

Welcome Remarks by the Hon Rimsky Yuen, SC
Secretary for Justice
at CIETAC(HK) China Arbitration Chronicles
on 19 October 2016 (Wednesday)

The Honourable Mr Zhang Yongjian (*Chairman, Fourth Civil Division, Supreme People's Court of the People's Republic of China*), Mr Wang Chengjie (*Secretary-General and President of the Arbitration Court of the China International Economic and Trade Arbitration Commission (CIETAC)*), Dr Wang Wenying (*Secretary General of the CIETAC Hong Kong Arbitration Center*), Distinguished Guests, Ladies and Gentlemen,

It gives me great pleasure and honour to attend this conference in celebration of the 60th Anniversary of the China International Economic and Trade Arbitration Commission (“CIETAC”). First of all, on behalf of the Department of Justice, I would like to extend to all of you our warmest welcome, particularly those who travelled from the Mainland and other places to attend this conference.

2. On 6 May 1954, the Central Government of the People's Republic of China made the decision, if I may say, with a great deal of foresight, to establish within China Council for the Promotion of International Trade a Foreign Trade Arbitration Commission. On 2 April 1956, the Foreign Trade Arbitration Commission was officially established. The rest is history and this Foreign Trade Arbitration Commission is now the body known as CIETAC.

3. Having gone through this period of 60 years, CIETAC is China's biggest, longest-serving and most experienced arbitral institution. As a leading arbitral institution, it accepts the majority

of foreign-related arbitration cases in China and administers them independently and impartially. In September 2012, CIETAC sets up in the Hong Kong SAR its first ever branch office outside the Mainland. We are grateful for its presence and the opportunity to collaborate in the promotion of arbitration in Hong Kong and beyond, notably in our biennial Legal Services Forum held in the Mainland and overseas promotional visits led by the Department of Justice and various other events organized for the promotion of dispute resolution.

3. Throughout the past 6 decades, CIETAC has made significant contributions to the development of the arbitration practice in China. It has also built strong connections and fostered close cooperation with many arbitral institutions across the world, for example, as a key member in the Asia Pacific Regional Arbitration Group.

4. As a leading international arbitral institution, CIETAC provides dedicated service to meet the needs of the Chinese business sector to resolve economic and cross-border trade and investment effectively. Among others, since its first edition in 1956, CIETAC Arbitration Rules have been revised a number of times to enable CIETAC arbitration to develop in line with international practices.

5. One concrete example I wish to cite is the adoption of the procedures for emergency arbitrator¹ under the CIETAC Rules 2015 (“the 2015 Rules”) and more specifically, the CIETAC Emergency Arbitration Procedures in Appendix III thereof. Under the general

¹ Pursuant to Article 23.2, CIETAC’s Arbitration Rules 2015, the emergency arbitrator’s decision is binding upon parties and can be enforced in national courts of various jurisdictions in accordance with local laws.

procedures, parties may apply to the Arbitration Court of CIETAC for emergency relief in accordance with the applicable law or the agreement of the parties. In cases of arbitration before the CIETAC Hong Kong Arbitration Center, the 2015 Rules² provide for a party to apply for emergency relief where the arbitral tribunal has not yet been formed. This specific rule applicable to arbitration administered by the CIETAC Hong Kong Arbitration Center is, I am pleased to add, complemented by Part 3A of the Hong Kong *Arbitration Ordinance* (Cap.609) which provides for enforcement by Hong Kong courts of relief granted, whether in Hong Kong or otherwise, by an emergency arbitrator.

6. I hope this brief review would facilitate further discussion in the seminar today on CIETAC's recent developments. I note in particular that the seminar will cover a wide range of interesting and practical subjects. They will include a Q&A session on CIETAC, a Cambridge style debate over the value and influence of the 60 years of PRC arbitration legacies and its future, some war stories on cross-border arbitration as well as panel discussions on such topical issues as IP arbitration and third party funding.

Recent Developments of International Arbitration in Hong Kong

7. On the last two topics, may I provide a brief update on their developments in the Hong Kong arbitration scene.

8. Firstly, we are actively promoting IP arbitration in Hong Kong. According to the World Intellectual Property Organisation, the number of patent applications received in China has risen six-fold during the period from 2004 to 2014. In this regard, we see

² CIETAC Arbitration Rules 2015, Art 77(2)

great potential in the demand for IP dispute resolution services, and of course also great potential for co-operation between the Hong Kong arbitration bodies and CIETAC. Against this background, we are in the process of introducing the necessary amendments to our *Arbitration Ordinance* to make it clear that disputes over intellectual property rights are capable of resolution by arbitration and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which concerns IP rights.

9. Secondly, third party funding is the other area we are actively working on. It is wholly understandable that parties who are considering whether to resolve their disputes in Hong Kong by arbitration will consider the financing options available to them in conducting such arbitrations. Accordingly, clarity and certainty of the law concerning third party funding for arbitration is essential. You may have already noticed that a Sub-Committee of our Law Reform Commission has issued a report on last Wednesday (12 October), recommending that the *Arbitration Ordinance* should be amended to set out clearly that the common law doctrines of maintenance and champerty do not apply to arbitration. This can put beyond doubt that third party funding for arbitration is permissible under Hong Kong law. The Department of Justice supports LRC's recommendations and will take steps to implement them through legislative amendments.

The Future

10. Before I conclude, may I venture to make two more points concerning the future of international arbitration.

11. First, with the growing popularity of arbitration across the world, we are confident that the demand for international commercial and investment arbitrations will continue to increase. The Belt and Road Initiative will definitely provide further impetus in the further economic development for the different countries along the routes. As the jurisdictions along the Belt and Road routes have very different legal systems, arbitration is no doubt one of the best options to resolve cross-border commercial disputes.

12. Second, we are well-placed in time to witness which is to unfold for the future of what may be a new dispute resolution culture in the Asia-Pacific region or along the Belt and Road routes. Questions such as whether the traditional arbitration regime would require modification to meet the emerging and changing circumstances merit attention and serious studies. Together, we have to facilitate a more user-friendly regime and supporting infrastructure for the conduct of arbitration.

Concluding remarks

13. Ladies and gentlemen, I would like to once again express our gratitude to CIETAC for establishing its Hong Kong office, for the collaborative efforts in promoting the wider use of arbitration in Hong Kong and the Asia-Pacific region, and also for its unfailing support of various regional moots and international competitions³ in kindling the interests of the younger generation on arbitration as a method of dispute resolution.

³ In November 2015, CIETAC hosted the 13th CIETAC Cup International Commercial Arbitration Moot in Beijing with participating students from law schools in the Mainland China. CIETAC sponsored the winning team to participate in the international moot court competitions, such as the Annual Willem C. Vis International Commercial Arbitration Moot and the Willem C Vis East International Arbitration Moot held in Vienna, Austria and Hong Kong respectively, available at <<<http://www.cietac.org/index.php?m=Article&a=show&id=2764&l=en>>>.

14. CIETAC's past sixty years of remarkable achievements has laid a solid foundation for them. I am confident that CIETAC will go from strength to strength in the years to come. The Department of Justice will look forward to further and closer co-operation with CIETAC in the promotion of international arbitration.

15. On this note, it remains for me to wish CIETAC a happy 60th birthday and a very enjoyable anniversary conference for all taking part in it. For those coming from outside Hong Kong, I hope you would have an enjoyable stay here.

Thank you !