

# Paradigm

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# CEAC – A New Option for Dispute Resolution Clauses in China Related Contracts

*The Chinese European Arbitration Centre (CEAC) in Hamburg, Germany, specializes in China related disputes. Founded in September 2008 with the joint support of the Hamburg Bar, the Hamburg Chamber of Commerce and the Hamburg State, as well as law firms from around the globe, CEAC has received ten cases since June 2012. CEAC handles cases from all parts of the world. Its arbitration rules are based on the neutral arbitration rules of the United Nations Commission on International Trade Law, adapted to the needs of China related arbitration.*

## I. The Practical Need of Arbitration Clauses in China Related Contracts

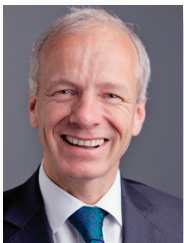
In international contract negotiations, usually each party is most satisfied when it can impose its own conditions, rely on its own law and provide for the competence of the courts at its seat. Often this simply does not work, because the business partner may have

a similar concept in mind with different conditions, another state law and a distinct dispute resolution mechanism. In the case of contract negotiations with a Chinese party, e.g. about a joint venture, a transaction or sale of goods, the Chinese party is likely to have Chinese law and the competence of Chinese courts in mind, while its international partner, e.g. a company from New York, might prefer New York law and the competence of New York courts. How is such a conflict resolved?

Regarding substantive law, the parties might settle on the choice of the law of a neutral state or, less risky and less costly<sup>1</sup>, on the neutral *UNIDROIT Principles of International Commercial Contracts* (UNIDROIT PICC), which have been created over the past decades by the neutral international organization UNIDROIT, comprising 63 member states including the U.S. and China<sup>2</sup>. They provide a bridge between anglo-saxon U.S. law and Chinese law, which is based on continental (German) law.

With respect to the best possible dispute resolution mechanism, counsel of both parties will soon find out that any choice of jurisdiction clause is only of limited value. The reason is that enforcement of Chinese state judgments in the United States (or other jurisdictions of the world) or of U.S. judgments (or other foreign state judgments) in China are difficult and sometimes even impossible as there is no international treaty basis for enforcement. As a result, both counsel would look for an arbitration clause in order to create a functioning tool for the enforcement of rights, if necessary, by using the international enforceability of arbitration awards under the *New York Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention)*<sup>3</sup>. China acceded to this convention in 1987.

With respect to the choice of the adequate arbitration regime, the perspective is likely to be different. Each party will prefer the choice of the rules of



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a local or national arbitration institution of its home jurisdiction, e.g. the US AAA-rules<sup>4</sup> or the Arbitration Rules of the Chinese International Economic and Trade Arbitration Commission<sup>5</sup>.

## II. The CEAC Rules as a Pragmatic, Neutral Solution

It is at this stage that the alternative option of choosing the Arbitration Rules of the CEAC (CEAC Rules)<sup>6</sup>, becomes a more suitable solution. They have been specifically designed for such an occasion for three reasons.

First, they are tailor-made for the Chinese market. They include a number of details which are the result of discussions with Chinese experts involved in making and controlling the rules. For example, the CEAC Rules ensure that any wording of the arbitration clause referring to arbitration under the CEAC Rules will always be interpreted as referring to *institutional* arbitration administered by CEAC<sup>7</sup>. As *ad hoc* arbitration is not a common concept in China<sup>8</sup>, this enhances the chances of enforcement of an award in China. The Chinese judge in charge of an enforcement of a CEAC award under the New York Convention will thereby relate to a form of arbitration which is known to him.<sup>9</sup>

Second, they reflect a concept of intensified neutrality which is the basis for their international acceptability, also in China.

- Hamburg, CEAC's seat in the north of Germany, is acceptable to Chinese merchants as Hamburg is the sister city of Shanghai<sup>10</sup>, hosts over 400 Chinese companies and is considered by many Chinese as a "gateway to Europe."
- They are the result of a worldwide legal dialogue and are based on the neutral arbitration rules of

UNCITRAL, the Commission on International Trade Law of the United Nations<sup>11</sup>.

- The international team involved in creating the rules or the administration of arbitrations, includes members from China, Europe and the world (e.g. Brazil, U.S.). This concerns the case management, the appointing authority and the advisory boards of CEAC, the arbitration centre, and its shareholder, the NGO Chinese European Legal Association (CELA).
- The legal environment of the CEAC Rules is neutral. It is based on instruments which the state of China was involved in making. Even the German arbitration law (which comes into play in the worst case scenario of a legal battle over a CEAC case<sup>12</sup>) is based on the UNCITRAL Model Arbitration Law. The CEAC choice of law clause<sup>13</sup> proposes, on an optional basis, to choose the United Convention of the International Sale of Goods or the UNIDROIT Principles of International Commercial Contracts as a neutral set of rules.

Third, the CEAC Rules include a number of pragmatic adaptations to the underlying UNCITRAL Arbitration Rules, designed for ad hoc arbitrations, in order to create a secure ground for the case administration by CEAC as an institution. Such adaptations relate, for example, to communication (filing, sending of copies to CEAC) or to costs (e.g. VAT issues).

## III. The CEAC Rules in Practice

Since 2008, the CEAC Rules have been accepted by many parties from around the globe. CEAC Ambassadors in Algeria, Argentina, Colombia, Hong Kong, Switzerland and as well as CEAC and CELA events in over 30 cities and 19 jurisdictions around the globe help to promote the rules. The Willem C. Vis

International Commercial Arbitration Moot has based its 2013 problem on a case which is to be decided under the CEAC Rules.

The first cases mainly relate to alleged contract violations in the energy or, for example, the shipping industry. Some of the cases concern disputes between Chinese and European companies (from Germany, Italy or Spain). Other cases are due to disputes between German companies and companies from Western Europe, Canada or Israel. In these cases the relation to the Chinese market is indirect, e.g. by one of the companies being a subsidiary of a Chinese company.

The total dollar amount of CEAC administered disputes already reaches over 80 million USD (ca. 60 mio. euro). For more information see [www.ceac-arbitration.com](http://www.ceac-arbitration.com) and [www.cela-hamburg.com](http://www.cela-hamburg.com).<sup>14</sup>

1 Bonell, in: An International Restatement of Contract Law, 3rd edition 2004, p. 26 et seq.; Vogenauer in: Vogenauer/Kleinheisterkamp, Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC), Oxford 2009, Introduction, marginal No. 21; Brödermann, The impact of the UNIDROIT Principles on international contract and arbitration practice - The experience of a German lawyer -, Uniform Law Review 2011, p. 589 et seq.

2 See [www.UNIDROIT.org](http://www.UNIDROIT.org).

3 Dated 10 June 1958; and entered into force on 7 June 1959, 330 U.N.T.S. 38 (1959).

4 Arbitration Rules of the American Arbitration Association, see [www.adr.org](http://www.adr.org).

5 See generally on arbitration in China Kun Fan, Arbitration in China. A Legal and cultural analysis (2013), p. 119 et seq. (on CIETAC).

6 For a detailed description of the CEAC Rules see e.g. Brödermann, The Chinese European Arbitration Centre, Journal of International Arbitration (J.Int.Arb.) 2013, 303-327.

7 Art. 1A CEAC Rules.

8 Kun Fan, Arbitration in China (op. cit. note 5), p. 40 et seq.

9 For further examples, see Brödermann, op. cit., J.Int.Arb. 2013, p. 303, 318-319.

10 Hamburg is also sister city to Chicago, Dar-es-Salaam, Dresden, León, Marseille, Osaka, Prague, and St. Petersburg.

11 <http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf>

12 Book 10 (Arbitration Proceedings) of the German Civil Procedure Act (*Zivilprozessordnung*) which contains, in its §§ 1025 et seq., the German arbitration law.

13 Art. 35 CEAC Rules.