



CIETAC REBRANDING IN SHANGHAI AND SHENZHEN

In our *Commentary* in August 2012, we reported on the dispute between the China International Economic and Trade Arbitration Commission in Beijing (“CIETAC”) and its Shanghai and South China (Shenzhen) Sub-Commissions.

BACKGROUND

To recap, the dispute came about because CIETAC’s amended 2012 Arbitration 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 was 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, for example, the past practice was that the CIETAC Shanghai Sub-Commission would administer the case. However, the amended 2012 Arbitration 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 objected to the centralizing effect of the amended 2012 Arbitration Rules, most likely because they feared that they would 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.

CIETAC attempted to resolve the impasse with its two sub-commissions, without success, and on August 1, 2012, effectively disqualified its Shanghai Sub-Commission and its Shenzhen Sub-Commission from accepting and administering arbitration cases with effect from that date. In practice, both Shanghai and Shenzhen have ignored this edict and have continued to accept cases referred to CIETAC in Shanghai and Shenzhen respectively. This has led to considerable confusion as to which institution is legally qualified to administer CIETAC arbitrations in Shanghai and Shenzhen.

THE “NEW” INSTITUTIONS—A SOLUTION?

Both of the former CIETAC sub-commissions have now rebranded themselves, with Shanghai now being known as the Shanghai International Arbitration Commission (“SHIAC”) and the slightly longer Shanghai International Economic and Trade Arbitration Commission. Interestingly, its web site remains www.cietac-sh.org. Shenzhen is now known as the South China International Economic and Trade Arbitration Commission and the Shenzhen Court of International Arbitration (“SCIA”), and its web site also remains www.sccietac.org.

The SCIA launched new rules and a new panel of arbitrators on December 1, 2012, and the SHIAC started using new arbitration rules and a new panel of arbitrators on May 1, 2013.

Thus far, this seems to provide a solution to the confusion. However, this is not necessarily the case because both the SHIAC and the SCIA have said that they will continue to accept disputes where the parties have agreed to arbitrate through CIETAC Shanghai or CIETAC Shenzhen respectively.

It is unclear how CIETAC in Beijing will respond to this approach, or whether there will continue to be debate over where proceedings should be filed if the reference is simply to CIETAC. In this regard, we have recently seen a number of cases—where the arbitration clause specifies CIETAC as the institution and Shanghai as the venue for the arbitration hearing—that have been accepted by SHIAC and that have been disputed by CIETAC Beijing.

Parties should also be aware that apart from SHIAC, there is a new CIETAC sub-commission in Shanghai and the existing Shanghai Arbitration Commission (and the same applies in Shenzhen). This complicates matters because where an arbitration agreement provides for a dispute to be submitted

to an arbitration institution at a specific locality, and there are two or more institutions at that locality, then the parties must agree on the selection of one of the institutions. In the event that the parties cannot agree (which is often the case in a dispute), then the arbitration agreement will be invalid according to the interpretation of the Supreme People’s Court on Certain Issues Relating to the Application of the Arbitration Law in 2006. This is a nightmare scenario!

Going forward, if you wish to have your disputes arbitrated before CIETAC, then it is probably best to refer to CIETAC in Beijing, or alternatively you can expressly refer to SHIAC or SCIA if you wish to use one of the two “new” institutions.

LAWYER CONTACTS

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