

# Client Update New Rules Take Effect at CIETAC

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The China International Economic and Trade Arbitration Commission (“CIETAC”) has revised its arbitration rules, effective as of January 1, 2015 (the “2015 Rules”). Unlike the comprehensive overhaul of CIETAC’s rules in 2012 (the “2012 Rules”), this latest revision focuses on fine-tuning and bringing the rules further in line with international norms, although there are notable new provisions that provide for joinder, an emergency arbitrator procedure and the ability of CIETAC to administer arbitrations in Hong Kong. This Client Update summarizes the most significant changes in the 2015 Rules.

## JOINDER, CONSOLIDATION AND MULTIPLE CONTRACTS

In 2012, CIETAC introduced new rules that included provisions for the consolidation of multiple arbitrations, but they did not include provisions for the joinder of parties to existing arbitrations. The 2015 Rules (Article 18) now permit an additional party to be joined to an arbitration—even over a party’s objection—where it can be established that the arbitration agreement governing the arbitration binds the additional party. When a Request for Joinder is filed prior to the formation of the arbitral tribunal, CIETAC is empowered to determine whether the additional party should be joined; where a Request for Joinder is filed after the tribunal has been formed, the tribunal may first hear from the parties (including the additional party) before CIETAC makes a decision on the joinder request. (This is consistent with CIETAC’s general power, under China’s Arbitration Law (Article 20), to determine the tribunal’s jurisdiction.) Notably, where the tribunal has already been formed and an additional party has been joined, the additional party may request that a new tribunal be appointed to allow the additional party to participate in its formation.

With regard to consolidation of multiple arbitrations, although the 2012 Rules did introduce a consolidation procedure, it required the consent of all parties. Under the 2015 Rules (Article 19), CIETAC may order consolidation even where

a party objects. Consolidation is now permitted where: (i) all of the claims in the arbitrations are made under the same arbitration agreement; or (ii) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties as well as legal relationships of the same nature; or (iii) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the multiple contracts involved consist of a principal contract and its ancillary contract(s); or (iv) all the parties to the arbitrations have agreed to consolidation. When consolidation is ordered, the arbitrations are to be consolidated into the first commenced arbitration, unless the parties agree otherwise.

Article 14 of the 2015 Rules contains a somewhat related provision, specifying that a single arbitration may be commenced under multiple contracts, as long as (a) the contracts consist of a principal contract and its ancillary contracts, or they all involve the same parties and legal relationships of the same nature; (b) the disputes arise out of the same transaction (or series of transactions); and (c) the arbitration agreements in such contracts are identical or compatible.

### **EMERGENCY ARBITRATOR PROCEDURE**

In line with the international trend of arbitral institutions providing for the appointment of an emergency arbitrator, Article 23(2) and Appendix III of the 2015 Rules permit a party to apply to CIETAC for an Emergency Arbitrator Procedure, provided that such a procedure is in accordance with the applicable law or the agreement of the parties. If CIETAC grants the application, within one day of receipt of the application and the requisite fees, CIETAC must appoint an emergency arbitrator. Once appointed, the emergency arbitrator must issue an order within 15 days of his or her acceptance of the appointment, unless an extension of time is granted by CIETAC. The Emergency Arbitrator Procedure may be of limited use for parties to a CIETAC arbitration in mainland China, however, as China's Arbitration Law and Civil Procedure Law permit only courts to grant conservatory relief, which has the practical effect of limiting the interim relief in aid of arbitration that is available from a tribunal.

### **CIETAC ARBITRATION IN HONG KONG**

In 2012, CIETAC established the China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center. Before the issuance of the 2015 Rules, however, the specific manner in which the CIETAC Hong Kong Arbitration Center would administer disputes was somewhat unclear. The 2015 Rules make clear that parties may submit their dispute to the CIETAC Hong Kong Arbitration Center for administration in Hong Kong under CIETAC's rules. Chapter VI of the 2015 Rules contains special provisions that apply to such

an arbitration. They provide that unless otherwise agreed by the parties, the seat of such an arbitration will be Hong Kong, that the law governing the conduct of the arbitration will be Hong Kong law, and that the award will be deemed a Hong Kong award.

Chapter VI also includes provisions that reflect significant differences between the arbitration laws of Hong Kong and China. For example, Article 75 permits the tribunal rather than CIETAC to determine its own jurisdiction. Also, although Article 77, which governs the award of interim measures, is similar to Articles 23(2) and (3), as they apply to Mainland China arbitrations, the fact that Article 77 will permit the award of interim relief under Hong Kong law should in practice mean that a far greater range of interim measures will be available from CIETAC Hong Kong than from CIETAC in Mainland China. In addition, and unlike the case in CIETAC arbitrations in Mainland China, the 2015 Rules permit parties to a CIETAC arbitration in Hong Kong to appoint an arbitrator outside of CIETAC's panel of arbitrators without the need to obtain consent from the opposing party to do so.

#### **NEW ARBITRATION COURT**

On September 26, 2014, in anticipation of the implementation of the 2015 Rules, CIETAC also established an Arbitration Court, which will handle CIETAC's case management, including arbitrator appointments, and decisions on jurisdiction, joinder and consolidation, leaving CIETAC's Secretariat to handle public affairs and internal administrative matters. Each CIETAC sub-commission and arbitration center will also have its own arbitration court that will administer arbitrations submitted to it.

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Although the 2015 Rules do not represent a fundamental rewriting of CIETAC's arbitration rules, they do introduce several features parties have come to expect from the major international arbitral institutions. Perhaps most notably, they also clarify the ability of parties to submit to CIETAC arbitration in Hong Kong and reinforce CIETAC's growing ambition to be seen as a global provider of arbitration services.

Please do not hesitate to contact us with any questions.