



International arbitration: CIETAC's new arbitration rules

China's main international arbitration body, the China International Economic and Trade Arbitration Commission (CIETAC), has recently revised its arbitration rules. The new rules represent a major overhaul of CIETAC arbitration procedures and are sure to enhance CIETAC's position as a leading player in the resolution of Chinese-foreign business disputes. The rules came into effect on 1 May 2005.

The changes are significant for all companies doing business in China. Not only is arbitration the preferred method of resolving disputes for investors in China, the PRC positively encourages it (the department of trade for example, stipulates that all securities disputes must be resolved by arbitration).

These are the key changes from the rules of 1 October 2000.

Arbitration outside China

Parties are now able to select a seat of arbitration outside China. For the first time the procedural law of another country may apply to CIETAC arbitrations.

International practices

The new rules seek to bring CIETAC arbitration processes more in line with accepted international practices. Features include imposing time limits on the exchange of statements and granting the tribunal the power to issue procedural directions. Significantly, the tribunal is now expressly permitted to conduct either inquisitorial or adversarial proceedings.

Foreign arbitrators

Parties are now able to appoint arbitrators who are not on CIETAC's panel of arbitrators, provided that all the parties agree to do so (in the agreement to arbitrate), and the chairman of CIETAC confirms the appointment.

Appointing the chairman

There is now a 'list' procedure to appoint the tribunal chairman. Each party has an opportunity to nominate one to three candidates and where one candidate appears on both lists, that candidate will be appointed. Previously, CIETAC appointed the chairman when parties could not agree. Critics claimed this allowed CIETAC to stack tribunals in favour of Chinese nationals. The new rules only allow CIETAC to make the appointment when there is no common candidate. Its appointee must be someone who has not been nominated by either side.

Party autonomy

Where the parties agree, and applicable laws permit, CIETAC will now administer arbitrations conducted under a different set of rules (eg UNCITRAL). Previously, the parties' ability to agree this was subject to CIETAC's discretion. This change is designed to give both foreign and local parties greater autonomy and flexibility when it comes to the conduct of proceedings.

Validity of the arbitration agreement

Although CIETAC continues to be primarily responsible for determining the validity of the arbitration agreement (and is thus responsible for determining its own and the

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tribunal's jurisdiction), it may now also authorise the tribunal to make such a determination.

Independence and impartiality

There is now an express obligation on all arbitrators to treat the parties equally, fairly and independently. Arbitrators are also now required to declare any matters which may raise reasonable doubts about their independence and impartiality.

Costs

The cap on the amount of costs recoverable under the previous rules has been abolished. The tribunal may now assess costs according to various factors including the complexity of the case, the actual expenses incurred, the disputed amount and the reasonableness of the expenses.

Other issues

In addition to the changes to the CIETAC Arbitration Rules, there are many other points to be aware of when it comes to arbitration in China, including for example, differences between the treatment of foreign and domestic contracts, the fact that ad hoc arbitrations are invalid, a general lack of clarity on the validity of the rules of foreign arbitral institutions and different procedures and customs when it actually comes to conducting the arbitration. With offices in Hong Kong, Shanghai and Beijing and extensive experience in advising on all aspects of handling foreign-Chinese business disputes, we are well placed to assist on all of these issues.

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