

CIETAC Arbitration Rules 2024

Brödermann / Etgen

2024

ISBN 978-3-406-81228-6

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Institutional Arbitration
Schütze (ed.)

CIETAC Arbitration Rules 2024

Article-by-Article Commentary

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by
Eckart Brödermann
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DIE FACHBUCHHANDLUNG

2024



Published by

Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
email: bestellung@beck.de

Co-published by

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,
online at: www.hartpub.co.uk

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5, 76530 Baden-Baden, Germany,
email: nomos@nomos.de

Published in North America by Hart Publishing

An Imprint of Bloomsbury Publishing 1385 Broadway, New York, NY 10018, USA
email: mail@hartpub.co.uk


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DIE FACHBUCHHANDLUNG

ISBN 978 3 406 81228 6 (C.H.BECK)

ISBN 978 1 5099 8437 4 (HART)

ISBN 978 3 7560 1813 0 (NOMOS)

© 2024 Verlag C.H.Beck oHG,

Wilhelmstr. 9, 80801 München

Printed in Germany by

Beltz Grafische Betriebe GmbH

Am Fliegerhorst 8, 99947 Bad Langensalza

Typeset by

Reemers Publishing Services GmbH, Krefeld

Cover: Druckerei C.H.Beck Nördlingen



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Preface

In a world which is facing global challenges and disruptions, arbitration is an important tool to cope with their economic consequences for business relationships. No matter how strong the impact of such challenges and disruptions may be, it is timely and important to remember the powerful Chinese principle of “Peace shall have Priority” (*yi he wei gui*: 以和为贵) which calls for the universal renunciation of violence. Domestic and international arbitration provides an important tool to realize that principle by solving economic disputes and contributing thereby to peace. In this spirit we ourselves hope to contribute with this book to the understanding of arbitration in China and especially under the arbitration rules of the China International Economic and Trade Arbitration Commission (CIETAC), further developed yet again with their 2024 version that has come into force on **January 1, 2024**.

Among the over 1,000 options for institutional arbitration offered by various arbitral institutions around the globe, **CIETAC ranks at the top**, both through the numbers for arbitrations as a whole and for international arbitrations. In many situations, foreigners doing business in China are bound to consider or to work with them. When negotiating contracts with a Chinese party, the combination of an arbitration clause with a choice of the general principles and rules as developed by the International Institute for the Unification of Private Law (UNIDROIT), i.e., the UNIDROIT Principles of International Commercial Contracts, has been described as “**Simplified Global Contracting**” (→ Art. 52 mn. 8).

According to a European saying, the devil lies in the details. This is also true for the interpretation of the CIETAC Arbitration Rules. While there exist excellent books on Chinese arbitration law, even in English (*Kun Fan, Jingzhou Tao*), and also on the CIETAC Arbitration Rules (*Jianlong Lu/Lijun Cao*, 2020), this article-by-article commentary provides an **international perspective** with a focus on the challenges which an arbitration in China provides for a foreign entity or the foreign shareholders of a Chinese subsidiary. Moreover, the 2024 CIETAC Arbitration Rules include several **noteworthy changes**, e.g., with regard to the digitalisation of CIETAC arbitration, third party funding, interim awards, early dismissal, the approach to *ad hoc* arbitration and the adaptation of the choice of law regime in Art. 52 which now includes explicitly the possibility to choose or apply general principles of law in the area of international contracting, namely the UNIDROIT Principles of International Commercial Contracts. In contrast, the changes to Chinese arbitration law as discussed since a few years under the **Draft Revised PRC Arbitration Law (2021)** have not seen the daylight and the law is likely to undergo further changes. It has been discussed in this book where relevant and appropriate.

This book covers all changes of the 2024 edition by comments. It thereby continues a tradition of observing the CIETAC Rules from an international, multi-jurisdictional perspective with article-by-article comments which was started in 2006 by *Sabine Stricker-Kellerer* (Germany) and *Michael Moser* (Hong Kong) under the editorship of *Rolf Schütze*.¹

¹ The comments were initially published in German by Sabine Stricker-Kellerer/Michael J. Moser, ‘Schiedsordnung der China International Economic and Trade Arbitration Commission (CIETAC)’ in

Preface

Both authors – connected with each other through the **Inter-Pacific Bar Association (IPBA)** – are international arbitration practitioners with a long-standing focus on China and Chinese arbitration law. **Eckart Brödermann** (born 1958) encountered Chinese arbitration law first during the research for his LL.M. thesis on Chinese admiralty law at the East Asian Legal Studies Program of Harvard Law School in 1982/83, when China started to open both to international business and towards re-admitting the profession of lawyering. He has observed Chinese arbitration law for many years, acting *inter alia* from 2012 to 2020 as managing director of the Chinese European Arbitration Centre (now, since 2023, the Asian European Arbitration Centre) in Hamburg, Germany, which he cofounded jointly with the Hamburg Bar in friendly cooperation with CIETAC and CCPIT in 2008. In his teaching of international arbitration as professor at the University of Hamburg, the CIETAC Arbitration Rules are never missing. Considering the options offered by international arbitration with an open mind, there is never only one solution. Students and practitioners need to know options; and in several situations the choice of the CIETAC Arbitration Rules may be the best solution under the specific circumstances of the case. In Shanghai, he has experienced the CIETAC Arbitration Rules also as a chairman in an international arbitration. **Björn Etgen** (born 1962), a fluent mandarin speaker, spent over 20 years as a lawyer in Beijing, Hong Kong and Taiwan. He has been a pioneer in legal advice to German companies in Asia, particularly in China. He is admitted as an arbitrator at various Asian and international arbitration institutions and has been serving as arbitrator in a substantial number of CIETAC arbitrations over the last 20 years and has been closely following the developments of arbitration in China. In 2023 alone, he has been involved in CIETAC arbitration cases with a total amount of the disputes exceeding 150 million EUR.

With these article-by-article comments, the authors strive to provide the legal community with a **tool** which may be helpful when diving into the adventure of foreign-Chinese business.

The authors wish to thank CIETAC for valuable comments and insights offered during the preparation of this revision, especially with regard to recent developments in 2022/2023 on the digital organization of arbitration under the CIETAC Arbitration Rules.

The authors further wish to thank their law firms and their colleagues for their support of this book project: Attorney-at-law HE Mingjie (何铭杰) (Graf von Westphalen) who assisted with research and was responsible for the comparison of the new and old CIETAC Arbitration Rules and Ms. WANG Rumeng (王如梦) (Graf von Westphalen – Shanghai office) who assisted with extensive research of the latest developments in arbitration in Mainland China. The team of students at the University of Hamburg, Verena Ernst, Kai Kunad, Jakob Schüssler and Paul Vogel (all Brödermann Jahn) provided substantial background research.

Hamburg and Munich
May 2024

Eckart Brödermann
Björn Etgen

Schütze (ed.), *Institutionelle Schiedsgerichtsbarkeit*, 1st edn, Munich 2006 and 2nd edn, Munich 2011 (in German) and 1st edn, Munich 2013 (in English); published with revisions by Eckart Brödermann/Björn Etgen, *ibid.*, in 3rd edn, 2018 (in German). Over time, with multiple adaptations of the CIETAC Rules on their way towards internationalization, few roots have remained from the initial comments, but the authors would like to acknowledge their alignment to the tradition established by the initial commentators to whom the authors are connected in multiple ways, e.g., in one case by joint studying of Chinese law over 40 years ago when China started to open up towards the international world.

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