



IN STYLE •
HONG KONG
SYMPOSIUM

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Hot Topics on CIETAC Arbitration

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- ❖ CIETAC Hong Kong's **First Enforcement Case** in the Chinese Mainland
- ❖ CIETAC Hong Kong Arbitration Center Rules as **Appointing Authority** in *Ad Hoc* Arbitrations
- ❖ CIETAC International **Investment Arbitration Rules**



I. CIETAC HKAC award enforced in Nanjing

13 December 2016 — *the Nanjing Intermediate People's Court of Jiangsu Province handed down a decision to **enforce a CIETAC Hong Kong arbitral award** in the Chinese mainland for the first time.*

Background

- ❖ Claimant: **American** architectural design firm
- ❖ Respondent: **Chinese** property developer
- ❖ 2 property design contracts between the parties
- ❖ Arbitration commenced in **2015** at the **CIETAC Hong Kong Arbitration Center** to recover unpaid design fees and interest pursuant to the Contracts.
- ❖ Hearing took place in the same year and award rendered 3 months later.
- ❖ Arbitral award found in favour of the Claimant and ordered **immediate payment of all design fees and interests owed**, and the Respondent to bear liability for all arbitration costs.
- ❖ The Respondent acted in compliance with the award **except for the interest element** of it.



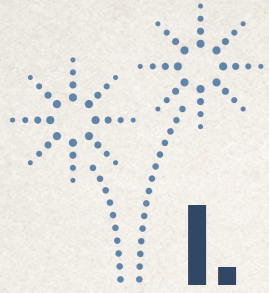
I. CIETAC HKAC award enforced in Nanjing

*The Nanjing Court relied on the **1999 Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Chinese Mainland and Hong Kong**, a mutual enforcement instrument that mirror the New York Convention.*

*E.g. **1999 Mutual Enforcement Arrangement** — **Article 1** relevant rights to apply for enforcement
& **Article 7** grounds for refusal of enforcement*

Court's decision as follows:

- ❖ *Enforce “arbitral award part 3” [2015]CIETACHKCAIZI0003 made by **Hong Kong Special Administrative Region** China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center.*
- ❖ *The application fee is 400 RMB and shall be borne by the Respondent.*

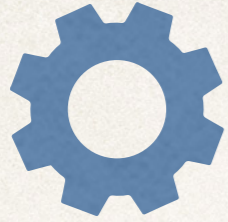


I. CIETAC HKAC award enforced in Nanjing

*The landmark enforcement demonstrated the **recognition and enforceability of awards rendered under the administration of CIETAC Hong Kong**, thereby effectively expanded parties' future options for dispute resolution in Hong Kong.*

Two takeaway points

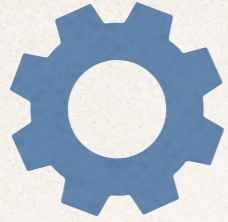
- ① Confirmed CIETAC Hong Kong's status as a **Hong Kong institution** and the status of such award as a **Hong Kong award**;
- ② Demonstrated the applicability of the **Mutual Enforcement Arrangement** towards such CIETAC Hong Kong-administered cases.



II. Ad Hoc Arbitration — Appointment Authority Rules

*1 July 2017 — the **CIETAC Hong Kong Arbitration Center Rules as Appointing Authority in Ad Hoc Arbitrations** came into effect. Designed to answer parties' ad hoc arbitration needs, the new Rules are to be implemented by CIETAC Hong Kong.*

- ❖ CIETAC Hong Kong may serve as appointing authority upon request, such roles include: *(Articles 2)*
 - ❖ **Appointment of arbitrators**
 - ❖ Decision on the **number of arbitrators** to be appointed
 - ❖ Decision on **challenges**
 - ❖ Determination of **arbitrators' fees** and verification of any **Terms of Appointment**
 - ❖ Undertaking of **financial management** of arbitrations
 - ❖ Provision of **oral hearing** services, **tribunal secretary** services and other related services as required



II. Ad Hoc Arbitration — Appointment Authority Rules

Enhanced flexibility to cater for parties' arbitration needs — The new Rules cover non-institutional arbitrations under other ad hoc arbitration rules and those under relevant provisions of law or agreement of the parties, thereby going beyond arbitrations under the UNCITRAL Arbitration Rules

Two takeaway points

- ③ International standards incorporated; examples:
 - Combining valuable elements of the **2013 UNCITRAL Arbitration Rules** (*Articles 6.1 & 14 etc.*)
 - Reference to the **IBA Guidelines on Conflicts of Interest** (*Articles 9*)
- ④ Selection of the most suitable arbitrator(s) for each dispute
 - **Appointment Committee** (*Articles 3*)
 - **List-Procedure** (*Articles 6*)



III. CIETAC International Investment Arbitration Rules

*1 October 2017 — the **CIETAC International Investment Arbitration Rules** effective as of 1 October 2017 are set to refine the international investment arbitration practice in the PRC, whereby **international investment disputes** between investors and Host States may be referred to **CIETAC for arbitration**.*

- ❖ Under the CIETAC IA Rules, parties are offered **options of jurisdiction** and **place of arbitration** for their investment disputes.
- ❖ Where the parties agree to **designate Hong Kong as the place of arbitration**, or to refer an international investment dispute to the **CIETAC HKAC**, the CIETAC HKAC shall accept the arbitration application and administer the case accordingly.



III. CIETAC International Investment Arbitration Rules

Four takeaway points

- ⑤ Scope of Application:
 - ❖ The CIETAC IA Rules are **specifically crafted** to cover relevant **investment disputes**.
 - ❖ Provide for acceptance of cases involving International investment disputes arising out of a **contract, treaty, statute** or **other instrument** between an investor and a **State, intergovernmental organisation, or any other organ, authority or entity authorised or otherwise** the conduct of which are **attributable** to a State.
 - ❖ Scope of application is **without prejudice** to any **applicable mandatory provision** of the law.



III. CIETAC International Investment Arbitration Rules

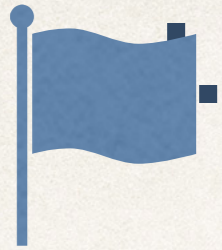
- ⑥ Panel of Arbitrators for International Investment Disputes & Stringent Qualification Requirements
- ❖ The CIETAC IA Rules have in place a **Panel of Arbitrators for International Investment Disputes** specifically compiled for the relevant disputes covered.
- ❖ Requirements such as — arbitrators shall be persons of **high moral character** and of **recognised competence** in professional fields such as law and investment, and who also are proficient in exercising **independent judgment**.
- ❖ **Appointment outside of the Panel** possible subject to fulfilment of the aforesaid **qualification** requirements and **confirmation** by the Chairman of CIETAC.



III. CIETAC International Investment Arbitration Rules

⑦ Public Hearing

- ❖ In light of issues related to **legitimacy of ISDS**, investment treaties began to incorporate **public hearing** requirements of investment arbitration.
- ❖ E.g. **2012 Canada-China BIT** — Article 28 Public Access to Hearings and Documents & China's participation in **Mauritius Convention on Transparency**.
- ❖ The CIETAC IA Rules provide that, unless otherwise agreed by the parties or decided by the arbitral tribunal, the **hearing shall be public**.
- ❖ The CIETAC IA Rules also introduce **third party written submission** by a Non-disputing Contracting Party or a Non-disputing Party, as well as permitting **publication of information** on the arbitral proceedings.
- ❖ Hence greatly **enhance** the **transparency** of proceedings conducted under the CIETAC IA Rules.



CIETAC International Investment Arbitration Rules

⑧ Third Party Funding for Arbitration

- ❖ The CIETAC IA Rules incorporate **third party funding** for arbitration.
- ❖ The CIETAC IA Rules require **disclosure** by the funded party of the existence and nature of the funding arrangement, and the name and address of the third party funder.
- ❖ Furthermore, when making a **decision on the costs of arbitration and other fees**, the arbitral tribunal may take into account the **existence of any third party funding arrangement** and whether the relevant **disclosure requirements** have been complied with.



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