

DRAFT JUDICIAL PRECEDENT NO. 15/2024¹

JUDICIAL PRECEDENT NO. .../2024/AL

**Regarding the Exemption from Consular Legalization of Documents
in Arbitration Proceedings**

Adopted by the Judicial Panel of the Supreme People's Court on ..., 2024, and published pursuant to Decision No. .../QĐ-CA dated ..., 2024, of the Chief Justice of the Supreme People's Court.

Source of the Precedent:

Decision No.16/2023/QĐ-PQTT dated November 27, 2023, of the Hanoi People's Court regarding the refusal to annul an arbitral award between the claimant, Company TNHH T, and the related party, Company E.

Location of Precedent Content:

Sections 6 and 7 of the "Court's Opinion"

Summary of the Precedent Content:

- ***Factual scenario:***

The claimant requested the annulment of the arbitral award on the grounds that the Arbitral Tribunal did not require the related party to conduct consular legalization of documents and materials prepared abroad and submitted to the Vietnam Commercial Arbitration.

- ***Legal solution:***

In this case, the Court determined that consular legalization of the documents and materials was not mandatory because the receiving authority, the Vietnam Commercial Arbitration, did not request it, unless the arbitration procedural rules specifically provided for such a requirement.

Relevant Legal Provisions:

- Commercial Arbitration Law No. 54/2010/QH12
- Clause 4, Article 9 of Decree No. 111/2011/ND-CP dated December 5, 2011, of the Government on Consular Certification and Legalization

Keywords of the Precedent:

¹ This draft precedent was proposed by Judge Hoang Ngoc Thanh, Chief Justice of the Economic Court, Hanoi People's Court.

“Documents, materials”; “Exemption from consular legalization”; “Request for consular legalization”; “Receiving authority does not require”; “Arbitration proceedings”.

CASE SUMMARY

On May 28, 2020, T Company Ltd. (hereinafter referred to as the “Claimant”) and E Company (hereinafter referred to as the “Related Party”) entered into Sales Contract No. 01/2020/EG-MKIIS (hereinafter referred to as “Contract No. 01”) for the purchase of 1,000,000 Dr. Ryan 4-layer medical face masks, standard TCVN8389-1:2010, manufactured by O Joint Stock Company (“O”). The contract specified the place, time, method of delivery, and payment terms.

During the execution of the contract, a dispute arose between the parties.

On July 22, 2022, the Related Party filed a lawsuit against the Claimant at Arbitration Center V to resolve the dispute.

On June 23, 2023, Arbitration Center V issued Arbitral Award No. 49/22 and made the following rulings:

- Partially accepted the claim of the Related Party;
- Accepted the Related Party's request to annul part of the Contract concerning the 600,000 masks that had not been delivered;
- Ordered the Claimant to refund the Related Party the full amount of USD 55,643.4, which had been paid but not matched by delivery;
- Ordered the Claimant to pay the Related Party an attorney's fee of VND 24,255,000;
- Rejected other claims of the Related Party.

Dissatisfied with the above Arbitral Award, the Claimant submitted an application to the Court requesting the annulment of the award on the grounds that the Award violated fundamental principles of Vietnamese law, specifically:

According to the provisions of Contract No. 01, the Annex to Contract No. 01 signed between the two parties, the process of conclusion and execution of the sales contract, and the fundamental principles of Vietnamese law:

1. The Arbitral Tribunal in Dispute No. 49/22 (hereinafter referred to as the “Tribunal”) issued an Award that contradicted fundamental principles of Vietnamese law by not properly considering the self-defense arguments of the Related Party in the self-defense statements submitted in Arbitral Award No. 49/22. The Award lacked objectivity, especially with respect to the application of basic principles of Vietnamese law in the sale of goods, including the buyer's

obligation to accept the goods as stipulated in Article 56 of the Commercial Law, the buyer's responsibility to facilitate the acceptance of goods, and the buyer's duty to diligently fulfill their obligations as set forth in Article 6 of the Contract.

- In the self-defense statements and during the arbitration hearings in Dispute Case No. 49/22, the Related Party argued that the request to annul part of the sales contract was unfounded, as the Related Party had violated basic principles of Vietnamese law in the conclusion and performance of the sales contract. The Related Party had made payment for the goods as agreed, but when the market price of the goods significantly dropped, the Related Party proposed changing the delivery method from air transport to sea transport to reduce costs. This proposal was negotiated and agreed upon by both parties and concluded through electronic messages in accordance with the provisions of the Vietnamese Commercial Law. The Related Party subsequently made an unlawful request for a price reduction. When this request was not accepted, the Related Party demanded a refund of the payment for goods that had been purchased but not delivered due to the nature of the goods, which required export. This demand for a refund, after the payment had already been made, was contrary to Vietnamese law and lacked a legal basis for reclaiming the paid amount under Vietnamese law.

However, the Tribunal in Dispute Case No. 49/22 did not fully reflect these issues in the Award. The Claimant's arguments in the self-defense statements and during the hearings were not adequately considered, resulting in an Award that contradicted the fundamental principles of Vietnamese law.

- The Tribunal in Dispute Case No. 49/22 failed to be objective by not fully presenting and reflecting the Claimant's disagreement with the Related Party's request to annul part of the contract as stated in the Related Party's fourth supplementary self-defense statement, and during the first hearing when the defense counsel for the Respondent argued that the Contract should be amended in accordance with Article 421 of the Civil Code, the buyer's responsibility to accept goods under Article 56 of the Commercial Law, and the exemption of responsibility for breach of contract under Article 294 of the Commercial Law (since the Claimant did not accept the goods, the Respondent could not deliver them, and therefore the delay was not the Claimant's fault, as stated by the Claimant in the self-defense statements). The Award did not reflect these self-defense arguments made by the Claimant in accordance with the Commercial Law, leading to an inaccurate and unfair Award that agreed to annul part of the sales contract between the parties.

2. According to Clause 4, Article 4 of the Civil Code 2015, "In cases where there is a conflict between the provisions of this Code and an international treaty to which Vietnam is a party regarding the same issue, the provisions of the international treaty shall apply."

Article 6 of Contract No. 01 stipulates, “This contract is governed by Vietnamese law.” However, the Tribunal in Dispute Case No. 49/22 applied the United Nations Convention on Contracts for the International Sale of Goods (CISG) to make its Award, annulling part of the sales contract between the parties. This application of the CISG significantly impacted the Claimant’s legal rights and interests, even though Vietnamese law contains sufficient provisions relating to the sale of goods in disputes in Dispute Case No. 49/22, particularly provisions regarding the responsibilities of the seller and buyer to pay and accept delivery, which are consistent with the CISG. More importantly, the parties did not agree to apply the CISG to govern their transaction.

The seller and the buyer must fully comply with the fundamental principles of Vietnamese law as stipulated in Clause 5, Article 3 of the Civil Code 2015. In Dispute Case No. 49/22, the Related Party had agreed and reached a consensus on changes to the delivery method but failed to fulfill its responsibilities under Vietnamese law, particularly in relation to the procedures and conditions for accepting goods. The Related Party demanded a price reduction, and when this was not granted, it sought a refund for the purchased goods through various methods contrary to the parties’ agreement on dispute resolution, including filing a complaint with the police of Bac Giang Province against the legal representative of the Claimant for alleged fraud in the sale of masks, thus violating its obligation to amend and supplement the contract through the changes agreed upon via electronic mail. The form of contract conclusion is recognized under Vietnamese law.

3. The Arbitral Award in Dispute Case No. 49/22 partially accepted the Related Party’s claim that there was no requirement for consular legalization of documents with foreign elements when filing the dispute at Arbitration Center V, as the Commercial Arbitration Law and other relevant legal documents do not provide any requirement for consular legalization of documents or materials submitted by foreign entities. However, the Tribunal in Dispute Case No. 49/22 did not reference any provision of the Commercial Arbitration Law, relevant regulations on commercial arbitration, or international treaties that stipulate that documents with foreign elements do not require consular legalization when arbitration proceedings are conducted in Vietnam. The Tribunal did not explain which legal provisions or international agreements it relied on to conclude that the consular legalization of the Related Party’s complaint was unnecessary, and why the Tribunal did not require consular legalization of the complaint while accepting the Claimant’s other documents. The Claimant has formally requested the Tribunal to clarify whether Arbitration Center V is a competent authority in Vietnam and whether it is required to comply with Vietnamese law when assessing the legal grounds for the claim, the competence to sign the complaint, and ensuring that decisions are made fairly and in accordance with the fundamental principles of Vietnamese law, balancing the legal rights and interests of both parties. To date, the Claimant has not received any clarification from the Tribunal on these requests.

According to Clause 2, Article 4 of Decree No. 111/2011/ND-CP dated December 5, 2011, in order to be recognized and used in Vietnam, documents must go through consular legalization if they are intended for litigation purposes, such as seeking the annulment of a contract. The Tribunal's failure to require consular legalization of the Related Party's complaint does not ensure the legal rights and interests of the Claimant under Vietnamese law.

4. The Claimant has submitted a written request to the Tribunal in Dispute Case No. 49/22 seeking clarification of Section 42 of the Arbitral Award in Dispute Case No. 49/22, which includes the statement: "regarding the request to annul part of the contract related to the 600,000 masks that have not been delivered due to a breach of the delivery obligation..." The Claimant asks on what legal basis and which pieces of evidence provided by the Plaintiff and Defendant the Tribunal relied to determine that the Claimant was late in delivering the goods, thus breaching a fundamental contractual obligation of non-delivery, when in fact, the Claimant did deliver the goods twice as agreed between the parties in the Contract and its Annex. Additionally, the parties had agreed to and negotiated multiple deliveries, and changed the delivery method from air freight to sea freight.

According to the evidence provided by the Claimant, the parties reached several agreements on the implementation of the contract through electronic communications, including new terms regarding the goods, packaging, and significant changes to the method of delivery via sea transport. The Claimant contends that there is no basis for determining that the Claimant was late in delivering the goods, and the Claimant did not breach the fundamental obligation of timely delivery. Rather, the evidence shows that the Related Party violated its obligations as a buyer under Article 6 of the Contract, and violated the agreement on the determination of the competent authority to resolve disputes, as it demanded the Claimant return the payment made for the goods, in violation of Vietnamese law.

However, the Tribunal's analysis in Section 42 of the Arbitral Award does not reflect this position. The Claimant has clearly and fully presented its arguments during the hearings and in the self-defense statements from the first to the fourth submission. The Tribunal's analysis was not objective, as it improperly separated the 200,000 masks that had been agreed upon and delivered to the Related Party from the 600,000 masks that were not accepted, and the demand for a refund of the payment. The Tribunal failed to fully consider the evidence and the provisions of Vietnamese law in forming its opinion and issuing an Award that does not comply with the relevant legal provisions of Vietnamese law.

The Claimant has requested that the Tribunal amend and supplement the Award in Section 52 regarding the rejection of the Related Party's complaint, on the grounds that the reasons stated in the Award do not reflect the Claimant's intentions as presented in its self-defense statements

and submissions. The Claimant has consistently maintained that there was no delay in delivery, and no fault on its part regarding the Related Party's failure to receive the goods. The Related Party was at fault for not accepting the goods, as it failed to fulfill its obligations as the buyer, including the responsibility to accept the goods and to facilitate delivery, as required by the Commercial Law. The Related Party's sole objective appears to be to recover the payment made for the goods. Since the Related Party is at fault for the non-delivery of the goods, the Claimant is entitled to exemption from its obligations under the provisions of Clause c, Article 294 of the Commercial Law. The Claimant believes that the Tribunal did not properly consider the relevant provisions of Vietnamese law when issuing the Arbitral Award in Dispute Case No. 49/22, which contradicts the fundamental principles of the Civil Code as stipulated in Clause 5, Article 3 of the Civil Code: "Individuals and legal entities must bear responsibility for not fulfilling their civil obligations properly." However, until now, the Claimant has still not received any supplementary decisions from the Tribunal regarding this request.

- Regarding the Award that the Claimant must pay the Related Party a portion of the legal fees amounting to VND 24,255,000, this Award is in violation of the fundamental principles of Vietnamese law, specifically Article 5, Clause 3 of the 2015 Civil Code, which stipulates that individuals and legal entities are responsible for failing to fulfill or properly perform their civil obligations. The Plaintiff entered into a legal services agreement with a legal service provider, but the parties did not agree on the lawyer's fees. However, the Tribunal in Dispute Case No. 49/22 still imposed the obligation on the Claimant to pay the legal fees for the Related Party's agreements. This Award does not align with Vietnamese legal provisions and is not supported by any agreement in Article 6 of the Sales Contract.

Based on Clause d, Article 2, Section 68 of the Commercial Arbitration Law, the Claimant requests that the Court annul the Arbitral Award in Dispute Case No. 49/22 issued by the V Arbitration Center on June 23, 2023.

The Related Party, through its legal representative, submits as follows:

The Claimant argues that the Tribunal did not fully reflect the contents of the Claimant's arguments in its self-defense submissions, resulting in an inaccurate Award. The Related Party responds as follows:

Under Article 61, Clause 1 of the Commercial Arbitration Law, the content of an arbitral award may include (i) a summary of the complaint and the disputed issues; and (ii) the legal basis for the award, unless the parties agree otherwise. Accordingly, the award does not need to include all arguments from the parties.

Additionally, Sections 24, 25, 26, 31, and 32 of the Award in Dispute Case No. 49/22 summarize the Claimant's views from its self-defense submissions and the dispute resolution hearings. During the hearings, the Tribunal allowed the parties to fully present their arguments and evidence. Therefore, the Claimant's assertion lacks merit.

The Claimant asserts that the Tribunal improperly applied the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). However, the Related Party maintains that the basis for applying the CISG is clearly outlined in Section 40 of the Award. Therefore, the Claimant's claim is unfounded.

The Claimant argues that the Tribunal failed to require the Related Party to legalize foreign documents. The Related Party clarifies as follows:

In Sections 35 and 36 of the Award in Dispute Case No. 49/22, the Tribunal did indeed require the Related Party to provide legalized documents. In accordance with the Tribunal's request, the Related Party provided a legalized Power of Attorney dated January 5, 2023, from Mr. J, the legal representative of the Related Party, to Mr. Luu Hoàng H1 and Ms. Lê Quỳnh A, which "confirms and approves any actions taken or to be taken by the authorized representatives in accordance with this power of attorney, including the validation and approval of any work honestly and in good faith carried out on behalf of the Company in executing and completing the authorized work." This authorization includes the actions taken by the authorized representatives, including signing the complaint before the date the Power of Attorney was legalized.

During the dispute resolution hearing on March 3, 2023, Arbitrator Phan Chí H explained the legal basis for accepting the above Power of Attorney from the Related Party. According to Articles 2, Clause 4, and 4, Article 9 of Decree No. 111/2011/ND-CP, documents and materials submitted to Vietnam's receiving authorities that do not require legalization or consular certification, and that comply with Vietnamese law, will not need to be legalized to be recognized and used in Vietnam. Additionally, Article 32 of the Commercial Arbitration Law provides that: "If the parties have no other agreement or the rules of procedure of the Arbitration Center do not provide otherwise, within 10 days from the date of receiving the complaint, accompanying documents, and the payment receipt for the arbitration fee, the Arbitration Center must send the defendant a copy of the plaintiff's complaint and the documents specified in Clause 3, Article 30 of this Law."

In this case, the V Arbitration Center is the body receiving the complaint filed by the Related Party. Therefore, except for documents that need to be legalized as required by the V Arbitration Center, other documents, papers, or texts do not need to be legalized if the V Arbitration Center does not require such legalization.

Regarding the duration of the power of attorney, Article 563 of the 2015 Civil Code also stipulates that the duration of the power of attorney is agreed upon by the parties. Article 142 of the 2015 Civil Code also recognizes that civil transactions made by someone without the authority to represent still generate rights and obligations for the represented party if the represented party recognizes the transaction.

The Claimant has fully understood and has no objection to the explanation provided by Arbitrator Phan Chí H. All matters related to the consular legalization of documents have been explained and duly recorded in Sections 35, 36, and 37 of the Arbitral Award. Therefore, the Claimant's grounds are unfounded.

The Claimant argues that the Tribunal was not objective or impartial in handling the case. However, the Tribunal's decision to separate the portion of the contract related to the 200,000 masks already delivered and the portion of the contract related to the 600,000 masks not yet delivered is not in violation of Vietnamese law or the CISG. The Tribunal has also fully outlined the legal basis (under both the CISG and the Commercial Law) to make a determination regarding the right to cancel the portion of the contract related to the 600,000 masks not delivered. The issues raised by the Related Party concerning changes to the delivery method, delivery deadlines, prices, and the inability to sign the amendment to the contract have been recognized and analyzed by the Tribunal in Section 44 of the Arbitral Award. Therefore, there is no basis to claim that the Tribunal was not independent, objective, or impartial in its handling of the case, or that it failed to comply with legal provisions. The Claimant's argument is without merit.

The Claimant asserts that the Tribunal's refusal to dismiss the Related Party's complaint is contrary to Vietnamese legal principles because the Claimant was not at fault and should be exempt from liability. However, the Tribunal has clearly examined the evidence and arguments of the parties and specifically outlined its reasoning from Sections 41 to 55 of the Arbitral Award, which clearly identifies the responsibilities of the Claimant. The Claimant's argument is difficult to understand and lacks a legal basis.

The Claimant argues that the Tribunal's decision to require the Claimant to pay part of the legal fees is contrary to the fundamental principles of Vietnamese law. However, Clause 2, Article 36 of the V Arbitration Center's Rules states: "*The Tribunal has the right to decide that one party shall pay all or part of the legal fees or other reasonable expenses of the other party.*" The Claimant's argument is without legal merit.

The Related Party requests that the Tribunal reject the application to annul the Arbitral Award in Dispute Case No. 49/22, as there is no basis to conclude that the Award violates the fundamental principles of Vietnamese law.

At the hearing regarding the request to annul the Arbitral Award:

The Claimant reiterated the content previously outlined in the Request to annul the Arbitral Award and requested that the Tribunal annul the Award due to violations of the provisions of Clause d, Article 2, Section 68 of the Commercial Arbitration Law, as stipulated in the 2015 Civil Code and the Commercial Law.

The Related Party maintains its opinion as presented to the Court during the preparation process for the request to annul the Arbitral Award, and requests that the Tribunal reject the Claimant's request to annul the Arbitral Award.

The representative of the Procuracy, who participated in the hearing, expressed the following views:

Regarding procedural matters: The request to annul the Arbitral Award was submitted within the legally prescribed time limit. The Claimant has paid the required fee for the petition, so the acceptance of the commercial dispute case is in accordance with the law.

The Tribunal has complied with the relevant procedural legal provisions, and the parties have fully exercised their rights and obligations in accordance with the law.

Regarding the request to annul the Arbitral Award: The Claimant argues that the Tribunal's decision contains content contrary to the fundamental principles of Vietnamese law, but has not specifically identified which fundamental principles are violated.

The Claimant asserts that, in cases where there is a conflict between the provisions of the Civil Code and international treaties to which Vietnam is a party on the same issue, the provisions of the international treaty should apply. This issue was raised and addressed correctly in the Arbitral Award in accordance with the law.

Regarding the Claimant's argument that the Tribunal did not require the Related Party to legalize the complaint, according to the provisions of Decree No. 111/2011/ND-CP dated December 5, 2011, a complaint is not a document that must be legalized. This issue was addressed in the Arbitral Award and is consistent with the applicable legal provisions.

The Claimant has submitted a request for the Tribunal in Case No. 49/22 to clarify Section 42 of the Arbitral Award, which concerns the "request to annul part of the contract relating to 600,000 masks not delivered due to a breach of the delivery obligation..." The Tribunal did not provide an explanation on this point. This issue pertains to the content of the dispute and has already been addressed and resolved in the Arbitral Award.

Based on the above analysis, the representative of the Procuracy requests that the Tribunal reject the request to annul the Arbitral Award, and that the Claimant should bear the court fees.

COURT'S OPINION

[1] After reviewing the Request for the annulment of the Arbitral Award, the documents and evidence in the case file, as well as the opinions of those summoned to the hearing and the opinions of the representative of the People's Procuracy of Hanoi, the Tribunal reviewing the petition concludes:

[2] *Regarding the procedural matters:* On June 23, 2023, the Arbitration Center V issued the Arbitral Award in dispute case No. 49/22. On July 18, 2023, the Claimant submitted the request to annul the Arbitral Award in accordance with Clause 2, Article 31 of the Civil Procedure Code, Point g, Clause 2, Clause 3 of Article 7, and Article 69 of the Commercial Arbitration Law. The submission of the request to annul the Arbitral Award was within the statutory time limit, and the People's Court of Hanoi has accepted and processed the request in accordance with its jurisdiction.

[3] *Regarding the substance of the request to annul the Arbitral Award:* Considering the grounds presented by the Claimant for requesting the Court to annul the Arbitral Award, the Tribunal reviewing the petition finds:

[4] The Claimant argues that the Arbitral Award violates the principle that Arbitrators must adhere to the provisions of the law stipulated in the Commercial Arbitration Law, which is one of the fundamental principles of Vietnamese law, and therefore the conditions for annulment under Point d, Clause 2, Article 68 of the Commercial Arbitration Law are met. Specifically, the Claimant argues that the Tribunal did not fully reflect the opinions presented in the Claimant's defense submissions, leading to an inaccurate ruling. The Tribunal reviewing the petition finds that this concerns the substance of the case, which the Tribunal has already adjudicated. Pursuant to Article 71 of the Commercial Arbitration Law, the Tribunal reviewing the petition is not permitted to reexamine the substance of the case. Therefore, this Claimant's request is unfounded and cannot be accepted.

[5] The Claimant asserts that the Tribunal failed to apply the United Nations Convention on Contracts for the International Sale of Goods (CISG) in resolving the dispute. However, the Tribunal reviewing the petition finds that this issue has already been addressed in the Arbitral Award, and the application of the law in resolving the dispute is a matter of substance that falls within the scope of the case adjudicated by the Tribunal. Under Article 71 of the Commercial Arbitration Law, the Court is not allowed to reconsider the dispute that has already been adjudicated by the Tribunal. Therefore, this ground presented by the Claimant is without merit.

[6] The Claimant contends that the Tribunal did not require the Related Party to legalize documents containing foreign elements. The Tribunal reviewing the petition finds that in Sections 35 and 36 of the Arbitral Award in dispute case No. 49/22, the Tribunal did, in fact, require the

Related Party to provide legalized documents. In compliance with the Tribunal's requirement, the Related Party submitted a legalized Power of Attorney dated January 5, 2023, from Mr. J, the legal representative of the Related Party, to Mr. Luu Hoang H1 and Ms. Le Quynh A. This Power of Attorney "confirms and approves any actions taken by the authorized representatives, or intended to be taken, lawfully under this Power of Attorney, including the confirmation and approval of any actions conducted honestly and in good faith on behalf of the Company to perform and complete the tasks authorized." Thus, the content of this Power of Attorney includes the tasks performed by the authorized representatives, including the filing of the complaint prior to the date of consular legalization. Therefore, as the Related Party has legalized the Power of Attorney, which encompasses the content of the earlier documents, including the Complaint, there was no need for the Complaint itself to be

[7] Furthermore, according to the provisions of Clause 4, Article 9 of Decree No. 111/2011/ND-CP, documents and materials that are not required by the receiving authority in Vietnam to be legalized are exempt from such legalization. In this case, the Plaintiff's complaint was submitted to the Arbitration Center V, which is the receiving authority, and it did not require consular legalization as per the arbitration rules. Therefore, the Claimant's assertion lacks a legal basis.

[8] The Claimant argues that the Tribunal was not impartial and unbiased when considering the case, claiming that the Tribunal's decision to separate the part of the contract related to 200,000 masks and the part concerning the 600,000 masks was not contrary to the laws of Vietnam or the CISG. This issue pertains to the substance of the case, and according to Article 71 of the Commercial Arbitration Law, the Tribunal reviewing the petition does not have the authority to reconsider the substantive aspects of the case. Therefore, the request of the Claimant in this regard cannot be accepted as the hearing today is not intended to rehear the case adjudicated by the Tribunal.

[9] Based on the analysis above, the Tribunal reviewing the petition finds no grounds to annul the Arbitral Award in dispute case No. 49/22.

[10] Regarding court fees: The Claimant is responsible for the fees related to the request for annulment of the Arbitral Award in accordance with the law.

For the above reasons,

DECISION

- Based on Clause 2, Article 31, Articles 414 and 415 of the Civil Procedure Code;

- Based on Articles 3, 4, 7, 68, 69, 70, 71, and 72 of the Commercial Arbitration Law;

- Pursuant to Resolution No. 326/2016/UBTVQH14 of the Standing Committee of the National Assembly on the level of fees, exemptions, reductions, collection, payment, management, and use of court fees and fees.

1. The request to annul the Arbitral Award in dispute case No. 49/22, dated June 23, 2023, issued by the Arbitral Tribunal of the Vietnam International Arbitration Center, is not accepted. The dispute is between:

Claimant: Company E

Headquarters: 2892 N Bellflower Suite 470, Long Beach, CA 90815, United States. Legal Representative: Mr. J, Chairman. Authorized Representatives: Ms. Le Quynh A, Mr. Luu Hoang H1, Mr. Tran Quang H2 (Address: 118, Alley 203, Q Street, N Ward, Cau Giay District, Hanoi City, Vietnam).

Respondent: T Limited Liability Company

Headquarters: Village M, Commune D, Hiep Hoa District, Bac Giang Province, Vietnam. Legal Representative: Ms. Le Thi T1, General Director. Authorized Representative: Mr. Tran Khac N (Address: S Building, V Urban Area, T Ward, Nam Tu Liem District, Hanoi City, Vietnam).

2. Court Fees: T Limited Liability Company is required to pay a court fee of VND 500,000 (five hundred thousand), which shall be deducted from the amount of advance fees already paid, as per Receipt No. 0002642 dated September 27, 2023, issued by the Civil Judgment Enforcement Department of Hanoi City.

3. This decision is final and shall be effective from the date of signing. The parties involved, the Arbitration Tribunal have no right to appeal and the Procuracy has no right to lodge a complaint.

CONTENT OF THE PRECEDENT:

“[6] The Claimant argues that the Tribunal did not require the Respondent to have the foreign-related documents legalized. The Tribunal reviewing the petition finds that in Points 35 and 36 of the Arbitral Award No. 49/22, the Tribunal specifically required the Respondent to provide legalized documents. In response to this request, the Respondent submitted a legalized Power of Attorney dated January 5, 2023, from Mr. J, the legal representative of the Respondent, to Mr. Luu Hoang H1 and Ms. Le Quynh A. The Power of Attorney confirms and authorizes any work that the authorized representatives have already undertaken, will undertake, or intend to undertake, in accordance with the terms of the Power of Attorney, including the validation and

approval of any work carried out in good faith on behalf of the Company to complete the authorized tasks. Therefore, the content of this Power of Attorney also covers tasks performed by the authorized representatives, including the signing of the complaint prior to the date of the legalized Power of Attorney. Hence, since the Respondent has already legalized the Power of Attorney, it implicitly includes the content of the earlier documents, including the Complaint, and therefore, it is not necessary to legalize the Complaint separately.

[7] Furthermore, according to Clause 4, Article 9 of Decree No. 111/2011/ND-CP, documents and materials that the receiving authorities in Vietnam do not require to be legalized are exempt from such legalization. In this case, the Plaintiff's complaint was submitted to the Vietnam Arbitration Center, which is the receiving authority, and it did not require consular legalization according to the arbitration rules. Therefore, the Claimant's argument has no legal basis."

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REASONS FOR PROPOSING THIS PRECEDENT

The 2010 Commercial Arbitration Law does not contain any provisions requiring the consular legalization of documents or materials prepared abroad when submitted to Vietnamese arbitration. Decree No. 111/2011/ND-CP dated December 5, 2011, regarding consular certification and legalization, also does not mandate the consular legalization of documents or materials prepared abroad when submitted to Vietnamese arbitration.

However, in practice, some judges have required that such documents and materials undergo consular legalization, leading to the annulment of certain arbitral awards when the arbitration tribunal did not require the consular legalization of these documents and materials. This practice has caused significant confusion and is inconsistent with international commercial and arbitration practices, as well as with the aforementioned legal provisions. Therefore, a precedent is needed to establish a uniform application of the law.

The decision of the Hanoi People's Court mentioned above is in line with the Commercial Arbitration Law and Decree No. 111/2011/ND-CP concerning consular certification and legalization. The approach in the Draft Precedent also aligns with international practices in resolving disputes in arbitration and provides a high degree of flexibility by allowing arbitration rules to require consular legalization of documents submitted to arbitration. Consequently, the development of a precedent on this issue is necessary, contributing to the efficient and swift resolution of disputes through arbitration in Vietnam.