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Vietnam

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A. Legislation and rules

A.1 Legislation

Prior to 2010, Ordinance No. 08/2003/PL-UBTVQH11 on Commercial Arbitration (the “Ordinance”) governed arbitration proceedings for the settlement of disputes arising from “commercial activities” pursuant to the parties’ agreement on such method. By 17 June 2010, the National Assembly ratified Law on Commercial Arbitration No. 54/2010/QH12 (the “LCA”) and improved the commercial arbitration provisions in the Ordinance through addressing international expectations. Among other positive developments, the most significant changes that were adopted in the LCA are: (i) the ability to refer to arbitration, provided that at least one of the parties is engaged in commercial activities; (ii) the option to appoint foreign arbitrators in Vietnam; and (iii) the ability to apply for interim measures to protect the legitimate interests of the parties.

Furthermore, as of 1 July 2016, revised Civil Procedure Code No. 92/2015/QH13 (“CPC 2015”) governs the recognition and enforcement of foreign arbitral awards in Vietnam. The procedures for recognition and enforcement of foreign arbitral awards under Part VII

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of CPC 2015 have been praised for being more effective and in line with the New York Convention.

In addition, various important revisions to the current regulations on arbitration are expected to be made in the coming years given that the Ministry of Justice of Vietnam is currently working on a draft National Plan on the Improvement of Arbitration Practice in Vietnam from 2018-2023.

A.2 Institutions, rules and infrastructure

There are 19 arbitration institutions in Vietnam registered with the Ministry of Justice.⁴ Among these arbitration institutions, the Vietnam International Arbitration Center at the Vietnam Chamber of Commerce and Industry remains the most active and prestigious arbitration institution in Vietnam. This is because compared to other domestic arbitration institutions, VIAC has a long history of development with high-profile arbitrators, including 28 foreign arbitrators.

On 3 February 2017, VIAC released the 2017 edition of the Rules of Arbitration (“VIAC Rules 2017”), which replaced the 2012 edition. The VIAC Rules 2017 allow for arbitral proceedings to be conducted in accordance with the “expedited procedure” if the parties so consent, in which case the tribunal shall consist of a sole arbitrator (unless otherwise agreed by the parties).

Moreover, the VIAC Rules 2017 allow claims arising out of or in connection with more than one contract to be made in a single request for arbitration and to be resolved in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement.

These new provisions are expected to increase the attractiveness of VIAC’s services in the years to come.

⁴ See <http://btp.moj.gov.vn/qt/Pages/trong-tai-tm.aspx?Keyword=&Field=&&Page=1>.



B. Cases

B.1 A foreign arbitral award unreasonably refused recognition and enforcement in Vietnam

A seller and a buyer entered into three contracts for the sale of cotton via facilitation by a brokerage company. Of the three contracts, only one provided for arbitration, in the United Kingdom at the International Cotton Association with the governing law as English law. However, this contract was never executed by the buyer. The other two contracts without an arbitration clause were executed by both the seller and the buyer.

During the implementation of the contracts, the buyer failed to make sufficient payment to the seller. Thus, the seller filed a request for arbitration, obtained a favorable arbitral award and sought for enforcement in Vietnam against the buyer. However, in a judgment dated 30 May 2016, a court of first instance rejected the seller's application for recognition and enforcement of the foreign arbitral award in Vietnam. The seller appealed to the High Court of Hanoi.

The buyer's position was as follows:

- (a) No contract: The buyer did not sign the contract with the arbitration clause. Therefore, the buyer was not bound by the contract.
- (b) Insufficient service: The buyer alleged that it did not receive any notices/documents from the tribunal via email, fax or courier service. The buyer alleged that the tribunal sent all documents to an incorrect email address. Moreover, the buyer claimed that its receptionist was not whose name appeared on the signed acknowledgment of receipt of documents from the courier.

However, the seller disagreed and presented the following counter-arguments:

- (a) Valid contract: The governing law was English law. Hence, the contract was still valid according to English law, regardless of whether the buyer signed it or not.
- (b) Proper service: The service was sufficient. English law should be referred to in determining the sufficiency of service. Specifically, all notices were emailed to the buyer via the brokerage company's email address. Further, the courier confirmed that all couriered documents were received by the buyer.

On 30 March 2017, the High Court of Hanoi issued a judgment affirming the ruling of the court of first instance. It reasoned that there was no valid arbitration clause because: (i) the contract with the arbitration clause was not signed by the buyer, thus forcing the buyer to settle the dispute through arbitration was contrary to a fundamental principle of Vietnamese law (ie, a party's autonomy); and (ii) the other two executed contracts did not have an arbitration clause and, therefore, the tribunal had no jurisdiction to handle the disputes related to those contracts.

Furthermore, the High Court of Hanoi viewed that the service of documents to the buyer was improper. First, all documents were emailed to the brokerage company (not the buyer). Second, the courier could not provide sufficient evidence that the buyer received all documents from the tribunal. More specifically, the courier and its local agent could not produce relevant proof of delivery because it was the agent's internal policy to delete all proofs of delivery every three months. Although the courier ultimately produced some archived data related to the delivery, such data showed that the delivery was received by an individual named "S." The buyer only had two employees with the name "S" (a security guard and a worker). Thus, the buyer's argument that it did not receive any



documents from the tribunal was affirmed to be reasonable by the High Court of Hanoi.

C. Funding in international arbitration

Arbitration funding has not been officially discussed in Vietnam. This notion is rather new and has yet to be specifically recognized or incorporated under any regulations. However, on a case-by-case basis, different regulations and rules may come into play to strike down a third-party funding arrangement if it, for instance, raises concern about the impartiality of the arbitrators or adversely affects the client-attorney relationship.