CLIENT ALERT

New CIETAC Arbitration Rules 2012

Mar.20.2012

The China International Economic and Trade Arbitration Commission ("CIETAC") has published its long-awaited revised Arbitration Rules (the "2012 Rules"), updating its previous rules of 1995 (the "1995 Rules"). The 2012 Rules, adopted by the China Council for the Promotion of International Trade and by the China Chamber of International Commerce on 3 February 2012, will come into effect as of 1 May 2012.

The 2012 Rules are divided into six Chapters:

- General Provisions (Arts. 1-10);
- Arbitration Proceedings (Arts. 11-45);
- Arbitral Award (Arts. 46-53);
- Summary Procedure (Arts. 54-62);
- Special Provisions for Domestic Arbitration (Arts. 63-70); and
- Supplementary Provisions (Arts. 71-74).

CIETAC's jurisdiction extends to cases "involving economic, trade and other disputes of a contractual or non-contractual nature, based on an agreement of the parties," including international or foreign-related disputes; disputes related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan Region; and domestic disputes (2012 Rules, Art. 3).

Parties whose disputes fall under the jurisdiction of CIETAC should note, in particular, the following areas of change as a result of the 2012 Rules:

1) Place and Language of Arbitration

Under the 2012 Rules, where the parties have not agreed on the place and/or language for their arbitration, CIETAC may determine this "having regard to the circumstances of the case," (2012 Rules, Arts. 7(2) and 71(1)). This represents a major and very welcome departure from the position under the 1995 Rules, whereby CIETAC determined the seat according to the domicile of CIETAC (located in Beijing) or of one of its three Sub-Commissions (located in Shanghai, Shenzhen, and Tianjin, respectively), and Chinese was the default official language of the arbitration.

2) Consolidation of Arbitrations

The option to consolidate two or more arbitrations into a single arbitration is now available under the 2012 Rules. This option is available by request of a party or where CIETAC believes it is necessary, subject to the agreement of all the parties (2012 Rules, Art. 17(1)).
3) Interim Measures

Under Art. 21(2) of the 2012 Rules, the arbitral tribunal now has the express authority, at the request of a party, to order "any interim measure it deems necessary or proper in accordance with the applicable law."

This addition brings the CIETAC rules more in line with the rules of other international arbitral institutions, such as those of the ICDR and of the LCIA, for example, which both provide for interim measures by way of application to the arbitral tribunal.

4) Multiple-Party Appointment of Arbitrators

In the case of multiple claimants and/or multiple respondents, and in the absence of an agreement on either side for the joint nomination of an arbitrator (or where the parties on either side fail to agree to jointly entrust the Chairman of CIETAC to appoint their arbitrator), the Chairman of CIETAC will now be able to nominate all members of the arbitral tribunal as well as to appoint the chairman of the tribunal (2012 Rules, Art. 27(3)).

This modification ensures that there is no imbalance or unfairness between the two sides in case of the default appointment process being necessary.

5) Suspension

The 2012 Rules make provision for the suspension of arbitration proceedings where requested by the parties or where otherwise considered necessary, providing added flexibility to the proceedings in the case of unforeseen events. The decision whether to suspend and whether to resume the proceedings will be made by the arbitral tribunal, or, where it has not yet been formed, by the Secretary General of CIETAC (2012 Rules, Art. 43).

6) Combination of Conciliation with Arbitration

An unusual characteristic of the CIETAC Rules is the provision for the combination of arbitration and conciliation at the request of a party and subject to the agreement of the other party.

While provisions allowing the members of a CIETAC arbitral tribunal to “switch” to conciliate a case during the course of arbitration proceedings already existed under the 1995 Rules, the 2012 Rules now provide that parties who wish to conciliate their dispute may also do so without the involvement of the arbitral tribunal.

7) Summary Procedure Threshold

A summary procedure for cases with lower amounts in dispute was already available under the 1995 Rules. However, the threshold for a case to be eligible for the summary procedure has been significantly increased from cases where the amount in dispute does not exceed RMB 500,000 yuan (under the 1995 Rules), to those where it does not exceed RMB 2,000,000 yuan (under the 2012 Rules), reflecting an increase in the amounts at dispute in CIETAC arbitrations in the past seven years.

The summary procedure will automatically apply to cases where the amount in dispute does not exceed RMB 2 million yuan, unless the parties agree otherwise.
Conclusion

In several respects, the revised CIETAC rules are consistent with recent changes seen in the rules of other international arbitral institutions around the world, including those of the International Court of Arbitration of the International Chamber of Commerce, reflecting a recognition of the increasing complexity and global nature of international arbitral disputes.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.