As Matthieu de Boisséson, who is honoring us with his participation at this 7th Newsletter, rightly highlights, there is clear evidence that Soft Law has « found in arbitration, a favorable and appropriate field because legal inventiveness and spontaneity are at the core of this matter ». This is why we chose to dwell a moment on this « soft and polymorphous law » according to Professor Denis Mouralis’ expression, the whole of these non-binding rules, legally contested, which « thrives on the fecund field of Arbitration ». We also mention in this newsletter, a few days after the Arbitral Women Speednet, in which the CAIP participated, the place of women in arbitration. With the record Priscille Pedone reveals to us: « women come in Arbitration, but we have to let them a little bit of time! ».

CAIP’s international aspect is not forgotten, with, in this edition, a focus made on the International arbitration law and practice in Vietnam and a focus on the new CIETAC Arbitration rules, partner of the CAIP. To conclude, a study is dedicated to the settlement of the arbitral tribunal’s seat, a disputing concept in Arbitration law, for which the legal advisors of the CAIP bring an opportune decoding.

Good reading!

Baudouin Delforge, Chairman of the International Arbitration Chamber of Paris.

Editorial

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**INTERVIEWS**

*Soft Law in Arbitration*

Interview with Matthieu de Boisséson

Lawyer, associate of Linklaters’s Law Firm

Matthieu de Boisséson evokes the *Soft Law*’s appearance, for which he recently consecrated a noteworthy article (*La Soft Law dans l’arbitrage, Cahiers de l’arbitrage* 2014(3) / Paris J. Int’l Arb. 519)

Good practices codes, ethical charters, guidelines: in International arbitration practice we attend today a development of Soft law. What are the main reasons on your mind?

In the nineties, the expansion of arbitration was followed by a proliferation of symposiums, commissions and work groups, which led to the redaction of Good behavior codes, directives and others guidelines, under the direction of various organizations: nationals bars, international lawyers associations, with at the first rank the International Bar Association (IBA), permanent arbitration institutions ... These recommendations, which do not have a binding nature, only providing advises without imposing obligations legally sanctioned, are mainly presented as the codification of good practices, mostly procedural. There is clear evidence that they found in arbitration, a favorable and appropriate field because legal inventiveness and spontaneity are at the core of this matter: more than everywhere, we see in arbitration a real harmonization between national legislation, contractual instruments and practice of Arbitration. International conventions, Arbitration centers’ rules and innovative solutions, born with
the application of law and customs of international trade, made the rest. Nevertheless, the soft law’s appearance (out look) is not limited to the international arbitration field but is part of a large trend which concerns all national systems and that we called « law-ranking source » of law: we note that non-binding state sources, such as administrative circular, explanations or recommendations from jurisdictional or administrative organizations and behavior codes, submerged the whole of law fields.

What is the practical utility of Soft Law?

What is sure is that we can not deny the utility of these instruments we just mentioned, and which become over time reference tools inspiring the parties. IBA rules in evidence matter or in conflict of interest matter are some of the best examples. That is the same concerning the ICC’s works on the control of arbitration’s costs or on the Redfern rules which formalized the exchange of documents between the parties while permitting to give rhythm to the communication process. These rules are the result of workgroup reflections, composed by shrewd professional persons from the international arbitration world and de facto, they assume an indisputable authority for professional actors of the sector.

Precisely, is Soft Law respected in practice?

Nowadays, several parties use instruments of Soft Law to base their arguments in invalidation proceedings and some jurisdiction already rendered decisions are based on theses instruments. This evolution is not surprising, on account of the structures and contents of some instruments elaborated by IBA or other organizations. Indeed, far from expressing general guidelines, that is general advices for recommendations the parties or arbitrators could precise or adapt these texts go deep in the procedure and often endeavor to examine the specific cases that do not require recommendation but solution. It is a paradox in Soft Law: the more these instruments are used like rules or guidelines, the more they become standardized in the way of customary practices and minimum level of quality. We must keep in mind the fact that these norms can not be enforced: their content remains necessarily unclear and in any way, their instrumentum is not suitable. Even though theses norms acquired a more intense level of normativity than in the past.

What else can we reproach to these rules?

Criticisms against Soft Law faces the objection according to which they have no significance since, these rules have anyway no binding force. Actually, this objection is not persuasive, because, by an insidious way, these rules have an increasing influence on the arbitrators and on the parties. Finally, the proliferation of one-size-fits-all solutions challenges, whether we accept it or not, the arbitrator’s discretion, and his initial emancipation from a group of binding rules which were those of the judiciary procedure. However, the increasing normativity of these recommendations reveals a risk: to prevail method of the law on the right itself.

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**Soft Law**

*Interview with Valéria Golikova*

Legal advisor, Legal and insurance CEO, Assystem

**Nowadays, codes, ethical charters, guidelines increase. Why?**

Indeed, communiqués, guides, guidelines, firm’s internal procedure, advices, optional technical standards, baseline, guidelines, model contracts, and so on which constitute Soft Law, are currently expanding.

Real alternative of « hard law » for authors, public and private persons, they appear as a better option than binding standards not to oblige receivers but for guiding behavior.

Several factors may explain this trend, among other constant technological development, evolution of national legislations in various fields (industrial, fiscal, financial, and so on), the strengthening of firms’ controls, development of supra-nationals standards, the international trade in various and very different geopolitical and legal contexts, and voluntary application.

**What are their practical usefulness?**

Concerning ethical charters, guidelines, code of good conduct, the standard permitting deviations, if necessary, is welcomed and used by firms. It can contribute to the necessary auto-regulation and co-regulation in the business world, in particular in international group of companies, it can be used as an instrument of internal control systems, of risk identification and management, but also as an tol to prepare the society’s organization for an important legislative modification, for new
obligations imposed by hard law, or to harmonize their agent’s behavior abroad in order to respect foreign countries laws.

In international arbitration dispute, the use of guides and good practices as the « IBA Rules of Evidence », or the ones concerning the « Good management of the ICC’s Arbitration » aims to ensure a fair and effective procedure and to optimize arbitration’s costs and delays.

The usefulness can be researched too in the arbitrator’s application of Soft Law instruments, chosen by parties, because they are adapted to their needs (ex. INCOTERMS, UNIDROIT).

In its 2013 annual report, the french Conseil d’État equally recognized the usefulness of soft law « as a substitute for hard law when its using is not practicable, either to palliate the legal impossibility to subscribe binding commitments, or due to international society’s characteristics » or as a substitute for regulatory provisions, uselessly detailed, which contribute « to the fight against the normative increasing » at the hard law’s quality and at the government’s renewal.

What is the good practices’ symbol? Is it to state the existence of « professions »? Is it to give a positive picture of the profession in question? Is it to imposer standards?

I think that it is the need which states the existence of a profession and that its positive picture can only be earned by quality, efficiency, and individual professionalism, the creation of good practices only is inefficient without their good application. They can be used by professionals to help them in sensitive situations, for example in conflict preventions.

In the course of trade, we can note as well the importance of good practices in company competitiveness. For example, the accession of recognized value companies at the international standards commonly accepted in corporate societal responsibility governances which has yet an important function (and sometimes even a decisive function) in the suppliers and providers’ choice and assessment by clients.

Concerning international companies, the good practices’ application can contribute also to the image of the country abroad. Are they respected in practice?

Although Soft law’s instruments do not create rights or obligations for their beneficiaries the judicial remedy by an interested party is not excluded to reproach a potential non-compliance with standards respect’s commitments which came from ethical codes and from the accession at the Soft law’s instrument, as the Global Compact for example. The proof of non-compliance with the rules is nuanced by particular circumstances, by beneficiaries of Soft Law’s instruments and their ability to create a customary norm which consecrates the liability (CA Versailles du 22 mars 2013 AFPS et OLP c/ Alstom Transport, Alstom et Veolia Transport).

The compliance with these rules depends on their nature and content, on the degree of commitment took in this instrument (for example, the obligation to justify differences or the obligation of compatibility with the instrument).

It seems to me that if the good situation of Soft Law contributes to the performances and to the competitive advantages of companies, the latter have to ensure themselves to its regular updating and to its actual use in management process. There is a real interest to respect them to avoid adverse consequences as the deterioration of the image, investors’ disaffection, loss of customers. Moreover, some instruments, as technical standards or good practices’ recommendations can be taking in account to assess the liability of the professionals under the recommended practice in his field.

However, according to Soft Law nature, the respect of the practice depends, in fine, on the will of its users and beneficiaries and of the rule’s quality.

What can we reproach at these rules?

Legal insecurity and the high costs’ risk for beneficiaries of soft law. Legal insecurity came from uncertainty on the scope of the instrument, from the beneficiary’s difficulties to identify boundaries between lawlessness, soft law, and hard law (for example, saying that something is soft law or hard law, the undertaking of contractual commitments by an instrument of soft law or a contractual commitment of its application). Costs are linked with the mobilization of the personnel and of the experts and the time dedicated to their development, with the necessity also to certify their compliance. The effectivity of soft law rules decreases if their implementation and their evaluation are insufficient. There are equally difficulties in the control of their application because they are based on the voluntary accession of the beneficiaries and they are exclusive responsible of their good application.
We note a multiplication of these rules. Is an harmonization necessary? If so, how do you want to proceed?

According to the diversity of fields in which Soft law may stand, diversity of authors, of users and of beneficiaries, it is difficult to imagine its harmonization. The main interest of these rules is their variety, which aims to respond to the needs and particularities of each user. By reducing these differences and divergences between them, this interest might disappear. However, the harmonization of applicable rules to the same category of user is necessary to ensure their acknowledgment and their effective practical application.

DOCTRINE

Soft Law and Arbitration

By Denis Mouralis
Agrégé of faculties of Law, Professor at the Avignon University

The concept of soft law appeared recently.

This concept of soft law, namely *droit souple* in French, is based on the idea that apart from the rules of law, precise and binding, and whose infringement implies a sanction – the hard law – there are equally principles, patterns of behaviors, more or less defined, that are optional, or at least, deprived from any sanction and that represent nevertheless another aspect of the law. To put it another way, law could not be limited to precise and fixed rules, mandatory and sanctioned by public powers. The concept of soft law means therefore that one shall think beyond the traditional conception of jurisdictionally, built thanks to the only criteria of mandatory character conferred to the rules. The concept of soft law has been forged, some decades ago, by international public law’s specialists, to consider the applicable standard in States’ relationships, that are not always sanctioned, and whose effectiveness might be uncertain, but this concept of soft law is today applied in other fields of law and trigger a real enthusiasm from a doctrinal point of view. This being said, we can see in older concepts, as natural obligations or suppletive law, some premises of the *soft law* concept.

Soft law is polymorphous and abundant, what impose us to conceptualize it. A lot of works tried to, for example, we can quote those of professors Mireille Delmas-Martý (*Les nouveaux lieux et les nouvelles formes de régulation des conflits*, in *Les transformations de la régulation juridique*, LGDJ, 1998, p. 209) and Catherine Thibierge (*Le droit souple, réflexion sur les textures du droit*, *RTD civ.* 2003, p. 599), for who soft law cannot be determine neither by its fields, nor by its legal sources, and no more by its beneficiaries who are often the same as those of hard law. *The soft law* is characterised by the flexibility of its contents and of its strength. The flexibility of its content refers to the legal vagueness, composed of vague standards which constitute the legal basis and some legal obligations as, for example, the morality (French « bonnes mœurs »). The flexibility of the strength refers to sweet law (French « droit doux ») which is not-binding and to soft law (French « droit mou ») which is not enforceable.

If soft law concept must be as old as the right itself, it is more present nowadays, from the fact that our societies endure less and less coercion. Standards seem to be understood and accepted, as much as respected. Thus, non-binding rules are often those which are the most respected, and some people think the fight against climate change could be help better by a treaty based on the voluntary commitments of governments (M. Greenstone, *A Voluntary, and Effective, Climate Treaty*, *New York Times*, 15 février 2015).

The same observation supports European and national legislators to consult public opinion, or, at least, professionals and companies directly concerned, before to prepare reforms. Furthermore, these political consultations are facilitated by new technologies. By the way, the proliferation of information and opinions exchanges on social networks must increase our appetite for this kind of participatory democracy.

Soft Law thrives on the fecund field of arbitration

It is not surprising that soft law manifests itself abundantly in arbitration (M. de Boisséson, *La Soft Law dans l’arbitrage*, *Cah. de l’arb. – Paris J. Int’l Arb.*, 2014, p. 519), because it is a matter based on freedom and agreement. It results of an agreement of the parties who can choose their arbitrators. Arbitrators can, for their part, accept or refuse their mission. Failing arbitrators, parties have a large latitude to organize the procedure. In the case of an international arbitration procedure, this latitude is larger and concerns the choice of the applicable law too. This freedom of choice gives a large available field for soft law, and, to a certain extent, make it indispensable: to deal with the variety of options that
were available to the arbitration’s actors, the need of marks is present, and *soft law* largely answers this need. We can give some non-exhaustive illustration.

Firstly, arbitration has been the subject of a lot of guidelines (*guide de bonnes pratiques* in french), elaborated by private organizations. This is a textbook case of *Soft Law*, because they do not came from any state-authority and have, *a priori*, no-binding force. We think in particular about the important works of the *International Bar Association (IBA)* which deal with international arbitration, and which resulted into guidelines linked to the production of evidence (2010), to the representation of parties in court (2013) and to the conflict of interests (2014). Equally, we can think about the *Code of Ethics for Arbitrators in Commercial Disputes*, elaborated by the *American Arbitration Association (AAA)* together with the *American Bar Association (ABA)*.

We can quote likewise the *Redfern Schedule*, so called in honor of its eminent creator, Master Alan Redfern, which organized exchanges related to the production of evidence, presented in tabular form. In the first column, the party who asks for the production of evidence brings his description. In the second column, the applicant explains how the evidence might be useful and relevant. In the third column, the defendant explains why he does not agree with the production of this evidence. In the last column, the tribunal gives a decision. This process simplifies and accelerates the production of evidences by allowing the tribunal to avoid procedural hearings and the readings of memorandums.

This method and the IBA’s guidelines, in particular those related to the production of evidence are widely followed by international arbitration practitioners. Obviously, when the parties chose to be bound by these rules, it is not question of *soft law*, but it is question of binding rules because they came from an agreement. Nonetheless, it is therefore remarkable that these principles constitute a base for arbitral tribunals even when the parties did not decide to make them applicable. In other words, in arbitration community, there is a positive feeling for these guidelines which contain the substance of key principles.

Arbitration centers’ rules are another source of *soft law*. Although only the adhering parties are bound by these rules, *ad hoc* arbitral tribunals have the possibility to use them when they have to solve a procedural issue, even if parties did not choose an arbitration rules especially dedicated to *ad hoc* arbitration proceedings (Like those proposed by UNCITRAL and Paris, place d’arbitrage).

Arbitration center’s scales are also a useful reference for setting the *ad hoc* arbitrators’ fees. UNCITRAL’s model law international trade arbitration is a source of *soft law* especially effective as well, because it was transposed in a lot of states.

There are other sources of *soft law*, more unexpected. National legislation on arbitration use the same standards, as the duty of loyalty (art 1464, paragraph 3, of french *Code de procédure civile*), which are included in undefined law, previously studied. There is also the question to know whether, in international arbitrations, doctrine is a source of *soft law* or not, because, several well-known authors, arbitrators, lawyers, professors or persons with several of these qualities are very respected and recognized. Some of their publications are indispensable reference.

In international arbitrations, very often, *soft law* has an important function in the dispute resolution on substantive issues. Indeed, in this kind of arbitration, the parties have the possibility to be bound by national law and rules, as international trade principles (F. Osman, *Les principes de la lex mercatoria, contribution à l'étude d'un ordre juridique anational*, LGDJ, 1992). Even if the parties did not express their due, the arbitral tribunal can apply such rules (*C. français de proc. civ.*, art. 1511; *loi suisse de DIP*, art. 187(1); UK Arbitration Act, art. 46).

When an arbitral tribunal, to settle a dispute, tries to establish international rules by researching principles which are commons in numerous legislation (E. Gaillard, « *Trente ans de Lex Mercatoria, pour une application sélective de la méthode des principes généraux du droit* », JDI 1995, p. 5) or recognized by numerous arbitral awards, based on texts as UNIDROIT principles or, at times, in the *Shari’a rules* (for example, award rendered in *Musawi v. R.E. International* case (UK), to which the british court of appeal allowed the exequatur : [2007] EWHC 2681), or by applying standards as good faith, it implements *soft law*.

Concerning investments law, it has several general standards relate to the undefined law category, while they are binding because they were adopted by states in investment protection treaties. In particular, arbitral awards had to precise the demand’s content of a fair and equitable treatment and of the full protection and security.

**Arbitration shows some questions asked by *soft law***

Arbitration, as other law fields, demonstrates that *soft law* is a indisputable reality, but in the same time, it highlights some questions that it raises. *Soft law* has an important function on the harmonization of arbitration law in the world. It is obvious concerning the UNCITRAL model law on international trade arbitration. Likewise, arbitration rules and above all guidelines, by they more and more common application, contribute to standardized the arbitration process sequence. Thus, the witnesses’s hearings, examined and cross-examined, with a typical American and British method become quasi-
systematic, despite criticisms of continental legal tradition’s arbitrators. This method appears equally in France during the conduct of domestic arbitration.

Nevertheless, we can consider that the soft law’s useful is characterized in its optional and undefined aspect, because arbitration must to stay an art, in which the arbitrator search the most appropriate dispute settlement in full freedom.(M. de Boisséson, above mentioned). Thus, we criticize a wayward trend of Soft Law, which become very precise in its requirements and quasi-mandatory in the minds of parties and arbitrators. However, these technical requirements can also improve the arbitration’s quality and reinforce the public confidence in arbitration.

Whatever one may think about this, it is true that arbitration’s soft law becomes slowly mandatory. Also, it is interesting to see that some state’s jurisdictions censured international awards because the arbitrators did not respect guidelines. For example, in United States, the Federal Court of Appeal, in the 9th judicial Court circuit, cancelled an international arbitral award because an arbitrator did not conduct investigation to discover that he was the subject of a conflict of interest, in contradiction with the AAA’s and ABA’s code of ethics (above mentioned) and the IBA’s guidelines. Paradoxically, the court highlights that these rules are not legally binding but added to the traditional duty of legal counsel to avoid conflict of interest, they justified the final decision (New Regency Productions c. Nippon Herald Films, 501 F.3d 1101 (2007)).

That brings up inevitably the question of the existence of Soft law: What kind of Foreseeability? Isn’t it condemn to become slowly a group of binding rules? Isn’t this crystallization, finally, the traditional process of legal customs’ creation, from usage that the soft law concept leads us to rediscover? If it is not easy to find the answer to these questions, something is sure: hard law is no more soft.

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POINT OF VIEW

The arbitrator is a woman -

Interview with Priscille Pedone
Lawyer at the Paris Bar, CM&P Law Firm

Lawyer at the Paris Bar, specialist of Arbitration that she practices in CM&P, Priscille Pedone is on the liste of the International Arbitration Chamber of Paris. She talks for us about the place of woman in arbitration

Nowadays, what is the place of woman in arbitration?

Women, on my mind, are becoming increasly. They are more numerous than before and they have a more important visibility. Currently, I am not sure that there is a « place » to reserve for women in arbitration. Obviously, there is more mans than woman in arbitration, but it seems to me that there are other discrepancies of reserved place not less interesting to highlight, as cultural difference, generational difference or educational difference.

In our job, and in particular in arbitration field, I think that this pluralism and what everybody can bring with their own qualities, men/women, seniors/juniors, common law/civil law is a stimulating force.

Try to preserve places or to favour qualities by the sole fact to have only one of these particularities must be a loss of diversity as wealth.

To speak like this, I am absolutely aware to be lucky by not being a pioneer et that I must benefit of the fight led per hundreds women for a long time before I came in arbitration. But nowadays, women who are present in arbitration have their place for their professional and intellectual qualities and not only because they are women.

Do you have met some particular difficulties, and if so, which one, to chair an arbitral tribunal with to mans as co-arbitrators?

My experience did not give me particular difficulties under the man-woman relationship.
On the contrary when I was chairman and that my co-arbitrators were men, we had a natural complementarity. On my mind, this complementarity was more based on a panel’s alchemy, came from our different and complementar professionals approaches, than on our anatomical differences.

I was equally co-arbitrators with two men, and I noted the same observation. I did not feel more or less woman but rather a complementar lawyer with the two experienced arbitrators who had a different professional background from mine. It is also this approach that I like in the Chamber, this constructive composition at the heart of which the three arbitrators bring their added value thanks to their professional background and to their different experiences.

**How can you explain that women dominated in magistracy and in minority in arbitration?**

This difference is probably explained by a choice of career at the beginning of our respective professions. If the feminization of magistracy career began a long time ago, it happened at a time of the end of our Law studies, rather than a choice of career at midway.

On the contrary, to be an arbitrator, it is necessary to have a few white hair, and men are certainly likely to have some way before women!

More seriously, if we “born” judge at the beginning of our career, we “do not born” arbitrator immediately: to become arbitrator, you often have to be a lawyer before, or in any events, to have exercised a profession during several years to be able to settle a dispute. The mission of the arbitrator needs to have both professional experience, a knowledge and a decline that you can only gain over time. In facts, it is what the parties are looking for: to entrust their dispute not to a judge but to a peer, a professional who will bring a different point of view from those of a judge.

Concerning women, they come to arbitration but we have to let them a little bit of time! It is only a generational matter. If you take a closer look, it was not that long ago that women started to get interested by arbitration and they are more and more numerous to take an interest in it.

**The perception of an arbitrator-woman does match better with the purpose of arbitration: flexibility, softness, will to bring about peace, conciliation considerations, greater attention to their sensibility, doesn’t it?**

I would like to think that any woman is born with the qualities you place on them, without having to improve them. But again, I am not sure this is the reality. For instance, for mediation, that is a field where all these qualities are paramount, the percentage men/women has not reach a balance yet.

The attention, the flexibility and all the qualities you quote are those that any party would like to find in the person of the arbitrator, whether he is a man or a woman. However, they are professional abilities forged with time, skills and personality.

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**SURVEY**

**International Arbitration law and practice in Vietnam**

**By Corinne Nguyen**  
Doctor of law, Consultant

**Introduction**

Arbitration as a privileged mode for international commercial disputes settlement is widely used and favoured by parties in the context of their business relationships.

This movement in the business environment towards international arbitration has influenced countries, such as Vietnam which committed, since 1987, to a process of transition towards a market-centric economy; with the view to provide a better regulation of the business framework including the settlement of commercial disputes.

**International commercial arbitration law in Vietnam**

Arbitration law in Vietnam is currently governed by the following legislation:
The Law on commercial arbitration of 17 June 2010 (the “LCA of 2010”), inspired by the UNCITRAL model law on international commercial arbitration of 1985.

It replaces the ordinance of 25 February 2003 on commercial arbitration which remains applicable to arbitration agreements concluded before 1st January 2011;

- The Decree of 28 July 2011 implementing the LCA of 2010;
- The Law of 14 November 2008 on the enforcement of civil judgements (the “LECJ of 2008”);
- The Code of civil procedure of 2004 (the “CCP of 2004”) which was partly modified in 2011 (the “CCP of 2011”);
- The Resolution of 20 March 2014 clarifying some provisions of the LCA of 2010 (the “Resolution of 2014”).

These different texts aim to offer a favourable framework to the settlement of disputes in answer to the needs of the business community while taking into account the evolution of the current arbitration practice:

- The LCA of 2010 is applicable to domestic and international arbitration procedures taking place in Vietnam.
- Chapter XXVI of the CCP of 2004 deals with the recognition and enforcement in Vietnam of foreign arbitral awards.
- The specificity of awards enforcement procedures is specified by the LECJ of 2008.
- Challenges of arbitral awards are allowed but only in limited cases.


Vietnam has also signed over 50 bilateral investment treaties (the “BITs”) and 7 multilateral treaties, including the World Trade Organization (“WTO”). It has however not joined the Washington Convention of 1965 on investments yet (the “Washington Convention” or the “ICSID Convention”).

The Resolution of 20 March 2014

Due to the difficulties on the application and interpretation of the different legal texts by local courts which render uncertain the outcome of the procedures, the Supreme Court of Vietnam has adopted the Resolution of 2014 with the view to clarify some of the provisions of the LCA of 2010.

The Resolution of 2014 – which contains 19 articles, the study of which goes beyond the scope of this article – clarifies notably the provisions on the validity or invalidity of arbitration agreements, the respective competence of arbitrators and local courts in the constitution of the arbitral tribunals, the conduct of the arbitral procedure and the annulment proceedings of arbitral awards.


Domestic arbitral awards can be enforced directly without enforcement procedures and fall within the ambit of the LCA of 2010 and of the LECJ of 2008.

On the contrary, foreign arbitral awards, i.e. awards that are rendered “inside or outside Vietnamese territory by arbitral tribunals chosen by mutual agreement of the parties for the settlement of disputes arising out of their commercial or labour relations” are enforceable only once they have been recognized by Vietnamese courts. The recognition and enforcement of foreign arbitral awards are governed by the Vietnamese Code of civil procedure and not by the LCA of 2010.

In practice, the procedure is slow and complex with an uncertain outcome.

Local courts appear to be reluctant to enforce foreign arbitral awards and often adopt a narrow interpretation of Vietnamese law.

As an example, article 370 of the CCP – which lists the different cases of non-recognition of foreign arbitral awards – provides, without any other clarification, that local courts can refuse their recognition and enforcement for violation of the “fundamental principles of Vietnamese law”.

The Court of appeal of the Supreme Court of Vietnam, Ho Chi Minh City thus unreasonably decided in 2003 that the failure of a Singaporean entrepreneur to possess a foreign construction license in Vietnam was contrary to the fundamental principles of Vietnamese law in order to annul the arbitral award rendered in the Tyco v. Leighton case.
Article 14 (2) (dd) of the Resolution of 2014 specifies now henceforth the meaning of fundamental principles of Vietnamese law. These are the basic principles of conduct which are fundamental for the development and application of Vietnamese law.

Local tribunals must therefore identify and specify the fundamental principles which would have been violated by the arbitral tribunal to justify the annulment of the foreign arbitral award. It is notably the case when the interests of the State, the rights and legitimate interests of a party or the parties or even of third parties, have been violated by the arbitral tribunal. It is also the case when the principle of contractual freedom of the parties defined by article 11 of the commercial Law or article 4 of the civil Code was not respected by the arbitral tribunal.

**Practice of international commercial arbitration in Vietnam**

The ongoing efforts of the Vietnamese authorities are necessary and useful to the development of arbitral centers in Vietnam which contribute to promote the practice of arbitration through the cases they manage and the trainings and lectures they provide.

There are currently 8 arbitral centers, on top of which is the Vietnam International Arbitration Center established in Hanoi with three offices in Danang, Can Tho and Ho Chi Minh City.

**Conclusion**

It can only be hoped that the stance adopted by Vietnam to favor the efficiency of arbitration as a privileged mode for disputes settlement will bear fruit.

Clarifications brought by the Resolution of 2014 – which came into force the 4th July 2014 – are certainly useful and necessary but its real impact is still to be measured in practice.

Hence, it will be interesting to follow its application by Vietnamese courts. Their support and decisions are essential to offer more visibility and confidence to parties which decide to resort to arbitration in Vietnam and to ensure that this country is seen as a truly reliable forum for arbitration in the world.

11. S. Chapter III of the LECJ of 2008 applicable to domestic arbitral awards.
12. S. article 342 (2) of the CCP ; see also article 3 § 11 of the LCA of 2010 on foreign arbitration, meaning the arbitration established « in accordance with foreign arbitration law which the parties agree to select to conduct dispute resolution, either inside or outside the territory of Vietnam » ; s. also article 758 of the civil Code which provides that a dispute involving an “international element” must meet at least one of the following conditions :
  i) involvement of a physical or moral person, foreign or Vietnamese but residing abroad; ii) the fact or the legal event at the origins of the parties’ relationship, its alteration or termination occurred abroad; iii) the assets are located overseas.
13. S. art. 343 of the CCP.
15. S. art. 4 of the civil Code: « Article 4. Principles of free and voluntary undertaking and agreement. The right to freely undertake or agree on the establishment of civil rights and obligations shall be guaranteed by law, if such undertaking or agreement is not prohibited by law and/or not contrary to social ethics. In civil relations, the parties shall act entirely voluntarily and neither party may impose, prohibit, coerce, threaten or hinder the other party. Lawful undertakings or agreements shall be binding on the parties and must be respected by individuals, legal persons and other subjects”.
16. Can Tho Commercial Arbitration Center (CCAC) ; Ho Chi Minh City Commercial Arbitration Center (TRACENT) ; Financial Commercial Arbitration Center (ACIAC) ; Pacific International Arbitration Center (PIAC) ; Vietnam Financial Banking Arbitration Center (VIFIBAR) ; Indochine Trade Arbitration Center (ITAC) and Vietnam International Arbitration Center (VIAC).
New CIETAC Arbitration Rules Effective on 1 January 2015

In an effort to adapt to the latest developments in international arbitration practice and to better accommodate the needs of the parties, the China International Economic and Trade Arbitration Commission (CIETAC) has revised its Arbitration Rules. The new 2015 Arbitration Rules, passed by the Chairmen's meeting on September 26, 2014 and adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014, has been effective as of January 1, 2015.

The revision of the CIETAC Arbitration Rules covers a range of issues.

Set Up an Arbitration Court to Administer Arbitration Cases

As part of its internal reforms, CIETAC has set up an Arbitration Court to replace the Secretariat to perform case administration functions under the Arbitration Rules. The Secretariat will instead focus on the promotion of arbitration and other public legal services. It should be noted that the set-up of the Arbitration Court only represents a change in division of responsibilities of CIETAC’s internal departments and the name of CIETAC as well as its model arbitration clause remains unchanged.

Introduce Provisions on Multiple Contracts and Additional Parties

In response to the diversification of business modes and in order to quickly and fairly resolve disputes arising from multiple parties and contracts due to serial transactions, multi-party transaction and/or project series transactions, CIETAC, on the basis of summarizing its own experience, has added two provisions on “Joinder of Additional Parties” and “Multiple Contracts” and revised the provisions on “Consolidation of Arbitrations”, which will increase arbitration efficiency and reduce arbitration costs of the parties at issue.

Increase the Dispute Amount of Summary Procedure

In order to reduce procedural complexity and improve efficiency, and in view of the rapid growth of China’s economy and the growing value of cases administered by CIETAC, the new Arbitration Rules increases the threshold dispute amount for the Summary Procedure from RMB 2 million to RMB 5 million, that is, unless otherwise agreed by the parties, the Summary Procedure shall apply to cases where the amount in dispute is below RMB 5 million.

Add a Special Chapter for Hong Kong Arbitration

This revision adds a chapter of “Special Provisions for Hong Kong Arbitration” to highlight international features of CIETAC. CIETAC plays an active role in promoting the development of international commercial arbitration and in September 2012, CIETAC set up the CIETAC Hong Kong Arbitration Centre at the invitation of the Hong Kong SAR Government. As the Centre was not yet established when the previous CIETAC Arbitration Rules took effect in May 2012, the 2012 Arbitration Rules did not include the Hong Kong Arbitration Centre and there were no provisions as to how cases should be conducted in CIETAC Hong Kong. By adding the chapter on “Special Provisions for Hong Kong Arbitration”, the new CIETAC Arbitration Rules fully shows the openness and internationalization of CIETAC Arbitration Rules.

The “Special Provisions for Hong Kong Arbitration” in the new Arbitration Rules includes a number of new international arbitration practices. For instance, “Unless otherwise agreed by the parties, for an arbitration administered by the CIETAC Hong Kong Arbitration Centre, the place of arbitration shall be Hong Kong, the law applicable to the arbitral proceedings shall be the arbitration law of Hong Kong, and the arbitral award shall be a Hong Kong award”, “The parties may nominate arbitrators from outside the CIETAC’s Panel of Arbitrators”, and the administrative fee and the arbitrator’s fee shall be charged separately. The revision reflects an even more open attitude of CIETAC and its commitment to embracing international arbitration practices in Hong Kong and providing parties at issue with more professional, efficient and international arbitration services.

Introduce the Emergency Arbitrator Procedures

The emergency arbitrator procedure is a new mechanism of international arbitration, representing the direction of development of international arbitration rules. It reflects the importance of emergency relief before the formation of the arbitral tribunal and helps guarantee the fulfillment of lawful rights of the parties.

The introduction of emergency arbitrator procedures under CIETAC Arbitration Rules meets the need of the practice of CIETAC Hong Kong Arbitration Centre, where pursuant to the Hong Kong Arbitration Ordinance; any emergency relief granted by an emergency arbitrator is enforceable in the same manner as an order of the court. Also, it adds the possibility of enforcement of the decision of the emergency arbitrator in the enforcing state or region. If the law at the enforcing place
grants legal validity to the decision of the emergency arbitrator, the parties may apply for enforcement in accordance with the decision of the emergency arbitrator.

Further, the new procedure can serve as a necessary supplement to interim measures ordered by the court. Emergency relief granted by the emergency arbitrator may be interim measures that cannot be ordered by the court and therefore can serve as a necessary supplement to interim measures and help protect the lawful rights and interests of the parties in a timely manner and reduce losses, with great significance in practice.

**Other Revisions**

Other revisions include the way of service of documents, strengthened power of the presiding arbitrator, engagement of stenographer, etc.

Through the revision of its Arbitration Rules, CIETAC endeavors to further refine its procedural design and improve arbitration efficiency. CIETAC will continue to provide high-quality international arbitration services through constant improvement and innovation.

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**FILE**

**The settlement of the arbitral tribunal’s seat:**

**what’s consequences?**

The seat of arbitration is a debated concept in arbitration law, with some questioning its usefulness and some highlighting its value. However, in practice, this notion remains misunderstood because it has not, in arbitration, the consequences that we could allow it instinctively. In few questions, we will approach this concept as it is governed today under substantive law.

1 – **Who settle the arbitration’s seat?**

French law does not provide the settlement of the arbitral tribunal’s seat.

In Institutional arbitrations, the seat of the arbitration is usually provided in the arbitration rules at the place where the institution is located. However, in the absence of a text, a total freedom is allowed to the parties to establish the seat of the arbitral at the place that they want, either at the stage of drafting the arbitration clause, or after the beginning of the arbitration procedure by a simple agreement of the parties (frequently, the agreement of the parties on the seat of arbitration is entered in the mission order.

The Court of appeal of Paris (France) specifies by the way that the seat of arbitration is “under the direction of the parties’due”

2 - **Why should we not overestimate the significance of the seat of arbitration?**

If the seat of arbitration has important legal consequences, they are lower than we can, *a priori*, estimate.

a – First of all, the seat of arbitration does absolutely not determine the place where arbitration operations will be conduct. The hearings place, the place where arbitrators or parties will meet, or the place where arbitral award is signed can be different from the place defined as the seat of arbitration.

Materially, all these operations can, entirely or partially, take place in another location which is not the seat of arbitration. Indeed, the French jurisprudence recognized for a long time ago that “*no legal provisions require from the arbitral tribunal to perform in the same place whatever acts are necessary to achieve the whole of their mission, including the conduct of the proceedings and the issuance of the award*”

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The French court of appeal explains this logic as follows: “the seat of arbitration is a purely legal approach (...) and not a material concept which is function of the place where the hearings has been held or of the place where the award is signed, and which can change according to the arbitrators’ choice or clumsiness.”

**b** – Furthermore, the seat of arbitration does not determine the procedural law or the applicable law. They remain the choice of the parties without the seat of arbitration can interfere in this choice.

**c** – Finally, the seat of arbitration has no impact on the place of the award must be enforce. This separation between the seat of arbitration and enforcement is enabled by the wide ratification of the New York convention Of 1958. Indeed, enforcement of arbitral award can be done in any of the 152 signatory states, regardless the country of the seat of arbitration.

3 – What is the seat of arbitration’s usefulness?

The place of the seat of arbitration remains undeniably an important factor for two reasons: this place determine the competence of the “juge d’appui” and judicial remedies against the award.

**a** – The settlement of the seat of arbitration thereby involve the competence of the “juge d’appui” according to the seat’s country’s arbitration law. For an arbitration where the seat is settled in Paris, the competent “juge d’appui” will be the president of the French Tribunal de grande instance, or, if the arbitration agreement provides it, the president of the French Tribunal de commerce, in compliance with the article 1459 of the French Code de procedure civile.

However, the French arbitration law provides only a residual jurisdiction for the “juge d’appui” and thus, he is rarely seized in institutional arbitrations. Indeed, in this assumption, the “juge d’appui” takes action only when there is no action from the arbitral institution designated by parties to solve the problem.

**b** – The seat of arbitration determines as well the judicial remedies against the award. It is the main reason which must determine the seat of arbitrage’s choice by the parties.

However, again, the French arbitration law preserves largely the will of parties: They have, in particular in international arbitrations, a large waiver power to judicial remedies provided.

CAIP’s rules states that : ”subject to the provisions of Article 42 below, only an application to set aside the award may be filed before the Court of Appeal in relation to awards issued in France under the auspices of the International Arbitration Chamber of Paris” (art 41 p.1) and that “in international arbitrations, the parties have the right to waive proceedings to set aside the award(s) issued in France by an Arbitral Tribunal established under the auspices of the International Arbitration Chamber of Paris”.

Lastly, it should be noted that the parties can choose to appoint a judge from a different place that the place of the seat of arbitration to deal with an eventual judicial remedy : « In French Arbitration Law, the award’s relocation does not oppose the possibility to bring the annulment appeal before another judge that one of the seat of arbitration via the jurisdiction clause ».

In summary, the seat of arbitration, “purely legal approach”, submitted to the will of the parties, has consequences concerning the competence of French national tribunals to intervene in arbitration (juge d’appui) or to control (judge of the cancellation) but no “material” or practical consequence in arbitral procedure or on the substantive issue.

2. Cour de cassation, 2ème Chambre civile, 9 février 1994.
CAIP’s membership of Paris, the Home of International Arbitration

CAIP is pleased to announce you that it joined the association Paris, Place d’Arbitrage International. With the aim of promote Paris as the 1st world place in arbitration, the association provides resources to people wanting to choose Paris as the seat of their arbitrations.

+ To learn more

Intervention of CAIP at the training day JURIS DEFI

The International Arbitration Chamber of Paris took part the 10 of March 2015 at the second JDDAY’S of Juris Défi which is a network regrouping professionals of law. During this day, organized at the initiative of its presidents, Jean-Jacques François, lawyer, and Pascal Morin, Notary in CNB’s premises, Ms Irina Guérif, Secretary General of CAIP, spoke about the theme: « Dispute settlement by arbitration : practice and strategy » alongside that of Marilyne Foucault Perron and Nicole Babeau, members of Juris Défi who spoke about collaborative law and mediation.

The speech of Irina Guérif was completed by a feedback session of Mr Alain Cheval, president of the organization France DEFI. Participants were able to understand and debate of preventive arbitration’s practice and strategy and those to adopt during an arbitral procedure.

Thus, the Arbitration Chamber remained faithful to its vocation to sensitize professionals of law at the dispute settlement by arbitration.

+ To learn more

Intervention of CAIP at a breakfast-debate organized by RACINE

Thursday the 2 of April 2015 from 8.30 am to 10.30 am

Under the patronage of CAIP’s president, Mr Baudouin Delforge, the Law Firm RACINE will organize a breakfast-debate during which Master Bruno Néouze, associate and manager of the Agriculture and agro-food chain department et Ms Irina Guérif, Secretary General of CAIP will study the question of : « Settlement of dispute related to the sale of agricultural and food goods : conciliation – mediation - arbitration », Various professionals would be informed of the issues of the “Loi d’Avenir pour l’agriculture, l’alimentation et la forêt” and et of the solutions that CAIP shall provide to the parties.

+ To learn more about Racine Law Firm
+ To learn more about the breakfast-debate
Open house for students in CAIP

In the guideline of the tradition built by CAIP, it received, the 6 of March 2015, and for the third consecutive time, student of professor Régis Chemain, Director of the International trade law Master degree in Paris-Ouest – Nanterre La Défense University. On this occasion, students had the opportunity to discover activities of CAIP and to familiarize itself with the procedure applicable at arbitration bodies which are practiced in CAIP and with general arbitration.

Participation of CAIP at the ARBITRALWOMEN SPEEDNET

On Monday, 9 March 2015, an innovative networking event for women in the field of commercial disputes resolution was held at the premises of the law firm August & Debozy. The event was jointly organised by August & Debozy and the organisation ArbitralWomen. This event, marking Women’s Day, was a big success, allowing participants to interact in a warm and friendly environment. Around fifty women working in arbitration and in all forms of dispute resolution had confirmed their attendance for the event.

The very pleasant evening commenced with a warm welcome by Marie Danis and Carine Dupeyron, both associated with the law firm August & Debozy, and a vote of thanks by Mireze Philippe on behalf of ArbitralWomen, of which she is a co-founder, to August & Debozy for their support in organising and for hosting the event. Then came the highlight of the evening when Rashda Rana, President of ArbitralWomen, announced the rules of SpeedNet and encouraged all participants to join in the game. Very productive informal discussions were then initiated. The quick exchanges allowed participants to multiply their new contacts. Another advantage of the format was that the participants benefitted from mixing with the variety of professions – lawyers, arbitrators, mediators, experts, advisors, professors, representatives of arbitral institutions – as well as generations that were represented. The informal discussions continued around a buffet. The event was hailed a success just like its previous edition in London. In light of this, it will be extended, in the coming months, to different cities around the world, by the members of ArbitralWomen. The information will be posted on the website www.arbitralwomen.org.

ArbitralWomen is an international organisation bringing together women in the field of commercial dispute resolution. Created in 1993, it has more than 1,000 members in over 40 countries.

ArbitralWomen SpeedNet was created by Lisa Thomas of Arnold & Proter (UK) LLP and a member of ArbitralWomen.

+ To learn more