# Arbitration under the CIETAC Rules 2012

## Getting started

### Preliminary steps

- Identify all claims and counterclaims and check that they fall within the scope of the arbitration clause.
- Identify whether the dispute is a domestic arbitration or a foreign-related arbitration.
- Consider which (sub-)commission will administer the arbitration.
- Check for time-bars.
- Identify your preferred arbitrator.
- Decide whether any interim measures are necessary.
- Start to prepare evidence.
- Familiarise yourself with CIETAC rules on communications and time-limits.

## Commencing the arbitration under the General Procedure

### Claimant

- Submit a Request for Arbitration in writing signed and/or sealed by the Claimant and/or its authorized representative(s) to CIETAC.
  
  1. See Article 12 for the information that the Request must contain and enclose.
  
  2. Provide one copy for each Respondent, each arbitrator and CIETAC.

- Submit a Power of Attorney to the Secretariat of CIETAC for each of your external lawyers who will be representing you in the proceedings (Article 20).

- Pay the arbitration fee in advance to CIETAC (as specified by the Arbitration Fee Schedule) (Article 12).
CIETAC

- Send a Notice of Arbitration to each party, together with one copy of the CIETAC Arbitration Rules and CIETAC's Panel of Arbitrators.
- For the Respondent, CIETAC will forward the Claimant's Request for Arbitration and its attachments at the same time (Article 13.2).

Respondent

- The Respondent has 45 days from the date of receipt of the Notice of Arbitration to file a Statement of Defence with the Secretariat of CIETAC or the relevant sub-commission.
  1. See Article 14 for the information that the Statement of Defence must contain.
  2. Submit a Power of Attorney to CIETAC for each of your external lawyers who will be representing you in the proceedings (Article 20).
  3. The Arbitral Tribunal or the Secretariat may grant an extension of time if the Respondent has justified reasons to request an extension (Article 14.1).
- If the Respondent wishes to file a Statement of Counterclaim, it must:
  1. File it within 45 days from the date of receipt of the Notice of Arbitration;
  2. The Arbitral Tribunal or the Secretariat may grant an extension of time if the Respondent has justified reasons to request an extension;
  3. Pay the relevant arbitration fee (as specified by the Arbitration Fee Schedule);
  4. Include the facts and grounds for its counterclaim and enclose any relevant supporting evidence (Article 15.1-15.3).

Formation of the tribunal

Constitution of the tribunal

- If the parties have not agreed on the number of arbitrators, the default
number of arbitrators shall be three (Article 23).

- If the Arbitral Tribunal is composed of three arbitrators, the arbitrators will be appointed in accordance with the following procedure:
  
  1. The Claimant and Respondent must each nominate (or entrust the Chairman of CIETAC to appoint) one arbitrator within 15 days of the Respondent receiving the Notice of Arbitration;
  
  2. The Claimant and Respondent should also jointly nominate (or jointly entrust the Chairman of CIETAC to appoint) the presiding arbitrator within 15 days of the Respondent receiving the Notice of Arbitration;
  
  3. To jointly nominate the presiding arbitrator, each party may recommend one to five candidates. If there is one candidate in common, this candidate will be appointed as the presiding arbitrator. If there is more than one or no candidate in common, the Chairman of CIETAC will choose the presiding arbitrator from the common candidates or will choose a candidate who does not appear on either party's list of recommended arbitrators (Article 25).

- If the Arbitral Tribunal is composed of a sole arbitrator, the parties must jointly nominate the arbitrator within 15 days of the Respondent receiving the Notice of Arbitration. This process is the same as the process for appointing the presiding arbitrator in a three-member tribunal (Article 26).

- If there are two or more Claimants and/or Respondents, the process for appointing the Arbitral Tribunal is the same as above with the following variations:
  
  1. In case of a three-member tribunal, where either the Claimant side or the Respondent side fail jointly to nominate (or jointly to entrust the Chairman of CIETAC to appoint) an arbitrator, the Chairman of CIETAC will appoint all members of the arbitral tribunal and designate the presiding arbitrator (Article 27).

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**Challenge of arbitrators**

- Challenges based on facts or circumstances disclosed by the arbitrator shall be submitted in writing to CIETAC within 10 days of receipt of the arbitrator's Declaration and/or written disclosure communicated by CIETAC (Article 30.1).

- Challenges based on facts or circumstances not disclosed by the arbitrator shall be submitted in writing to CIETAC within 15 days of receipt of the Notice of Formation of the Arbitral Tribunal, or within 15 days of learning the facts on which the challenge in based (Article 30.3).
### Procedure

#### Preliminary points

- Parties should raise any jurisdictional objections pursuant to Article 6.
- The place of arbitration shall be as agreed by the parties. If the parties have not agreed, the place of arbitration shall be the domicile of CIETAC or the relevant sub-commission. CIETAC may also determine the place of arbitration to be another location having regard to the circumstances of the case (Article 7).
- The language of the arbitration proceedings shall be as agreed by the parties. If the parties have not agreed, CIETAC shall determine the language, which may be Chinese or any other language. (Article 71.1).

#### Evidence and hearings

- Each party must submit evidence to support its claim, defence or counterclaim within the time limit set by the arbitral tribunal (Article 39). The arbitral tribunal may undertake investigations of its own to collect evidence (Article 41).
- A case may be examined by way of an oral hearing, and if so, evidence must be exhibited at the hearing, and may be examined by the parties. Where a case is to be decided on the basis of documents only, parties may submit written opinions on the evidence within the time period specified by the arbitral tribunal (Article 40).
- Hearings are held in private (Article 36). The place of the hearing will be the location of CIETAC or the relevant sub-commission, unless otherwise agreed by the parties and approved by CIETAC (Article 34). The arbitral tribunal may adopt either an inquisitorial or adversarial approach in hearing the case (Article 33.3).
- The arbitral tribunal may conduct the proceedings as it sees appropriate, including issuing procedural orders or lists of questions, holding pre-hearing meetings and producing terms of reference (Article 33.5).
- The arbitral tribunal may act as conciliator to attempt to settle the dispute (Article 45.1). However, if conciliation is terminated, the arbitral tribunal shall continue the arbitration proceedings and render an award (Article 45.7).
- Where a party applies for conservatory measures under PRC law, CIETAC must forward the application to the competent Chinese court (Article 21.1). The tribunal may also order interim measures available under the applicable
Article 21.2).

- Article 37 sets out the provisions on default by the parties and the consequences of failure to be present at the hearing.

**Award and post award**

**The award**

- The arbitral award is final and binding upon both parties. It shall not be revised by any court or organization (Article 47.9).
- Article 47.3 sets out the information the award shall include.
- The arbitral tribunal may specify in the award the timeframe in which the parties must comply with the award or bear certain liabilities for failing to do so. If no time limit is specified, the parties must comply with the arbitral award immediately (Article 53.1).

**Fees and costs**

- The arbitral tribunal may, in the award, specify the arbitration fee and other expenses to be paid by the parties to CIETAC (Article 50.1).
- The award may also specify that the losing party pays to the winning party any expenses reasonably incurred during the conduct of the case (Article 50.2).

**Post-award**

- Within **30 days** after receipt of the award:
  1. Either party may request in writing a correction of any clerical, typographical, or calculation errors or any errors of a similar nature contained in the award (Article 51.2). The arbitral tribunal may also make corrections, on its own initiative, within a reasonable time after the award is made (Article 51.1).
  2. Either party may make a written request to the arbitral tribunal for an additional award on any claim or counterclaim which was advanced in the arbitration proceedings but was not dealt with in the award (Article
52).