

Asia Practice

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China's Largest International Arbitration Institution Adopts New Procedural Rules

The China International Economic and Trade Arbitration Commission (CIETAC) has unveiled new procedural rules taking effect on January 1, 2015 (the “**2015 Rules**”). The 2015 Rules modify existing CIETAC procedural rules effective since May 1, 2012 (the “**2012 Rules**”) and demonstrate that CIETAC is keeping up with global arbitration standards.

Background

CIETAC is the leading international arbitration institution in the mainland People's Republic of China and the busiest in the world by volume of cases. Initially restricted to foreign-related disputes, CIETAC has been authorized to adjudicate cases consisting solely of domestic parties since 2000. CIETAC now dominates the Chinese arbitration landscape and is the preferred arbitral body for disputes involving foreign companies and Chinese government entities or state owned enterprises. In 2013, CIETAC resolved 1,043 disputes and accepted some 1,256 new cases.

CIETAC adopted the 2012 Rules to reflect changes to the rules of other major institutional arbitration bodies with whom CIETAC competes for cases. Amendments provided greater efficiency, facilitated foreign-seated arbitration and permitted new powers, such as the ability to seek interim measures and consolidate multiple related proceedings.

However, the adoption of the 2012 Rules caused a split between CIETAC and its sub-commissions in Shanghai and Shenzhen, which declared independence

over elements of the 2012 Rules that shifted administrative power to CIETAC headquarters in Beijing. CIETAC has now established new sub-commissions in these regions but lingering enforcement issues continue to plague arbitral awards issued through the departed independent entities.

Recent Amendments

The 2015 Rules are the first amendments by CIETAC to its procedural framework since the tumultuous experience of May 2012. The revisions improve the efficiency of CIETAC proceedings and provide parties with important new powers in line with international best practice.

Key elements of the 2015 Rules are:

1. **Provision for an Emergency Arbitrator (Article 23):** Parties can now appoint an emergency arbitrator to grant any urgent injunctive relief required prior to the appointment of the arbitral tribunal. The new rule provides that the emergency arbitrator's powers cease once the arbitral tribunal is established and that parties may still apply to a court for such relief.
2. **Expansion of Summary Procedure (Article 56):** The threshold for use of summary procedure has been increased from RMB 2 million (CAD 360,000) to RMB 5 million (CAD 915,000). Unless the parties agree otherwise, summary procedure will apply when the amount at issue in the dispute is less than this new threshold.
3. **Consolidation, Joinder and Multiple Contracts (Articles 14, 18, 19):** A party may now request consolidation of multiple arbitration proceedings without the agreement of all other parties and may seek joinder of additional parties that are subject to the arbitration clause. A claimant may also initiate a single arbitral proceeding involving multiple contracts if certain conditions are met.

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4. **Administration of Arbitration (Article 2):**

CIETAC has also attempted to address some of the complications arising out of the 2012 split. Where authorization of a sub-commission named in a CIETAC arbitration clause has been terminated, the central CIETAC office in Beijing will administer the case.

Key Points for Canadian Companies

The 2015 Rules demonstrate that CIETAC is continuing to keep pace with its competitors, such as the ICC, LCIA, HKIAC and SIAC, and protecting its status as the leading international arbitration institution in China.

International arbitration has become increasingly complex and technical. These amendments are intended to make CIETAC procedure efficient and cost-sensitive, while flexible enough to accommodate the complexities of modern international disputes.

Chinese government entities and state owned enterprises often insist on providing for CIETAC arbitration in contracts with foreign companies. CIETAC is also the preferred arbitration institution of many private Chinese enterprises. Canadian companies doing business with these Chinese entities should benefit from these new procedural mechanisms and the enhanced confidence they provide in the CIETAC arbitration regime.

For further information on CIETAC or international commercial arbitration in China, please contact any member of our Asia Practice or Litigation Law Groups.