

Tips and lessons learned for parties involved in an arbitral proceedings

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The first and most important note is that the parties should know the Rules of Arbitration (the “Rules”) applied to their Dispute. Each arbitration centre has its own Rules; the Rules are "guiding" actions/inactions for the parties, the Arbitral Tribunal, the Centre and other people/organizations involved. The Rules provide from general issues to specific ones. Communications from the Parties, the Arbitral Tribunal and the Centre are usually based on particular Articles of the Rules. Understanding the Rules, the parties proactively know the status of the dispute as well as prepare for next steps of the arbitral proceedings. Advice: Timely contact the arbitration center in Pre-arbitral.

The second important issue is the selection of arbitrators and constitution of arbitral tribunals. All knows that it is the Arbitral Tribunal who resolves the disputes between the parties; the Arbitration Centre is only the organization providing administrative and other supports. The Arbitration Centre may send requests to the parties before the constitution of the Arbitration Tribunal or as per specified in Article 35 of the Rules of VIAC *“In all matters not expressly provided for in these Rules, the Centre and the Arbitral Tribunal shall act in the spirit of these Rules and make all efforts for the dispute to be resolved in a fair and efficient matter”*. Choosing commercial arbitration, parties are free to select their arbitrator, who shall be member of the Arbitral Tribunal. If the parties have specifically agreed on qualifications of arbitrators, the parties select the arbitrators according to these qualifications. Otherwise, the parties can choose anyone on the list or outside the list of arbitrators of arbitration centres to act as arbitrator. Arbitrators in the list of arbitrators of arbitration centres are usually of higher qualifications than the legal requirement. To exercise their rights, the parties should study the nature of disputes and related matters such as place of arbitration, language of arbitration, applicable laws, etc to select the arbitrators with suitable

fields of expertise, place of residence, nationality, language, etc. At this stage, the role of counsel is important. Advice: Be active, Use your Right to Select Arbitrator, not necessary being listed arbitrators of the Center.

The arbitral proceedings commence when the Arbitration Centre (for the case of institutional arbitration) receives the valid Request for Arbitration from Claimant. Rules of Arbitration in general and the VIAC's in particular provide in detail the contents of the Request for Arbitration, other relevant documents and how to submit them. Among them, we would like to draw your attention to "the value of disputes". Based on this value, the Centre calculates and requests the Claimant to pay the arbitration costs. Arbitration Centres have provisions on arbitration costs in the Rules and the Schedule of arbitration costs. Parties can calculate arbitration costs with the formula available on the Website of arbitration centres. The Claimant should give the exact value in dispute with reasonable evidences. Should the Claimant put a high value in dispute but the Arbitral Tribunal in its Award decides to reject such a high value or accept part of the value, the Claimant shall usually bear the arbitration costs for the rejected part. In other cases, should the Claimant detect errors and amend the Request for Arbitration reducing the value in dispute, the Claimant is granted no refund for arbitration costs for the difference. For their part, the Respondents should note its rights and duties in selecting arbitrators, submitting the Statement of Defense and making the Counterclaim. Advice: Formulate accurately your Request.

Another note is the language of arbitration. In Vietnam, for disputes with a foreign element or for disputes in which at least one party is an enterprise with foreign investment capital, the parties are allowed to agree on the language of arbitration other than Vietnamese. Without such an agreement, the Arbitral Tribunal shall determine the language or languages to be used in the arbitral proceedings; the Arbitral Tribunal shall consider relevant circumstances such as the language of the contract. When making the Request for Arbitration, the Statement of Defense and/or the Counterclaim and other relevant documents, the parties should pay attention to the mentioned language of arbitration.

The parties may participate direct or by proxy in the arbitral proceedings. At the VIAC, approximately 70% of the arbitration cases involves authorized representatives. The power of attorney (PoA) should clearly state the scope, contents and duration of authorization. It is a controversial note that the authorized party should be individual(s) rather than organization (such as a law firm). Another note is that if the authorized person signs the Request for Arbitration, the PoA shall need to specify this in its contents. Advice: Authorized Person should be a natural Person, not a Company.

As you know, though the parties are in dispute, negotiation or mediation is always the optimal solution while the Arbitral Tribunal is resolving the dispute. The law and commercial arbitration practice support these solutions. We note two major issues here. Firstly, the parties should study carefully the dispute resolution clause their contract. In the event of such a detailed clause for negotiation and/or mediation before arbitration, that a party ignores the negotiation/mediation step fully or partly and goes straight to arbitration is controversial. It depends on the Arbitral Tribunals' discretions to accept or reject the claims. Secondly, the parties should consider opportunities for negotiation and mediation during arbitral proceedings. A practical consideration is if a party sees that the Arbitral Award (shall) declare the party "win" 100%, will this party accept a negotiated agreement/successful mediation with the winning rate of 80% or not? At the VIAC, around 10% disputes ends with negotiation or mediation without an arbitral award.

Unless exceptionally otherwise agreed by the parties, hearing(s) is the indispensable step in the arbitral proceedings. The note is on the final hearing to resolve the disputes (the final hearing). When the parties receive the summon to attend a hearing to resolve the dispute, the parties never see the word "final" in the summon. So, what is the final hearing? VIAC's Rules of Arbitration as well as the other arbitration centers' Rules write similar definition: *At a hearing, if the Arbitral Tribunal considers that the parties have no further relevant documents or evidences to submit, the Arbitral Tribunal shall declare such a hearing to be the final hearing.* After the declaration, two consequences are worth remembering. First, if the parties submit additional documents after the final hearing, the

Arbitral Tribunal shall have no obligation to consider them. Second, the Arbitral Tribunal shall make the arbitral award (the “product” awaited by the parties) no later than 30 days from the date on which the final hearing finishes. Advice: Make a Checklist of your evidence supporting your points for Hearings.

Finally, we would like to draw your attention to arbitration costs. When you are considering choosing a foreign or Vietnamese arbitration institution, one of the important considerations is the costs of arbitration. VIAC’s Schedule of arbitration costs is available on the VIAC’s Website with simple calculation method and mainly bases on value of disputes (as we noted above). Arising arbitration costs, if any, comes from the amendment and/or supplement of the parties which increase the value in dispute and/or travelling, accommodation and other relevant expenses for the Arbitrator(s) who resolve the dispute and secretarie(s) of the hearings, expenses for inspection and valuation of assets, expenses for seeking expert advice, and expenses for other assistance at the request of the Arbitral Tribunal. VIAC’s Schedule of Arbitration costs is considered reasonable in comparison with that of other international arbitration centres.

Above are some notes in the arbitral proceedings for this event. Many other legal issues and practices need considering for an efficient dispute resolution. We are willing, within our capabilities, to answer all questions from you./.