

Dispute between China International Economic and Trade Arbitration Commission (CIETAC) and its Shanghai and South China Sub-commissions

August 20, 2012.

On August 1st, 2012, China International Economic and Trade Arbitration Commission (CIETAC) issued Announcement On the Administration of Cases Agreed to be Arbitrated by CIETAC Shanghai Sub-commission and CIETAC South China Sub-commission (hereinafter referred to as “Administrative Announcement”), suspended its authorization to the CIETAC Shanghai Sub-commission and CIETAC South China Sub-commission (renamed from the CIETAC Shenzhen Sub-commission) for accepting and administering arbitration cases.

On August 4th, 2012, the CIETAC Shanghai Sub-commission (CIETAC Shanghai) and the CIETAC South China Sub-commission (CIETAC South China) made a Joint Statement, saying that they “will overcome all the improper disturbances from CIETAC, as independent arbitration institutions and subject to the Arbitration Law, continue to accept and manage arbitration cases as agreed upon by the parties.”

By now, the relationship between CIETAC and its Shanghai and South China Sub-commissions has officially broken up.

Background

In 1954, CIETAC was set up by the China Council for the Promotion of International Trade (CCPIT) with the approval of the Administration Council of the Central People’s Government.

In 1982, the CIETAC Shenzhen Office was approved by CCPIT to be set up in Shenzhen following approval by the State Council of an application jointly submitted by CCPIT, the Ministry of Foreign Economic Relations and Trade and the Ministry of Foreign Affairs. The Shenzhen Office was renamed the Shenzhen Sub-commission in 1989 and the South China Sub-commission in 2004.

In 1988, the CIETAC Shanghai Sub-commission was approved by CCPIT to be set up in Shanghai after it obtained the approval from the State Council.

From 2009, CIETAC initiated a “reform” by amending the arbitration rules and the articles of association. CIETAC Shanghai and CIETAC South China expressed their clear objection to CIETAC on several occasions.

In 2010, the Shenzhen Municipal Government approved CIETAC South China to use the name as “Shenzhen Court of International Arbitration” (SCIA) to operate as an experimental legal institution which was highly supported by Guangdong Provincial Office of Justice.

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On April 24th, 2012, CIETAC published CIETAC Arbitration Rules (2012) which had been previously reviewed and approved by the Commission Meeting of CIETAC and then approved by CCPIT.

On April 30th, 2012, CIETAC Shanghai declared in an announcement to have set up its own commission, published its own arbitration rules and adopted its own Panel of Arbitrators.

On May 1st, 2012, CIETAC issued a statement and an open letter on its official websites, reiterate that the sub-commissions are only its branch offices and declared that the commission establishment, constitution and rule formulation as well as the selection of arbitrators of CIETAC Shanghai were all null and void.

On May 2nd, 2012, CIETAC Shanghai issued a statement as a response to CIETAC, saying that CIETAC Shanghai has always been an independent arbitral institution and shall not use CIETAC Arbitration Rules (2012) which are invalid procedurally, and contain many illegal provisions that are substantively ineffective and gravely harmful.

On June 16th, 2012, the Opening of the Shenzhen Court of International Arbitration (SCIA) was launched. CIETAC South China officially started to use the concurrent name as SCIA.

Main Issues

The disagreement between CIETAC and its Shanghai and South China Sub-commissions mainly involves the following issues:

1. Nature of CIETAC Shanghai and CIETAC South China

CIETAC emphasizes that CIETAC Shanghai and CIETAC South China are only branch offices of CIETAC. According relevant regulations and public documents, CIETAC South China is under the direct leadership of CCPIT in respect of its arbitration business and it is under the leadership of the Shenzhen Municipal Government in terms of personnel and administrative affairs; CIETAC Shanghai is under the direct leadership of CIETAC in its business and is administratively attached to the Shanghai Sub-Council of CCPIT.

CIETAC Shanghai and CIETAC South China claimed that both sub-commissions are independent arbitration institutions, which were sponsored, approved and organized by the Shanghai Municipal Government and the Shenzhen Municipal Government respectively, and are independent legal persons. Both institutions have completed their judicial registrations respectively with the Shanghai Municipal Bureau of Justice and Department of Justice of Guangdong Province according to the Arbitration Law of the People's Republic of China (the "Arbitration Law").

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2. Application of Arbitration Rules

According to CIETAC, CIETAC Shanghai and CIETAC South China shall follow the Arbitration Rules (2012) as branch offices of CIETAC.

However, CIETAC Shanghai and CIETAC South China did not recognize or use the Arbitration Rules (2012) and articles of association from the very beginning. They claimed that the amendment to arbitration rules and articles of association made by CIETAC in 2012 violated the relevant procedures and the Arbitration Law, as well as went contrary to the generally accepted practice of international commercial arbitration. Therefore, they refused to apply the Arbitration Rules (2012).

3. CIETAC's "Authorization" and its Nature

CIETAC suspended its authorization to CIETAC Shanghai and CIETAC South China for accepting and administering arbitration cases based on the Arbitration Rules (2012) and articles of association which provided that CIETAC and its sub-commissions form an integrated arbitration institution and that the sub-commissions conduct arbitration business under the authorization of CIETAC.

CIETAC Shanghai and CIETAC South China argued that, as duly established arbitration institutions, their respective jurisdiction comes from the agreement of the parties, rather than the "authorization" from any other institutions, not to mention the so-called "suspension of authorization". They claimed that CIETAC violated Article 6 of the Arbitration Law which provides that "the arbitration commission shall be selected by agreement of the parties concerned", and betrayed the basic principle of "party autonomy" in the arbitration system.

4. Acceptance and Management of Arbitration Cases

According to CIETAC's Administrative Announcement, as from 1 August 2012, where parties have agreed to arbitrate their disputes by CIETAC Shanghai or CIETAC South China, the parties shall submit their applications for arbitration to CIETAC and the CIETAC Secretariat shall accept such arbitration applications and administer such cases. Without CIETAC's authorization, no institutions shall have the right to accept and administer the afore-mentioned arbitration cases.

But CIETAC Shanghai and CIETAC South China believe that the so-called Administrative Announcement has no binding effect on them and the parties, and will not affect the acceptance and management of cases or the normal operation. The parties can continue to apply for arbitration with CIETAC Shanghai and CIETAC South China according to their arbitration agreements.

Both CIETAC and its Shanghai and South China Sub-commissions provided their respective contact information for communication or inquiry.

General Comments

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The dispute involves not only CIETAC and its two sub-commissions but also the legitimate rights and interests of concrete cases' parties. It has caused unnecessary confusion to and exerted negative influence on the public and the parties concerned and further damaged the goodwill of China's arbitration institutions and brought unstable factors to the economic and social development. Neither CIETAC nor its Shanghai and South China Sub-commissions will gain. Since the disagreement will cause uncertainty in respect of the effect of the determination, the parties may choose none of them for arbitration.

The current Arbitration Law entered into force in 1995. Nowhere in the Arbitration Law ever provides the legal status and arbitration authority of the sub-commissions. In order to specify the assets, personnel, finance and arbitration business of the sub-commissions, relevant amendment could be made to the Arbitration Law.