



CIETAC Publishes New Arbitration Rules

In the aftermath of the “split” with the Shanghai and Shenzhen sub-commissions¹ of the China International Economic and Trade Arbitration Commission (“CIETAC”) resulting from the 2012 revision to the CIETAC arbitration rules,² CIETAC has unveiled a new set of arbitration rules, which will come into force on January 1, 2015 (“2015 Rules”).

The key changes introduced by the 2015 Rules include:

- The appointment of emergency arbitrators;
- Joinder and consolidation of arbitrations; and
- Provisions to cover arbitrations administered by the CIETAC Hong Kong Arbitration Center.

The 2015 Rules also attempt to address the confusion that has surrounded the “split” with CIETAC’s former Shanghai and Shenzhen sub-commissions.

Emergency Arbitrator (Article 23 and Appendix III)

Consistent with similar provisions introduced recently by the Hong Kong International Arbitration Centre (“HKIAC”) as well as other international arbitral

institutions, a new emergency arbitration procedure has been added by CIETAC. Article 23 allows parties to appoint and apply to an emergency arbitrator for urgent interim relief prior to the establishment of the arbitral tribunal in accordance with the procedures set out in Appendix III of the 2015 Rules. The powers of the emergency arbitrator will come to an end as soon as the arbitral tribunal is constituted. Parties are entitled to apply to any competent court for interim relief concurrently.

The procedure can be invoked either by agreement of the parties or the law of the arbitral seat. While the Arbitration Ordinance of Hong Kong permits emergency arbitrators, the Arbitration Law of China does not provide any such mechanism and only the Chinese courts are empowered to grant interim relief. Hence, it is expected that these provisions will primarily apply to arbitrations administered by the CIETAC Hong Kong Arbitration Center. Pursuant to the Arbitration Ordinance of Hong Kong, any interim relief granted by an emergency arbitrator, whether inside or outside Hong Kong, is enforceable in Hong Kong in the same manner as an order or judgment of the court.

1. See our *Commentaries*, “CIETAC Issues Announcement Suspending Shanghai and Shenzhen Sub-Commissions” (August 2012) and “CIETAC Rebranding in Shanghai and Shenzhen” (May 2013).
2. See our *Commentary*, “CIETAC Issues New Arbitration Rules: Interim Measures and Consolidation Among the Highlights” (April 2012).

Use of Single Arbitration for Multiple Contracts (Article 14)

Article 14 of the 2015 Rules permits parties to commence a single arbitration concerning disputes arising out of multiple contracts. This provision is particularly useful for parties who have entered into related contracts governing a single transaction. This mechanism can be initiated where all of the following conditions are present: (i) such contracts consist of a principal contract and its ancillary contracts or such contracts involve the same parties as well as legal relationships of the same nature; (ii) the disputes arise out of the same transaction or the same series of transactions; and (iii) the relevant arbitration agreements are identical or compatible.

Joinder of Third Parties (Article 18)

Article 18 of the 2015 Rules allows third parties to be joined to an existing arbitration at any stage of the proceedings. Any party may request the joinder of a third party to the arbitration if the third party is prima facie bound by the same arbitration agreement on which the arbitral proceedings are founded. CIETAC will make a decision upon hearing from all parties and the party to be joined to the proceedings.

Compulsory Consolidation of Proceedings (Article 19)

Consolidation of arbitrations was first introduced by CIETAC in its 2012 rules. Article 19 of the 2015 Rules takes the process further by allowing a party the unprecedented right to request the consolidation of parallel arbitration proceedings even in the absence of consent from all the other parties. In other words, the agreement of all the parties (as introduced in the 2012 rules) is no longer necessary for consolidating multiple proceedings. As well as by the agreement of all parties, proceedings now can be consolidated by CIETAC at the request of any party if the claims in these arbitrations (i) share the same arbitration agreement; (ii) are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties and the legal relationships are of the same nature; or (iii) are made under multiple arbitration agreements that are identical or compatible, and the multiple contracts involved consist of a principal contract and its ancillary contracts.

Increased Threshold of Summary Procedure (Article 56)

Article 56 expands the threshold for invoking the summary arbitration procedure from Renminbi (“RMB”) 2 million to RMB 5 million. Unless otherwise agreed by the parties, the summary procedure will apply to disputes where the amounts in dispute fall below this threshold. Parties may also consent to adopt the summary procedure to govern their arbitrations when the amount in dispute is above this threshold.

Establishment of the Arbitration Court (Article 2)

A new Arbitration Court has been set up in Beijing to take over the case administration role from CIETAC’s secretariat. Article 2 also clarifies the structure of CIETAC by setting out its various arbitration centers (e.g., the CIETAC Hong Kong Arbitration Center) and sub-commissions in Appendix I. In an attempt to clear up any confusion caused by the 2012 “split” when its former Shanghai and Shenzhen sub-commissions declared their independence, Article 2(6) confirms that CIETAC Beijing shall administer the proceeding where an arbitration agreement is ambiguous or where “the sub-commission/arbitration center agreed upon by the parties does not exist or its authorization has been terminated” (i.e., the former Shanghai or Shenzhen sub-commissions).

Special Provisions for Hong Kong Arbitration (Articles 73 to 80 in Chapter VI)

CIETAC established its Hong Kong Arbitration Center in September 2012, after the publication of the 2012 rules and accordingly the 2015 Rules introduce a new chapter devoted to CIETAC arbitration proceedings in Hong Kong. According to Article 74 of the 2015 Rules, unless otherwise agreed by the parties, the seat of arbitration shall be Hong Kong, the law of the arbitration shall be the Arbitration Ordinance of Hong Kong, and the arbitral award shall be a Hong Kong award.

In addition, the parties are free to nominate arbitrators who are not listed on CIETAC’s panel lists without the consent of the other parties under Article 76. The implication is that CIETAC Hong Kong awards will be regarded as a foreign award and enforceable in China in accordance with the reciprocal enforcement arrangement that exists between

Mainland China and the Hong Kong Special Administrative Region of China. Special provisions allowing the parties to an arbitration in Hong Kong to appoint an emergency arbitrator for interim relief orders and a different fee scale are provided for in Articles 77 and 79, respectively. The Hong Kong fee scale is particularly significant because CIETAC arbitrators are typically paid less than those in arbitrations before other international arbitration institutions and this has led to a perception that the pool of arbitrators was reduced because of the lack of competitive fees. The improved fee scale should increase the attractiveness of the CIETAC Hong Kong Arbitration Center to international arbitrators.

Other significant amendments of the 2015 Rules include:

- Parties may now serve documents by way of notary public under Article 8;
- The presiding arbitrator has discretion to decide on procedural matters alone under Article 35;
- A stenographer may be engaged to make a stenographic record of an oral hearing under Article 40; and
- The compensation of arbitrators may be increased under special circumstances according to Appendix III and Article 82.

Conclusion

CIETAC, haunted by its experiences in 2012, is clearly striving to remain the world's busiest and China's most appealing arbitral body for both foreign and domestic disputes. The 2015 Rules are designed to streamline its procedural framework, provide greater efficiency, and further empower the parties.

The 2015 Rules are another example of CIETAC's determination to introduce international best practices and to demonstrate its commitment to the rule of law as advocated by the Chinese government. The effectiveness of the implementation of the 2015 Rules remains to be seen, but they should at least allow CIETAC to better accommodate the needs of parties to increasingly complex and technical international arbitrations.

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