

CIETAC's Internal Conflicts: A Chronology of Events and Practical Implications

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Shanghai's Recent Reaction

As a recent development of the ongoing conflicts within the China International Economic and Trade Arbitration (CIETAC), the CIETAC Shanghai Sub-Commission has now officially been renamed Shanghai International Economic and Trade Arbitration Commission; it will also use Shanghai International Arbitration Center ("SHIAC") concurrently as official name. (See [official announcement of the SHIAC](#)). On 11 April 2013, SHIAC and Council for the Promotion of International Trade Shanghai jointly held a press conference and unveiling ceremony.

The Shanghai Municipal Government approved the name change, clarifying the status of the new commission. During the ceremony, Mr. Cen Furong, Chairman of CCPIT Shanghai and SHIAC, stated that that this ceremony was not just about changing names but marked the starting point of a new era.

The SHIAC has promulgated new versions of Arbitration Rules and Panel of Arbitrators, which will be effective as of 1 May 2013. For parties wishing to choose the Shanghai International Economic and Trade Arbitration Commission/SHIAC, the following model clauses are proposed:

Model Arbitration Clause I: 'Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission for arbitration.'

Model Arbitration Clause II: 'Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Arbitration Center for arbitration.'

SHIAC started using new logo and [website](#), while the address and contact were kept unchanged. The SHIAC also announces that it accepts cases upon agreement between parties to arbitrate by Shanghai International Economic and Trade Arbitration Commission, SHIAC, and continue to accept cases upon agreements between parties to arbitrate by China International Economic and Trade Arbitration Commission Shanghai Commission/ Shanghai Sub-Commission/Shanghai Branch.

A Chronology of Events

The conflict was triggered by the introduction of the CIETAC Arbitration Rules 2012 (the CIETAC Rules 2012), which was promulgated in January 2012, approved by China Council for the Promotion of International Trade/CCPIT (China Chamber of International Commerce/CCOIC) in February 2012, and came into force on 1 May 2012. On 24 April 2012, the CIETAC made an announcement that 'the CIETAC and its sub-commissions form an integrated arbitration commission that uses a uniform set of Arbitration Rules and Panel of Arbitrators', and that 'as from **1 May 2012**, the CIETAC Arbitration Rules (2012) shall uniformly apply to the CIETAC and its sub-commissions.

One of the changes in the CIETAC Rules 2012 is to provide default provision for administration by CIETAC Beijing. In the past, many arbitration clauses did not explicitly state the name of the sub-commission, but simply stated that the CIETAC Rules shall apply. The common practice was that the party commencing proceedings was entitled to choose one of the sub-commissions, and the other party had the right to object, which may cause delays. Article 2(6) of the CIETAC Rules 2012 provides that 'where the sub-commission/center agreed upon by the parties does not exist, or where the agreement is ambiguous, the Secretariat of CIETAC shall accept the arbitration application and administer the case. In the event of any dispute, a decision shall be made by CIETAC.' As a result, if the arbitration clause did not explicitly state the name of the sub-commission, even if they have chosen the hearing should take place in Shanghai, for example, the arbitration proceedings will be administered by the CIETAC headquarters in Beijing.

Unsatisfied with the new rules, two of CIETAC's sub-commissions, namely CIETAC's Shanghai Sub-Commission (CIETAC Shanghai Sub-commission) and CIETAC's South China Sub-Commission based in Shenzhen (CIETAC South China Sub-commission) declared themselves as independent arbitral institutions. CIETAC South China Sub-commission stated that it would retain the CIETAC Rules 2005, while CIETAC Shanghai Sub-commission published its own Arbitration Rules, based on the CIETAC rules 2005.

On **1 May 2012**, the CIETAC issued an Open Letter to all arbitrators, making the following statements:

- the conduct of setting up its own commission by the sub-commission is null and void;
- the arbitration rules formulated by the sub-commission are null and void;
- the conduct of recruiting arbitrators by the sub-commission is null and void;
- as from 1 May 2012, where parties submit their dispute to a sub-commission of CIETAC for arbitration in accordance with an arbitration clause that provides for arbitration by that sub-commission, the said sub-commission must apply CIETAC Arbitration Rules (2012) to the case; and
- pursuant to the relevant provisions of CIETAC Rules 2012, in cases administered by CIETAC and its sub-commissions, the decisions on jurisdiction and on a party's standing to participate in the arbitration shall be made by CIETAC or the arbitral tribunals with its authorization; the arbitrators shall be appointed by the Chairman of CIETAC (unless appointed by the parties); the challenge of arbitrators shall be decided by the Chairman of CIETAC; and any document concluding a case, such as an arbitral award, a decision on dismissing a case and a conciliation statement, shall be affixed with the seal of CIETAC.

On **1 August 2012**, CIETAC released the Announcement on the Administration of Cases Agreed to be Arbitrated by CIETAC Shanghai Commission and CIETAC South China Commission, suspending CIETAC's authorization to the CIETAC Shanghai Commission and CIETAC South China Commission for accepting and administering arbitration cases. CIETAC's Announcement also states that 'as from 1 August 2012, where parties have agreed to arbitrate their disputes by the CIETAC Shanghai Commission or the CIETAC South China Commission, the parties shall submit their applications for

arbitration to CIETAC and the CIETAC Secretariat shall accept such arbitration applications and administer such cases. Without CIETAC's authorization, no institutions shall have the right to accept and administer the afore-mentioned arbitration cases'.

In response, CIETAC Shanghai Sub-Commission and CIETAC South China Sub-Commission made a Joint Statement on **4 August 2012**, stating that CIETAC Shanghai Sub-Commission and CIETAC South China Sub-Commission are independent arbitration institutions, established following the approvals of Shanghai and Shenzhen Municipal Governments and that their jurisdiction 'come from the agreement of the parties, rather than the "authorization" from any other institutions'. On **28 August 2012**, another Joint Announcement was issued by the two sub-commissions, restating their position. Contrary to the Announcement of the CIETAC, the Joint Announcement declares that where an arbitration agreement refers to the disputes to CIETAC Shanghai or CIETAC South China, disputes shall be submitted to CIETAC Shanghai Sub-Commission or CIETAC South China Sub-Commission respectively.

On **22 October 2012**, the South China Sub-commission changed its name to the South China International Economic and Trade Arbitration Commission (SCIA), which is also known as the Shenzhen Court of International Arbitration (SCIA). SCIA starts to adopt its own Arbitration Rules and Panel of Arbitrators as from 1 December 2012. The following model clauses are proposed on SCIA's website, proposing the parties to choose specifically SCIA, SCIA, or SCIA under UNCITRAL Arbitration Rules.

Model Arbitration Clause 1: Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIA) for arbitration.

Model Arbitration Clause 2: Any dispute arising from or in connection with this contract shall be submitted to Shenzhen Court of International Arbitration (SCIA) for arbitration.

Model Arbitration Clause 3: Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIA) for arbitration which shall be conducted in accordance with the UNCITRAL Arbitration Rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon the parties.

On **31 December 2012**, CIETAC issued an Announcement On Issues Concerning CIETAC Shanghai Sub-Commission and CIETAC South China Sub-Commission, announcing the following decisions:

- The conduct of changing its name and its institutional status of a sub-commission of CIETAC by the CIETAC South China Sub-Commission without lawful procedure is null and void by law. The arbitration rules and panel of arbitrators made by the CIETAC South China Sub-Commission in the name of South China International Economic and Trade Arbitration Commission without authorization are null and void by law.
- The CIETAC Shanghai Sub-Commission and the CIETAC South China Sub-Commission are hereby forbidden to continue in any way and any form the use of the name, brand and relevant logo of "CIETAC", either in Chinese or English, and to conduct any further arbitration activities in the names of CIETAC Shanghai sub-commission and CIETAC South China Sub-Commission.
- Authorization to the CIETAC Shanghai Sub-Commission and the CIETAC South China Sub-Commission for accepting and administering arbitration cases is hereby terminated.
- Where parties have agreed to arbitrate their disputes by the CIETAC Shanghai Sub-Commission or

the CIETAC South China Sub-Commission, the parties shall submit their requests for arbitration to CIETAC and the CIETAC Secretariat shall accept such requests and administer such cases. Without CIETAC's authorization, no institutions shall have the right to accept or administer the aforementioned arbitration cases.

- When the CIETAC Secretariat accepts and administers the above-mentioned cases, unless otherwise agreed by the parties, for cases agreed to be arbitrated by the CIETAC Shanghai Sub-Commission, the place of arbitration and the place of oral hearing shall be Shanghai; for cases agreed to be arbitrated by the CIETAC South China Sub-Commission, the place of arbitration and the place of oral hearing shall be Shenzhen.
- Cases accepted and administered by the CIETAC Shanghai Sub-Commission and the CIETAC South China Sub-Commission before 1 August 2012 may be concluded in accordance with the CIETAC Arbitration Rules and under the uniform leadership of CIETAC in respect of case administration as provided in the Rules.
- Separate arrangement will be made with regard to the business operation of CIETAC's branch offices in Shenzhen and Shanghai.

Practical Implications for Parties

In light of the uncertainty caused by CIETAC's internal disputes, parties wishing to choose CIETAC arbitration need to act with extreme caution.

In case of negotiating new arbitration clauses, if parties wish to submit the disputes to arbitration administered by CIETAC, it will be prudent for them to stipulate explicitly CIETAC Beijing as the arbitration institution. With the arbitration administered by CIETAC Beijing, parties may still choose Shanghai or Shenzhen as the place of arbitration and venue of oral hearing. If parties wish to submit the disputes to another arbitration institution, they need to specify the name of the arbitration institution without ambiguity.

In case of existing arbitration clauses, which provide for arbitration administered by CIETAC Shanghai Sub-Commission or CIETAC South China Sub-commission, parties would be prudent to revise the clause to refer the dispute to CIETAC Beijing, or to refer to another arbitration institution without ambiguity.

Note that in Shanghai, apart from the SHIAC (which is now separated from the CIETAC), there is another independent arbitration institution named Shanghai Arbitration Commission. In Shenzhen, apart from the SCIA (which is now separated from the CIETAC), there is also an independent body named Shenzhen Arbitration Commission. Caveat! Where an arbitration agreement provides for arbitration to be submitted with an arbitration institution at a fixed locality, and there are two or more arbitration institutions at that locality, the parties may agree on the selection of one of the arbitration institutions; where the parties concerned are unable to agree on the choice of the arbitration institution, the arbitration agreement shall be invalid. (Article 6 of [the Interpretation of SPC on Certain Issues Relating to the Application of the Arbitration Law of the People's Republic of China 2006](#)).