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On 3 February 2012, the China International Economic and Trade Arbitration Commission (CIETAC) adopted a revised version of its Arbitration Rules (the 2012 Rules), which went into effect on 1 May 2012. The 2012 Rules represent the seventh time that CIETAC has amended its Arbitration Rules since they were first published in 1956, the most recent revision coming in 2005. The latest revision is not a radical overhaul of the 2005 revision, but it does demonstrate CIETAC's commitment to keep in line with developments internationally in arbitration practice.

Headquartered in Beijing, CIETAC is one of the major permanent arbitration institutions in the world. Formerly known as the Foreign Trade Arbitration Commission, CIETAC was set up in 1956 under the China Council for the Promotion of International Trade and today is also known as the Arbitration Court of the China Chamber of International Commerce (CCOIC).

In recent years, CIETAC has registered an increasing number of arbitrations – and particularly arbitrations with a foreign element. Motivated in part by this increase, and in view of recent amendments to other major arbitration rules (such as those of the International Chamber of Commerce [ICC] and the United Nations Commission on International Trade Law [UNCITRAL]), CIETAC established a working group in 2010 to update its Arbitration Rules.

The 2012 Arbitration Rules are the culmination of that effort. Key amendments to the CIETAC Arbitration Rules include:

- **Seat (Place) of the Arbitration.** Article 7(2) provides that, where the parties' agreement does not specify the seat of the arbitration, CIETAC has the power to seat the arbitration in any location based on the circumstances of the case. The default seat is no longer China, albeit this is applicable only to a foreign-related dispute.
- **Consolidation.** Article 17 states that CIETAC may consolidate two or more arbitrations into a single arbitration at the request of a party and with the agreement of all the other parties, or where CIETAC believes it necessary and all the parties have agreed.
- **Conservatory Measures.** Article 21 establishes new provisions regarding conservatory measures. Under the law of the People's Republic of China (PRC), preservation of property and preservation of evidence are conservatory measures that can only be granted by a Chinese court. The 2012 Rules thus allow a party to request conservatory relief pursuant to PRC law to CIETAC, which will then forward the request to a competent Chinese court for a ruling. For arbitrations seated outside China, Article 21 authorizes the arbitral tribunal to award interim measures it deems necessary in accordance with the applicable law (generally the seat of the arbitration).
- **Multi-Party Appointment of Arbitrators.** Article 27(3) provides that, where there are two or more claimants and/or respondents in an arbitration case, if either side fails to appoint its arbitrator, then the chairman of CIETAC will appoint all three. This provision is intended to eliminate unfairness that sometimes arose under the previous rules where the respondent lost its right to nominate an arbitrator while the claimant retained its right.
- **Conciliation (Mediation).** Having the arbitral tribunal mediate the dispute has always been a feature of arbitrations in China. Perhaps as a response to concerns of foreign parties on the impartiality of the arbitral tribunal if it were also to be involved in the conciliation process, Article

45(8) provides that CIETAC may assist the parties to conciliate their dispute in a manner and procedure it considers appropriate, if the parties so agree. The new rules, however, do not specify how CIETAC is to assist.

- **Summary Procedure.** Article 54 makes the summary procedure set forth under Chapter IV of the 2012 Rules applicable to all disputes that are under RMB 2 million (an increase from the previous threshold of RMB 500,000), unless the parties agree otherwise.
- **Language.** Article 71(1) provides that, where the parties' agreement does not specify the language of the arbitration, CIETAC has the power to determine which language will govern the arbitration, taking into account the nationality of the parties and the subject matter of the dispute. The default language is no longer the Chinese language. While this provides for flexibility, it may lead to uncertainty. Parties are advised to specify and agree on the language of arbitration in the arbitration agreement.

Notably, the 2012 Rules retain the provision, found in Article 47, stating that the arbitral tribunal shall render an award that is "fair and reasonable." Some commentators have interpreted this provision as granting to the tribunal the power of *amiable compositeurs* to disregard the applicable law and the parties' contract to reach an equitable result. By contrast, the ICC and UNCITRAL arbitration rules provide that a tribunal cannot decide a case as *amiable compositeurs* or *ex aequo et bono* unless both parties have expressly authorized the tribunal to do so.

Moreover, the 2012 Rules do not include all of the changes recently made to other major arbitration rules, such as the ICC and UNCITRAL arbitration rules, because of limitations under PRC law. For example, the 2012 Rules contain no provision for the appointment of emergency arbitrators.

Nevertheless, the 2012 Rules are a welcome development and have brought CIETAC arbitration more in line with modern international arbitration practice.

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