

VIETNAM

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Memorandum

Hanoi, 15th March 2016

To: IBA Sub-Committee on Recognition and Enforcement of Awards
Attn: Pascal Hollander
Re: Countries report on the public policy exception in New York Convention– Vietnam

INTRODUCTION

I. NOTION OF PUBLIC POLICY

I.1. In the context of enforcement of foreign arbitral awards

a. Legislation

1. Vietnam acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”) on 12th September 1995 with the entry being in force from 11th December 1995. New York Convention was first implemented in Vietnam through the 1995 Ordinance on Recognition and Enforcement of Foreign Arbitral Awards (“**the 1995 Ordinance**”) which has since been replaced by the provisions of Part VI of the Civil Procedure Code of Vietnam amended in 2011 (the “**CPC**”) and the Law on Enforcement of Civil Judgments amended in 2014 (“**LECJ**”).
2. Regarding the exceptions of enforcement of foreign arbitral awards, Article 16 of the 1995 Ordinance and Article 370 of the CPC adopt the non- recognition cases provided by Article V of New York Convention. In accordance with Article V.2 (b) of New York Convention, the arbitral awards may be refused to be recognized and enforced if “*the recognition or enforcement of the award would be contrary to the public policy of that country*”. It was seen as a significant change of New York Convention compared to the 1927 Geneva Convention on Execution of Foreign arbitral Awards (“**The 1927 Geneva Convention**”), which refers to “*the public policy or to the principles of the law of the country where the enforcement is sought*” as a ground for non-recognition of foreign

arbitral awards.¹ However, none of these conventions provide a definition of “*public policy*” or “*the principles of the law*” of a country. It leaves open the possibility for enforcement courts to apply *public policy* widely or narrowly, although the drafters of the New York Convention preferred a narrow application.²

3. The relevant provision is stated in Article 16.2(b) of the 1995 Ordinance and Article 370.2(b) of the CPC. Nevertheless, both of them use the term “*the fundamental principles of Vietnamese laws*” instead of “*public policy*”. The legislative history of the 1995 Ordinance and the CPC do not clarify the reason why Vietnamese law makers decided to replace the ground of “*public policy*” under New York Convention with “*the fundamental principles of Vietnamese laws*”.
4. It should be noted that the National Assembly of Vietnam recently approved the new Civil Procedure Code no. 92/2015/QH13 dated 15th November 2015 (the “**New 2015 CPC**”). The procedure for recognition and enforcement of foreign arbitral awards in Part 7 of the New 2015 CPC was amended to be more effective and in light with New York Convention. At the time of drafting the new CPC, there was a proposal that this term should be replaced by “*public policy*” to be strictly consistent with New York Convention. However, the new CPC still keeps this ground. One of the reasons given at workshops commenting on the draft of the New CPC and the 2015 Civil Code is that the term “*public policy*” is too vague for judges to interpret.³ On the other hand, for the purpose of uniform application, it might not be appropriate to introduce new legal concept when other current Vietnamese regulations only refer to the term “*fundamental principles of Vietnamese laws*”.⁴

b. Interpretation

5. Under Vietnamese laws, there is no definition of the term “*fundamental principles of Vietnamese laws*”. The reference to ‘basic principles’ of Vietnamese law would suggest a wider defence, more closely based on domestic rather than international standards. A number of “fundamental/ basic principles” are stated in each law of Vietnam. For example, Article 4 of Law no. 54/2010/QH12 on Commercial Arbitration (“**LCA**”) provides five (05) principles for dispute resolution by arbitration. Or Chapter II of CPC and Chapter II of Civil Code No. 33/2005/QH 11 also stipulate fundamental principles of

¹Article 1(e) of the 1927 Geneva Convention

²A. Sheppard; “*Public Policy and the Enforcement of Arbitral Awards*”, TDM 1 (2004), www.transnational-dispute-management.com

³See: **Speech 09**: some issues regarding the implementation of law on recognition and enforcement of judgment, decision of the foreign court decision and foreign arbitral award and law on judicial assistance in civil procedures, p. 236, Conference on implementation of civil procedure code in Vung tau, 16-17 Oct, 2014.

⁴e.g. Civil Code 2005 (Article 759.3 and 759.4) and Civil Code 2015 (article 666). Article 5.2 of Law on Commerce 2005, Article 4 of Investment Law 2014

each law. Indeed, there is an opinion that mere breach of Vietnamese law by itself may have amounted to a violation of basic principles of Vietnamese law.⁵

6. To facilitate the proper application of this ground at Vietnamese courts in the context of recognition and enforcement of foreign court judgments and foreign arbitral awards, the Research of Institution of Judicial Science of the Supreme People's Court⁶ tried to explain this term based on the principles under Article 3 of Law no 41/2005/QH11 on the Conclusion, Accession to and Implementation of Treaties. In particular:
 - Respect for national independence, sovereignty, territorial integrity, prohibition of the use of force or threat to use force, non-interference in the domestic affairs of each other, equality, mutual benefit and other fundamental principles of international law;
 - Conformity with the provisions of the Constitution of the Socialist Republic of Vietnam;
 - Conformity with national interests, foreign policy of the Socialist Republic of Vietnam;
7. In spite of this, it is not an official interpretation or guidance of the Vietnamese Supreme People's Court. Consequently, the Vietnamese judges are not bound by this explanation and could only take it as a reference.

I.2. In the context of setting aside of awards

a. Legislation

8. The procedure for setting aside a Vietnamese arbitral award was firstly governed by the 2003 Ordinance on commercial arbitration (“OCA”). Notably, Article 54.2(b) of the OCA stated that the arbitral award shall be annulled if it is against the public interests of Socialist Republic of Vietnam. Albeit the usage of this term, neither definition nor explanation is provided during the time of implementation of the OCA.
9. The OCA was then replaced by the Law no. 54/2010/QH12 on Commercial Arbitration (“LCA”) which has come into effect as from 01st January 2011. When drafting the LCA, there are two different opinions being raised. First, it is suggested to use the term “fundamental principles of Vietnamese law” for the consistency with other laws. The other opinion, which is encouraged by foreign experts from UNCITRAL and France, is the “*fundamental principles of Socialist Republic of Vietnam*” should be replaced by

⁵Richard Garnett and Kien Cuong Nguyen, Enforcement of Arbitration Awards in Vietnam, Asian International Arbitration Journal, (Kluwer Law International 2006 Volume 2 Issue 2) pp. 143-145

⁶Topic no.4-2009 of the Judicial Science of the Supreme People' Court of Vietnam: Research on recognition and enforcement of foreign civil judgments and decisions, foreign arbitral decisions in Vietnam (29/03/2010), available at: <http://toaan.gov.vn/portal/pls/portal/docs/701340.PDF>, p.29, (in Vietnamese only)

“*international public policy*”.⁷ This is a popular term in international private law, which could be interpreted as fundamental principles of laws recognized by all countries. However, this suggestion met a lot of objection on the ground that the notion of “*public policy*” has not existed in Vietnamese law. Finally, the LCA applies similar wordings of grounds for recognition and enforcement of foreign arbitral awards i.e. “*The arbitral award is contrary to the fundamental principles of the laws of Vietnam*”.⁸

10. Besides, in light of Article V.2 of New York Convention and the UNCITRAL Model Law on International Commercial Arbitration (“**UNCITRAL Model Law**”), the Vietnamese court shall have the responsibility to collect and verify evidence themselves in order to decide to set aside or not set aside the arbitral award⁹ i.e. the party against the award shall not bear the burden of proof if it invokes this ground.
11. Further, there are other grounds for annulment of the arbitral award that may also lead to the violation of *the fundamental principles of the laws of Vietnam*. Particularly, two provisions often referred to by the opposing party under LCA are Article 68.2.b (arbitral proceedings violate parties’ agreement or the provision of law)¹⁰ and Article 68.2.d (evidence was forged, bribery, violation of objectivity and impartiality)¹¹ which are related to procedural elements. Remarkably, the ground under Article 68.2.d is an additional ground which is different from the exceptions of the recognition and enforcement of foreign arbitral awards under CPC. Hence, it is arguable whether a foreign arbitral award which is rendered upon forged evidence would fall within the violation of fundamental principles of Vietnamese laws in the context of recognition and enforcement of foreign arbitration. On the other hand, regarding substantive elements, the non-arbitrability could be considered as the breach of fundamental principles of Vietnamese laws in some cases e.g. a party has not operated legally under Vietnamese laws or the subject matter of the dispute is not arbitrable.

⁷ According to the Yearbook of Conference organized by Maison Du Droit Vietnamo – Française on 24-25/09/2009, from pages 20 to 22

⁸ Article 68.2(b) of LCA

⁹ Article 68.3- LCA

¹⁰ **Article 68** *Grounds for setting aside arbitral award*

2. An arbitral award which falls within any one of the following cases shall be set aside:

(b) The composition of the arbitration tribunal was [or] the arbitration proceedings were inconsistent with the agreement of the parties or contrary to the provisions of this Law;

¹¹ **Article 68** *Grounds for setting aside arbitral award*

2. An arbitral award which falls within any one of the following cases shall be set aside:

(d) The evidence supplied by the parties on which the arbitration tribunal relied to issue the award was forged; [or] an arbitrator received money, assets or some other material benefit from one of the parties in dispute which affected the objectivity and impartiality of the arbitral award;

b. Interpretation

12. As mentioned above, at the time the OCA took effect, there is no definition of “public interests” in Vietnam. The same applies after the LCA came into force. Vietnamese judges often, case by case, rely on their own understandings to consider the validity of the arbitral awards.
13. However, to decrease the number of arbitral awards annulled unreasonably, the Supreme People’s Court issued the Resolution 01/2014/NQ-HDTP dated 20th March 2014 (“Resolution 01/2014”). In which Article 14.2.dd created new interpretation of this exception that “*the arbitral award is contrary to the fundamental principles of the law of Vietnam*” means that award violates **basic principles on conduct**, whose **effects are most overriding** in respect of **the development and implementation of Vietnamese law**.¹² To clarify this notion, the Supreme People’s Court listed some examples including the principle of freedom and freewill to reach an agreement in commercial activities as provided in Article 11 of the Commercial Law and Article 7 of the Civil Code, coercion, fraud, threat or bribery, etc. However, this interpretation is still too broad and unclear in the view of local judges.

I.3. A specific way to apply *public policy* rules to the enforcement or setting aside of arbitral awards

14. Generally, Vietnamese courts are not allowed to review the substantive matter resolved by the arbitral tribunal when considering the recognition and enforcement of foreign arbitral awards.¹³ However, as a matter of court practice, the Vietnamese courts often consider fundamental principles of Vietnamese laws as an exception for this i.e. Vietnamese courts still review substantive matters of the case when they examine this ground.
15. In Resolution 01/2014, the Supreme People’s Court also provides how to apply the concept of “*fundamental principles of Vietnamese law*”. Accordingly, when considering an application to set aside an arbitral award, the Court must determine that the arbitral award violates one or more fundamental principles of the law and that such principle(s) is (are) relevant to the dispute resolved by arbitration.
16. In particular, Vietnamese Courts shall set aside the arbitral award only after deciding that
 - (i) the award has any content which is contrary to one or more **fundamental principles of Vietnamese law** that were not respected by the Tribunal in making

¹²Article 14.1.dd of Resolution 01/2014-Grounds to set aside arbitral awards as provided in Article 68 LCA

¹³Article 369.4 CPC, Correspondence 246, para.6

the award; for example, principles for dispute resolution by arbitration provided in Article 4 of LCA¹⁴

- (ii) the award violates the interests of the government, such as independence, sovereignty, against the government, support terrorism and/or violates the legitimate rights and interests of third party or parties.

Only when the arbitral award meets these two criteria, the court may vacate that award on the basis of violation of fundamental principles of Vietnamese laws.

17. Although the new definition rectifies the incorrect understanding of some Vietnamese courts that all provisions of law could be “*fundamental principles*”, it is not comprehensive enough since there are still a number of “*fundamental principles*” that can be found in other laws. It is however undeniable that with the new guidance, the Vietnamese court will be more prudent when considering whether to vacate an arbitral award on this ground. Moreover, since Resolution 01/2014 aims at guiding the implementation of some provisions of LCA only, it is uncertain whether such interpretation could apply to explain the exceptions under enforcement procedure under the CPC or not.¹⁵

I.4. Development in the interpretation and implementation of *public policy* exception in Vietnam

18. To sum up, the notion of international public policy has not really existed in Vietnamese laws. As such, the exception of “the fundamental principles of Vietnamese laws” is referred in place of public policy ground in case of recognition and enforcement of foreign arbitral awards and setting aside domestic awards. In Vietnam, domestic standards will be applied to consider whether foreign arbitral awards fall within this ground or not. Moreover, since there is no official guidance on how to apply this exception in the context of recognition and enforcement of foreign arbitral awards, it is Vietnamese judges who have full discretion to interpret this term. In practice, the breach of Vietnamese Constitution and the mere violation of fundamental principles stated in each Vietnamese law could be considered as the violation of fundamental principles of Vietnamese laws.

19. After the issuance of Resolution 01/2014, it is undeniable that the number of cases where the violation of fundamental principles of Vietnam was accepted as a ground to set aside/ refuse the recognition and enforcement of arbitral awards has extremely decreased. The

¹⁴Tuong Duy Luong, Nguyen Van Cuong, *Some issues regarding the grounds for setting aside arbitral awards under Article 68.2.dd and the application of Article 71 of LCA when considering the annulment of the arbitral award*, presented at Conference of Implementation of Resolution 01/2014/NQ-HDTP (6-7/4/2015)

¹⁵Nguyen Manh Dzung & Nguyen Thi Thu Trang, *Vietnam in The Asia- Pacific Review 2016*, Law Business Research, p.98-101

interpretation and implementation of “*public policy*” ground in the context of not only annulment domestic awards but also recognition and enforcement of foreign arbitral awards received a lot concerns from the judges, arbitration practitioners, scholars and experts in Vietnam.

20. Additionally, the year 2015 witnessed a lot of important reform of legislation in Vietnam, *inter alia*, the new 2015 CPC and the Civil Code 2015 were issued. Although these new laws have not used the term “*public policy*” as expected, the law drafting process shows the possibility of replacing the exception of “*the fundamental principles of Vietnamese laws*” with “*public policy*” in the near future.
21. On the other hand, the Supreme People’s Court with the sponsor of the World Bank Group is preparing a bench book for judges regarding International Commercial Arbitration. In which, it is expected to clarify the content and the scope of “*fundamental principles of Vietnamese laws*” in comparison with the ground of *public policy* under New York Convention and UNCITRAL Model Law. Accordingly, it would assist Vietnamese judges in interpret and apply such exception when resolving commercial arbitration matters.
22. It further should be noted that Vietnam has signed Bilateral Investment Treaties (“BIT”) with 63 countries and territories, 46 of them are still in force.¹⁶ Also, Vietnam is member of 11 Free Trade Agreements (“FTA”), including the mega regional Trans-Pacific Partnership (“TPP”).¹⁷ Therefore, for the purpose of attracting foreign investment and ensuring the stabilization of legal environment, the harmonization of private laws would become a thorny issue for Vietnamese law makers. Vietnam, thus, is required to get closer to international standard rather than domestic one. The replacement of the vague term “*fundamental principles of Vietnamese laws*” with international *public policy* in accordance with New York Convention is inevitable.

II. CATALOGUE OF CONCRETE SITUATIONS WHERE ARGUMENTS REGARDING VIOLATION OF PUBLIC POLICY WERE ACCEPTED

II.1. *Toepfer v. Sao Mai [2011] Appellate Court – Supreme People’s Court in Hanoi*

The Appellate Court – Supreme People’s Court in Hanoi upheld the first instance decision and turned down the petition for recognition and enforcement of an arbitral award of the Grain and Feed Trade Association (“GAFTA”) set forth by Toepfer as the award was considered as contrary to the fundamental principles of Vietnamese laws. The

¹⁶Vietnam Bilateral Investment Treaties (BITs)’ (Investment Policy Hub – UNCTAD), available at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/229>> accessed 15 March 2016

¹⁷Available at: <http://trungtamwto.vn/fta> accessed 15 March 2016

Court reasoned that, the damages awarded to Toepfer were not actual and direct. The Court also found that Sao Mai should not be held liable for damages as its failure to open L/C had been due to *force majeure*. The GAFTA Award, therefore, was contrary to the principles concerning damages under Vietnamese commercial law.

II.2. *Enrgo Novus (Moscow) vs. VINATEX [1998], Decision no. 60/KTPT dated 04/06/1988 of the Appellate Court of the Supreme People's Court in Hanoi*¹⁸

The award creditor i.e. Enrgo Novus submitted the application for recognition and enforcement of an arbitral award of the International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry (“ICAC”) in 1997. The award debtor i.e. VINATEX argued that Mr. Nguyen Ba Noi as its representative in Russia did not have full capacity and was not authorized to conclude the contract with Enrgo. The first instance court accepted VINATEX’s allegation based on two grounds. First, “Pursuant to the Regulation on the organization and operation of Vietnamese trade representative offices abroad – issued together with Decree no. 283/HDBT dated 08/08/1990 of Minister Council; pursuant to Article 2.2 of Regulation no. 299/TMDL-XNK dated 09/04/1992 regarding the conclusion and management of Vinatex Contracts-in compliance with Vietnamese laws, Mr. Nguyen Ba Noi did not have capacity or was not authorized to conclude the aforementioned contract as well as arbitration agreement [...] this is the uniform principle recognized by both countries, the contracting parties must be obliged and in fact were aware of”. Secondly, since ICAC did not accept the notarized documents submitted by VINATEX but requested VINATEX to provide the original ones, the court found that “ICAC rendered a decision which violates the fundamental principle of Vietnamese laws i.e. rejecting the validity of a document notarized by Vietnamese notary public”. The Appellate Court in Hanoi upheld such decision of the first instance court and refused to enforce the foreign arbitral award under Article 16.1.a and 16.2.b of the 1995 Ordinance on recognition and enforcement of foreign arbitral award in Vietnam.

II.3. *Tyco Services Singapore PTE LTD vs. Leighton Contractors VN LTD [2003] Decision no. 02/PTDS dated 21/01/2003 of the Appellate Court in Hochiminh*¹⁹

The Australian arbitral awards resolving disputes arising from a construction contract performed in Vietnam. The arbitrator issued two awards in favour of Tyco, who then sought enforcement in Vietnam. While the first instance court granted enforcement, the

¹⁸ Do Van Dai and Tran Hoang Hai, Collection of Vietnamese Court Decision and Judgment Relating To Commercial Arbitration, Labour Publishing House, (In Vietnamese: *Tuyển tập các bản án, quyết định của Tòa án Việt Nam về trọng tài thương mại*, NXB Lao Động), 2010, p. 207-212.

¹⁹ Do Van Dai and Tran Hoang Hai, Collection of Vietnamese Court Decision and Judgment Relating To Commercial Arbitration, Labour Publishing House, (In Vietnamese: *Tuyển tập các bản án, quyết định của Tòa án Việt Nam về trọng tài thương mại*, NXB Lao Động), 2010, p. 244-252

Court of Appeal reversed this decision. First, the court found that under Art 8 of the 1989 Ordinance on Economic Contracts of Vietnam, the contract was invalid since Tyco, as a Singaporean company, had not been issued with a foreign construction contractor licence by the Vietnamese Ministry of Construction as required by Vietnamese regulations. The second reason was the contract between Tyco and Leighton expressly provided that Tyco was not subject to Vietnamese tax law. The court said that such a provision 'negatively affected' the interests of Vietnam by showing a failure on the part of Tyco to respect local law. The Appellate Court thus, decided to refuse the recognition and enforcement of these arbitral awards pursuant to Article 16.2.b of the 1995 Ordinance.

II.4. *Sudico (Vietnam) vs. STT 260 Architects [2015], Decision no. 08/2015/QDPT-KDTM dated 12/08/2015 of the High Court in Hanoi*

Since Sudico violated its obligations under the contract, STT 260 Architects initiated the arbitration against Sudico at Singapore International Arbitration Centre ("SIAC") as per parties' agreement. The applicable law is Vietnamese law. The arbitral tribunal rendered the arbitral award to resolve the case and an additional arbitral award clarifying the interests awarded in favor of STT 260 Architects.

Sudico is against the enforcement of such awards in Vietnam on the ground that the arbitral award failed to respect parties' agreement which is voluntarily concluded between parties in accordance with social morality. Sudico averred that the arbitral award is inconsistent with several provisions of Vietnamese laws.²⁰ Both the first instance court and the High Court in Hanoi (replacing the Appellate Court in Hanoi of the Supreme People's Court) accepted these defenses of Sudico and refused the enforcement of these SIAC awards based on Article 370.2.b. of CPC, in particular:

²⁰ Sudico's arguments are as follows:

- the arbitral award confirmed that STT 260 Architects completed the process of construction designing, and thus violated Vietnamese laws on the appraisal of basic design under Article 59 of Construction law no. 16/2003/QH11 dated 26/11/2003; Article 1- Law no. 38/2009/QH12 dated 19/06/2009 amending and supporting a number of articles of the laws concerning capital construction investment; Article 10- Decree no. 12/2009/ND-CP on management of investment projects on the construction of works; Circular no. 12/2/2009/TT-BXD
- The award allowed STT 260 Architects entitled the right related to the works for technical design where it has not satisfied the precondition for appraisal of basic design. The award hence, violated Article 13 of Decree no. 209/2004/ND-CP on quality management of construction works
- The award relied on the opinion of the Consultant, whereas examination results of the consultant do not substitute for investors' evaluation. Thus, it is inconsistent with Vietnamese regulation on the position of Consultant under Article 9.3 of Circular 27/2009/TT-BXD guiding a number of provisions on quality management of construction works.

- The arbitral awards violated the principles of protecting the freedom and freewill to agreement in commercial activities pursuant to Article 4 of Civil Code 2005 and Article 11 of Law on Commerce 2005.
- Second, the arbitral awards did not apply Vietnamese laws to resolve the cases as required under Article 11 of Civil Code.

II.5. Ecom Agroindustrial Corp. Ltd (Ecom) v Dong Quang Spinning Corporation (Dong Quang) Decision [2014] Appellate Court in Hochiminh City no.31/2014/QDPT-KDTM dated 10/06/2014

The arbitral award was rendered in accordance with the Arbitration Rules of the International Cotton Association (“ICA”) in England. The Vietnamese award debtor opposed the recognition and enforcement of such award on the ground that (i) Dong Quang has not been duly served the arbitral notices by the arbitral tribunal pursuant to Article 370.1(c) of CPC (ii) the representative of Ecom has no capacity to sign the arbitration agreement in accordance with Article 370.1 (a) of CPC. The First Instance Court i.e. The People’s Court of Long An province accepted the defence of Dong Quang and decided to refuse the recognition and enforcement of foreign arbitral pursuant to Article 370.1(c) of CPC since Dong Quang, as the award debtor was not duly and properly noticed of the appointment of arbitrators and the arbitral proceedings at foreign arbitration.

The Appellate Court in Hochiminh City resolved the Appeal of Ecom and widened the legal grounds to refuse the recognition and enforcement of the ICA arbitral award including both Article 370.1(a) of the CPC, regarding the signatory capacity of Ecom’s representative, and Article 370.1(c) of current CPC regarding the service of documents. Although the Appellate Court did not directly refer to Article 370.2(b) of CPC, at page 4 of the Appellate Decision, the Court held that: “At the appellate hearing, Ecom did not submit its Charter proving who is its representative. Thus, the fact that Mr. President and Mrs. Director of Ecom signed the Application for recognition and enforcement of foreign arbitral award in Vietnam is not valid and inconsistent with the fundamental principles of Vietnamese laws related to representative under Article 73 of Civil Procedure Code.” This explanation illustrates the understanding of Vietnamese court about “the fundamental principles of Vietnamese laws”.

Annex A Selection of case related to *public policy*

Identification of the decision	Summary of the <i>public policy</i> argument	Substantive	Procedural	Enforcement denied	Enforcement accepted
<p><i>Decision no. 59/KTPT dated 04/06/1988</i></p> <p><i>Enrgo Novus (Moscow) vs. VINATEX [1998]</i></p>	<ul style="list-style-type: none"> - VINATEX's representative in Russia did not have full capacity and was not authorized to conclude the contract with Enrgo under Vietnamese law - the tribunal rejecting the validity of a document notarized by Vietnamese notary public 		X	X	
<p><i>Decision no. 60/KTPT dated 04/06/1988</i></p> <p><i>Enrgo Novus (Moscow) vs. VINATEX [1998]</i></p>	<ul style="list-style-type: none"> - VINATEX's representative in Russia did not have full capacity and was not authorized to conclude the contract with Enrgo under Vietnamese law - the tribunal rejecting the 		X	X	

	validity of a document notarized by Vietnamese notary public				
<i>Tyco Services Singapore PTE LTD vs. Leighton Contractors VN LTD [2003].</i>	Tyco is not a legal entity under Vietnamese law since had not been issued with a foreign construction contractor licence by the Vietnamese Ministry of Construction		X	X	
<i>Toepfer v. Sao Mai [2011]</i>	– the damages awarded to Toepfer were not actual and direct	X		X	
<i>Ecom vs. Vinatex [2014]-Appellate Court in Hochiminh City</i>	– the basis for calculation of damages is inconsistent with Vietnamese Law on Commerce (based on estimated damages but not actual damages; ECOM’s failure to mitigate damages)	X			X

<p><i>Sudico vs. STT 260 Architects [2015]</i></p>	<ul style="list-style-type: none"> – arbitral award failed to respect parties’ agreement which is voluntarily concluded between parties in accordance with social morality – the arbitral award is inconsistent with several provisions of Vietnamese construction laws 		<p>X</p>	<p>X</p>	
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