

CIETAC Financial Disputes Arbitration Rules-China International Economic and Trade Arbitration Commission

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China International Economic and Trade Arbitration Commission Financial Disputes Arbitration Rules

(Revised and Adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014. Effective as from January 1, 2015.)

Chapter I General Provisions

Article 1 These Rules are formulated for the purpose of impartial and prompt resolution of disputes arising from financial transactions between the parties.

Article 2 The China International Economic and Trade Arbitration Commission (hereinafter referred to as the "CIETAC" and also known as the Arbitration Institute of the China Chamber of International Commerce") independently and impartially resolves, by means of arbitration, disputes arising from, or in connection with, financial transactions between the parties.

The term "financial transactions" shall refer to transactions arising between financial institutions *inter se*, or arising between financial institutions and other natural or legal persons in the currency, capital, foreign exchange, gold and insurance markets that relate to financing in both domestic and foreign currencies, and the assignment and sale of financial instruments and documents denominated in both domestic and foreign currencies, including but not limited to:

1. Loans;
2. Deposit certificates;
3. Guarantees;
4. Letters of credit;

5. Negotiable instruments;
6. Fund transactions and fund trusts;
7. Bonds;
8. Collection and remittance of foreign currencies;
9. Factoring;
10. Reimbursement agreements between banks; and
11. Securities and futures.

Article 3 These Rules shall apply to any financial dispute accepted by the CIETAC for arbitration where the parties have agreed upon the application thereof. Failing such agreement, the Arbitration Rules of the CIETAC shall apply.

The CIETAC shall make a ruling on objections with regard to whether the dispute between the parties arises from, or is in connection with, a financial transaction, or whether these Rules should be applied to the dispute between the parties.

Article 4 Where the parties have agreed on any modification of these Rules, the parties' agreement shall prevail except where such agreement is inoperative or in conflict with a mandatory provision of the law of the place of arbitration.

Where the parties agree to refer their disputes to arbitration under these Rules without providing the name of an arbitration institution, they shall be deemed to have agreed to refer the dispute to arbitration by the CIETAC.

Article 5 The CIETAC shall have the power to determine the existence and validity of an arbitration agreement and its jurisdiction over an arbitration case. The CIETAC may, if necessary, delegate such power to the arbitral tribunal. Where the validity of the arbitration agreement is challenged and one party requests the CIETAC to make a decision thereon while the other party applies to the People's Court for a ruling, such a ruling shall be made by the People's Court.

The arbitration shall proceed notwithstanding an objection to the arbitration agreement and/or jurisdiction over the arbitration case.

Article 6 The parties may appoint arbitrators from the Panel of Arbitrators provided by CIETAC.

Where the parties have agreed to appoint arbitrators from outside of the CIETAC's Panel of Arbitrators, the arbitrators so appointed by the parties or nominated according to the agreement of the parties may act as arbitrator if the appointment is confirmed by the Chairman of CIETAC in accordance with the law. Such confirmation shall be made, or not made, without stating the reasons therefor.

Where the appointment of an arbitrator is to be made by the Chairman of CIETAC, the Chairman may, unless otherwise agreed by the parties, appoint such arbitrator from the Panel of Arbitrators provided by CIETAC.

Article 7 An arbitrator appointed by the parties or by the Chairman of the CIETAC shall sign a Declaration and disclose to the CIETAC in writing any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.

Chapter II Arbitration Proceedings

Article 8 The arbitration proceedings shall commence on the date on which the Arbitration Court of the CIETAC receives a Request for Arbitration.

Article 9 A party applying for arbitration shall:

1. Submit a Request for Arbitration in writing signed by and/or affixed with the seal of the Claimant and/or its authorized representative(s), which shall, *inter alia*, include:

(a) the names, addresses and methods for communications of the Claimant and the Respondent, including the zip code, telephone, telex, fax and telegraph numbers, Email addresses or any other means of electronic telecommunications;

- (b) a reference to the arbitration agreement that is invoked;
- (c) a statement of the facts of the case and the main issues in dispute;
- (d) the claim of the Claimant; and
- (e) the facts and grounds on which the claim is based.

2. Attach to the Request for Arbitration the relevant evidence supporting the facts on which the Claimant's claim is based.

3. Make payment of the arbitration fee in advance to the CIETAC according to its Financial Arbitration Fee Schedule.

Article 10 Where the Arbitration Court of the CIETAC finds that a Request for Arbitration satisfies the requirements for arbitration, it shall notify the parties in writing of its acceptance of the Request for Arbitration within five (5) days from the date of receipt of the Request. Should the Arbitration Court of the CIETAC find that the Request for Arbitration does not satisfy the requirements for arbitration, it shall notify the parties in writing of its rejection of the request for arbitration and the reasons therefor.

Article 11 Together with the Notice of Arbitration for the acceptance of the Request for Arbitration, the Arbitration Court of CIETAC shall furnish to the Claimant these Rules, the Arbitration Rules of CIETAC, and the Panel of Arbitrators of CIETAC.

Together with the Notice of Arbitration for the acceptance of the Request for Arbitration, the Arbitration Court of CIETAC shall furnish to the Respondent a copy of the Claimant's Request for Arbitration and the documents annexed thereto, these Rules, the Arbitration Rules of CIETAC, and the Panel of Arbitrators of CIETAC.

Article 12 The arbitral tribunal shall be composed of one or three arbitrators. Where the parties have not agreed upon the number of arbitrators, the Chairman of the CIETAC shall decide whether the arbitral tribunal shall be composed of one or three arbitrators.

Unless otherwise agreed by the parties, where the arbitral tribunal is composed of one arbitrator, the Claimant and the Respondent shall, within ten (10) working days from the date of receipt of the Notice of Arbitration by the party who last receives it, jointly appoint a sole arbitrator or entrust the Chairman of the CIETAC to effect such appointment.

Unless otherwise agreed by the parties, where the arbitral tribunal is composed of three arbitrators, the Claimant and the Respondent shall, within ten (10) working days from the date of receipt of the Notice of Arbitration, respectively appoint an arbitrator or entrust the Chairman of the CIETAC to effect such appointment, and shall, within ten (10) working days from the date of receipt of the Notice of Arbitration by the party who last receives it, jointly appoint a third arbitrator, or alternatively, shall entrust the Chairman of the CIETAC to effect such appointment. The third arbitrator shall be the presiding arbitrator.

Where there are two or more Claimants and/or Respondents in an arbitration case, the Claimant's side and/or the Respondent's side each shall, through consultation, jointly appoint an arbitrator, or alternatively, jointly entrust the Chairman of the CIETAC to effect such appointment.

Unless otherwise agreed by the parties, where a party fails to appoint an arbitrator or fails to entrust the Chairman of the CIETAC to effect such appointment in due course, such arbitrator shall be appointed by the Chairman of the CIETAC.

Article 13 Unless otherwise agreed by the parties, the Respondent shall, within fifteen (15) working days from the date of receipt of the Notice of Arbitration, submit its written Statement of Defense and the relevant evidence to the Arbitration Court of the CIETAC.

Unless otherwise agreed by the parties, the Respondent shall, within the foregoing time period, file its counterclaim in writing, if any, with the Arbitration Court of the CIETAC.

Article 14 Unless otherwise agreed by the parties, the Claimant shall, within fifteen (15) working days from the date of receipt of the Statement of Counterclaim and the attachment of the Respondent, file its written Statement of Defense to the Respondent's counterclaim with the Arbitration Court of the CIETAC.

Article 15 The arbitral tribunal may conduct the arbitration in such way as it deems appropriate. The arbitral tribunal shall treat the parties with equality and afford each party reasonable opportunities for presentations.

Unless otherwise agreed by the parties, the arbitral tribunal may adopt an inquisitorial or adversarial approach when examining the case, having regard to the circumstances of the case.

Article 16 During the arbitral proceedings, the arbitral tribunal may issue procedural directions and lists of questions, and hold pre-hearing meetings and preliminary hearings, etc.

Article 17 Where a time period for producing evidence has been agreed upon by the parties or has been set by the arbitral tribunal, the parties shall produce their evidence to the arbitral tribunal within the specified time period.

Where no such time period for producing evidence is agreed upon by the parties or set by the arbitral tribunal, the parties shall file all written statements and relevant evidence with the Arbitration Court of the CIETAC not less than three (3) working days prior to the date of the first oral hearing.

Unless otherwise agreed by the parties or decided by the arbitral tribunal, the arbitral tribunal may refuse to admit any written statement or evidence submitted by any party beyond the time period for producing evidence.

Article 18 The arbitral tribunal shall hold an oral hearing when examining the case. However, the oral hearing may be omitted and the case shall be examined on the basis of documents only if the parties so request or agree and the arbitral tribunal also deems that the oral hearing is unnecessary. If the oral hearing is to be held, the Arbitration Court of the CIETAC shall serve a Notice of Oral Hearing on each party at least ten (10) working days in advance of the oral hearing date.

Article 19 With the consent of the President of the Arbitration Court of the CIETAC, the time period specified in Article 12 may be extended.

With the consent of the arbitral tribunal, the time periods respectively specified in Articles 13, 14 and 18 may be extended.

Article 20 Where the parties have agreed on the place of arbitration in writing, their agreement shall prevail. Failing such agreement, the place of arbitration shall be the domicile of the CIETAC or its sub-commission/arbitration centers. The arbitral award shall be deemed as being made at the place of arbitration.

Unless otherwise agreed by the parties, the arbitral tribunal may conduct oral hearings or other activities at any place it deems appropriate.

Chapter III Award

Article 21 Subject to mandatory provisions of law, the parties to any case involving a foreign-related element may agree upon the law to be applied to the merits of the dispute. Failing such agreement, the arbitral tribunal shall apply the law that it determines to be appropriate. In all cases, the arbitral tribunal shall take into account the terms of the contract, the general usages and standard practices of specific business sectors, and abide by the principles of fairness and reasonableness.

Article 22 Unless otherwise agreed by the parties, the arbitral tribunal shall render an arbitral award within forty-five (45) working days from the date on which the arbitral tribunal is formed.

At the request of the arbitral tribunal, the President of the Arbitration Court of the CIETAC may extend the said time period if he/she considers it truly necessary and the reasons for the extension truly justified. Each such extension may not exceed twenty (20) working days.

Article 23 Before signing an award, the arbitral tribunal shall submit its draft award to the CIETAC. Without affecting the independence of the arbitrators in rendering the award, the CIETAC may draw the arbitrators' attention to matters pertaining to the award.

Chapter IV Miscellaneous

Article 24 All documents, notices and written materials in relation to the arbitration may be sent to the parties and/or their authorized representative(s) in person, or by registered mail or express mail, facsimile, telex, cable, Email or by any other proper means.

Article 25 Unless otherwise agreed by the parties or decided by the arbitral tribunal, for the purposes of these Rules, the term "working day" shall mean a working day at the domicile of the CIETAC.

Article 26 In the event of any inconsistency between these Rules and the Arbitration Rules of the CIETAC, these Rules shall prevail.

For matters not covered in these Rules, the Arbitration Rules of the CIETAC shall apply.

Article 27 These Rules uniformly apply to the CIETAC and its Sub-Commissions/Centers. Where arbitration proceedings are administered by a Sub-Commission/Center, the functions and duties under these Rules allocated to the Chairman, the Arbitration Court and the President of the Arbitration Court of the CIETAC shall be performed, respectively, by a Vice-Chairman authorized by the Chairman, the Arbitration Court and the President of the Arbitration Court of the relevant Sub-Commission.

Article 28 These Rules shall be interpreted by the CIETAC.