

Ensuring enforcement of arbitral awards after CIETAC split

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The internal struggle within the China International Economic and Trade Arbitration Commission (“CIETAC”) was resolved earlier this year with the final split off of the Shanghai and Shenzhen sub-commissions. Local courts today, however, are still struggling with arbitral awards rendered by these sub-commissions. To avoid uncertainty, existing arbitration clauses should be modified, and new arbitration clauses should be worded carefully.

The internal struggle within the CIETAC was resolved earlier this year with the final split off of the Shanghai and Shenzhen sub-commissions. And now that the dust of the dispute has settled, there are clearly three different institutions:

1. CIETAC, with offices in Beijing, Shanghai and Shenzhen
2. Shanghai International Arbitration Centre (“SHIAC”) in Shanghai
3. Shenzhen Court of International Arbitration (“SCIA”), also known as South China International Economic and Trade Arbitration Commission, in Shenzhen

Local courts today, however, are still struggling with arbitral awards rendered by the Shanghai and Shenzhen sub-commissions. The debate mainly concentrates on the enforcement of awards rendered by SHIAC and SCIA after the split, based on a pre-split arbitration clause providing for one of the CIETAC sub-commissions as the administering institution. In short, we have seen local courts in different places differ in their positions on the enforcement of these awards. On-going cases therefore require a tailored approach, which will very much depend on the competent court.

For existing arbitration clauses which designate one of the former CIETAC Shanghai or CIETAC South China sub-commissions, our recommendation is to amend and clarify the agreement. If this is not feasible, parties run the risk that wherever they instigate arbitration proceedings the other party will challenge the submission.

For new arbitration clauses to be executed, parties can select to submit their disputes to one of the three arbitration institutions by copying a clause to that effect from the respective Model Arbitration Clauses. Alternatively, parties can refer their disputes to any other arbitration institute in China by using the relevant clauses as prescribed by those institutes. If the intention is to choose CIETAC as the administering institution, the arbitration clause explicitly should provide for CIETAC Beijing as the administering institution, with seat in Shanghai or Shenzhen. CIETAC Beijing has set up secretariats in Shanghai or Shenzhen for that purpose.