

THE CEAC HAMBURG ARBITRATION RULES: A EUROPEAN-CHINESE TRADE-RELATED ADAPTATION OF THE REVISED UNCITRAL ARBITRATION RULES 2010

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1. Introduction

The Chinese European Arbitration Centre (CEAC) is an arbitral centre located in Hamburg, specialising in China-related trade disputes.¹ CEAC offers institutional arbitration of disputes “with a direct or (however remote) indirect relation to China”.² In fact, “CEAC is the first initiative aimed at having an arbitration centre common to the Chinese and Western business community outside China”.³ The establishment of CEAC is timely in view of the fact that “China is the single most important challenge for EU trade policy. China has re-emerged as the

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¹ The Chinese European Arbitration Centre (CEAC) was established by the Chinese European Legal Association (CELA) in 2008. CELA is “a non-profit organisation dedicated to supporting the interaction and exchange between China, Europe and the world regarding issues of law and legal culture” (see Preamble, Paragraph C, Core Rules). CELA was initiated by the Hamburg Bar Organisation (which provides the seat of CELA) and the Hamburg Chamber of Commerce. CEAC, which operates in accordance with CELA’s Statutes and the CEAC Hamburg Arbitration Rules (CEAC Rules), has its seat at the Hamburg Chamber of Commerce. In accordance with Article 19(3) CEAC Rules, “Unless otherwise agreed by the parties, all arbitrators in the respective proceedings and CEAC management, English is the working language of CEAC.”

² See CEAC’s website: www.ceac-arbitration.com.

³ See CEAC Newsletter, 1st Edition, March 2009, 2.

world's second largest economy and the biggest exporter in the global economy ... China is now the EU's 2nd trading partner behind the USA and the EU's biggest source of imports by far."⁴ CEAC conducts arbitration in accordance with the CEAC Hamburg Arbitration Rules (CEAC Rules). The CEAC Rules are essentially based on the revised UNCITRAL Arbitration Rules 2010 (revised UNCITRAL Rules) which have been in operation since 15 August 2010.⁵ The revised UNCITRAL Rules are modified and supplemented by CEAC's Core Rules which were approved during an advisory Board meeting held on 21 September 2010.

Where the Core Rules have modified the revised UNCITRAL Rules to suit the "the needs of China trade"⁶, the Core Rules take precedence over the revised UNCITRAL Rules "unless otherwise provided for by the parties".⁷ The revised UNCITRAL Rules thus provide the basis of, and have been incorporated into, the CEAC Rules and are applied in CEAC arbitrations.⁸ A consolidated version of the CEAC Rules, containing the Core Rules and the revised UNCITRAL Rules, was released by CEAC on 21 September 2010 and revised on 12 September 2012. Any changes to the revised UNCITRAL Rules appear in bold in this consolidated version, thereby facilitating a review of the CEAC Rules.

The revised UNCITRAL Rules modified the original UNCITRAL Arbitration Rules (original UNCITRAL Rules) which were adopted in 1976.⁹ The revision process maintained the generic nature of the original UNCITRAL Rules. Because of their generic and neutral nature, the revised UNCITRAL Rules can be used in any arbitration undertaken in any jurisdiction based upon any

⁴See European Commission, Trade, China: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/china/>. According to the European Commission, EU goods exports to China in 2011 totaled €136.2 billion (+20% on 2010) and EU goods imports from China 2011 amounted to €92.5 billion (+3% on 2010).

⁵ An arbitration agreement concluded after 15 August 2010 is presumed to refer to the 2010 version of the UNCITRAL Arbitration Rules. However, the parties may agree to apply the original 1976 version of the UNCITRAL Arbitration Rules. This presumption does not apply where the arbitration agreement was concluded after 15 August 2010 by accepting an offer made before that date: Article 1(2), revised UNCITRAL Rules.

⁶ Article III, CEAC Core Rules.

⁷ Article II, CEAC Core Rules.

⁸ Article II, CEAC Core Rules.

⁹ The original UNCITRAL Rules were adopted on 28 April 1976 and were endorsed by United Nations General Assembly Resolution A/RES/31/98. The original text appears in (1976) 7 *United Nations Commission on International Trade Law Yearbook* 22.

arbitration law.¹⁰ It is the generic nature of these Rules that facilitated their modification for the purpose of drafting the CEAC Rules.

The CEAC Rules can be used for China-related arbitrations as well as for any other international arbitral proceedings. Preamble D, CEAC Rules clearly states that “if the parties so explicitly desire, arbitration under the *CEAC Hamburg Arbitration Rules* shall also be open to other international arbitrations.” To this end, the CEAC Rules have been developed “in interaction with experts from numerous jurisdictions from around the globe in a truly international spirit and with special regard to the needs of intercultural arbitrations”.¹¹ The extension of the CEAC Rules to “other international arbitrations” ensures that the validity of the arbitration agreement is not endangered by the “degree of relations of a case to China-related trade”.¹² However, it is doubtful whether the Core Rules which modified and supplemented the revised UNCITRAL Rules can be used effectively for matters which are “not necessarily or only remotely or indirectly related to China”¹³. As the Core Rules are specifically tailored to “the needs of China trade”¹⁴, a legitimate question may be raised pertaining to the suitability of the Core Rules in other international arbitrations.

This article is not intended to be a comprehensive annotation of the CEAC Rules. Instead, we propose to concentrate on any modifications that have been made by the Core Rules to the revised UNCITRAL Rules, and on their application in practice.¹⁵ In order to enhance an understanding of the CEAC Rules and to assist the reader, reference will also be made to the original UNCITRAL Rules.

¹⁰ Giuditta Cordero Moss, “Revision of the UNCITRAL Arbitration Rules: Further Steps” (2010) 13 *International Arbitration Law Review* 96.

¹¹ Preamble D, CEAC Core Rules.

¹² See fn 1 to the CEAC Rules: “The openness, upon explicit request of the parties, to other international arbitrations which is not necessarily or only remotely or indirectly related to China was suggested by a number of supporters ... The degree of relation of a case to China-related trade should never become an issue which might endanger the validity of an arbitration proceeding.”

¹³ Fn 1 to Preamble D, CEAC Core Rules.

¹⁴ Article III, CEAC Core Rules. Article 2(1)(b) of the CELA Statutes confirms that CEAC has been established “to make a contribution to the avoidance, settlement and resolution of disputes related to international trade from and to China (including international investments in China and Chinese investments worldwide).

¹⁵ For a discussion of the revised UNCITRAL Rules, see Gabriël A. Moens and John Trone, “The First Amendment of the UNCITRAL Arbitration Rules”, vol. XIV (2011) *International Trade and Business Law Review* 376.

2. China-related and other international arbitrations under the CEAC Rules

The Preamble to the CEAC Rules indicates that, as a consequence of globalisation, trade between the People's Republic of China (PRC) and "traders from all over the world" has increased, as have international investments in China and Chinese investments outside China.¹⁶ In this context, the Statutes of CELA state that CEAC "will give Chinese, European and international merchants and lawyers a tool to structure their business relations in a coherent environment which ... secures the contracting parties equal rights"¹⁷, involving tailor-made arbitration services and rules.

The importance of the CEAC Rules lies in the fact that it is practically impossible to recognise court judgments in China, unless China has previously entered into a reciprocity agreement with the State in which the judgment has been rendered. Conversely, it is often difficult to enforce Chinese judgments in foreign countries. Hence, "recourse to international arbitration is an important tool to enforce rights of participants in international trade."¹⁸ As the recognition and enforcement of foreign arbitral awards is a major advantage of arbitration, the CEAC Rules were adopted to facilitate the resolution of disputes between European and Chinese parties by arbitration.¹⁹

However, it is possible to use the CEAC Rules in other international arbitrations, which do not relate to China.²⁰ This extension of the applicability of the CEAC Rules presumably strengthens arbitration agreements by avoiding or eliminating objections to their validity which otherwise might be constantly disputed on the ground that they do not relate, even remotely, to China-related trade.

Nevertheless, although the CEAC Rules stress that the association of these Rules with "China-related" trade should never affect the validity of the arbitration agreement, in practice, it cannot

¹⁶ Preamble A, CEAC Core Rules.

¹⁷ Preamble F, CELA Statutes.

¹⁸ Preamble B, CEAC Rules.

¹⁹ Preamble C, CEAC Rules.

²⁰ Preamble D, CEAC Rules.

be guaranteed that it might not “endanger the validity of an arbitration proceeding”.²¹ This may be illustrated by reference to the experience of the China International Economic and Trade Arbitration Commission (CIETAC). Earlier, CIETAC had exclusive jurisdiction over “foreign-related” arbitration.²² It was always a jurisdictional issue to be decided whether the arbitration was “foreign-related” or not. However, as CIETAC did not develop any criteria or tests for the purpose of ascertaining whether the arbitration was “foreign-related”, arbitral tribunals sought to justify their jurisdictional competence on various grounds, for example the existence of a “foreign” element in the arbitration, such as a foreign fund, a foreign party, a joint venture with a foreign party, etc. Later, after the adoption of the new Arbitration Law of China²³ and also due to a ruling of a court in the *Beijing Lidu Hotel* case, the exclusive jurisdiction of CIETAC over foreign-related arbitration was removed though the CIETAC still resolves foreign-related disputes.²⁴ Similarly, CEAC’s association with “China-related” or intercultural arbitration may go beyond the aspirational nature of its services and activate jurisdictional issues relating to the validity of the arbitration agreement or even the application of the CEAC Rules.

The scope of “China-related” arbitration may be very wide and yet controversial. For example, it is questionable whether any dispute relating to Hong Kong, Macao or Taiwan would be considered as “China-related”. If two parties to the dispute are from outside China, but the place of performance of the contract is in China, would that be considered as “China-related”? Would the nationality of a party be a factor that is considered in a definition of “China-related” arbitration? These unanswered questions may generate jurisdictional challenges and may even result in a challenge to the application of the CEAC Rules.

On the other hand, the CEAC Rules also indicate that these Rules may be applied in other international arbitrations “if the parties so explicitly desire”.²⁵ The parties’ autonomy in this

²¹ See Note 1 to Preamble D, CEAC Rules.

²² Article 2, CIETAC Rules (1 October 1995).

²³ Arbitration Law of the People’s Republic of China, promulgated by Order No. 31 of the President of the People’s Republic of China on 31 August 1994, and effective on 1 September 1995.

²⁴ *China International Construction and Consultant Corporation v. Beijing Lidu Hotel Company*, Reported in Selected Cases of the People’s Courts, Vol. 4. (1993) at 137-140. In that case, the court refused to enforce a CIETAC award because CIETAC had wrongly acquired jurisdiction as it was not a “foreign-related” case. Also see Article 3(2), CIETAC Rules (1 May 2012).

²⁵ Preamble D, CEAC Rules.

regard might frustrate the very purpose of the existence of CEAC as an institution and the CEAC Rules. Preamble D, CEAC Rules which envisages the applicability of these Rules in “other international arbitrations” may serve as the fall back position when the criteria of “China-related” trade are not satisfied. It may also open the door for other parties to use CEAC for arbitration. If that were to happen, CEAC would lose the special status of an arbitration institution which deals with “China-related” matters or “intercultural arbitration” and, in effect, it would become just like any other arbitration institution around the world.

3. The Beijing-Hamburg Conciliation Rules: The Possibility of Combining Arbitration with Conciliation/Mediation

Although the CEAC Rules are based on the revised UNCITRAL Rules, the CEAC Rules are supplemented by Core Rules which take precedence unless otherwise provided by the parties.²⁶ One of the most important features of these Core Rules is that either party, prior to the initiation of an arbitration proceeding or within 21 days after receipt of the notice of arbitration by the respondent, is entitled to request in writing the other party’s express written consent to conciliate under the Beijing-Hamburg Conciliation Rules “or to engage in any other form of mediation or conciliation”.²⁷ These Conciliation Rules were adopted by the Beijing-Hamburg Conciliation Centre which was established in 1987.²⁸ If so, the arbitral proceeding, including deadlines for extensions of time, is suspended for 3 months or until the termination of the conciliation or mediation whichever is earlier or “upon an earlier application provided that the conciliation or mediation was initiated within one (1) week after receipt of such consent.”²⁹ If the mediation is not finished within the 3 month time period, a further suspension of the arbitral proceedings requires the mutual written consent of all parties which may be contained in separate documents.”³⁰

The Beijing-Hamburg Conciliation Rules which are based on the United Nations General Assembly Resolution 35/52 adopted on 4 December 1980 stipulate in Article 2 that disputes may

²⁶ Article 1(3), CEAC Rules.

²⁷ Article 1(4), CEAC Rules.

²⁸ Preamble E, CEAC Rules.

²⁹ Article 1(4), CEAC Rules.

³⁰ Article 1(4)(b), CEAC Rules.

be settled “in an amicable manner, on the basis of mutual understanding, fairness and justice”. In particular, Article 11(2) of the Conciliation Rules provides that “The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.” During the negotiation, the parties undertake to co-operate “in good faith with the conciliator and ...to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.”³¹ Importantly, the parties also undertake to refrain from initiating arbitral or judicial proceedings, unless these proceedings are necessary to maintain the rights of the parties.³²

Interestingly, “If the conciliation proceedings are terminated without any settlement agreement between the parties and the dispute is referred to arbitration later on, the conciliator may be appointed as arbitrator unless this is contrary to the arbitration agreement between the parties or to the provisions of law of the country where arbitration is to be conducted”.³³ Although it appears that in many jurisdictions, a conciliator may also act as an arbitrator in the same dispute,³⁴ there is substantial angst in the arbitration community about the wisdom of such a provision.³⁵ The angst relates not only to the different psychological and educational qualifications which may be required of a conciliator and arbitrator respectively. It also concerns the legal requirement in arbitration for arbitrators to respect principles of natural justice, whereas such principles may not necessarily be followed by conciliators.³⁶ Despite such angst, in China, it is very common to combine arbitration with mediation and this combination has been reasonably successful in practice. In China, mediation is also combined with litigation. Therefore, those who are familiar with the Chinese practice may find the applicability of the

³¹ Article 14, Beijing-Hamburg Conciliation Rules.

³² Article 19, Beijing-Hamburg Conciliation Rules.

³³ Article 22, Beijing-Hamburg Conciliation Rules.

³⁴ For example, the Australian, Singaporean and Hong Kong law shares the common rule that a person cannot be precluded from acting as an arbitrator on the sole ground of his having previously mediated or conciliated in the dispute: s.27(1) of the Uniform Australian *Commercial Arbitration Act* 1985 stipulates, in part, that (i) parties to an arbitration agreement “may seek settlement of a dispute between them by mediation, conciliation or similar means” and (ii) may authorise an arbitrator to act as a mediator or conciliator “whether before or after proceeding to arbitration, and whether or not continuing with the arbitration”. See also s.62(3) *Singapore Arbitration Act* (Cap. 10) and s. 33 *Hong Kong Arbitration Ordinance* (Cap. 609).

³⁵ See Philip Evans and Gabriël Moens, “Reflections on the role of mediators and arbitrators: can a good mediator also be a good arbitrator?”, vol. 5 (2009) *Macquarie Journal of Business Law* 265.

³⁶ In conducting the arbitration in the manner the arbitrator thinks fit, the arbitrator is bound by the rules of natural justice. See *Oldfield Knott Architects Pty Ltd v. Ortiz Investments Pty Ltd* [2000] WASCA 225.

CEAC Rules appealing in this regard. For example, Professor Tang Houzi has argued that using the same person as an arbitrator and mediator does not violate any principles of natural justice or create any wrong perception about the parties in the eyes of that arbitrator.³⁷ Therefore, the CEAC Rules which allow arbitrators to assist the parties to reach a settlement will be attractive for the Chinese party and reflects “Chinese preferences for settlements and negotiations” during arbitration.³⁸ The CEAC itself suggests that “it is sometimes wise to combine a CEAC arbitration clause with a mediation or conciliation clause”.³⁹

4. Applicability of the CEAC Rules

In accordance with Article 1(3), the CEAC Rules incorporate the revised UNCITRAL Arbitration Rules “in the version in force at the time when the agreement between the parties came into force and as supplemented or amended by the additional rules ... which take precedence unless otherwise provided for by the parties”. Thus, whenever parties agree that disputes will be settled in accordance with the CEAC Rules, the Rules “existing at the time when the agreement between the parties came into force” will be used.⁴⁰ In addition, Article 1a stipulates that, “Any reference to CEAC in combination with a reference to the UNCITRAL Arbitration Rules or any other set of arbitration rules shall be deemed to be a reference to the CEAC Arbitration Rules.” Article 1a further states that a reference “to arbitration under the “CEAC Hamburg Arbitration Rules”, the “CEAC Arbitration Rules”, the “CEAC Rules” or the “Rules of the Chinese European Arbitration Centre” or if the parties agree on “CEAC””, is deemed to constitute a reference by the parties to institutional arbitration by the Chinese European Arbitration Centre in Hamburg, Germany.⁴¹ This is an important provision in view of the fact that often parties fail to refer to the institution in their arbitral agreements.

³⁷ See Tang Houzi, “Combination of Arbitration and Mediation” and “Is there an expanding culture that favours combining arbitration with conciliation or other ADR Procedures”, respectively available at http://www.cityu.edu.hk/slw/ADR_Moot/doc/Combination_of_Arbitration_and_Mediation.pdf and http://www.cityu.edu.hk/slw/ADR_Moot/doc/Expanding_culture.pdf.

³⁸ See CEAC Newsletter, 1st Edition, March 2009, 1.

³⁹ Eckart Brödermann and Thomas Weimann, “CEAC”, *Global Arbitration Review*, 2011, 10-15.

⁴⁰ Article 1(1), CEAC Rules. Cp Article 1(1) of the revised UNCITRAL Rules, which states: “Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.”

⁴¹ Article 1(1a), CEAC Rules.

However, the Model Arbitration Clause, option (g) which is annexed to the CEAC Rules, allows parties to request that the Rules in force at the moment of the commencement of the arbitration are used as the applicable procedural rules. Even then, option (g) permits a party to request the operation of the Rules in force at the time of the conclusion of the contract if such a request is made within 4 weeks following the constitution of the arbitral tribunal. This entitlement is unnecessarily confusing because it allows a party to request the applicability of the CEAC Rules as they existed at the time of the conclusion of the contract, even if they have selected option (g). In such a situation, it is appropriate to leave the decision regarding use of the particular version of the Rules to the claimant who initiates the arbitration proceedings. If the respondent objects to the version of the Rules to be applied to the arbitration, it can always raise its objection before the arbitral tribunal or the CEAC, whichever has the authority to decide this issue.

Article 1(2) CEAC Rules provides that parties are deemed to have referred their dispute to institutional arbitration by the Chinese European Arbitration Centre in Hamburg if they submit their disputes to arbitration under the CEAC Rules. Unless otherwise agreed by the parties, the seat of arbitration will be Hamburg, Germany.⁴² In particular, Article 18(1) CEAC Rules states that, “If the parties have not explicitly agreed on another seat, the seat of the arbitration will be Hamburg, Germany. Regardless of the seat of the arbitration, the parties are free to determine any appropriate place for hearings or other proceedings.” Article 18(1) allows the parties, exercising their rights under the Doctrine of Party Autonomy, to agree explicitly on the seat of arbitration. But this provision also seems to prevent the arbitral tribunal from fixing another seat and, in this regard, Article 18(1) CEAC Rules is similar to Article 19.1 of the Arbitration Rules of the Australian Centre for International Commercial Arbitration (ACICA). Although other arbitration rules usually allow parties to arbitration to select the seat of the arbitration, they are usually qualified by the statement that the arbitral tribunal is authorised to select a different arbitration seat “in view of the circumstances”.⁴³

⁴² Article 18(1), CEAC Rules. Like any other institutional rules, the venue of physical meeting or hearing may be organised outside Hamburg. See the general description of CEAC arbitration at <http://www.ceac-arbitration.com/index.php?id=100>.

⁴³ See, for example, Article 16(1) London Court of International Arbitration Rules and Article 16(1) Swiss Rules of International Arbitration (June 2012).

The seat of arbitration is a most important legal concept in arbitration because a reference to the seat activates the relevant arbitration statute of the country where the arbitration is held. Indeed, “The concept that an arbitration is governed by the law of the place in which it is held, which is the “seat” (or “forum” or “*lex arbitri*” of the arbitration, is well established in both the theory and practice of international arbitration.”⁴⁴ This means that in CEAC arbitrations, the CEAC Rules “shall be applied on the basis of the UNCITRAL Model Law based German Provisions on Arbitration in the German Code of Civil Procedure (ZPO §§ 1025-1066), because Hamburg is the seat of arbitration (even if the parties agree on another place as the venue of physical meetings).”⁴⁵ Modern jurisprudence confirms that the seat of arbitration must be distinguished from the “venue of hearing”,⁴⁶ and where the parties have agreed upon the seat of arbitration, that seat does not change even though the tribunal conducts all of the hearings in another country. Article 1(a) of the CEAC Rules, revised in September 2012, has made it clear that “Any reference to another city in combination with a reference to CEAC shall be deemed to be a choice of the place where oral hearings shall be held”, and is not a reference to the seat of arbitration.

The City of Hamburg has prepared itself to serve effectively as the seat of CEAC. At the seat of arbitration, parties often need assistance from the local court. In this regard the Appellate Court of Hamburg has assigned one civil court to deal with all arbitration matters reflecting the arbitration friendly environment at the seat of arbitration. Any matters relating to arbitration such as “questions about the appointment or rejection of an arbitrator, findings over the admissibility or inadmissibility of arbitral proceedings, the enforcement or rescission of provisional steps of the arbitral tribunal, the reversal of an arbitral award or its enforceability” now can be taken to that civil division in charge of arbitration matters in the Appellate Court of Hamburg.⁴⁷ However, as is normal practice in arbitration, the parties are free to select any suitable place for their hearings or other proceedings.⁴⁸ Nevertheless, the CEAC advises the parties not to select the place of hearing in China in order to enhance the chances of recognition of an award in China

⁴⁴ Alan Redfern, Martin Hunter, Nigel Blackaby and Constantine Partasides, *Law and Practice of International Commercial Arbitration* (4th ed.), London, Sweet & Maxwell, 2004, 98.

⁴⁵ See CEAC’s website: www.ceac-arbitration.com.

⁴⁶ *PT Garuda Indonesia v. Birgen Air* [2002] ISLR 393.

⁴⁷ See CEAC Newsletter, 3rd Edition, February 2011, 3.

⁴⁸ Article 18(1), CEAC Rules. It is noteworthy that Article 18(1) CEAC Rules has modified Article 18(1) revised UNCITRAL Rules in this regard.

under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).⁴⁹

Article 1 CEAC Rules deals with the scope of application of the Rules. Consistent with the revised UNCITRAL Rules, the CEAC Rules have a broad focus. Indeed, the CEAC Rules refer to claims relating to “a defined legal relationship, whether contractual or not”.⁵⁰ This Article is based upon similar provisions in the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration (Model Law).⁵¹ It is noteworthy that in the New York Convention as well as in the Model Law, ratifying states may refuse to enforce awards which are not ‘commercial’ or related to a dispute based on non-contractual defined legal relationships. Article 1 CEAC Rules does not limit an “arbitration agreement” in such a manner.⁵² Of course, mandatory provisions of national arbitration law prevail over the CEAC Rules and, therefore, to the extent that CEAC Rules are incompatible with these provisions, mandatory rules prevail.⁵³

5. The initiation of arbitral proceedings under the CEAC Rules

In accordance with Article 3(1) CEAC Rules, the claimant initiates the arbitration proceeding “by sending a notice of arbitration” to CEAC in Hamburg “together with a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract.” The Notice of Arbitration and supporting documentation needs to be submitted by the claimant in seven copies, but in a case involving multi-party arbitration, CEAC may request the submission of further copies.⁵⁴ For the purpose of submission of these documents, “Parties may use the letter box of the Hamburg Regional Court of First Instance (*Landgericht Hamburg*) which is accessible 24 hours per day.”⁵⁵ The filing of the Notice of

⁴⁹ See CEAC Newsletter, 2nd Edition, Summer 2010, 2.

⁵⁰ Article 1(1), CEAC Rules; based on Article 1(1), revised UNCITRAL Rules.

⁵¹ Article 2(3), Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, 330 UNTS 38; Article 7(1) Option 1 and Article 7 Option 2, UNCITRAL Model Law on International Commercial Arbitration, as revised 7 July 2006, [2006] *Uniform Law Review* 866, A/61/17, 56.

⁵² Article 7, Model Law and Article II, New York Convention have used such language with reference to the definition of “Arbitration Agreement”.

⁵³ Article 1(2), CEAC Rules; based on Article 1(3), revised UNCITRAL Rules.

⁵⁴ Article 3(1) CEAC Rules.

⁵⁵ Article 3(1) CEAC Rules. Article 3(1) CEAC Rules amended Article 3(2) of the revised UNCITRAL Rules. The letter box of the Hamburg Court of Appeals is located at Landgericht Hamburg, Sievekingplatz 1, 20355 Hamburg, Germany. This letter box “is checked frequently” to ensure that the brief addressed to CEAC and put into the letter

Arbitration triggers the payment of the administration fee determined in accordance with the Schedule of Costs of CEAC.⁵⁶ Further, at the time of filing the Notice of Arbitration, “CEAC management shall request payment of an advance of costs” in accordance with Articles 40-43 of the CEAC Rules.⁵⁷ Importantly, if the administration fee and the advance on costs are not paid by the claimant within the time period indicated by CEAC, “the claim shall be deemed to have been withdrawn.”⁵⁸ Once the administration fee has been paid, “CEAC shall serve the notice of arbitration to the defendant or the defendants, as the case may be.”⁵⁹ However, “arbitral proceedings shall be deemed to have commenced on the date on which the Notice of Arbitration is received by CEAC, if the payment of the administration fees has been made within a reasonable time thereafter.”⁶⁰ Article 3(2) also emphatically states that, “The arbitral tribunal shall not proceed with the arbitral proceeding without ascertaining at all times with CEAC management that CEAC has received the requested payments.”

The contents of the Notice of Arbitration, listed in Article 3(3) CEAC Rules, are mandatory and the requirements are the same as those under Article 3(3) of the revised UNCITRAL Rules:⁶¹

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and contact details of the parties and, if applicable, its statutory representative;
- (c) Identification of the arbitration agreement that is invoked;

box “will be marked as received on the date of submission”. This letter box is also available on weekends, holidays and at night. See CEAC Newsletter, 2nd Edition Summer 2010, 5.

⁵⁶ Article 3(2), CEAC Rules.

⁵⁷ In accordance with Article 43 CEAC Rules, “Each party shall pay half of the advance on costs, unless separate advances are determined ... and except for the initial administration fee which shall be advanced by the claimant.” Advances on costs do not bear any interest: see Article 43(5) CEAC Rules.

⁵⁸ Article 3(2) CEAC Rules.

⁵⁹ Article 3(2) CEAC Rules. It is interesting that this Article describes the respondent in an arbitral proceeding as the ‘defendant’.

⁶⁰ Article 3(2), CEAC Rules. Note that Article 3(2) contains a stylistic error in that the word “and” appears between “administration fees” and “has been made within a reasonable time thereafter.” Article 3(2) of the revised UNCITRAL Rules, simply states that “Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.”

⁶¹ Note that the wording here is not the same as what is given in the Check list of Notice of Arbitration under the CEAC Rules at <http://www.ceac-arbitration.com/index.php?id=12>).

- (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) A brief description of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

As is the case in the revised UNCITRAL Rules, the Notice of Arbitration may also include a proposal for the appointment of a sole arbitrator and notification of the appointment of an arbitrator.⁶² The Notice of Arbitration may be treated by the claimant as a Statement of Claim, provided that this Notice complies with the requirements outlined in Article 20(2)-20(4).⁶³ These requirements relate principally to the names and contact details of the parties, a statement of the facts that support the claim, the points at issue and the relief or remedy sought. With the Notice of Arbitration, it is also mandatory to include the copy of the contract related to or out of which the dispute has arisen and a copy of the arbitration agreement if that is not contained in the contract as an arbitration clause.⁶⁴

Under the revised UNCITRAL Rules (and therefore, under the CEAC Rules) the Statement of Claim must now also incorporate the legal grounds that support the claim.⁶⁵ The Statement of Claim should as far as possible include all supporting documents and evidence, or at least make reference to those documents and evidence.⁶⁶ However, the full Statement of Claim is an optional requirement under the CEAC Rules at the time of the issuance of the Notice of Arbitration.⁶⁷

⁶² Article 3(4), CEAC Rules; based on Article 3(4), revised UNCITRAL Rules.

⁶³ Article 20(1), CEAC Rules; based on Article 20(1), revised UNCITRAL Rules.

⁶⁴ See the Check List of the Notice of Arbitration to the CEAC at <http://www.ceac-arbitration.com/index.php?id=12>.

⁶⁵ Article 20(2)(e), CEAC Rules; based on Article 20(2)(e), revised UNCITRAL Rules.

⁶⁶ Article 20(4), CEAC Rules; based on Article 20(4), revised UNCITRAL Rules.

⁶⁷ See the Check List of the Notice of Arbitration to the CEAC at <http://www.ceac-arbitration.com/index.php?id=12>

In accordance with Article 3(5) CEAC Rules, “The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.” This provision is identical to Article 3(5) revised UNCITRAL Rules.

The original UNCITRAL Rules provided that the agreement to use the Rules must be in writing.⁶⁸ The original UNCITRAL Rules also provided that notices must be physically delivered.⁶⁹ These requirements became outdated with the advent of the extensive use of electronic communications.⁷⁰ In 2006, the Model Law was amended to facilitate reliance upon electronic communication⁷¹ and the original UNCITRAL Rules also required such a revision. As is the case in the revised UNCITRAL Rules, the CEAC Rules no longer provide that the agreement to use the Rules must be in writing.⁷² The CEAC Rules state that notifications “may be transmitted by any means of communication that provides or allows for a record of its transmission”,⁷³ thus permitting the use of electronic forms of communication. The CEAC Rules also make express reference to delivery by e-mail or facsimile.⁷⁴ A notice sent by electronic communication is deemed to have been received on the day on which it was sent.⁷⁵ However, a Notice of Arbitration sent by electronic communication is deemed to have been received on the day it actually reaches the other party’s electronic address.⁷⁶ For the purpose of calculating a period of time under the CEAC Rules, “such period shall begin to run on the day following the day when a notice is received.”⁷⁷

⁶⁸ Article 1(1), original UNCITRAL Rules.

⁶⁹ Article 2(1), original UNCITRAL Rules.

⁷⁰ Judith Levine, “Current Issues in International Arbitral Practice as Reflected in the Revision of the UNCITRAL Arbitration Rules” (2008) 31 *University of New South Wales Law Journal* 266, 272.

⁷¹ Art 7(4) Option 1, *UNCITRAL Model Law on International Commercial Arbitration*, as revised 7 July 2006, [2006] *Uniform Law Review* 866, A/61/17, 56.

⁷² Article 1(1), CEAC Rules; based on Article 1(1), revised UNCITRAL Rules.

⁷³ Article 2(1), CEAC Rules; based on Article 2(1), revised UNCITRAL Rules.

⁷⁴ Article 2(2), CEAC Rules; based on Article 2(2), revised UNCITRAL Rules.

⁷⁵ Article 2(5), CEAC Rules; based on Article 2(5), revised UNCITRAL Rules.

⁷⁶ Article 2(5), CEAC Rules; based on Article 2(5), revised UNCITRAL Rules.

⁷⁷ Article 2(6), CEAC Rules; based on Article 2(6), revised UNCITRAL Rules.

The original UNCITRAL Rules referred to the claimant or respondent in the singular.⁷⁸ The revised UNCITRAL Rules and the CEAC Rules now specifically accommodate situations where there is more than one claimant or respondent.⁷⁹ Indeed, Article 17(5) CEAC Rules provide for the joinder of third parties who are party to the arbitration agreement, unless the tribunal finds that joinder would prejudice a party to the arbitration or a third party. If the tribunal permits joinder, it may issue one or more awards in relation to the arbitration.⁸⁰ This Article will, however, not help a non-signatory to the arbitration agreement to join the arbitration indirectly because the first condition of the joinder is that the party joining must also be a party to the arbitration agreement.⁸¹

6. The appointment of arbitrators

To the extent that the parties do not exercise their right to appoint an arbitrator under Articles 8 to 10 CEAC Rules, or if the party-appointed arbitrators do not agree on a third arbitrator as the presiding arbitrator, the CEAC operating as an Appointing Authority will appoint an arbitrator from the CEAC List of Arbitrators who come from around the world. It is important to note that the Advisory Board of CEAC deliberately did not include the “list procedure” of Article 8(2) of the revised UNCITRAL Rules into the CEAC Rules because CEAC has its own list of arbitrators.⁸² This certainly reflects the modification or non-inclusion of the revised UNCITRAL Rules based on the “specific needs” of the CEAC.⁸³

Article 1(3) CEAC Rules incorporates the revised UNCITRAL Rules “and as supplemented or amended by the additional rules contained herein which take precedence unless otherwise provided for by the parties.” It may be argued that when CEAC’s Core Rules are silent on a particular issue, the relevant provisions of the revised UNCITRAL Rules may be applied as

⁷⁸ Articles 18-19, original UNCITRAL Rules.

⁷⁹ Article 10(1), CEAC Rules; based on Article 10(1), revised UNCITRAL Rules.

⁸⁰ Article 17(5), CEAC Rules; based on Article 17(5), revised UNCITRAL Rules.

⁸¹ Some Institutional Rules do not require a third party to be a party to the arbitration agreement before being joined to the arbitration proceeding. For example, see Article 14.6, HKIAC Rules.

⁸² See CEAC Newsletter, 3rd Edition, February 2011, 1.

⁸³ Article III, CEAC Core Rules.

residual provisions. This argument is supported by the fact that wherever CEAC Rules deviate from the revised UNCITRAL Rules, they are expressed in clear words.

In order to serve the needs of intercultural arbitration, the Appointing Authority “shall appoint a Chairman from a neutral jurisdiction whereby it operates in Chambers with international experts from China, Europe and other regions of the world.”⁸⁴ To guarantee international independence, each chamber of the Appointing Authority is composed of one European, one Chinese and one expert from outside Europe and China.⁸⁵ Hence, there is a tri-partite division of power in the Appointing Authority.

The default number of arbitrators under the original and revised UNCITRAL Rules is three.⁸⁶ Under the original UNCITRAL Rules there was no mechanism for appointing a single arbitrator unless the parties had agreed to that effect.⁸⁷ The expense of a three member panel was an impediment to the arbitration of claims for smaller amounts.⁸⁸ However, many other arbitral rules allowed for the appointment of a single arbitrator.⁸⁹

The revised UNCITRAL Rules and the CEAC Rules now provide a mechanism for the appointment of a single arbitrator other than by agreement of the parties.⁹⁰ Where no party

⁸⁴ Preamble F, CEAC Rules.

⁸⁵ So far two Chambers at the CEAC have been established. The first Chamber is competent to deal with all matters against a Respondent named first as Respondent in the Notice of Arbitration whose name starts with a letter from A to M; the Second Chamber is competent to deal with Respondents whose name start with a letter from N to Z. The First Chamber consists of (i) Professor Lu Song, Institute of International Law, China Foreign Affairs University, Beijing, China; (ii) Mr. Angelo Anglani, Ungi e Nunziante-Studio Legale, Rome, Italy (Europe); and (iii) Ms. Karen Mills, Karim Syah Law Firm, Jakarta, Indonesia (World). The Second Chamber consists of (i) Mr. Li Yong, China Patents & Trademarks Publications Office, Hong Kong, (China); (ii) Mr. Bart Kasteleijn, HIL International Lawyers & Advisers, Amsterdam, the Netherlands (Europe) and (iii) Dr (Ms.) Nayla Comair-Obeid, Obeid Law Firm, Beirut, Lebanon (World). See CEAC’s website: www.ceac-arbitration.com.

⁸⁶ Article 5(1), original UNCITRAL Rules; Article 7(1), revised UNCITRAL Rules.

⁸⁷ Article 5(1), original UNCITRAL Rules.

⁸⁸ Michael Polkinghorne and Marily Paralika, “Revision of the UNCITRAL Arbitration Rules: The Current State of Play” (2008) 1 *Contemporary Asia Arbitration Journal* 1, 8; Jan Paulsson and Georgios Petrochilos, *Revision of the UNCITRAL Arbitration Rules* at [64], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf.

⁸⁹ Eg Articles 8-9, *ACICA Arbitration Rules*; Article 6.1, *Arbitration Rules of the Singapore International Arbitration Centre* (1 July 2010); Article 12 (1), *International Chamber of Commerce Rules of Arbitration* (2012); Article 5.4, *LCIA Arbitration Rules* (1 January 1998).

⁹⁰ Parties can agree to the appointment of a sole arbitrator at the time of consenting to arbitration. The CEAC Model Arbitration Clause, option (a), allows parties to choose a single arbitrator to decide the dispute. The agreement to have a sole arbitrator may also be limited by the amount of the claim, as per the monetary limit set by the parties in the Model Arbitration Clause appended to the CEAC Rules.

responds to another party's proposal for the appointment of a sole arbitrator and the parties have not appointed a second arbitrator, the Appointing Authority may appoint a single arbitrator, at the request of a party, if it considers that this is appropriate in the circumstances.⁹¹ However, under the CEAC Rules, the default rule is that the number of arbitrators shall be three. Importantly, if the parties have agreed that the arbitral tribunal be composed of a number of arbitrators other than one or three, "the arbitrators shall be appointed according to the method agreed upon by the parties", but "The number of arbitrators shall not be an even number."⁹² Thus, on the one hand, the CEAC Rules allow parties to choose one or three arbitrators, but on the other hand, the Rules impose a restriction that the "number of arbitrators shall not be an even number". However, such restrictions may not stand in the way of parties' autonomy if parties agree to choose an even number of arbitrators, nor will it render an arbitration agreement invalid.⁹³

In accordance with Article 6 CEAC Rules, the CEAC Appointing Authority "shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties." Paragraphs 1 to 6 of Article 6 of the revised UNCITRAL Rules have been deleted and not incorporated in the CEAC Rules. Hence, unlike Article 6(1) and 6(2) of the revised UNCITRAL Rules, the parties in a CEAC arbitration may not nominate their preferences for the appointing authority, which otherwise would have included the Secretary-General of the Permanent Court of Arbitration.⁹⁴ Under Article 6(2) of the revised UNCITRAL Rules, if the parties cannot agree upon an Appointing Authority, a party may request that the Secretary-General designate an appointing authority.

For the purpose of the CEAC, the first or the second chamber, as the case may be, acts as an Appointing Authority.⁹⁵ However, the bar to nationality for the appointment of arbitrators may

⁹¹ Article 7(2), CEAC Rules; based on Article 7(2), revised UNCITRAL Rules.

⁹² Article 10(2) CEAC Rules.

⁹³ CLOUT Case No 177 [*MMTC v. Sterlite Industries (India) Ltd.* Supreme Court, India, 18 November 1996]. The Indian *Arbitration and Conciliation Act* 1996, which is based on the Model Law, has a similar provision like the CEAC Rules restricting a tribunal with an even number of arbitrators: see section 10; D. Rautray, *Master Guide to Arbitration in India*, CCH, New Delhi, 2008, 86.

⁹⁴ Article 6(1), revised UNCITRAL Rules.

⁹⁵ See CEAC's website: <http://www.ceac-arbitration.com/index.php?id=154> .

create some practical problems for the CEAC Appointing Authority. As the CEAC is promoted as providing arbitration services for China-related disputes, it is most likely that one of the parties may be Chinese. Therefore, arbitrators who are Chinese cannot be appointed even if they are suitably qualified or otherwise appropriate to resolve the China-related dispute. Such a situation will in effect dilute the advantages of CEAC as a specialised arbitration centre for China-related disputes.

The second problem may be technical but yet important to be clarified by the CEAC; it relates to the criteria which will be used to ascertain nationality of arbitrators. For example, how should Chinese nationality be defined? An arbitrator holding the Chinese (PRC) passport will certainly be considered as a Chinese national. Whether an arbitrator from the Hong Kong Special Administrative Region (HKSAR) who holds an HKSAR passport may also be considered as Chinese is questionable, even though HKSAR Passport holders are legally Chinese nationals.⁹⁶ Although Hong Kong does not recognise dual citizenship (as the PRC Nationality Law which is operative in Hong Kong does not recognise dual citizenship) it is very common in Hong Kong for professionals to hold more than one passport (of a country which recognises dual citizenship, such as the United States of America, Canada, United Kingdom or Australia). In that situation, an arbitrator from Hong Kong holding an HKSAR passport as well as a Canadian passport could be considered as a Chinese and also a Canadian national. There is another group of arbitrators who are permanent residents of Hong Kong but are not holding the HKSAR passport: would they be considered Chinese or nationals from other countries?⁹⁷ The situation may even become more convoluted if we include the arbitrators from Taiwan. If the Chinese nationality is defined in geographical terms, Chinese professionals from Singapore, Malaysia, Indonesia and elsewhere might also be excluded. If we look at CEAC's list of arbitrators, some arbitrators listed under China actually possess a different nationality and some arbitrators from other places have two

⁹⁶ In an investment arbitration which has nationality as a condition for jurisdiction, a resident of Hong Kong who held an HKSAR passport was considered as a Chinese national for the purpose of the bilateral investment treaty signed between the PRC and Peru: See *Tza Yap Shum v. The Republic of Peru* (ICSID Case No. ARB/07/6) - Decision on Jurisdiction and Competence.

⁹⁷ According to the Nationality Law of the PRC, a permanent resident of Hong Kong, without holding the HKSAR passport, will not be considered as a Chinese national. However, all Chinese compatriots of Hong Kong are considered as Chinese nationals, even if they hold a travelling document from other countries. See "Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region (Adopted at the 19th Session of the Standing Committee of the 8th National People's Congress on 15 May 1996).

nationalities in front of their name.⁹⁸ In any event, the rejection of an arbitrator on the basis of nationality may not be a good practice in international arbitration because it might involve the exclusion of professionals who have the experience and ability to resolve, in a competent manner, China-related trade disputes.

If parties have selected Chinese as the language of arbitration and also decided to submit documents in Chinese, then it will be more practical to use Chinese arbitrators who can read and understand Chinese; this would certainly make the arbitration process efficient and effective.⁹⁹ However, when parties select one language for arbitration but a different language for the submission of documents, then that may reduce “the choice of available competent arbitrators and counsels” because it would be difficult to find arbitrators who are proficient in both languages.¹⁰⁰

An important amendment to the appointment process addresses the problem identified by the *Dutco* decision of the French Cour de Cassation.¹⁰¹ That case concerned arbitration under the International Chamber of Commerce (ICC) Rules. An arbitrator had been appointed by the ICC for two respondents who had been unable to select an arbitrator, whereas the claimant had selected an arbitrator. The Court held that this procedure infringed the equality of the parties in relation to the appointment process.¹⁰² Many arbitral rules were subsequently amended to address the *Dutco* issue.¹⁰³ The original UNCITRAL Rules did not address this problem.¹⁰⁴

⁹⁸ See the list of arbitrators of CEAC at <http://www.ceac-arbitration.com/index.php?id=42&L=3>.

⁹⁹ The CEAC Model Arbitration Clause provides an option for the parties to choose the language of arbitration (option (c)) as well as the language for the documents submitted in the arbitration (option (d)). It is also possible that parties may agree on different languages for arbitration and for documents.

¹⁰⁰ In situations where arbitrators with proficiency in both languages are found, the document receiving party will have to bear the burden of the cost of translation and not the party who submits the document. See Explanatory Comments on the Model Clause of the CEAC Rules, available at <http://www.ceac-arbitration.com/index.php?id=22>.

¹⁰¹ *Sociétés Siemens v. Société Dutco*, Cass Civ 1re, 7 January 1992, 119 *Journal du droit international* 707; *Revue de l'arbitrage* 1992, 470; 18 *Yearbook of Commercial Arbitration* 140. See Jean-Louis Delvolvé, “Multipartism: The *Dutco* Decision of the French Cour de Cassation” (1993) 9 *Arbitration International* 197; Eric A Schwartz, “Multi Party Arbitration and the ICC in the Wake of *Dutco*” (1993) 10, 3 *Journal of International Arbitration* 5; Ricardo E Ugarte and Thomas Bevilacqua, “Ensuring Party Equality in the Process of Designating Arbitrators in Multi-Party Arbitration” (2010) 27 *Journal of International Arbitration* 9.

¹⁰² Michael Polkinghorne and Marilyn Paralika, “Revision of the UNCITRAL Arbitration Rules: The Current State of Play” (2008) 1 *Contemporary Asia Arbitration Journal* 1, 10.

¹⁰³ Eg Article 11.2, ACICA Arbitration Rules; Article 12(8), International Chamber of Commerce Rules of Arbitration (2012); Article 8(1), LCIA Arbitration Rules (1 January 1998); Article 9.1, Arbitration Rules of the Singapore International Arbitration Centre (4th ed, 1 July 2010).

During the revision of the original UNCITRAL Rules, an alternative proposal to insert the words “while respecting the equality of the parties” was not adopted. It was considered that the “shifting of all appointing power to the appointing authority safeguarded the principle of equality of all parties”.¹⁰⁵ The revised UNCITRAL Rules now provide that if there has been a failure to appoint an arbitrator, the Appointing Authority shall appoint the entire tribunal and may revoke any previous appointment.¹⁰⁶ This solution has been embraced by CEAC.¹⁰⁷

Where an arbitrator has to be replaced during the arbitration, a substitute is appointed pursuant to the appointment process.¹⁰⁸ If the CEAC Appointing Authority determines that in exceptional circumstances a party should be deprived of the right to appoint a substitute, the Appointing Authority may itself appoint the substitute arbitrator and authorise the arbitrators to continue with the arbitration if the hearing has been suspended.¹⁰⁹ Before taking any such decision, the CEAC Appointing Authority is required to collect views from the parties and other arbitrators.¹¹⁰ However, in order for the CEAC Appointing Authority to take this strong measure, it has to justify the existence of “exceptional circumstances” which, in effect, remove the right of a party to appoint its arbitrator. If the CEAC Appointing Authority had authorised the remaining arbitrators to continue with the arbitration, the award could be challenged on the ground that the tribunal was not composed according to the parties’ agreement. It may be noted that after the close of hearings the tribunal is only left with the writing of the award. However, a missing signature of one arbitrator may be used to seek the setting aside of the award or to resist enforcement of the award. If the parties consent to the continuation of the arbitration, they would not be able to challenge the award later because parties’ autonomy would effectively nullify attempts to resist the enforcement of the award on the ground that the composition of the arbitral tribunal is wrong. However, the death of an arbitrator after the close of hearings but

¹⁰⁴ Jan Paulsson and Georgios Petrochilos, Revision of the UNCITRAL Arbitration Rules at [87], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf.

¹⁰⁵ Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [60]-[61].

¹⁰⁶ Article 10(3), revised UNCITRAL Rules.

¹⁰⁷ Article 10(3), CEAC Rules.

¹⁰⁸ Article 14(1), CEAC Rules; based on Article 14(1), revised UNCITRAL Rules.

¹⁰⁹ Article 14(2) CEAC Rules; based on Article 14(2), revised UNCITRAL Rules.

¹¹⁰ Article 14(2) CEAC Rules; based on Article 14(2), revised UNCITRAL Rules.

before the award is rendered may necessitate a decision by the parties, arbitrators and the CEAC Appointing Authority to continue the arbitration for the purpose of efficiency.

Disclosure by and challenge of arbitrators is dealt with in Articles 11 to 13 CEAC Rules. A person who is approached to serve as an arbitrator is obliged to disclose “any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.”¹¹¹ This obligation is imposed on the arbitrator from the time of his appointment and throughout the arbitral proceedings.¹¹² An arbitrator may be challenged by a party “only for reasons of which it becomes aware after the appointment has been made”¹¹³ and the procedure for challenge is contained in Article 13 CEAC Rules, which is based on Article 13 of the revised UNCITRAL Rules.

The original UNCITRAL Rules did not make provision regarding the immunity of arbitrators. Most arbitral rules provide for such exclusion of liability.¹¹⁴ The revised UNCITRAL Rules and the CEAC Rules provide that the parties waive any claim against the arbitrators in relation to the arbitration, save only for “intentional wrongdoing.”¹¹⁵ CEAC made this explicit by adding two further sentences to Article 16 of the revised UNCITRAL Rules. These sentences now make it clear that “no arbitrator, employee or agent of an arbitrator shall be liable to any person for any act or omission in connection with an arbitration unless they are shown to have intentionally caused damage by conscious and deliberate wrongdoing.” The same immunity is also extended to CEAC and its organs and employees and any other service providers engaged by CEAC.

This exclusion of liability is very broad, and appears to exclude liability even for negligence. The Committee responsible for the revision of the UNCITRAL Rules in 2010 indicated that the

¹¹¹ Article 11, CEAC Rules; based on Article 11, revised UNCITRAL Rules.

¹¹² Article 11, CEAC Rules; based on Article 11, revised UNCITRAL Rules.

¹¹³ Article 12(2), CEAC Rules; based on Article 12(2), revised UNCITRAL Rules.

¹¹⁴ Eg Article 40, *International Chamber of Commerce Rules of Arbitration* (2012); Article 35, *International Centre for Dispute Resolution International Dispute Resolution Procedures* (as amended 1 June 2009); Rule 34, *Arbitration Rules of the Singapore International Arbitration Centre* (1 July 2010).

¹¹⁵ Article 16, CEAC Rules; Article 16, revised UNCITRAL Rules.

purpose of this provision was to protect an arbitrator against claims by parties dissatisfied that the award was caused by the negligence or fault of the arbitrator.¹¹⁶

7. Arbitration procedure

The CEAC Rules have introduced an express objective of efficiency into the arbitral process. The Rules now provide that in exercising its discretionary powers, the tribunal “shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute”.¹¹⁷

Article 3 revised UNCITRAL Rules has been supplemented by a paragraph which gives power to CEAC and the CEAC Appointing Authority to require from any party and the arbitrator the information they deem necessary to fulfill their function and “they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate.”¹¹⁸

The original UNCITRAL Rules did not afford to the respondent the opportunity to make a Response to the Notice of Arbitration before the tribunal was formed. The respondent thus did not have the opportunity to raise a counterclaim or jurisdictional challenge until the statement of defence was submitted.¹¹⁹ The revised UNCITRAL Rules, and consequently the CEAC Rules, now provide that the respondent shall communicate to the claimant a Response to the Notice of Arbitration.¹²⁰ The Response must deal with the matters raised by the Notice of Arbitration.¹²¹ The Response may also include a jurisdictional objection, counterclaim or claim for set-off, proposal for the designation of an appointing authority, proposal for the appointment of a sole

¹¹⁶ Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [73].

¹¹⁷ Article 17(1), CEAC Rules; based on Article 17(1), revised UNCITRAL Rules.

¹¹⁸ Article 3(6), CEAC Rules.

¹¹⁹ Michael Polkinghorne and Marily Paralika, “Revision of the UNCITRAL Arbitration Rules: The Current State of Play” (2008) 1 *Contemporary Asia Arbitration Journal* 1, 7.

¹²⁰ Article 4(1), CEAC Rules; based on Article 4(1), revised UNCITRAL Rules.

¹²¹ Articles 3(3)(c)-(g) and 4(1), CEAC Rules; based on Articles 3(3)(c)-(g) and 4(1), revised UNCITRAL Rules.

arbitrator, notification of the appointment of an arbitrator and a notice of arbitration where the respondent brings a claim against a party to the arbitration agreement other than the claimant.¹²²

Together with the Notice of Arbitration, the Response facilitates the early identification of the main issues in dispute.¹²³ It is intended that the Response be a “short document” and “a purely responsive pleading”.¹²⁴ The right of a respondent to rely upon a set-off in its statement of defence has been qualified by the addition of the words “provided the arbitral tribunal has jurisdiction over it.”¹²⁵

The original UNCITRAL Rules provided that the proceedings would be terminated for the default of the claimant in communicating its claim.¹²⁶ The revised UNCITRAL Rules, (and therefore the CEAC Rules), now provide that the proceedings shall be terminated in such circumstances unless there are other undecided issues which the tribunal considers are appropriate for decision.¹²⁷ Such an undecided issue would include a counter-claim by the respondent provided the tribunal has jurisdiction over the counter claim.¹²⁸

The original UNCITRAL Rules made no reference to a party to the arbitration appearing as a witness. Some national legal systems do not recognise that a party has that capacity.¹²⁹ In contrast, the revised UNCITRAL Rules and the CEAC Rules allow any individual to be a witness, “notwithstanding that the individual is a party to the arbitration or in any way related to

¹²² Article 4(2), CEAC Rules; based on Article 4(2)(a),(c)-(f), revised UNCITRAL Rules.

¹²³ Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [30].

¹²⁴ Jan Paulsson and Georgios Petrochilos, *Revision of the UNCITRAL Arbitration Rules* at [50]-[51], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf.

¹²⁵ Article 21(3), CEAC Rules; based on Article 21(3), revised UNCITRAL Rules; cp Article 19(3), original UNCITRAL Rules. For the background, see Clyde Croft and Christopher Kee, “Update on the UNCITRAL Arbitration Rules Revision” (2009) 11 *European Journal of Law Reform* 445, 446-449.

¹²⁶ Article 28(1), original UNCITRAL Rules.

¹²⁷ Article 30(1)(a), CEAC Rules; based on Article 30(1)(a), revised UNCITRAL Rules.

¹²⁸ Cp the original proposal discussed in Michael Polkinghorne and Marily Paralika, “Revision of the UNCITRAL Arbitration Rules: The Current State of Play” (2008) 1 *Contemporary Asia Arbitration Journal* 1, 17.

¹²⁹ Jan Paulsson and Georgios Petrochilos, *Revision of the UNCITRAL Arbitration Rules* at [142], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf; Judith Levine, “Current Issues in International Arbitral Practice as Reflected in the Revision of the UNCITRAL Arbitration Rules” (2008) 31 *University of New South Wales Law Journal* 266, 271-272.

a party.”¹³⁰ The words “related to a party” in the CEAC Rules include legal persons such as a corporation.¹³¹ This revised provision was inspired by Article 20.7 of the London Court of International Arbitration Rules which states that, “Any individual intending to testify to the Arbitral Tribunal on any issue of fact or expertise shall be treated as a witness under these Rules notwithstanding that the individual is a party to the arbitration or was or is an officer, employee or shareholder of any party”.¹³²

The CEAC Rules also require the tribunal to consult the parties before appointing independent experts to provide reports.¹³³ The parties must challenge experts prior to their appointment, except where the party only became aware of the grounds for challenge after the appointment was made.¹³⁴

The arbitral tribunal must render its final award within nine months, calculated “as of the constitution of the arbitral tribunal.”¹³⁵ although this time may be extended by the management of CEAC either at the request of the tribunal or on its own initiative when the circumstances warrant it necessary.¹³⁶ Such a time limit for rendering a final award is not stated in the revised UNCITRAL Rules. As compared to other institutional rules, a time period of nine months as provided by the CEAC Rules may be considered as too long. For example, the CIETAC Rules require the arbitral tribunal to render the award within a period of three months after the constitution of the arbitral tribunal and the ICC Rules give six months’ time to the tribunal to render its final award.¹³⁷

¹³⁰ Article 27(2), CEAC Rules; based on Article 27(2), revised UNCITRAL Rules.

¹³¹ Clyde Croft and Christopher Kee, “Update on the UNCITRAL Arbitration Rules Revision” (2009) 11 *European Journal of Law Reform* 445, 451.

¹³² Article 20.7, *LCIA Arbitration Rules* (1 January 1998). Jan Paulsson and Georgios Petrochilos. *Revision of the UNCITRAL Arbitration Rules* at [194], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf.

¹³³ Article 29(1), CEAC Rules; based on Article 29(1), revised UNCITRAL Rules.

¹³⁴ Article 29(2), CEAC Rules; based on Article 29(2), revised UNCITRAL Rules.

¹³⁵ Article 31a(1), CEAC Rules. The previous version of the CEAC Rules, adopted on 21 September 2010, provided that the tribunal shall render its final award as “from the date on which the Notice of Arbitration is received by CEAC.” This meant that, in effect, the arbitral tribunal had less than nine months to render its award because the period between the receipt by CEAC of the Notice of Arbitration and the constitution of the arbitral panel was included in that period.

¹³⁶ Article 31a(2), CEAC Rules.

¹³⁷ See Article 60(1), CIETAC Rules (2012) and Article 30, ICC Rules (2012).

8. Applicable Rules of Law

The original UNCITRAL Rules provided that the tribunal was to apply “the law” designated by the parties as applicable to the dispute.¹³⁸ Most other arbitral rules require the tribunal to apply the applicable “rules of law”.¹³⁹ Under the revised UNCITRAL Rules and the CEAC Rules the tribunal is now to apply the “rules of law designated by the parties as applicable to the substance of the dispute.”¹⁴⁰ CEAC has substantially amended Article 35(1) revised UNCITRAL Rules. Article 35(1) CEAC Rules now offers a model clause which enables parties to mark an appropriate box to express the law applicable to the dispute. These boxes refer to (i) the law of the jurisdiction of a country chosen by the parties, or (ii) the United Nations Convention on Contracts for the International Sale of Goods (CISG) without regard to any national reservation, supplemented for matters which are not governed by the CISG by the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles) and these supplemented by the otherwise applicable national law, or (iii) the UNIDROIT Principles supplemented by otherwise applicable law. The Article concludes by stating that “In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines as appropriate.” The use of the words “rules of law” in Article 35(1) CEAC Rules has expanded the options available to the parties. Indeed, the phrase “rules of law” has a broad meaning encompassing international rules and non-binding rules such as the UNIDROIT Principles.¹⁴¹ Nevertheless, combining CEAC Rules with the choice of the UNIDROIT Principles do provide a “full package” to parties.¹⁴² The parties may also choose to regulate different aspects of their relationship according to different rules of law.¹⁴³

¹³⁸ Article 33(1), original UNCITRAL Rules.

¹³⁹ Eg Article 21(1), *International Chamber of Commerce Rules of Arbitration* (2012); Article 34.1, *ACICA Arbitration Rules*; Article 33(1), *Swiss Rules of International Arbitration* (June 2012); Article 27.1, *Arbitration Rules of the Singapore International Arbitration Centre* (1 July 2010); Article 22.3, *LCIA Arbitration Rules* (1 January 1998).

¹⁴⁰ Article 35(1), CEAC Rules; Article 35(1), revised UNCITRAL Rules.

¹⁴¹ Giuditta Cordero Moss, “Revision of the UNCITRAL Arbitration Rules: Further Steps” (2010) 13 *International Arbitration Law Review* 96, 97; Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [155].

¹⁴² Eckart Brödermann, “The Impact of the UNIDROIT Principles on International Contract and Arbitration Practice – The Experience of a German Lawyer”, *Uniform Law Review*, Vol. 3, 2011, 589-612.

¹⁴³ Jan Paulsson and Georgios Petrochilos, *Revision of the UNCITRAL Arbitration Rules* at [259], available at http://www.uncitral.org/pdf/english/news/arbrules_report.pdf.

As the People's Republic of China (PRC) has ratified the CISG, the law of the jurisdiction of China in international commercial contracts may well be the CISG, as modified by other contract law provisions. The PRC, at the time of its ratification of the CISG, made an Article 96 declaration to require contracts to be in writing; this requirement has since become outdated even in China. Therefore, to ensure the smooth operation of the CISG as the governing law of the contract, the phrase "without regard to any national reservation" was added in the CEAC Model Arbitration Clause. This CEAC rule is also "based on the experience of such a confusion in a German to Chinese arbitration in which the Chinese party tried to avoid the application of the outdated Chinese reservation".¹⁴⁴ In all cases, the arbitral tribunal takes into account any usage of trade applicable to the transaction;¹⁴⁵ this is compatible with Article 9 CISG.

In order to understand the complexity of Article 35(1) CEAC Rules, regard must be paid to the fact that the original UNCITRAL Rules required the tribunal to apply the law determined by the conflict of laws rules it considered to be applicable.¹⁴⁶ The revised UNCITRAL Rules have removed the reference to conflict of laws rules. The tribunal is now to apply the law which it determines to be applicable.¹⁴⁷ However, the validity and enforceability of the award will be determined by the applicable law and the New York Convention.¹⁴⁸

A legal complexity may also arise where parties select the application of the UNIDROIT Principles as applicable law even though their respective countries are signatories to the CISG. The complexity arises from the fact that the CISG is a treaty that binds the ratifying State and serves as the governing law of the contract in international sales contracts. In displacing the operation of a treaty by mere agreement, the selection of the UNIDROIT Principles by the parties would in effect constitute an exclusion of the application of the CISG.¹⁴⁹ This situation

¹⁴⁴ Eckart Brödermann and Thomas Weimann, "CEAC", *Global Arbitration Review*, 2011, 12.

¹⁴⁵ Article 35(3), CEAC Rules; based on Article 35(3), revised UNCITRAL Rules.

¹⁴⁶ Article 33(1), original UNCITRAL Rules.

¹⁴⁷ Article 35(1), CEAC Rules; Article 35(1), revised UNCITRAL Rules.

¹⁴⁸ Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [156]. See Article 5, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 10 June 1958, 330 UNTS 38.

¹⁴⁹ UNCITRAL, in its 40th Plenary Session in 2007, formally endorsed the UNIDROIT Principles of International Commercial Contracts and commended their use by the international business community. See the Explanatory Comments on the Choice of Law Clause, available at <http://www.ceac-arbitration.com/index.php?id=23>.

raises the question as to whether parties' autonomy may justify the displacement of the operation of a treaty. This question should be answered in the affirmative because Article 6 CISG stipulates that, "The parties may exclude the application of this Convention or ... derogate from or vary the effect of any of its provisions." In such a case the choice of the parties of the UNIDROIT Principles as the applicable law of the contract could result in the CISG being relied on by arbitrators to fill the void.

The original UNCITRAL Rules provided that the tribunal must decide disputes in accordance with the terms of the contract.¹⁵⁰ The revised UNCITRAL Rules as well as the CEAC Rules have added the words "if any", consistent with the expansion of the Rules to claims relating to a defined legal relationship.¹⁵¹

9. Interim Measures

Article 26 revised UNCITRAL Rules regarding interim measures is considerably longer and more detailed than that in the original UNCITRAL Rules, and it has not been further amended by CEAC.¹⁵² An interim measure is now described as being a "temporary measure".¹⁵³ The provision gives examples of interim measures but does not provide an exhaustive list. Interim measures include orders for the maintenance or restoration of the status quo, for the prevention of imminent harm or prejudice to the arbitral process, for the preservation of assets that may be used to satisfy the award, or for the preservation of evidence.¹⁵⁴

The Rules set out a test for the grant of interim measures.¹⁵⁵ In particular, the party requesting an interim measure must satisfy the arbitral tribunal that:

¹⁵⁰ Article 33(3), original UNCITRAL Rules.

¹⁵¹ Article 35(3), CEAC Rules; based on Article 35(3), revised UNCITRAL Rules.

¹⁵² Cp Article 26, original UNCITRAL Rules.

¹⁵³ Article 26(2), CEAC Rules; based on Article 26(2), revised UNCITRAL Rules.

¹⁵⁴ Article 26(2)(a)-(d), CEAC Rules; based on Article 26(2)(a)-(d), revised UNCITRAL Rules.

¹⁵⁵ Article 26(3), CEAC Rules; based on Article 26(3), revised UNCITRAL Rules.

- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

The tribunal may require that a party disclose any change of circumstance that affects the basis upon which interim measures were granted.¹⁵⁶ The party requesting interim measures may be liable for costs or damages caused by their grant if the tribunal later finds that the interim measures should not have been granted.¹⁵⁷

Neither the CEAC Rules nor the revised UNCITRAL Rules provide for the making of preliminary orders before the question of temporary measure is decided.¹⁵⁸ As the final award will be rendered within nine months “as of the constitution of the arbitral tribunal”¹⁵⁹, it is likely that the interim measures may last until the award is rendered provided the circumstances requiring interim measures have not changed.

According to the CEAC Rules, if a party requests any assistance from a judicial authority, such request should not be considered incompatible with the agreement to arbitrate; nor should it be considered as waiver of that agreement.¹⁶⁰

10. Optional Waiver of the Right to Appeal

Interestingly, the CEAC Rules do not contain an optional waiver of the right to appeal. The Annex to the revised UNCITRAL Rules includes an optional waiver of the right of appeal. The waiver provides: “The parties hereby waive their right to any form of recourse against an award

¹⁵⁶ Article 26(7), CEAC Rules; based on Article 26(7), revised UNCITRAL Rules.

¹⁵⁷ Article 26(8), CEAC Rules; based on Article 26(8), revised UNCITRAL Rules.

¹⁵⁸ The Model Law provides for the issuance of a Preliminary Order before the question of Interim Measures is decided. The order lasts for twenty-one days from the date of its issuance. See Article 17(C)(4), Model Law.

¹⁵⁹ Section 31A(1) CEAC Rules.

¹⁶⁰ Article 26(9), CEAC Rules; based on Article 26(9), revised UNCITRAL Rules.

to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.” Note that the validity of the waiver is determined under the applicable law. It had been proposed that the issue of waiver be addressed in one of the Articles of the revised UNCITRAL Rules, but the difficulties of determining its proper limits saw the issue relegated to an optional statement in the Annex.¹⁶¹

A similar provision regarding waiver is also present in the ICC Rules which, however, has been proved to be infructuous.¹⁶² In a recent decision by the Hong Kong Court of Final Appeal in the *FGH Case*, the respondent (a State) successfully raised the defence of Sovereign Immunity barring the court’s jurisdiction to enforce an award against it.¹⁶³ It is a common understanding that an ‘arbitration agreement’ serves as a waiver of immunity for the State from the jurisdiction of the arbitral tribunal, however, at the time of enforcement of the award rendered by the same tribunal, the enforcement court requires another waiver of immunity from the State before the award can even be recognised by that court.¹⁶⁴ Recently, the Privy Council in the *Gecamines Case* has also ruled that State-owned enterprises may not be subjected to satisfy the claims of a party under an award against that State at the time of execution of the award because State-owned enterprises (SOEs) are a different legal person.¹⁶⁵ These two cases have made it clear that such kind of waiver provision has no significant effectiveness when one party is a State.¹⁶⁶

¹⁶¹ Report of the United Nations Commission on International Trade Law. Forty-third Session 21 June-9 July 2010 (A/65/17) at [142]-[151].

¹⁶² Article 34 (6), ICC Rules (2012).

¹⁶³ *The Democratic Republic of the Congo and others v. FG Hemisphere Associates LLC*, (FACV No. 5, 6&7 of 2010), decided by the Court of Final Appeal of Hong Kong on 8 June 2011.

¹⁶⁴ For a detailed discussion on this point see Rajesh Sharma, “Enforcement of Arbitral Awards and Defence of Sovereignty: The Crouching Tiger and the Hidden Dragon”, *Lapland Law Review*, Issue 1 (2011), 252-264.

¹⁶⁵ *La Générale des Carrières et des Mines (Appellant) v. F.G. Hemisphere Associates LLC (Respondent)*, [2012] UKPC 27, Privy Council Appeal No 0061 of 2011, decided on 17 July 2012. The Court also mentioned that assets of SOEs can be used to satisfy claims against the state if they are found on the facts to be an organ of the State however the threshold is rather high. The court states that “where a separate juridical entity is formed by the State for what are on the face of it commercial or industrial purposes, with its own management and budget, the strong presumption is that its separate corporate status should be respected, and that it and the State forming it should not have to bear each other’s liabilities” [para 29] and if a state-owned entity is to be equated with the State, the affairs of the entity and the State have to be “so closely intertwined and confused that the entity could not properly be regarded for any significant purpose as distinct from the State and vice versa” [para 29] (emphasis added).

¹⁶⁶ See Rajesh Sharma, “Enforcement of Arbitral Awards in Hong Kong: Legal and Political Challenges”, in V.K. Bhatia, Christopher N. Candlin, and Maurizio Gotti (eds), *Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects*, Ashgate, England, 2012, 73-92.

11. Reasonableness of Expenses

Article 40(1) CEAC Rules requires that the arbitral tribunal “state the costs of the arbitration in its award.” The Article then proceeds to provide an exhaustive list of costs, which includes VAT, if applicable, in relation to the costs.¹⁶⁷ The revised UNCITRAL Rules provide that the “fees of the arbitral tribunal shall be reasonable in amount”.¹⁶⁸ However, Article 41 CEAC Rules is different from Article 41 revised UNCITRAL Rules in that it makes no reference to the reasonableness of the fees and expenses of the arbitrators. The fees are determined by the CEAC Management at the request of the arbitral tribunal¹⁶⁹ and will be calculated in accord with the CEAC Schedule of Costs in force at the time of the commencement of the arbitral proceedings. The Schedule of Cost, which is appended to the CEAC Rules, has been determined by the General Assembly of CEAC on 2 September 2008. The revised UNCITRAL Rules have added a separate requirement that the travel and other expenses of arbitrators, the costs of expert advice and the travel and other expenses of witnesses must also be reasonable and reasonably incurred.¹⁷⁰ The CEAC Rules make no reference to reasonableness in these respects.¹⁷¹

12. Conclusion

CEAC, “as a dedicated venue for the Sino-foreign arbitration” potentially plays a significant role when a European or non-Chinese party engages with Chinese partners and has reservations in accepting arbitration in China due to “different legal traditions, business practices and cultural backgrounds”¹⁷² The main purpose of the CEAC Rules is to “provide a tailor-made solution for international disputes in China-related matters. This applies, most importantly, to international contracts with Chinese parties, to joint venture agreements with Chinese or Chinese-controlled

¹⁶⁷ It appears that the drafters of this revision overlooked the need to bold Article 40(f) and 40(g).

¹⁶⁸ Article 39(1), original UNCITRAL Rules.

¹⁶⁹ At the time of the tribunal’s request, “the arbitration tribunal shall also request a decision, if necessary, under No. 4 of the Schedule of Costs in light of “excessive workload of the arbitrators””.

¹⁷⁰ Article 40(2)(b)-(d), revised UNCITRAL Rules.

¹⁷¹ Article 40(1)(b)-(d), CEAC Rules.

¹⁷² Fiducia Management Consultants, “Resolve Disputes Through the Chinese European Arbitration Centre”, *China Focus*, January/February 2011.

parties or to contracts with subsidiaries of Chinese companies in other countries (for example, Europe, North and South America, Africa)”¹⁷³

CEAC’s Core Rules differ from the revised UNCITRAL Rules in the following respects:

- The initiation of institutional arbitration (Article 3(2) and 3(6));
- The exclusion of liability of CEAC as an institution and its organs (Management, Secretary General, Advisory Board) (Article 16);
- Hamburg as the standard seat of arbitration with the possibility of organising the hearings in other venues (Article 18(1));
- The time limits for the award (Article 31a);
- The choice of law clause (Article 35(1)); and costs and fees (Articles 40-43).¹⁷⁴

Most Articles of the revised UNCITRAL Rules have been adopted by CEAC because the UNCITRAL Rules support neutrality which is one of the guiding principles of CEAC. The changes in the CEAC Rules, achieved by the adoption of the Core Rules, relate in essence to the ability of parties to use the Beijing-Hamburg Conciliation Centre Rules prior to proceeding to arbitration, Notice of Arbitration, powers of the CEAC Appointing Authority, exclusion of liability of all CEAC personnel, the time limit for rendering a final award, costs, fees and expenses of arbitrators. All these changes have been made to meet the specific needs of resolving China-related disputes. The CEAC Rules are a timely and trade-related adaptation of the revised UNCITRAL Rules, specifically (but not exclusively) to resolve disputes between European and Chinese business people.

¹⁷³ Eckart Brödermann and Thomas Weimann, “CEAC”, *Global Arbitration Review*, 2011, 10.

¹⁷⁴ Eckart Brödermann and Thomas Weimann, “CEAC”, *Global Arbitration Review*, 2011, 13.