JUN HE BULLETIN

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Dispute Resolution

CIETAC "Jurisdictional Turf War" Comes To An End?

On April 17, 2013, China International Economic and Trade Commission Shanghai Commission ("**CIETAC Shanghai**") published a notice of name change on its official website and the Legal Daily, announcing that, with the approval of Shanghai Municipal People's Government and Shanghai Commission Office for Public Sector Reform, it was renamed "Shanghai International Arbitration Center" ("**SHIAC**") and would use a new version of Arbitration Rules and Panel of Arbitrators from May 1, 2013.

Before that, China International Economic and Trade Commission South China Commission ("**CIETAC South China**") published a notice on October 22, 2012, announcing that it was renamed "South China International Economic and Trade Arbitration Commission" (also the "Shenzhen Court of International Arbitration," "**SCIA**"). SCIA started using its new version of Arbitration Rules and Panel of Arbitrators from December 1, 2012.

SHIAC's announcement of name change may signal an end to the "jurisdictional turf war" among China International Economic and Trade Commission ("**CIETAC**"), CIETAC Shanghai and CIETAC South China.

I. Jurisdictional Turf War Revisited

Before the "jurisdictional turf war" occurred, CIETAC, CIETAC Shanghai and CIETAC South China used to jointly promote the "CIETAC" brand and apply the same Arbitration Rules and Panel of Arbitrators. Ever since the promulgation of CIETAC Arbitration Rules (2005), the parties may select at their own discretion one of the three commissions to apply for arbitration.

However, on February 3, 2012, CIETAC announced that it would use a new version of Arbitration Rules from May 1, 2012 ("**2012 Rules**"), which provide that, for any disputes involving CIETAC's "General Arbitration Clause,"[1] even if the clause was made prior to May 1, 2012, and even if the parties clearly agreed to "submit any dispute to CIETAC for arbitration in Shanghai or Shenzhen," such cases must be administered by CIETAC. This means that, some cases which would have been administered by CIETAC Shanghai or CIETAC South China according to CIETAC's 2005 Rules ("**2005 Rules**") shall instead be administered by CIETAC according to the 2012 Rules. As a result, both CIETAC Shanghai and CIETAC South China publicly expressed their refusal to implement the 2012 Rules, and one after the other announced that they would promulgate their own Arbitration Rules or temporarily use the 2005 Rules.

Thereafter, with CIETAC on one side, and CIETAC Shanghai together with CEITAC South China on the other, both sides published several announcements accusing each other, which served to escalate the conflict. On December 31, 2012, CIETAC made an announcement prohibiting CIETAC Shanghai and CIETAC South China from further use (overtly or covertly) of the Chinese and English names, the brand and relevant logos of "China International Economic and Trade Arbitration Commission," prohibiting them from carrying out any arbitration activities in the name of CIETAC Shanghai and CIETAC South China, and declaring a termination of its authorization for CIETAC Shanghai and CEITAC South China to accept and administer arbitration applications.

In return, CIETAC Shanghai and CIETAC South China (already SCIA then) made a joint announcement on January 21, 2013, claiming that both of them are legally established arbitration institutions who may independently exercise arbitration functions.

In addition, the Shanghai Municipal Bureau of Justice and the Department of Justice of Guangdong Province issued documents[2] respectively on October 11, 2012 and December 6, 2012, confirming that CIETAC Shanghai and CIETAC South China are lawful arbitration institutions having the right to accept and administer arbitration cases. On January 25, 2013, the Legislative Affairs Commission of Shanghai Municipal People's Congress also issued a document[3] confirming that CIETAC Shanghai has the lawful qualification to independently exercise arbitration functions.

Despite that, after the "jurisdictional turf war," in cases accepted by CIETAC Shanghai and CIETAC South China (or SCIA), many respondents raised objections to jurisdiction based on relevant announcements under the "jurisdictional turf war," some respondents even applied to the courts requesting a ruling that the arbitration agreements be declared null and void. We can say that the "jurisdictional turf war" created difficulties for CIETAC, CIETAC Shanghai and CIETAC South China in respect of accepting cases and damaged the reputable "CIETAC" brand.

II. Reforms Accompanying the Name Changes

CIETAC Shanghai and CIETAC South China adopted some reform measures along with their name changes, including the following:

1. Use of New Arbitration Rules

CIETAC Shanghai began to use its new version of Arbitration Rules from May 1, 2013. According to Mr. Cen Furong, Chairman

[1] General Arbitration Clause refers to "Any dispute arising out of or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration under the arbitration rules of CIETAC effective upon the application for arbitration. The arbitration award shall be final and binding upon both parties."

[2] See Hu Si Fa Zhi [2012] No. 7 and Yue Si Han [2012] No. 413.

[3] See Hu Hui Fa [2013] No. 2.

of CCPIT Shanghai and SHIAC, the Arbitration Rules formulated by SHIAC this time absorbed advanced experience and practice of international arbitration development in recent years, and added or adjusted provisions such as “use of other institutions’ arbitration rules,” “extension of the time limit to select arbitrators for the parties” and “third party participation in arbitration proceedings.”[4]

CIETAC South China began to use its new version of Arbitration Rules from December 1, 2012. The new version adopts a system of unified proceedings for both domestic and international arbitrations and no longer differentiates between them as the old rules did. Besides, such new version absorbs experience of international arbitration development in many of its provisions, such as “several contracts in one arbitration”, “consolidated arbitration,” “additional parties” and “payment by installment for arbitration fee in advance,” etc.

2. Use of New Panel of Arbitrators

According to CIETAC Shanghai’s newly released Panel of Arbitrators, it has 625 arbitrators, among which, 199 arbitrators are foreigners or from Hong Kong, Macau and Taiwan (from 39 countries and areas), which accounts for one-third of all the arbitrators.

In CIETAC South China’s newly released Panel of Arbitrators, 180 arbitrators are foreigners or from Hong Kong, Macau and Taiwan (from 25 countries), which accounts for 34% of all the arbitrators.

With a large number of foreign arbitrators and arbitrators from Hong Kong, Macau and Taiwan joining SHIAC and SCIA, the two arbitration institutions are more international than their counterparts in Beijing.

3. Use of New Model Arbitration Clause

After the name change, SHIAC published a new Model Arbitration Clause on its official website. According to the clause, if a party concerned intends to submit a dispute to SHIAC for resolution, it may set out in the arbitration agreement that the relevant dispute shall be submitted to Shanghai International Economic and Trade Arbitration Commission or Shanghai International Arbitration Center.

Before that, SCIA also published a new Model Arbitration Clause on its official website. According to the clause, if a party concerned intends to submit a dispute to SCIA for resolution, it may set out in the arbitration agreement that the relevant dispute shall be submitted to South China International Economic and Trade Arbitration Commission or Shenzhen Court of International Arbitration.

III. Arbitration Practice in China: Looking Forward

According to Mr. Cen Furong, in order to settle the “jurisdictional turf war” as soon as possible, the voluntary name change of CIETAC Shanghai is beneficial to settle the disputes over name, nature and jurisdiction power between institutions. Meanwhile, he also expressed that, the name change is only a modification of registration and the arbitration institution along with its status are not changed, and thus SHIAC shall not be deemed as a newly established arbitration institution. This not only maintains the stability of the institution and its services, but also exerts no impact on its jurisdiction before and after the name change. Besides, the name change provides clarity for parties when naming the parties an arbitration institution.

On the whole, the name change and use of new Arbitration Rules by CIETAC Shanghai and CIETAC South China will make them more distinguishable from CIETAC. In addition, the previous troubles caused to parties concerned by the “jurisdictional turf war” in respect of arbitration application and selection of arbitration institutions will gradually vanish.

From the perspective of arbitration practice, the parties shall pay attention to the following points after such name change.

1. In respect of any arbitration clause to be executed, if the parties select to submit the dispute to one of the three arbitration institutions, it is advised that the clause shall be made according to their respective Arbitration Rules and Model Arbitration Clause:

First, to select CIETAC, the arbitration clause may use the following Model Arbitration Clause: “Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.”

Second, to select SHIAC, the arbitration clause may use the following two Model Arbitration Clauses: “Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Economic and Trade Arbitration Commission for arbitration” or “Any dispute arising from or in connection with this Contract shall be submitted to Shanghai International Arbitration Center for arbitration.”

Third, to select SCIA, the arbitration clause may use the following two Model Arbitration Clauses: “Any dispute arising from or in connection with this contract shall be submitted to South China International Economic and Trade Arbitration Commission (SCIA) for arbitration”” or “Any dispute arising from or in connection with this contract shall be submitted to Shenzhen Court of International Arbitration (SCIA) for arbitration.”

Besides, in the arbitration clause, the parties may also agree upon matters such as the assumption of cost, place of arbitration and/or hearing, arbitration language, number of arbitrators, nationality of arbitrators and whether the summary procedure is applicable.

For any arbitration clause that designates SHIAC or SCIA as arbitration institution, though theoretically speaking the risk still remains that the parties may challenge the arbitration institution based on the “jurisdictional turf war” in future arbitrations, as the use of the new names of the two institutions itself expresses the real intention of the parties, such risk of a jurisdictional dispute should be limited.

2. In respect of any arbitration clause already made which designates CIETAC Shanghai or CIETAC South China as arbitration institution, the parties may decide whether to make amendment thereto according to actual conditions.

Though both SHIAC and SCIA expressed their willingness to accept the cases agreed to be arbitrated by “China International Economic and Trade Arbitration Commission Shanghai Commission” or “China International Economic and Trade Arbitration Commission South China Commission” after their name change, according to the current situation, there still exists the possibility that the parties may raise objection to jurisdiction based on relevant announcements under “jurisdictional turf war” and even apply to the people’s courts for ruling the arbitration agreements null and void.

However, the trend of such cases is increasingly clear. In Shenzhen, on November 20, 2012, Shenzhen Intermediate People’s Court of Guangdong Province made a ruling on a case numbered Shen Zhong Fa She Wai Zhong Zi [2012] No. 226 over a jurisdictional dispute (whereby the respondent petitioned the court to affirm that no arbitration agreement exists between the parties), under which the court held that, the arbitration agreement in which the parties agreed to submit disputes to China International Economic and Trade Arbitration Commission South China Commission is effective and the relevant dispute shall be

[4] See “CIETAC Shanghai Change Name and Use New Rules and Panel of Arbitrators Next Month”, from report dated April 12, 2013 in “Yicai.com” at http://www.yicai.com/news/2013/04/2621445.html.

submitted to South China International Economic and Trade Arbitration Commission (Shenzhen Court of International Arbitration) for arbitration.[5]

While in Shanghai, though by far no public ruling supports SHIAC's acceptance of the cases originally agreed to be arbitrated by CIETAC Shanghai, as both the Legislative Affairs Commission of Shanghai Municipal People's Congress and Shanghai Municipal Bureau of Justice have issued documents confirming that SHIAC is a lawful arbitration institution which may independently exercise arbitration functions, we presume that relevant courts are more likely to make rulings favorable to SHIAC in such cases.

Therefore, as to any arbitration clause already made which designates CIETAC Shanghai or CIETAC South China as arbitration institution, if both the parties intend to make amendment thereto, they may change the name of the arbitration institution to SHIAC or SCIA, but if such amendment involves hindrance and difficulty, there is no need for the parties to insist on the amendment.

Regarding the "jurisdictional turf war" among the three institutions, a relevant person-in-charge of SCIA said: "During the first 30 years in reform and opening up, the foreign-related arbitration institutions in Beijing, Shanghai and Shenzhen had a long-term good cooperation, who jointly promoted the reputation and influence of China's international arbitration. Today, to meet the development needs of a new era, the three institutions have ended their cooperation relationship; however, they shall further strengthen independence and openness, step up management and services innovation and protect the real intention and legitimate rights of the parties, so as to gain a foothold in the three economically developed areas respectively and contribute to establish an internationalized and legalized commercial environment."[6] We hope that the three institutions may conduct positive and healthy competition.

Along with the end of the "jurisdictional turf war," a geographic landscape is being shaped among the five arbitration institutions, namely CIETAC, Beijing Arbitration Commission, SHIAC, Shanghai Arbitration Commission and SCIA, doing arbitration in three areas of Beijing, Shanghai and Shenzhen. In recent years, Beijing Arbitration Commission and Shanghai Arbitration Commission have been rapidly developing. Specifically, the Beijing Arbitration Commission offers a reasonable pay to arbitrators and thus promote their efficiency; the Shanghai Arbitration Commission recruits more foreign arbitrators and proactively expands its foreign-related arbitration services. We hope that all five arbitration institutions may become more open and international with orderly competition, so as to create a sound arbitration resolution platform for the parties and jointly promote further development of China's arbitration.

[5] See http://www.sccietac.org/upload/2013131_1359624545419.pdf.

[6] See "SCIA and SHIAC: Independent Arbitration Institution Not Relying on Authorization", from report dated January 31, 2013 in "Yicai.com" at http://www.yicai.com/news/2013/01/2463616.html.

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争议解决法律热点问题

贸仲委“管辖权之争”暂告一段落

2013 年 4 月 17 日，中国国际经济贸易仲裁委员会上海分会（下称“**CIETAC 上海分会**”）分别在其官方网站以及《法制日报》刊登更名公告，宣布经上海市人民政府批准，上海市机构编制委员会批复同意，中国国际经济贸易仲裁委员会上海分会更名为“上海国际经济贸易仲裁委员会”（下称“**上海贸仲**”），并同时启用“上海国际仲裁中心”的名称。该公告还宣布，上海贸仲自 2013 年 5 月 1 日起启用新版《仲裁规则》和《仲裁员名册》。

在此之前，中国国际经济贸易仲裁委员会华南分会（下称“**CIETAC 华南分会**”）已于 2012 年 10 月 22 日发布公告，宣布其更名为“华南国际经济贸易仲裁委员会”（下称“**华南国仲**”），并同时使用“深圳国际仲裁院”的名称。自 2012 年 12 月 1 日起，华南国仲已启用其新版《仲裁规则》和《仲裁员名册》。

此次上海贸仲宣布更名，可能使中国国际经济贸易仲裁委员会（下称“**CIETAC**”）、CIETAC 上海分会、CIETAC 华南分会之间的“管辖权之争”暂告段落。

一、 “管辖权之争”简要回顾

“管辖权之争”发生之前，CIETAC 与 CIETAC 上海分会、CIETAC 华南分会曾经共同推广“贸仲”品牌，使用通用仲裁规则和统一的仲裁员名册。而且，自 CIETAC 2005 版仲裁规则启用时起，如果当事人约定采用“通用仲裁条款”[1]，将来发生争议时，当事人就可以自行选择向 CIETAC、CIETAC 上海分会和 CIETAC 华南分会其中一家申请仲裁，以申请人首先作出的选择为准。

然而，2012 年 2 月 3 日，CIETAC 宣布将于 2012 年 5 月 1 日起启用新版仲裁规则。该规则规定，对于约定“通用仲裁条款”的案件，即使该等条款订立在 CIETAC 2012 版仲裁规则施行之前，甚至当事人明确约定“将争议提交 CIETAC，在上海或深圳仲裁”，也都必须由 CIETAC 受理。这意味着，按照 CIETAC 2005 版仲裁规则应由 CIETAC 上海分会或 CIETAC 华南分会受理的部分案件，根据新版仲裁规则均应由 CIETAC 受理。为此，CIETAC 上海分会与 CIETAC 华南分会均公开表示拒绝执行 CIETAC 2012 版仲裁规则，并相继宣布启用其自行修订的仲裁规则或暂时沿用 CIETAC 2005 版仲裁规则。

此后，CIETAC 以及 CIETAC 上海分会、CIETAC 华南分会两个阵营之间多次发布公告指责对方，令矛盾持续升级。2012 年 12 月 31 日，CIETAC 再次发布公告，宣布禁止 CIETAC 上海分会和 CIETAC 华南分会以任何方式继续使用、变相使用“中国国际经济贸易仲裁委员会”中英文名称和品牌及相关标识，不得继续以 CIETAC 上海分会、CIETAC 华南分会名义从事任何仲裁活动，同时宣布终止对 CIETAC 上海分会、CIETAC 华南分会接受仲裁申请并管理仲裁案件的授权。

对此，CIETAC 上海分会和华南国仲（此时 CIETAC 华南分会已更名）于 2013 年 1 月 21 日发布联合公告，宣称 CIETAC 上海分会和华南国仲均为合法设立的仲裁机构，依法独立履行仲裁职能。

此外，上海司法局和广东省司法厅也相继于 2012 年 10 月 11 日、2012 年 12 月 6 日发文[2]，分别确认 CIETAC 上海分会和华南国仲是合法的仲裁机构，有权依据《仲裁法》的规定受理仲裁申请、审理仲裁案件。2013 年 1 月 25 日，上海市人大常委会法制工作委员会也发文[3]确认 CIETAC 上海分会具有独立履行仲裁职能的合法资质。

尽管如此，“管辖权之争”发生后，在 CIETAC 上海分会和 CIETAC 华南分会（或华南国仲）受理的案件中，已经多次出现被申请人以“管辖权之争”相关公告作为依据提出管辖权异议，甚至申请人民法院确认仲裁协议无效。可以说，“管辖权之争”使 CIETAC、CIETAC 上海分会和 CIETAC 华南分会在受理案件问题上陷入了混乱局面，并使“贸仲”这一享有良好声誉的品牌遭受了一定的损害。

二、 CIETAC 上海分会、CIETAC 华南分会更名带来的变化

CIETAC 上海分会和 CIETAC 华南分会以更名为契机，施行了一些变革措施，其所带来的变化主要体现在以下几个方面：

1、 启用新版《仲裁规则》

上海贸仲自 2013 年 5 月 1 日起启用新版《仲裁规则》。根据上海国际贸易促进委员会会长、上海贸仲主任岑富荣的介绍，上海贸仲此次制定的仲裁规则，吸收了近年来国际仲裁发展实践中的先进经验和做法，新增或调整有关“适用其他仲裁规则”、“当事人延长选定仲裁员期限”及“第三人加入仲裁程序”等规则。[4]

华南国仲自 2012 年 12 月 1 日起启用其新版《仲裁规则》。新规则采取国内和国际仲裁实行统一程序的制度，不再采取原来适用的规则对“国内仲裁”和“涉外仲裁”的区别性安排。新规则还在许多条文中吸收了近年来国际仲裁发展实践中的经验，例如“多份合同一次仲裁”、“合并仲裁”、“追加当事人”和“分期预缴仲裁费”等。此外，境外人士除了担任仲裁员以外，还可以担任理事、专家证人和调解专家。

2、 启用新的《仲裁员名册》

根据上海贸仲最新公布的《仲裁员名册》，上海贸仲的仲裁员共 625 名。其中，

[1] 通用仲裁条款是指：“凡因本合同引起的或与本合同有关的任何争议，均应提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁”。

[2] 沪司法制[2012]7 号文及粤司函[2012]413 号文。

[3] 沪会法[2013]2 号文。

[4] 见《上海贸仲更名 下月启用新规则新名册》，来源于“一财网”2013 年 4 月 12 日报道，原文链接 http://www.yicai.com/news/2013/04/2621445.html

外籍及港澳台仲裁员多达 199 名，约占三分之一，分别来自 39 个国家和地区。

而在华南国仲最新公布的《仲裁员名册》中，外籍及港澳台仲裁员达 180 名，占仲裁员总数的 34%，分别来自港澳台地区和 25 个国家。

随着大量外籍及港澳台的仲裁员加入上海贸仲和华南国仲，这两家机构仲裁员的国际化程度位居全国仲裁机构前列。

3、 启用新的示范仲裁条款

更名后，上海贸仲在其官方网站上公布了新的示范仲裁条款。根据新的示范仲裁条款，当事人有意将争议提交上海贸仲解决的，可以在仲裁协议中约定将相关争议提交上海国际经济贸易仲裁委员会或上海国际仲裁中心仲裁。

此前，华南国仲也在其官方网站上公布了新的示范仲裁条款。根据新的示范仲裁条款，当事人有意将争议提交华南国仲解决的，可以在仲裁协议中约定将相关争议提交华南国际经济贸易仲裁委员会或深圳国际仲裁院仲裁。

三、 CIETAC 上海分会、CIETAC 华南分会更名对仲裁实务的影响

上海国际贸易促进委员会会长、上海贸仲主任岑富荣认为，为尽快平息机构间的争议，CIETAC 上海分会主动进行更名，有利于化解机构间关于名称、性质和管辖权的纷争。岑富荣同时表示，更名仅是名称登记事项的变更，仲裁机构和主体地位并未改变，也不是新设仲裁机构，这保持了机构以及服务的稳定性，又使更名前后的仲裁管辖权不受影响。而且，当事人在约定仲裁机构时会更明确。

总体来说，CIETAC 上海分会和 CIETAC 华南分会的更名以及各自新仲裁规则的启用，使得其与 CIETAC 之间的区别更加显著。此前因“管辖权之争”给当事人在申请仲裁、选择仲裁机构等方面带来的困扰也将逐步淡化。

从仲裁实务的角度来看，CIETAC 上海分会和 CIETAC 华南分会更名后，当事人应当注意：

1、 对于即将签订的仲裁条款，当事人如果选择将争议提交相关仲裁机构仲裁，建议根据三家仲裁机构各自出台的仲裁规则和示范仲裁条款拟定仲裁条款：

第一，选择 CIETAC 作为仲裁机构的，在仲裁条款中可以适用如下示范仲裁条款：“凡因本合同引起的或与本合同有关的任何争议，均应提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。”

第二，选择上海贸仲作为仲裁机构的，在仲裁条款中可以适用如下两种示范仲裁条款：“凡因本合同引起的或与本合同有关的任何争议，均应提交上海国际经济贸易仲裁委员会仲裁”或“凡因本合同引起的或与本合同有关的任何争议，均应提交上海国际仲裁中心仲裁。”

第三，选择华南国仲作为仲裁机构的，在仲裁条款中可以适用如下两种示范仲裁条款：“凡因本合同引起的或与本合同有关的任何争议，均应提交华南国际经济贸易仲裁委员会仲裁”或“凡因本合同引起的或与本合同有关的任何争议，均应提交深圳国际仲裁院仲裁。”

此外，当事人还可以根据需要在仲裁条款中附加约定费用的承担、仲裁地及/或开庭地点、仲裁语言、仲裁员人数、仲裁员国籍、是否适用简易程序等事项。

尽管对于约定上海贸仲或华南国仲作为仲裁机构的仲裁条款而言，将来申请仲裁时，理论上仍然存在当事人以“管辖权之争”对仲裁机构提出质疑的风险，但是，约定使用上述两家机构更名后的名称本身就更能够说明当事人真实的意思表示，将来案件所涉的管辖权风险将非常有限。

2、 对于此前已经成立并生效的、约定仲裁机构为 CIETAC 上海分会或 CIETAC 华南分会的仲裁条款，当事人可以根据具体情况决定是否做出修改。

尽管上海贸仲和华南国仲更名后均表示将继续受理按照当事人的约定应当由“中国国际经济贸易仲裁委员会上海分会”或者“中国国际经济贸易仲裁委员会华南分会”仲裁的案件，但是，从目前的情况看，当事人以“管辖权之争”相关公告作为依据提出管辖权异议，甚至申请人民法院确认仲裁协议无效的情形仍有可能出现。

但是，此类案件的走势已日趋明朗。在深圳，2012 年 11 月 20 日，广东省深圳市中级人民法院就其受理的（2012）深中法涉外仲字第 226 号案件作出了民事裁定[5]。该案为 CIETAC 在深圳受理约定由中国国际经济贸易仲裁委员会深圳分会仲裁的案件而引发的管辖权纠纷，仲裁被申请人要求法院确认当事人之间没有仲裁协议。深圳中院在裁定中明确，当事人约定将争议提交中国国际经济贸易仲裁委员会深圳分会的仲裁协议有效，所涉案件应提交华南国际经济贸易仲裁委员会（深圳国际仲裁院）仲裁。

而在上海，虽然目前尚未有公开的判例支持上海贸仲受理原约定由 CIETAC 上海分会仲裁的案件，但是鉴于上海市人大常委会法制工作委员会以及上海市司法局均发文明确上海贸仲是合法的仲裁机构，依法独立履行仲裁职能，因此，我们推测相关法院在此类案件中更有可能最终作出有利于上海贸仲的裁决。

如上所述，对于此前已经成立并生效的、约定仲裁机构为 CIETAC 上海分会或 CIETAC 华南分会的仲裁条款，如果各方当事人均有意变更，则各方可以通过签订补充协议将仲裁机构变更约定为上述两家机构更名后的名称；但如果变更存在一定的障碍或困难，当事人也不必执意要求变更。

对于三家机构之间的“管辖权之争”，华南国仲相关负责人曾经表示：“改革开放的前三十年，京沪深三地涉外仲裁机构曾经有过长期的良好合作，共同提升了中国国际仲裁的声誉和影响力；如今为了适应新时期产业发展的需要，三个机构结束了原来的合作关系，应该进一步强化独立性和开放性，加快治理模式创新和业务创新，维护当事人的意思自治和合法权益，立足三个经济发达区域，为促进我国国际化法治化的营商环境建设而努力”[6]。我们希望三家机构今后能够开展积极的、良性的竞争。

随着三家机构“管辖权之争”暂告段落，京沪深三地形成了 CIETAC、北京仲裁委员会、上海贸仲、上海仲裁委员会和华南国仲五家仲裁机构共同竞争的局面。近年来，北京仲裁委员会和上海仲裁委员会发展迅速。北京仲裁委员会给予仲裁员较高的办案报酬，提高了仲裁员办案效率；上海仲裁委员会也在广纳外籍仲裁员，积极拓展其涉外仲裁业务。我们希望这五家仲裁机构均能够日趋开放和国际化，有序竞争，为当事人创造良好的争议解决平台，共同推进我国仲裁事业的发展。

[5] 参见 http://www.sccietac.org/upload/20130131/2013131_1359624545419.pdf

[6] 参见《华南国仲、上海贸仲：独立仲裁机构不存在授权之说》，来源于“一财网”2013 年 1 月 31 日报道，原文链接 http://www.yicai.com/news/2013/01/2463616.html

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