Kluwer Arbitration Blog

CIETAC's New Arbitration Rules 2015

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Introduction

The latest edition of the China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules (the 2015 Rules), which came into force on 1 January 2015. These replace CIETAC's 2012 Rules (the 2012 Rules).

The 2015 Rules introduce procedural innovations adopted in past years by bodies such as the Hong Kong International Arbitration Centre and the Singapore International Arbitration Centre. This reflects a trend of harmonisation in procedures across arbitral institutions.

Moreover, the fact that CIETAC's rules now envisage state-of-the-art procedures implemented elsewhere, some of which are not well-recognised under PRC law, signals CIETAC's ambition to administer more cases seated outside of China.

One focus of this internationalisation is CIETAC's Hong Kong Arbitration Center. The 2015 Rules introduce specific provisions dealing with arbitrations conducted through this entity.

The 2015 Rules also aim to clarify the position of arbitration agreements affected by the 2012 declarations of independence by CIETAC's former Shanghai and Shenzhen sub-commissions.

Addressing ambiguities arising from the CIETAC split

CIETAC's split left parties in doubt over the appropriate venue in which to commence arbitration under pre-2012 clauses providing for arbitration administered by "CIETAC, Shanghai" or "CIETAC, Shenzhen". The difficulty is that, irrespective of whether proceedings were commenced before CIETAC Beijing or one of the two former sub-commissions (neither of which now bears the CIETAC brand), they would be open to challenges at the jurisdictional or enforcement stages, on the basis that the wrong institution had been selected. Recent decisions of the Shanghai and Shenzhen courts have done little to clarify the situation.

Article 2.6 of the 2015 Rules aims to address this issue by providing that:

"where the sub-commission/arbitration center agreed upon by the parties does not exist or its authorization has been terminated, or where the agreement is ambiguous, the [CIETAC Beijing] Arbitration Court shall accept the arbitration application and administer the case. In the event of any dispute, a decision shall be made by CIETAC."

In practice, however, this amendment will give little comfort to affected parties. CIETAC has, since as early as December 2012, made it clear that it considers that it alone has the right to accept cases commenced pursuant to affected arbitration agreements. The new article 2.6 reaffirms this commitment. Given, however, that both former sub-commissions also assert that they have the sole right to accept such cases, the issue will not be laid to rest until definitive guidance on this matter is issued by the Supreme People's Court of the PRC.

Structural changes – the CIETAC Arbitration Court

The 2015 Rules establish a new CIETAC Arbitration Court, which now performs the role of the current Secretariat in carrying out case management and certain administrative functions (article 2.2). This follows the example of the ICC International Court of Arbitration and the SIAC Court of Arbitration. The aim of the reform is to improve the efficiency and effectiveness of each arm of CIETAC. Practitioners had in the past raised concerns over the time it could take for the Secretariat to respond to queries, owing to its workload.

Consolidation, multiple contracts and joinder

The 2012 Rules permitted the consolidation of parallel arbitral proceedings (article 17). Such consolidation was, however, contingent upon party agreement. The 2015 Rules now allow CIETAC to consolidate arbitrations even absent party agreement, provided that certain independent criteria are met. Specifically, CIETAC may order consolidation of two parallel sets of proceedings if: (1) all claims in these arbitrations are made under the same arbitration agreement; (2) the claims are made under multiple arbitration agreements that are identical or compatible; and (3) either the arbitrations involve the same parties and the legal relationships are "of the same nature", or the multiple contracts involved consist of a principal contract and its ancillary contracts (article 19).

Additionally, the 2015 Rules introduce a mechanism by which a party may initiate a single arbitration concerning multiple, connected contracts. Under the 2012 Rules, a party may have felt the need to commence a number of arbitrations under several related contracts. Clearly, this course of action involved incurring substantial filing fees. Furthermore, should the respondent veto a later consolidation of such cases, separate parallel tribunals would be constituted, leading to additional duplication and cost.

Under the 2015 Rules, a single 'umbrella' arbitration may now be commenced under multiple agreements, provided that the contracts: (1) consist of a principal contract and ancillary contract(s), or the contracts involve the same parties as well as "legal relationships of the same nature"; (2) the disputes arise out of the same transaction or

the same series of transactions; and (3) the arbitration agreements in these contracts are compatible (article 14).

While the 2012 Rules included no express provision allowing for the joinder of additional parties to an ongoing arbitration, parties would in practice file such a request to CIETAC when necessary and CIETAC would determine such requests as it considered appropriate. Article 18 of the 2015 Rules now formalises this procedure.

Emergency Arbitrator

In recent years, many international arbitration institutions have introduced emergency arbitrator procedures. These include the ICC, SCC, SIAC, HKIAC, AAA/ICDR and the Australian Centre for International Commercial Arbitration. CIETAC's new procedures (at article 23 of and Appendix III to the 2015 Rules) accordingly reflect international best practice.

It should, however, be noted that PRC law on emergency relief appears to render these provisions untenable in the Mainland. To the extent that the relevant procedures are implemented, therefore, this will likely be in respect of CIETAC arbitrations seated outside of the PRC. The procedures may be intended for use in arbitrations conducted through CIETAC's Hong Kong Arbitration Center and seated in Hong Kong. Notably, the Hong Kong Arbitration Ordinance (Cap 609) was updated with effect from 19 July 2013 to provide for the enforcement of emergency relief granted by emergency arbitrators (section 22B).

Summary procedure

The 2015 Rules raise the threshold for the value of claims which (absent contrary party agreement) will be resolved under CIETAC's summary procedure. The threshold of RMB 2 million, which applied under the 2012 Rules, has been raised to RMB 5 million. Speaking to an audience at Norton Rose Fulbright's London office, Mr Lu Fei, CIETAC's Senior Case Manager, stated that the higher threshold reflects a marked increase in the amounts being claimed under the CIETAC Rules, as well as increasing party confidence in the effectiveness of sole arbitrator proceedings.

Administration of CIETAC arbitration in Hong Kong

The 2015 Rules also address the operation of CIETAC's Hong Kong Arbitration Center, which was launched following the launch of the 2012 Rules. Accordingly, a new chapter sets out provisions recognising the new Center (article 73); confirming that, absent contrary party agreement, arbitrations administered by CIETAC Hong Kong have a Hong Kong seat and curial law (article 74); empowering Hong Kong arbitral tribunals to order interim relief (article 77); and establishing a new and more international treatment of the calculation of arbitrator fees for such proceedings (article 82.1 and Arbitration Fee Schedule III).

Conclusion

CIETAC has now published two major revisions to its rules in the space of three years. The changes express the institution's desire to stay at the vanguard of the ever-

evolving practice of arbitration.

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