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I. CIETAC Officially Releases "Procedures for Cases Administered under the UNCITRAL Arbitration Rules"

In 1976, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules ("UNCITRAL Rules") were formally promulgated. UNCITRAL Rules provide a comprehensive set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship and are widely used in administered arbitrations.

When the parties choose to arbitrate under UNCITRAL Rules, they could choose an arbitration institution to administer arbitration under the UNCITRAL Rules. The China International Economic and Trade Arbitration Commission ("CIETAC") has specially formulated the "Procedures for Cases Administered under the UNCITRAL Arbitration Rules" ("Procedures"), effective from March 1, 2025. The Procedures comprise 25 articles focusing on the standardization and internationalization of arbitration case management. This article primarily elaborates on several key points:

- **Scope of Application**

According to Article 2 of the Procedures:

1. The Procedures apply to cases where parties agree in the arbitration agreement to apply the UNCITRAL Rules and designate CIETAC as the administering arbitral institution. An arbitration agreement initiating arbitration based on:

- Agreement to submit disputes to CIETAC under the UNCITRAL Rules, or to manage arbitral proceedings.

- Agreement to apply the Procedures for arbitration or manage arbitral proceedings.

- Similar agreements.

2. Arbitration procedures shall be conducted in accordance with the UNCITRAL Rules as amended and supplemented by these Procedures, unless parties agree otherwise, provided that such agreements are enforceable and do not conflict with mandatory provisions of applicable arbitration laws.

3. These Procedures do not preclude CIETAC from serving as the designated institution under the UNCITRAL Rules or providing specific arbitration support services for ad hoc arbitrations conducted under the UNCITRAL Rules, as specified by parties or designated institutions.

4. These Procedures may also apply to investor-state arbitrations managed by CIETAC under the UNCITRAL Rules, based on treaties providing protection for investments or investors. Case procedures shall adhere to the Arbitration Law of the People's Republic of China and CIETAC's current arbitration rules, complementing the UNCITRAL Rules.

- **Composition and Authority of the Arbitral Tribunal**

Firstly, the parties may expressly agree on the composition and the appointing authority of the arbitral tribunal.

Under the UNCITRAL Rules Article 7(1), if the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

(UNCITRAL Rules Article 9(1))

Under the UNCITRAL Rules Article 7(2), notwithstanding Article 7(1), if no other parties have responded to a party’s proposal to appoint a sole

arbitrator within the time limit provided for in Article 7(1) **and** the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Given the broad criteria of "specific circumstances," Article 8 of the Procedures specifies that if one party requests CIETAC to appoint a sole arbitrator under Article 7(2) of the UNCITRAL Rules, CIETAC shall consider comprehensively the amount in dispute, the complexity and urgency of the case, and any other factors deemed relevant by CIETAC when deciding whether the arbitral tribunal should consist of a sole arbitrator.

- **Conduct of Hearings**

Article 13 of the Procedures emphasizes that the arbitral tribunal, after obtaining the parties' opinions, may decide to conduct hearings in person, via remote video, or other appropriate electronic means based on the specific circumstances of the arbitration case. Therefore, the Procedures acknowledge in writing the feasibility and effectiveness of electronic communication methods.

However, in practice, whether parties from different countries could participate in remote video hearings largely depends on the final decision of the arbitral tribunal.

- **Interim Measures**

Under the UNCITRAL Rules, parties may directly apply to the arbitral tribunal for interim measures. However, Article 16 of the Procedures emphasizes compliance with Chinese legal restrictions and requirements. When parties apply for interim measures, CIETAC shall

transfer the application to the competent court designated by the parties for consideration of interim measures.

It is worth noting that on April 2, 2019, the Supreme People's Court of the People's Republic of China and the Government of Hong Kong signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region in Hong Kong (the "Arrangement"). According to the Arrangement, parties to institutional arbitral proceedings in Hong Kong may apply to Mainland courts for interim measures and vice versa.

- **Conclusion**

It is a welcomed development that CIETAC is seeking to diversify its services and adopt a more flexible approach in accommodating and administering arbitrations under the UNCITRAL Rules.

In our experience, CIETAC tends to assume a more active role in procedural management compared to other international arbitral institutions. While this may, at times, facilitate the proceedings for both the parties and the tribunal, it may also give rise to concerns regarding the potential impact on the independence of the tribunal. Whether the Procedures will ultimately fulfill their intended purpose remains to be seen.

II. Reply of the Supreme People's Court on the Standards for Calculating Interest on Late Payments in Foreign Currencies and in the Currencies of Hong Kong, Macao and Taiwan

The Reply of the Supreme People's Court Regarding the Standards of Calculating Interest on Overdue Payments in Foreign, Hong Kong, Macao, and Taiwan Currency ("**the Reply**") came into force on February 13, 2025.

In this publication, we will briefly introduce you to the key content of the Reply.

- **The Interest Rate is Explicitly Agreed**

If there is an agreement on the standard for calculating the interest rate, the parties' agreement should prevail. However, if the agreed standard exceeds the upper limit stipulated by the applicable governing law of the dispute, the excess portion will not be supported.

- **The Interest Rate is Not Agreed Upon or the Agreement is Unclear**

When the parties have not agreed upon a standard for calculating the interest rate or the agreement is unclear, the standard should be determined in the following manner:

(1) For calculating interest on overdue payments in US dollars, the average interest rates for US dollar loans with maturities of less than 3 months, 3 to 6 months (inclusive), 6 to 12 months (inclusive), 1 year, and more than 1 year, as published in the appendices of the "China Monetary Policy Execution Report" regularly released on the official website of the People's Bank of China, could be used, and the People's Court should determine the rate based on the specific circumstances of the case.

(2) For calculating interest on overdue payments in Euro, British Pound, Japanese Yen, Australian Dollar, Swiss Franc, Canadian Dollar, New Zealand Dollar, and Singapore Dollar, reference could be made to the Euro Interbank Offered Rate (EURIBOR), the Sterling Overnight Index Average (SONIA), the Tokyo Overnight Average Rate (TONA), the Australian Bank Bill Swap Rate (BBSW), the Swiss Average Rate Overnight (SARON), the Canadian Overnight Repo Rate Average (CORRA), the New Zealand Bank Bill Benchmark (BKBM), and the Singapore Overnight Rate Average (SORA), respectively.

(3) For calculating interest on overdue payments in other foreign currencies, reference could be made to the benchmark interest rates for the respective currencies as published on the official websites of the relevant central banks.

- **Interest Rates for Hong Kong Dollar, Macao Pataca, and New Taiwan Dollar**

For the standards of calculating interest on overdue payments in Hong Kong Dollar, Macao Pataca, and New Taiwan Dollar, if the parties have agreed upon the interest rate, it should be used. If the parties have not agreed upon or the agreement is unclear, reference could be made to the Hong Kong Interbank Offered Rate, the Macao Pataca Composite Interest Rate, and the New Taiwan Dollar Basic Loan Rate.

- **Conclusion**

Before the Reply, the standards for calculating interest on overdue payments in foreign currencies (including Hong Kong, Macao, and Taiwan) have been inconsistent in the judicial practice of various courts. The Reply unifies the criteria for adjudication and provides guidance on interest rates for cross-border commercial disputes, thus it would be easier for interest estimation.

III. The State Administration for Market Regulation and the National Intellectual Property Administration jointly released the "Provisions on Case Categories for Intellectual Property Cases in the Market Supervision Field (Trial)"

On December 31, 2024, the State Administration for Market Regulation and the National Intellectual Property Administration jointly released the "Provisions on Case Categories for Intellectual Property Cases in the Market Supervision Field (Trial) (the "**Provision**") to strengthen the administration of causes of action for intellectual property cases and to standardize intellectual property law enforcement. This publication provides a brief introduction to the main points set forth in the Provision.

- **Hierarchy of Causes of Action**

The Provision establishes a three-tiered hierarchy for causes of action: primary, secondary and tertiary. The primary tier encompasses broad designations, while the secondary and tertiary tiers offer progressively narrower definitions, ensuring each alleged infringement can be addressed at the appropriate level of precision.

- **Applicable Rules on the Causes of Action**

Another key component of the Provision is the statement of applicable rules on the causes of action. First, the enforcement authorities are required to use these enumerated causes of action in a standardized manner. To ensure clarity, the term “Suspected” should precede a cause of action when no final enforcement decision has been reached or when a violation is identified but no penalty is imposed.

Secondly, when a precise match at the tertiary level is unavailable, the authorities may look at the corresponding secondary or primary cause of action. Enforcement authorities must use tertiary-level causes where applicable, ascending to secondary or primary level only if no subordinate category exists.

Thirdly, article 7 of the Provision states that in cases involving multiple infringements, different causes of action may be applied concurrently. Where these offenses are distinct in nature, enforcement authorities may list both relevant causes, each placed at the appropriate level of the hierarchy.

Additionally, the Provision clarifies that if a case is initially handled under this framework but later reassigned to a different legal regime, the applicable cause of action remains relevant until the transfer occurs. Thereafter, subsequent measures follow the new framework.

- **Dynamic Adjustments**

Article 9 of the Provision instructs regulators to dynamically adjust the categories of causes of action in response to modifications in applicable laws, administrative regulations, or actual enforcement experiences. If an emerging type of violation cannot be matched to any listed cause of action, enforcement authorities are directed to escalate the matter to the State Administration for Market Regulation for further guidance.

- **Categories of Intellectual Property Causes of Action**

In the attached Annex, the Provision provides 10 categories containing a total of 98 distinct causes of action. These categories are divided into: (1) trademark usage (13 causes), (2) trademark infringement (12 causes), (3) trademark application agency (24 causes), (4) trademark printing (8 causes), (5) collective or certification mark management (6 causes), (6) geographical indications (6 causes), (7) special or Olympic marks (7 causes), (8) patent usage (8 causes), (9) patent application agency (12 causes), and (10) other types of cases (2 causes).

By enumerating and defining each form of misconduct, the attached Annex provides detailed guidance for enforcement authorities in classifying and handling a broad spectrum of intellectual property violations. This comprehensive structure may clarify the specific legal basis for each alleged act, thereby strengthening both the consistency and accuracy of market regulation in the intellectual property arena.

- **Conclusion**

Causes of action help authorities classify disputes and apply laws effectively. The Provision improves enforcement clarity but has challenges. Its three-tiered system may oversimplify complex cases, especially in patent law. While Article 9 allows adjustments for new issues, reliance on escalation may cause delays. Its long-term effectiveness remains to be seen.

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