

Legal Overview on the Jurisdiction Dispute of CIETAC

As the most experienced arbitration institution in China, China International Economic and Trade Arbitration Commission (“CIETAC”) is based in Beijing with several sub-commissions over China, amongst which CIETAC Shanghai Sub-commission (“CIETAC Shanghai”) located in Shanghai and CIETAC South China Sub-commission (“CIETAC South China”) located in Shenzhen were the most famous and reputable ones.

Since May 2012, CIETAC (as one side) had dispute between CIETAC Shanghai and CIETAC South China (together as the other side) with respect to the jurisdiction over cases with certain typical arbitration clauses, which has caused great uncertainty to arbitration practice. In this article we will overview the development of the jurisdiction dispute, as well as analyze the impact caused to the contracting parties.

I. Overview of the jurisdiction dispute

(1) Initiation of the jurisdiction dispute

The dispute between the two sides was triggered by the promulgation of the Arbitration Rules of CIETAC taking effect from May 1, 2012 (“CIETAC Rules 2012”).

According to the previous arbitration rules (“CIETAC Rules 2005”), with the general arbitration clause that “Any dispute arising from or in relation to this contract shall be submitted to China International Economic and Trade Arbitration Commission and solved in accordance with its arbitration rules then”, the claimant shall have the option to submit the case for arbitration before CIETAC, CIETAC South China or CIETAC Shanghai, and when such option is exercised, the first choice by the party shall prevail.

Nevertheless, CIETAC Rules 2012 deleted that option. Consequently, CIETAC South China and CIETAC Shanghai would loss jurisdiction over cases with that general arbitration clause, which shall only be accepted by CIETAC. In addition, even with the arbitration clause that “the dispute shall be submitted to CIETAC, and the arbitration place shall be in Shanghai” or “the dispute shall be submitted to CIETAC, and the arbitration place shall be in Shenzhen”, CIETAC Shanghai or CIETAC South China neither has right to accept the case.

(2) Actions taken by CIETAC, CIETAC Shanghai and CIETAC South China

As CIETAC Rules 2012 will significantly reduce the cases to be solved by CIETAC Shanghai and CIETAC South China, CIETAC Shanghai and CIETAC South China publicly refused to apply CIETAC Rules 2012. In addition, CIETAC Shanghai adopted its own CIETAC Shanghai Sub-commission Arbitration Rules taking effect from May 1, 2012 (“CIETAC Shanghai Rules 2012”), and CIETAC South China announced that it would still apply CIETAC Rules 2005 rather than CIETAC Rules 2012.

Facing the resisting from CIETAC Shanghai and CIETAC South China, CIETAC published a series of announcements, mainly declaring that:

- (a) The sub-commissions should apply CIETAC Rules 2012, and have no right to make their own arbitration rules, and their arbitration rules shall be invalid;

GARRIGUES

- (b) From August 1, 2012, CIETAC suspends its authorization to CIETAC Shanghai and CIETAC South China for accepting arbitration applications and hear arbitration cases;
- (c) From August 1, 2012, with arbitration clause that “the dispute shall be submitted to China International Economic and Trade Arbitration Commission Shanghai Sub-commission” or “the dispute shall be submitted to China International Economic and Trade Arbitration Commission South China Sub-commission”, the parties shall submit the case to CIETAC rather than to CIETAC Shanghai or CIETAC South China, while CIETAC will hold the hearing in Shanghai or Shenzhen;
- (d) From December 31, 2012, CIETAC Shanghai and CIETAC South China shall not use the Chinese or English name, brand or any logo of “China International Economic and Trade Arbitration Commission (“CIETAC”)”, and shall not conduct any arbitration under the name of International Economic and Trade Arbitration Commission Shanghai Sub-commission or International Economic and Trade Arbitration Commission South China Sub-commission.

The actions taken by both sides had confused the contracting parties significantly. Nevertheless, the dispute could be regarded as temporarily suspended due to name change taken by CIETAC South China and CIETAC Shanghai, as the separation of CIETAC Shanghai/ CIETAC South China from CIETAC:

- (a) On October 22, 2012, CIETAC South China announced that it changed name to “South China International Economic and Trade Arbitration Commission”, as well as started to use the new name “Shenzhen Court of International Arbitration” (“SCIA”) concurrently as its official name. Besides, “South China International Economic and Trade Arbitration Commission Arbitration Rules” and its Panel of Arbitrators shall take effect from December 1, 2012;
- (b) On April 17, 2013, CIETAC Shanghai announced that it changed name to “Shanghai International Economic and Trade Arbitration Commission”, as well as started to use the new name “Shanghai International Arbitration Center” (“SHIAC”) concurrently as its official name. Besides, “Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) Arbitration Rules” and Panel of Arbitrators shall take effect from May 1, 2013.

II. Impact to contracting parties

- (1) For contracts to be executed by the contracting parties

After the name change of CIETAC South China and CIETAC Shanghai, when preparing the contract, the parties may refer to the below model arbitration clauses of each commission. With the changed name or new name of the commissions in the arbitration clause, the parties’ intention about the selected arbitration commission can be clearly expressed:

Table 1:

Commission	Model arbitration clause
CIETAC	Any dispute arising from or in connection with this Contract shall be

GARRIGUES

	submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.
SHIAC	<p>(1) Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission for arbitration.</p> <p>(2) Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Arbitration Center for arbitration.</p>
SCIA	<p>(1) Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIA) for arbitration.</p> <p>(2) Any dispute arising from or in connection with this contract shall be submitted to Shenzhen Court of International Arbitration (SCIA) for arbitration.</p> <p>(3) Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIA) for arbitration which shall be conducted in accordance with the UNCITRAL Arbitration Rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon the parties.</p>

(2) For contract already executed

Previously, many parties adopted the typical arbitration clauses as illustrated in Table 2 in their contracts. Currently, CIETAC, SHIAC and SCIA hold different opinions about whether they have jurisdiction over the cases with those arbitration clauses, as follows:

Table 2:

Typical arbitration clause	CIETAC's opinion	SHIAC's opinion
(A) Any dispute arising from or in relation to this contract shall be brought before the China International Economic and Trade Arbitration Commission ("CIETAC") Shanghai Sub-Commission	SHIAC has no jurisdiction over the case	SHIAC has jurisdiction over the case.
(B) Any dispute arising from or in relation to this contract shall be brought before the China International Economic and Trade Arbitration	SHIAC has no jurisdiction over the case	Based on our anonymous consultation, in practice, SHIAC avoids

GARRIGUES

Commission (“CIETAC”), and the arbitration place shall be in Shanghai.		clearly expressing whether it has jurisdiction over the case, but recommend the parties to submit the case to CIETAC to avoid jurisdiction dispute*.
Typical arbitration clause	CIETAC’s opinion	SCIA’s opinion
(A) Any dispute arising from or in relation to this contract shall be brought before the China International Economic and Trade Arbitration Commission (“CIETAC”) South China Sub-Commission	SCIA has no jurisdiction over the case.	SCIA has jurisdiction over the case.
(B) Any dispute arising from or in relation to this contract shall be brought before the China International Economic and Trade Arbitration Commission (“CIETAC”), and the arbitration place shall be in Shenzhen.	SCIA has no jurisdiction over the case.	Based on our anonymous consultation, in practice, SCIA avoid clearly expressing whether it has jurisdiction over the case, but suggest the parties to submit the case to CIETAC to avoid jurisdiction dispute.

* In May 2013, the Intermediate People’s Court of Suzhou (a city near Shanghai) issued a judgment refusing to enforce the arbitration award made by SHIAC with the said arbitration clause. The court judged that, prior to CIETAC Shanghai Sub-commission obtaining its Registration Certificate for Arbitration Commission on December 8, 2011, CIETAC Shanghai (SHIAC) had jurisdiction over the case with the said arbitration clause since the parties’ intention is to submit the case to CIETAC while CIETAC Shanghai Sub-commission was a part of CIETAC, but after that date CIETAC Shanghai (SHIAC) has lost its jurisdiction as it was no longer part of CIETAC but an independent arbitration commission different from CIETAC.

From Table 2, it could be concluded that, in case any dispute arising from the contracts with typical arbitration clauses (B), the risk about jurisdiction dispute between the contracting parties may be limited, as both CIETAC and SHIAC or SCIA agree that the case may be heard by CIETAC. Nevertheless, in case any dispute arising from the contracts with typical arbitration clause (A), the respondent may always bring jurisdiction objection and the hearing may be delayed, disregard whether the claimant chooses CIETAC or SHIAC/SCIA.

GARRIGUES

Fortunately, based on the non-official information from SCIA, the Supreme Court of the PRC is considering issue a judicial interpretation soon, to clarify the jurisdiction matters amongst the commissions, which is expected to dismiss the jurisdiction dispute and bring certainty to arbitration practice.

III. Recommendations

To avoid jurisdiction dispute between the contracting parties in the future, when preparing the arbitration clauses, the parties may refer to the model arbitration clauses in Table 1, by using the new names of SHIAC/SCIA to clearly express the arbitration commissions selected by the parties.

On the other hand, with respect to the contract which already has been executed with the typical arbitration clauses in Table 2, the parties may consider to change the arbitration clause, by using those in the model arbitration clauses in Table 2.

Most importantly, the contracting parties may engage legal professionals to have a review of the arbitration clause, to ensure the jurisdiction as well as the enforcement of the arbitration award made by that arbitration commission.