

## New year, new rules at CIETAC December 2014

In November, the China International Economic and Trade Arbitration Commission (CIETAC) published the *CIETAC Arbitration Rules 2015* ("the 2015 Rules"), which will enter into force on 1 January 2015.

The changes are designed to improve the efficiency of CIETAC arbitral proceedings and bring the CIETAC Arbitration Rules closer in line with international best practice. The 2015 Rules also introduce special provisions applicable to the CIETAC Hong Kong Arbitration Centre ("CIETAC Hong Kong").

Key updates include:

### Emergency arbitrator procedure

The 2015 Rules introduce an emergency arbitration procedure, in line with other international arbitral institutions. The procedure allows parties to apply for an emergency arbitrator to grant urgent relief, either by agreement or in accordance with the law applicable to the arbitration. The existence of emergency proceedings does not preclude a party from applying to any competent court for interim relief and the power of the emergency arbitrator would cease on appointment of the arbitral tribunal.

As the Arbitration Law in mainland China does not provide for emergency arbitrators, the new provisions will apply principally to arbitrations administered by CIETAC Hong Kong (see below). The Hong Kong Arbitration Ordinance was amended in July 2013 to provide for emergency relief granted by an emergency arbitrator to be enforceable in the same manner as an order or direction of the court. (The updated law supported the introduction of emergency arbitrator provisions into the HKIAC rules in mid-2013.)

### Single arbitration under multiple contracts

New provisions are introduced for parties to apply for a single arbitration under multiple contracts in one case, providing for greater efficiency, if the following requirements are met:

1. the contracts are master and accessory contracts, or are of the same nature and between the same parties;
2. the dispute arises from the same transaction or the same series of transactions; and

3. the arbitration agreements of those contracts are the same or compatible.

### An enhanced consolidation procedure

The revised Article 19 no longer requires the agreement of all the parties in order to consolidate parallel proceedings. At the request of a party, CIETAC may decide to consolidate several arbitrations into a single arbitration under the following conditions:

1. all claims in these arbitrations are made under the same arbitration agreement; or
2. the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible, the arbitrations involve the same parties and the legal relationships are of the same nature; or
3. the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible, and the multiple contracts involved consist of a principle contract and its ancillary contracts; or
4. all parties agree to consolidate.

### New joinder provision

New provisions are introduced under Article 18 for third parties to join an existing arbitration. A party may file a request at CIETAC to join a third party to the arbitration proceedings if the requesting party can establish a prima facie case that the third party is also bound by the arbitration agreement. The request for joinder is determined by CIETAC.

### Provisions for Hong Kong arbitration

CIETAC set up its Hong Kong Arbitration Centre in September 2012. The 2015 Rules introduce a new chapter of special provisions for Hong Kong arbitration.

The provisions expressly state that, unless otherwise agreed by the parties, the law applicable to arbitral proceedings in CIETAC Hong Kong shall be the arbitration law of Hong Kong and that the arbitral award shall be a Hong Kong award. Accordingly, enforcement of a Hong Kong award in the mainland would be pursuant to the arrangements for mutual enforcement, and not as a domestic award.

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Other notable features particular to CIETAC Hong Kong include:

- the power to appoint an emergency arbitrator and the enforceability of interim relief orders (see above),
- a fee structure different to CIETAC in the mainland: in keeping with international trends towards greater transparency, arbitrators' fees have been separated from the administrative fee for arbitrations seated in Hong Kong,
- the parties are free to nominate arbitrators from outside CIETAC's panel of arbitrators.

#### **CIETAC structural changes**

Under the 2015 Rules, CIETAC has also undergone some structural and administrative changes:

- A new Arbitration Court has been established to take over the case administration role from the Secretariat, allowing the Secretariat to focus on internal administrative matters.
- Following the "split" of the former Shanghai and South China (Shenzhen) sub-commissions from CIETAC (Beijing) in 2012, the 2015 Rules clarify the structure of CIETAC, with the sub-commissions listed in Appendix I. For the purpose of removing confusion and ambiguity after the "split", new provisions are introduced under Article 2 to confirm that where an arbitration agreement provides for arbitration before the former Shanghai or South China (Shenzhen) sub-commissions, whose authorization has been terminated, the arbitration will fall within the jurisdiction of, and will be administered by CIETAC (Beijing).

The 2015 Rules are a welcome update to reflect international best practice and to facilitate the operation of CIETAC Hong Kong.

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