Update

The new CIETAC Arbitration Rules 2012

The China International Economic and Trade Arbitration Commission (CIETAC) has launched a revised version of Arbitration Rules (the 2012 Rules) with the aim of better serving the needs of businesses engaged in international commerce and investment. The 2012 Rules take into account current requirements and developments in international arbitration practice and procedure, and there are a number of material changes compared to the 2005 version (the 2005 Rules). The 2012 Rules shall be effective as from 1 May, 2012. For cases administered before the 2012 Rules come into force, the 2005 Rules effective as at the time of acceptance shall apply, unless the parties agree that the 2012 Rules shall apply.

Dismissal of a case based on lack of jurisdiction

In the 2005 Rules, it was not clearly expressed what the outcome would be if CIETAC found that it has no jurisdiction over a case. Article 6 in the 2012 Rules has made it clear that once the CIETAC or the arbitral tribunal decides that CIETAC has no jurisdiction over a case, a decision to dismiss the case shall be made.

Consolidation of arbitrations

For the first time, the 2012 Rules adopt the concept of consolidation of arbitrations. According to Article 17, CIETAC may consolidate two or more cases at the request of a party with an agreement of all the other parties concerned, or where CIETAC believes it necessary and all parties have agreed. Factors which the CIETAC may take into account when deciding whether to consolidate the arbitrations include whether all of the claims in the different arbitrations are made under the same arbitration agreement, whether the different arbitrations are between the same parties, or whether one or more arbitrators have been nominated or appointed in the different arbitrations.

The consolidation rule is a welcome addition to the 2012 Rules, especially in view of the increased number of multi-party and multi-contract disputes over the last few years. It is believed that in the cases which are consolidated, the arbitral process will be more time efficient and less costly.

Further information
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Interim measures
Under the Civil Procedure Law of the PRC, there are only two interim measures, namely the preservation of property and protection of evidence. Only the competent court has the power to grant these two orders.

However, according to the 2012 Rules, the arbitral tribunal may, at the request of a party, order any interim measures it deems necessary or proper in accordance with the applicable law. The tribunal may require the requesting party to provide appropriate counter-security in connection with the measures. This change is in line with recent developments in other international arbitration institutions which have provided for the same in their latest versions of arbitration rules.

Unlike for instance the ICC Rules or the SIAC Rules, the 2012 Rules do not adopt an emergency arbitrator regime. It remains unclear what CIETAC would do if a party requests for interim measures prior to the constitution of the arbitral tribunal.

Suspension of the arbitration proceedings
In the 2005 Rules, there was no express provision granting the parties a right to request for suspension of the arbitration proceedings. Such right is now vested in Article 43, giving the parties a right to request a suspension of the arbitration proceedings. Also, the tribunal itself can suspend the proceedings where it deems necessary to do so.

Examination of the Evidence
Under the 2012 Rules, where a case is determined by way of an oral hearing, the evidence shall be produced at the hearing and may be examined and scrutinised by the parties. Where a case is to be decided on the basis of documents only, or where the evidence is submitted after the hearing, both parties may dispense with an oral hearing to examine the evidence.

The Summary Procedure
Some changes have been made in this regard. One of the changes is that the amount in dispute in order for the summary procedure to apply has been increased from RMB 500,000 to RMB 2,000,000 (approximately USD 78,750 to USD 315,000 at current exchange rate).

The parties may amend their claim or file a counterclaim during the course of proceedings. For the sake of continuity of the proceedings, even if the amount in dispute of the amended claim or that of the counterclaim exceeds RMB 2,000,000, the summary procedure will continue to apply unless the parties agree or the arbitral tribunal decides to change the procedure to general procedure. This is yet another improvement to the 2005 Rules which states that the summary procedure will automatically change to general procedure once the amount in dispute exceeds the threshold.

Language
Chinese is no longer the default language if the parties fail to agree on the language of arbitration. Article 71 provides that in the absence of such agreement, the language of arbitration to be used in the proceedings shall be Chinese or any other language designated by CIETAC having regard to the circumstances of the case.

In most of the cases, language is not a concern to both parties. However, sometimes the right to be treated equally in the proceedings might be infringed if the language is not properly chosen. In circumstances where one party is Chinese while the other is not, CIETAC will now consider all the circumstances to decide the most appropriate language so that language issue will not be a barrier to effective and equitable disposal of the arbitral proceedings.

Other issues
Certain time limits have been changed in order to make the process less disruptive. An example of this is that the parties under the 2012 Rules should request to postpone an oral hearing within five days of the receipt of the notice of oral hearing while the 2005 Rules stipulates that such request should be made at least ten days in advance of the oral hearing date.

Another change worth mentioning relates to the appointment of arbitrators. Both in the 2005 Rules, and in the 2012 Rules the parties could entrust the Chairman of CIETAC to appoint the third arbitrator. In the 2005 Rules, the parties could recommend one to three arbitrators while in the 2012 Rules it is now possible to recommend up to five arbitrators.

Conclusion
The 2012 Rules contain some new innovations such as suspension of the proceeding, consolidation of arbitrations and interim measures. These measures should increase the efficiency of CIETAC proceedings and make CIETAC arbitration more attractive to the international community.