



JONES DAY
COMMENTARY

CIETAC ISSUES ANNOUNCEMENT SUSPENDING SHANGHAI AND SHENZHEN SUB-COMMISSIONS

In March 2012, the China International Economic and Trade Arbitration Commission (“CIETAC”) released amended arbitration rules that became effective on May 1, 2012 (the “Amended Rules”).¹ Unfortunately, the release of the Amended Rules has led to a dispute between CIETAC in Beijing and its Shanghai and South China (Shenzhen) Sub-Commissions.

By way of background, CIETAC was founded in 1956 in Beijing as the first arbitration body in the People’s Republic of China. CIETAC has its headquarters in Beijing and has sub-commissions (or branches) in Chongqing, Shanghai, Shenzhen, and Tianjin. According to its statistics, in 2011 CIETAC accepted 1,435 new domestic and foreign-related arbitrations, more than in the previous year but less than in its peak year of 2009. Of the 2011 cases, 668 were submitted to Beijing, 523 to Shanghai, and 218 to Shenzhen. The other two sub-commissions receive

only a small number of cases; for example, last year Tianjin received 21 cases and Chongqing five.

The dispute has come about because the Amended Rules contain a requirement that all cases submitted to CIETAC should be administered in Beijing unless the parties have expressly submitted them to a sub-commission in their arbitration agreement. This is a departure from past practice, which saw disputes allocated based on regional connection, party convenience, or cost. In other words, if an arbitration agreement simply refers to CIETAC and states that the hearing should be held in Shanghai, the past practice had been that the CIETAC Shanghai Sub-Commission would administer the case. However, the Amended Rules now suggest that such an arbitration agreement would require the case to be administered by Beijing, with the hearing held in Shanghai, thus leaving the Shanghai Sub-Commission out of the picture.

Perhaps not surprisingly, Shanghai and Shenzhen have objected to the centralizing effect of the Amended Rules, most likely because they fear that

¹ Please see the *Jones Day Commentary* titled “CIETAC Issues New Arbitration Rules: Interim Measures and Consolidation Among the Highlights,” April 2012, available at www.jonesday.com/cietac_issues_new_arbitration_rules/.

they will lose revenue as a result, but also because most arbitration agreements in practice simply refer to CIETAC and do not specifically refer to arbitrations being administered expressly by either sub-commission. The sub-commissions have also objected to a number of new or revised provisions in the Amended Rules (e.g., interim measures and consolidation).

CIETAC has been attempting since May 1, 2012 to resolve the impasse with its two sub-commissions, and it issued a statement on May 1 accusing the Shanghai Sub-Commission of “causing confusion in the domestic and international arbitration communities and seriously affecting parties’ exercise of their arbitration rights.” Unfortunately, the dispute has not been resolved, and all the parties seem to have dug in their heels over the issue. As a result, CIETAC issued an announcement on August 1, 2012.

CIETAC ANNOUNCEMENT

CIETAC issued a press release on August 1, 2012 (the “Announcement”) in which it stated that CIETAC’s Shanghai Sub-Commission and its Shenzhen Sub-Commission have been disqualified from accepting and administering arbitration cases with effect from August 1, 2012.

The Announcement says that as the Shanghai and Shenzhen Sub-Commissions refuse to apply the Amended Rules and refuse to remain under the leadership of CIETAC with respect to case administration, CIETAC believes that such conduct has violated the basic principles provided in the CIETAC Articles of Association and the Amended Rules. Accordingly, CIETAC announced that beginning August 1, 2012, CIETAC’s authorization to its Shanghai and Shenzhen Sub-Commissions for the acceptance and administration of arbitration cases has been suspended.

The Announcement goes on to say that in the event of a dispute, parties who have arbitration agreements that provide for arbitration by either of the two sub-commissions after August 1, 2012 must submit their applications for arbitration to CIETAC in Beijing. The CIETAC Secretariat in Beijing will accept such arbitration applications and administer the

cases, and in these circumstances, the place of arbitration and the place of oral hearing will be Shanghai or Shenzhen, as the case may be.

IMPACT OF THE DISPUTE

CIETAC Shanghai and Shenzhen are handling more cases every year and, it seems, would like to play a larger and more independent role in Chinese arbitration, rather than simply being sub-commissions of CIETAC. The Amended Rules have obviously struck a sensitive nerve with both sub-commissions, which fear a reduction in revenue and standing. Both sub-commissions have already unveiled their own articles of association and arbitration rules.

Chinese courts have so far remained silent on the situation, but it is possible that both sub-commissions will take their cases to court, most likely led by Shanghai. There is also a chance that both sub-commissions will try to become independent arbitration bodies, but that might be difficult because Shanghai and Shenzhen, like most major Chinese cities, already have their own arbitration commissions, with legislation preventing the creation of additional ones. There are also issues over the use of the CIETAC name.

Of more practical concern is what will happen with the existing docket of cases, which had been submitted to the sub-commissions of what was at one time a unified arbitration institution. For example, there could be issues with the enforcement of arbitrations completed by the sub-commissions now that the sub-commissions have been suspended.

This dispute is likely to be ultimately resolved at higher levels, but the fact that it has already dragged on for four months does not bode well. CIETAC has been one of the world’s busiest arbitration institutions, and it has been trying to build and internationalize its “brand” to be recognized as one of the preeminent arbitration institutions in the world. Unfortunately, this dispute is undoing a lot of the good work that CIETAC has put in over the past several years. One hopes that a resolution is not too far away, for the sake of arbitration in China.

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