

Client Alert

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SPC Launches International Commercial Courts in Shenzhen and Xi'an

Following its earlier announcements, the Supreme People's Court of China (SPC) has formally launched two branches in Shenzhen and Xi'an on 29 June 2018, namely the First and Second International Commercial Courts of China (CICC). On the same day, it also issued the "Provisions on Several Issues regarding the Establishment of International Commercial Courts" (the "**Provisions**"), providing for the scope and operation of the CICC.

The CICC is a significant development in China's judicial system and will offer more dispute resolution choices to parties doing business in China and internationally, particularly in connection with China's Belt and Road Initiative. Its jurisdiction will include, among other disputes, international commercial cases with claims worth over RMB 300 million or of nation-wide significance, and where a party applies for interim measures in aid of arbitration and enforcement or setting aside of applicable arbitral awards.

Key features of the CICC

The CICC is a division of the SPC and sits at the same level of the SPC in the hierarchy of the Chinese judiciary. This means that it has jurisdiction over matters which fall within the purview of the SPC as per the Civil Procedure Law (CPL). Its first instance judgments are final and binding and are not subject to appeal. However, like all other binding judgments in China, they are subject to motions for supervisory review under the CPL.

The Provisions provide, among other things, the following aspects in relation to the CICC's operation:

- 1) scope of jurisdiction;
- 2) rules for determining and ascertaining applicable law;
- 3) rules of evidence taking;
- 4) seamless collaboration with mediation and arbitration;
- 5) use of electronic facilities for filings, payments of court charges, submissions and exchanges of documents, services of process and hearings;
- 6) effect of judgments and enforcement procedure.

Scope of the CICC's Jurisdiction

According to the Provisions, the CICC has jurisdiction over the following categories of cases:

- 1) First instance international commercial cases with claims worth over RMB300 million where parties have agreed to refer their disputes to the





jurisdiction of the SPC in accordance with Article 34 of the CPL. Article 34 provides that parties can choose to refer their disputes to the court in the place with actual connection with the disputes such as the place of the defendant's domicile, contract performance, contract signing, the claimant's domicile or the location of the subject matter.

- 2) First instance international commercial cases which would have been tried by a high court but are referred to the CICC by the high court with the approval of the SPC.
- 3) First instance international commercial cases with high nation-wide significance.
- 4) Applications for interim measures in aid of arbitration in accordance with Article 14 of the Provisions as well as those for enforcement or setting aside of the arbitral awards made as per that article.
- 5) Other international commercial cases which the SPC deems fit for the CICC to handle.

Evidence, electronic filing and applicable law

Interestingly, the Provisions do not require that all evidence formed outside China shall be notarized. Instead, it stresses that evidence should be examined at hearings. Documents in English are not required to be translated into Chinese should both parties agree. Collection and examination of evidence can be conducted via audio-visual facilities or other electronic transmission systems.

An electronic system will be set up to facilitate parties' filings of complaints, submissions, exchanges and review of documents, payment of court charges, service of process, status enquiry and even conduct of hearings online.

The CICC will apply the law agreed by the parties in priority to the law determined by China's rules of conflict of laws. A Committee of International Business Experts will be established to aid judges sitting on the CICC, particularly with respect to the ascertainment of foreign laws. The Committee can also be mandated to mediate the cases where the parties so agree. How members of the Committee will be selected remains to be seen. However, we believe the vast majority of them will be from foreign jurisdictions. As foreigners do not qualify as judges under current Chinese law, it is unlikely any members of the Committee will be allowed to sit on the bench.

Eight reputable judges from the SPC have been appointed to the bench of the CICC, all of whom can hear cases in English and Chinese. They will not be based in Shenzhen or Xi'an but will rather only go there in case of need, such as for hearings.

Collaboration with mediation and arbitration

The most interesting feature of the CICC is that it will house mediation, arbitration and litigation under the same roof.

Some qualified mediation institutions and arbitration institutions will be selected to work seamlessly with the CICC. When cases are referred to the CICC, it will consult with the parties whether they would like to have mediation or arbitration. If the parties agree, the cases will then be referred to the



Committee of International Business Experts or other mediation institutions for mediation, or a qualified arbitration institution for arbitration.

In addition, settlement agreements reached through the mediation can be converted into enforceable mediation statements or judgments by the CICC. Arbitral awards rendered under this mechanism can also be enforced by the CICC. Further, the CICC will grant interim measures in aid of the arbitration conducted in accordance with the Provisions.

What It Means for You

For foreign companies doing business with Chinese parties and seeking to enforce claims against their counterparties in China, the CICC is an additional option as a dispute resolution mechanism. It proposes to offer a more efficient procedure, wider choices of interim measures, higher professional quality in judgments and possibly better chances of enforceability.

Clients who wish to utilize the CICC should seek legal advice in structuring their dispute resolution clauses to ensure that the potential dispute meets the CICC's jurisdiction criteria and to avoid ending up in other Chinese courts if the dispute falls short of the relevant criteria.

Comments

It remains to be seen whether the arbitration institutions selected for the purposes of the Provisions will include foreign arbitration institutions. If so, the interim measures granted in aid of arbitrations administered by such foreign arbitration institutions would be a break from current judicial practice in China, which has been to refuse such measures up till now.

Another factor worth noting is that the CICC does not directly address or broaden the scope of enforceability of its judgments in foreign jurisdictions. Since China has not entered into many bilateral treaties or multilateral conventions for the mutual enforcement of civil judgments, it is unlikely that the CICC will attract cases brought in foreign jurisdictions for the sake of convenient enforcement. Further, cases with no actual connection with China cannot be tried by the CICC.

Despite the above uncertainties and limitations, the CICC is a welcome development in China's judicial system and will provide an additional and more efficient platform with more choices for dispute settlement in China, especially considering the prospect of housing arbitration under one roof and providing interim measure aids and enforcement to arbitration proceedings.

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