

CIETAC's Fresh Footprint in North America: Drawing on Experiences of its Hong Kong Counterpart

Kluwer Arbitration Blog

September 28, 2018

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Please refer to this post as: Brad Wang and Gloria Ho, 'CIETAC's Fresh Footprint in North America: Drawing on Experiences of its Hong Kong Counterpart', Kluwer Arbitration Blog, September 28 2018, <http://arbitrationblog.kluwerarbitration.com/2018/09/28/cietacs-fresh-footprint-in-north-america-drawing-on-experiences-of-its-hong-kong-counterpart/>

The Inauguration

On 2 July 2018, CIETAC established its second arbitration centre outside mainland China – the North America Arbitration Center in Vancouver, Canada. Co-organised by CIETAC and the Vancouver Economic Commission, the inauguration ceremony was graced by the presence of the Honourable Bruce Ralston, Minister of Jobs, Trade and Technology of the Government of British Columbia; the Honourable George Chow, Minister of State for Trade of the Government of British Columbia; Mr. Kong Weiwei, Deputy Consul General of the Consulate-General of the PRC in Vancouver; and close to 200 dignitaries from government departments, trade and commerce federations and the legal profession.

Expectations from the Vice-Chairman

Speaking at the ceremony, Vice-Chairman and Secretary-General of CIETAC Mr. Wang Chengjie pointed out that launching the North America Arbitration Center would enable CIETAC to learn from practices of international arbitration so as to enhance the internationalisation of its arbitration services. At the same time, the North America Arbitration Center would serve as a platform for the legal profession in North America to get informed of Chinese arbitrations.

Further, Mr. Wang foresaw that in establishing an overseas branch in North America, CIETAC would bring fair, efficient and convenient arbitration services to Chinese and foreign parties in North America. He indicated that CIETAC would continue its efforts in promoting the use of international arbitration and in making positive contributions to the development of global trade.

The Hong Kong Experience

Handling foreign-related commercial disputes has been CIETAC's founding mission since it was established in 1956. However, it was only six year ago and after it has already administered approximately 30,000 cases in total, upon the invitation of the Department of Justice of Hong Kong SAR, when CIETAC decided to step outside mainland China and authorise its Hong Kong Arbitration Center to administer cases when a neutral, common law, (and of course a popular) seat of Hong Kong is preferred by parties. CIETAC was both confident and comfortable with choosing Hong Kong as it saw Hong Kong as a frequently chosen seat of arbitration, and Hong Kong party-related cases ranked as 2nd in its case profile at that time.

CIETAC Hong Kong Arbitration Center was not built in a day. We summarised three key breakthroughs which will be of great assistance to the North America Arbitration Center, as explained below:

• **Chapter VI of CIETAC Arbitration Rules 2015 and Its “Bridging” Function**

Headquartered and having most cases administered in Beijing, CIETAC adopts arbitration rules which from version to version consistently feature what CIETAC considers to be the best practices of international arbitration to the extent they are practical to be carried out under the procedural laws in mainland China. The establishment of CIETAC Hong Kong Arbitration Center accordingly called for special rules that are more compatible with procedural laws and arbitration practices in Hong Kong.

Chapter VI was introduced in the CIETAC Arbitration Rules 2015 (the “Rules”), which is exclusively applicable to arbitration cases accepted and administered by the CIETAC Hong Kong Arbitration Center. The Chapter provides that cases under CIETAC Hong Kong Arbitration Center (unless parties agree otherwise) shall adopt an open panel of arbitrators and comply with the doctrine of “Kompetenz-kompetenz”; and acknowledges the power of the arbitral tribunal to make interim measures. A transparently-structured fee schedule was also introduced for the cases CIETAC Hong Kong Arbitration Center administers.

• **The Enforcement of Award of CIETAC Hong Kong Arbitration Center**

CIETAC Hong Kong Arbitration Center started to administer its cases under the Rules on 1 January 2015. The next milestone event, subsequently, was the enforcement of an Arbitral Award issued by CIETAC Hong Kong Arbitration Center in mainland China, which gave lawyers and parties a glimpse of a typical case under its auspices, from the beginning to the end.

In late 2016, the Nanjing Intermediate People’s Court of Jiangsu Province of China (“the Intermediate People’s Court”) handed down its ruling ((2016) Su Ren Gang 1) to enforce an Arbitral Award issued by CIETAC Hong Kong Arbitration Center. Relying on the Supreme People’s Court’s Arrangement Concerning Mutual Enforcement of Arbitral Awards between Mainland China and Hong Kong 1999, the Intermediate People’s Court found that the CIETAC award was in accordance with procedural laws of Hong Kong, and the enforcement would not contradict the public interest of mainland China.

• **Offshore Court’s Mareva Injunction in Aid of an Ongoing Case Administered by CIETAC Hong Kong Arbitration Center**

While most practitioners were discussing Hong Kong court’s supportive stance in its case *Chen Hongqing v Mi Jingtian & Others* (HCMP 972/2017) when it comes to granting interim relief for international arbitrations (in this case, a CIETAC mainland Chinese arbitration), an unreported case ((2017) Yue 0113 Cai Bao 237) by a local court in Guangzhou, China (“the Court”) in support of an ongoing arbitration at CIETAC Hong Kong Arbitration Center was lesser-known.

In June 2017, the Court accepted a party’s asset preservation application forwarded by CIETAC Hong Kong Arbitration Center to prevent the respondents from disposing of their assets. Primarily relying on Article 28 of Chinese Arbitration Law and upon a financial undertaking provided by a third party, the Court held that the tests for approving of such application were satisfied.

This case illustrates the “brunch” feature of CIETAC Hong Kong Arbitration Center as it carries both the characteristics of a Hong Kong seat and a sub-commission of CIETAC, a Chinese arbitration commission, and may be argued to have provided a new option of seeking interim reliefs in similar arbitrations.