agreements to arbitrate, and resulting arbitration awards, by any tribal court or other dispute resolution forum now or hereafter established by the Tribe (a “Tribal Court”).

Section 30 Scope of Ordinance (7 PYTC § 6-30)

This Ordinance applies to any written contract, agreement or other instrument entered into by the Tribe or by any subdivision, instrumentality, enterprise, wholly owned entity or affiliate 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.

Section 40 Agreements to Arbitrate are Enforceable (7 PYTC § 6-40)

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.

Section 50 Laws to be Applied (7 PYTC § 6-50)

- (A) In any contract, agreement or instrument described in Section 30 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 revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument of claim, dispute or controversy, or at least one of the parties thereto, shall have some contract with jurisdiction so selected.
- (B) In any 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 provisions; 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 applied.
- (C) In any proceeding under 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.

Section 60 Stay of Proceedings and Orders to Proceed with Arbitration (7 PYTC § 6-60)

- (A) If any action for legal or equitable relief or to the other proceeding is brought by any party to any contract, agreement or instrument described in Section 20 of this Ordinance, the Tribal Court shall not review the merits of the pending action or proceeding until an arbitration has been had in compliance with the agreement.
- (B) A party of any contract, agreement or instrument is described in Section 20 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 an event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the questions of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Section 70 Advice of the Tribal Court (7 PYTC § 6-70)

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 Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Section 80 Time within Which Award shall be Rendered (7 PYTC § 6-80)

- (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 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 therefore 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.

Section 90 Application for Order Confirming Award; Record to be Filed with the Tribal Court; Effect and Enforcement of Judgment (7 PYTC § 6-90)

- (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 Tribal Court for an order confirming the award.
- (B) Any party applying for an order confirming an arbitration award shall, at the time order is filed with the clerk (or other appropriate representative) of the Tribal Court for entry of judgment thereon, file the following papers with the clerk (or other appropriate representative):
 - (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 questions as to provide in Section 60.
 - (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
 - (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, 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 act (other than or in addition to the payment of money), the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 100 Arbitration Award Not Appealable (7 PYTC § 6-100)

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.

Section 110 Jurisdiction of the Tribal Court in Actions to Which the Tribe Is a Party (7 PYTC § 6-110)

- (A) 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 20 of this Ordinance to which the Tribe or any subdivision, instrumentality, wholly owned entity or affiliate of the Tribe is a party; provided that in any such actions brought against the Tribe or any other entity so authorized shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.
- (B) To the extent allowed by federal law, 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 Tribe or any subdivision, instrumentality, wholly owned entity or affiliate of the Tribe 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 II of this Ordinance to which the Tribe or any subdivision, instrumentality, wholly owned entity or affiliate of the Tribe is a party shall be valid and enforceable in accordance with its terms.

Section 120 Severability (7 PYTC § 6-120)

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.

Section 130 No Waiver of Sovereign Immunity (7 PYTC § 6-130)

Nothing in this Ordinance shall be interpreted to provide a waiver of the sovereign immunity of the Tribe, any subdivision, instrumentality, wholly owned entity or affiliate of the Tribe or any of their respective officers, employees or agents acting within the scope of their authority.

Section 140 Additional Enforcement (7 PYTC § 6-140)

All police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by any Tribal Court pursuant to this Ordinance.

Section 150 Effective Date and Repealer (7 PYTC § 6-150)

- (A) To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supersede and the conflicting provision shall be and hereby is repealed.

- (B) This Ordinance is effective upon the date of its enactment.