The China International Economic and Trade Arbitration Commission (CIETAC) has revised its arbitration rules with effect from 1 May 2012 (the “2012 rules”). This alert highlights some of the key amendments over the previous edition of the rules (adopted in 2005).

Application

The 2012 rules apply to any arbitration commenced with CIETAC as of 1 May 2012, unless parties have otherwise agreed to the application of another version of the rules. Under the 2012 rules, the arbitration proceedings shall commence on the day on which the CIETAC secretariat receives the Request for Arbitration.

Key Amendments

Flexibility in determining the place of arbitration

CIETAC’s name has long been associated with arbitrations conducted in mainland China. However, in an effort to stake its claim as an international arbitration body, CIETAC introduced rules in 2005 that permitted parties to agree to a place of arbitration outside mainland China. This meant that, like other international arbitration institutions such as the International Chamber of Commerce (ICC) and Singapore International Arbitration Centre (SIAC), CIETAC could now administer arbitrations outside mainland China if parties so agree. The 2012 rules give further flexibility to CIETAC to determine any appropriate location, including a location outside mainland China, as the place of arbitration, where parties have failed to reach an agreement or their agreement is ambiguous.

Permitting the consolidation of arbitrations

In recognition of the increasing number of disputes involving multiple parties and multiple contracts, many international arbitration bodies have revised their rules to permit the consolidation of two or more related arbitration proceedings. Such consolidation could be helpful in minimizing the risk of inconsistent outcomes arising from parallel proceedings, and allowing related disputes to be resolved in a more coordinated and efficient manner.

In line with this international trend, the 2012 rules now provide that two or more arbitrations may be consolidated, either on the request of a party, or where CIETAC believes it to be necessary. In either case, however, consolidation can only take place if all parties give their consent.
This consent requirement may nevertheless limit the practical use of the consolidation provisions as any uncooperative party can simply block the consolidation by withholding its consent, even if there are good reasons for the proceedings to be consolidated. Further, unlike other institutional rules, such as those of the ICC, SIAC and the Hong Kong International Arbitration Centre (HKIAC), there is no provision for additional parties to be joined to existing proceedings. In the circumstances, persons interested in the outcome of an arbitration but who have not been brought in as a party to the arbitration have no option but to commence parallel proceedings to pursue their rights.

_Tribunal’s power to order interim measures_

As a matter of PRC law, the power to grant interim measures rests with the People’s Courts, not the arbitral tribunal or arbitration commission. Further, these measures are limited to “conservatory” measures directed at preserving property or evidence. CIETAC rules reflect this regime by providing that any request for such conservatory measures must be forwarded to the People’s Court for a ruling.

The 2012 rules, however, now contain provisions that _expressly_ empower the arbitral tribunal, upon application by any party, to order _any_ interim measure it deems necessary or proper in accordance with applicable law (which is typically the law of the place of arbitration unless otherwise specified by the parties). In connection with its application, the requesting party may be required to furnish appropriate security. Given the limitations under PRC law (as explained above), these new provisions on interim measures are likely to be relevant only where the place of arbitration is outside mainland China, and where the local laws permit the grant of wider forms of interim measures (such as injunctive relief).

_Increased party autonomy in the arbitration-mediation process_

The use of “arb-med”, or combining arbitration with mediation (or conciliation), is common in mainland China. In other words, parties are often asked by their arbitrators during the course of the arbitration proceedings to conciliate their differences with the aim of settling the dispute. In this process, arbitrators more often than not offer to act as mediators. If the dispute is not settled, the parties revert back to arbitration where the same arbitrators will then decide on the merits of the parties’ case. Statistics from CIETAC suggest that between 20-30% of its caseload is resolved through “arb-med”. However, the combination of arbitration and mediation whereby the same individual acts as arbitrator and mediator has raised concerns that confidential information disclosed by one party, in private caucus during mediation, may unduly influence the arbitrator’s judgment if the dispute is not settled and the arbitrator has to finally resolve it by way of an arbitral award. To address such concerns, the 2012 rules now expressly state that CIETAC will assist parties to conciliate in a “manner and procedure it considers appropriate” if parties do not wish to have the conciliation conducted by the members of the arbitral tribunal.

_Language_

Where parties fail to agree on the language of the arbitration, CIETAC rules have long stipulated Chinese as the default language. This has had the effect, however, of severely restricting the parties’ choice of arbitrators to a mainly domestic pool of individuals and a limited number of foreign arbitrators who are fluent in Chinese. In its effort to internationalize CIETAC arbitration, the 2012 rules now empower CIETAC, where there is absence of agreement by the parties, to designate any
other language, taking into account relevant factors including the parties’ nationalities and the subject matter in dispute. Although this amendment is a commendable effort on CIETAC’s part, parties should nevertheless seek to reach agreement on language in their arbitration agreement to avoid any uncertainty pending CIETAC’s decision.

More efficient exchange of documents

Previously, all exchange of correspondence and arbitration documents between the arbitral tribunal and parties had to be routed through the CIETAC secretariat. This practice has been criticized as inefficient and out of line with modern international arbitration practice. The 2012 rules now allow parties to directly exchange correspondence and documents by email, copying CIETAC and the tribunal in the process and then following up with hard copies by courier.

Threshold for summary procedure raised

Unless otherwise agreed between the parties, the summary procedure (which requires the arbitration to be conducted under a more compact timetable) now applies to cases where the amount in dispute does not exceed RMB2,000,000. Previously, the threshold was RMB500,000. This amendment should result in more CIETAC arbitrations being conducted in an expedited manner, which, in turn, will translate into lower costs for parties.

Concluding remarks

The changes introduced by the 2012 rules are more evolutionary than revolutionary. Many of them have been adopted by reference to recent updates to the rules of other major arbitration institutions such as the ICC, HKIAC and SIAC, and with a view to encouraging greater party autonomy, flexibility and efficiency in the conduct of CIETAC arbitration. However, whether it is due to constraints imposed under PRC law or CIETAC’s own desire to maintain certain “Chinese characteristics” to its arbitrations, a number of provisions commonly found in the rules of other arbitration institutions have not been incorporated in the 2012 rules, including provisions relating to the joinder of additional parties (as discussed above). Another notable omission is the appointment of emergency arbitrator provisions found in the SIAC and ICC rules (which enable parties to appoint an emergency arbitrator solely for the purposes of obtaining urgent interim measures before the arbitral tribunal is constituted).

That said, the adoption of the 2012 rules is a welcome development and should enhance CIETAC’s competitiveness as a provider of international arbitration services.