

Shanghai Court rules on SHIAC jurisdiction following CIETAC breakaway

February 6, 2015 | Written by Yong Tong Ang, Carrie Tian and Stuart Jackson

Shanghai Court recently ruled SHIAC has jurisdiction on disputes arising from a clause referring the disputes to "CIETAC Shanghai Sub-Commission"



In 2013, the CIETAC Shanghai Sub-Commission and South China Sub-Commission broke with the national body and changed their respective names to the Shanghai International Arbitration Centre (SHIAC) and Shenzhen Centre of International Arbitration (SCIA). The two institutions also adopted independent arbitration rules and formed their own panels of arbitrators. Since that break, hundreds of cases (including conflicting court decisions) have accumulated, all resting on whether arbitration agreements referring to the CIETAC Sub-Commissions were no longer valid, should be referred to CIETAC Beijing, or should be heard by the newly independent SHIAC and SCIA institutions.

Following many months with no perceivable progress and considerable uncertainty, it now appears, following a decision initially in the Shanghai Intermediate People's Court, that the independent institutions have been determined to have jurisdiction to hear the pending disputes, despite the relevant agreements noting CIETAC as

the institution.

The Shanghai Decision

By way of background on the national stage, on 4 September 2013, the Supreme People's Court published the "*The Supreme People's Court Notice on Proper Hearing on Judicial Review on Arbitration (Fa 2013 - 194 Hao)*" (the "Notice") which directed that all applications at every court level regarding the validity of arbitration clauses, revocation of arbitral awards or setting aside of the enforcement of arbitral awards as a result of the CIETAC jurisdictional disputes, should be considered by the Judicial Committee and reported to the Supreme People's Court.

However, whilst these instructions were followed, no subsequent decision was handed down from the Supreme People's Court, despite both the mounting backlog and widespread expectation that guidance would be provided.

Instead, on 31 December 2014, 16 months after the Notice was issued, the Shanghai No. 2 Intermediate People's Court handed down its ruling confirming SHIAC's position an independent arbitral institution and its power to arbitrate on agreements specifying "CIETAC Shanghai Sub-Commission" to have jurisdiction.

Given the Notice requires reporting of such cases through each and every level of the court system up to the Supreme People's Court, it is understood that the Supreme People's Court has authorised Shanghai No. 2 Intermediate People's Court to legitimise SHIAC in this way.

As made clear in its ruling, the Shanghai No. 2 Intermediate People's Court ascertains and affirms the following:

- 1 [SHIAC] was approved by the Shanghai Municipal People's Government in 1988, organised by the Shanghai Council for the Promotion of International Trade, and that the China International Economic and Trade Arbitration Commission Shanghai Sub-Commission was established through a formal procedure and legitimately registered in the Bureau of Justice of Shanghai Municipality, with the Registry Certification of the PRC Arbitration Commission having been obtained.
- 2 It was approved by the Shanghai Municipal Government and agreed by the Shanghai Commission for Public Sector Reform, China International Economic and Trade Arbitration Commission Shanghai Sub-Commission has been officially renamed "Shanghai International Economic and Trade Arbitration Commission"; it will also use "Shanghai International Arbitration Center" (SHIAC) concurrently as official name.
- 3 The agreed arbitral institution, the China International Economic and Trade Arbitration Commission Shanghai Sub-Commission (now renamed Shanghai International Economic and Trade Arbitration Commission SHIAC) is legally established. As such, SHIAC has power to arbitrate and render arbitral awards based upon such arbitration clauses concluded by parties. The arbitration shall be submitted to SHIAC.

A week later, on 6 January 2015, the Shenzhen Intermediate People's Court also recognised the legitimacy of SCIA to arbitrate and issue awards on disputes arising under arbitration agreements specifying CIETAC South China Sub-Commission to have jurisdiction.

Given the requirements of the Notice, and on the face of these two recent Court decisions rendered within one week of each other, it would appear that these decisions were handed down with the blessings of the Supreme People's Court and SHIAC and SCIA would now appear to have seized of the jurisdiction to arbitrate disputes arising from arbitration clauses referring disputes to CIETAC Shanghai Sub-Commission and CIETAC South China Sub-Commission respectively.

Problems on the horizon?

Whilst the legitimacy of SHIAC and SCIA has been significantly bolstered by these two decisions, it is yet to be seen whether CIETAC will seek to argue that these institutions, which have declared complete independence, should not be allowed to hear cases under clauses specifically referring disputes to a sub-commission of CIETAC. Obviously such an argument will continue the past 18 months' controversy as this would represent and assertion of CIETAC jurisdiction in conflict with the two recent Court decisions.

In contrast to their position of silence to date, ultimately the situation could require express written guidance from the Supreme People's Court on this issue should further conflicts arise. However, given the lacuna that has profligate since 2013, the Shanghai judgment is to be welcomed within Chinese arbitration and industry circles. Given the considerable backlog of cases, such clear language gives hope for the end of the institutional detente and resolution of a large number of claims under the jurisdiction of the newly recognised institutions.

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Yong Tong Ang
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