CLOUT NETWORK
Case Law on UNCITRAL Texts

In the past few months, the UNCITRAL Secretariat has issued a total of **33** CLOUT cases (2176-2208) from **Australia**, **Cameroon**, **Canada**, **China**, **Colombia**, **Czechia**, **Egypt**, **France**, **Germany**, **Hungary**, **Kenya**, **Latvia**, **Poland**, **Singapore**, **Slovenia**, **Spain**, **Switzerland**, **Ukraine** and **the United Kingdom of Great Britain and Northern Ireland**. The new cases relate to **CISG**, **HR**, **LC**, **MAL**, **MLCBI**, **MLEC**, **MLES**, **MLETR**, and **NYC**.

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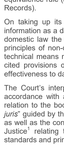
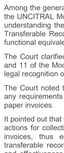
Cases in focus

Case 2176: NYC IV, [V(2), V, V(1), V(1)(b), V(1)(c), V(1)(d), V (2), V(2)(b)] *People's Republic of China, Shanghai Financial Court, | Case No. (2021) Hu 74 Xie Wai Ren No. 3 | SRT Capital SPC LLC v. Shanghai CiTic Electronics Development Co., Ltd. | 30 December 2022 | Original in Chinese | Abstract prepared by Bona Zhang, National Correspondent*

This case dealt with the question of whether notarized translations of submitted material are required as part of an application for recognition and enforcement of an arbitral award, whether the composition of the arbitral tribunal is legal, whether the tribunal exceeded its authority in its ruling and whether the ruling violated public policy. In 2020, SRT Capital SPC LLC (the applicant) and Shanghai CITIC Electronics Development Co., Ltd. (the respondent) signed a pledge loan agreement, which stipulated as follows: "Any disputes should be definitively resolved by three arbitrators appointed in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC)". After a dispute arose between the parties, the applicant submitted an arbitration application to the ICC International Court of Arbitration, which initiated the arbitration procedure in 2020. The applicant requested the application of the expedited procedure rules, for the appointment of a sole arbitrator, in accordance with the 2017 ICC Arbitration Rules. The respondent's representative submitted a response to the claimant's notice of arbitration and a counterclaim, also requesting the appointment of a sole arbitrator under the expedited procedure of the ICC Arbitration Rules. In 2021, the sole arbitrator issued a final award ordering the respondent to pay damages to the applicant. In the final award, the arbitral tribunal found that there was no evidence in the case indicating any wrongdoing by the applicant. The respondent also failed to prove that the applicant had any intent to violate Chinese law. In 2021, the applicant requested the Shanghai Financial Court to recognize and enforce the arbitral award. The respondent argued that, firstly, the applicant should have submitted a Chinese translation of the award, certified by a Chinese embassy or consulate abroad or notarized by a notary public, at the time of filing of the case. The translation that was submitted did not comply with article IV of the New York Convention or article 19 of the Provisions of the Supreme People's Court on Several Issues concerning the Enforcement Work of People's Courts (implemented on a trial basis). Secondly, this case involved suspected fraud, and the enforcement of the award in question would be contrary to the public policy of China. Thirdly, the arbitration procedure in this case violated the law: the arbitration clause clearly stated that the case should be "definitively resolved by three arbitrators", but it was in fact heard by a sole arbitrator. The respondent did not receive any notice regarding the appointment of arbitrators, nor did it participate in the arbitration proceedings organized by the ICC International Court of Arbitration or submit any response or defence. The arbitration tribunal also failed to issue terms of reference for the hearing, as specified by the provisions of the Arbitration Rules. Lastly, the arbitration clause states that matters subject to arbitration are "disputes arising from or related to this contract". Since the agreement submitted by the applicant did not include substantive contents relating to the loan, such as the amount of the loan, the interest rate and the term of the loan, the "compensation for breach of contract" specified in the second item of the operative part of the arbitral award constituted an excess of authority.

The Shanghai Financial Court ruled as follows: (1) Regarding the application materials, according to article IV (2) of the New York Convention, the Chinese translation of foreign language documents can be certified either by diplomatic or consular agents or by sworn translators or official translators. In this case, the submitted Chinese translation was translated by a qualified translation company in China, and it thus met the legal requirement. (2) Regarding the arbitration procedure and excess of authority, firstly, the final award fully documented the two parties' full participation in the arbitration. During the arbitration proceedings the respondent submitted a response to the claimant's notice of arbitration and a counterclaim, as well as other documents. Its simple denial was clearly contrary to common sense and devoid of any supporting evidence. Secondly, although the parties agreed in the contract that the final decision would be made by three arbitrators, during the arbitration process both consented to have a sole arbitrator hear the case under the expedited procedure. This was in compliance with the ICC Arbitration Rules and was procedurally legal. Thirdly, although according to the ICC Arbitration Rules the arbitration tribunal should indeed sign the terms of reference with the parties before hearing the case, the purpose of signing the terms of reference is to clarify relevant procedural matters for the hearing and to avoid disputes. In the arbitration process in this case, the parties were not in dispute over the content contained in the terms of reference, and this procedural defect did not result in the party being unable to present its case, as stipulated in article V (1) (b) of the New York Convention. Finally, the damages referred to in the second item of the operative part of the final award represented a decision on claims for "full compensation" and the "collateral fees", which were stipulated in the pledge loan agreement and the terms of reference of the arbitration. Moreover, the applicant also made corresponding claims during the arbitration proceedings. Therefore, there was no excess of authority. (3) Regarding the question of whether there was a breach of public order and customs, first of all, the respondent's claim alleging the applicant's fraud was raised during the arbitration proceedings, but it was not upheld by the arbitral tribunal. The respondent's attempt to raise this Lawsuit once again to contest the application for recognition and enforcement of the foreign arbitral award was not accepted. Secondly, the case concerned a civil dispute between equal parties, and the respondent's attempt to elevate its own economic interests to the level of national public interest had no basis. Thirdly, the respondent's claims that the transaction in question involved criminal offences and that the applicant lacked qualification as a legal entity likewise had no basis. In conclusion, since the conditions for non-recognition of the arbitral award as stipulated in article V of the New York Convention were not fulfilled, the award should be recognized.





Case 2190: MLEC 3, MLETR 10; 11 | *Colombia: First Municipal Civil Court of Ibagué, Tolima | Case No. 73001-40-03-001-2023-00612-00 | Rentaequipos S.A.S. v. El Pomar S.A.S.* | 26 February 2024 | Original in Spanish

The Court refused to order the payment of a monetary obligation set out in a data message (electronic sales invoices considered as documents of title) on the grounds that the requirements of form applicable to the legal act of acceptance with respect to instruments issued on paper had not been met.

The claimant provided screenshots of the electronic invoice registry with a view to authorization of the acceptance of the electronic invoice, citing the regulatory decree on the Registry of Electronic Sales Invoices Treated as Documents of Title (RADIAN).

The Court considered two questions: (i) whether the RADIAN decree could be considered a statutory basis for enforcing documents of title in the form of data messages; and (ii) whether the screenshots of the invoice registry constituted a reliable method of verifying singularity, control and integrity as required in order to comply with the functional equivalence rule (arts. 10 and 11 of the UNCITRAL Model Law on Electronic Transferable Records).

On taking up its consideration of the matter, the Court noted that the processing of information as a data message was provided for in Act No. 527. That Act incorporates into domestic law the UNCITRAL Model Law on Electronic Commerce and the fundamental principles of non-discrimination, neutrality and functional equivalence with respect to the technical means referred to and the information contained therein. In addition, the Court cited provisions of national law that regulate legal validity and procedural and evidentiary effectiveness to data messages on the basis of those principles.

The Court's interpretation took into account the international origin of Act No. 527 in accordance with article 3 of the Act, referring to the interpretative work undertaken in relation to the body of UNCITRAL standards, which constituted a true "*electronic corpus juris*" guided by the "general principles of the legal regime for electronic communications", as well as the consistent case law of the Civil Cassation Division of the Supreme Court of Justice[1] relating to analysis of the data message and the application of UNCITRAL standards and principles relating to electronic commerce.

Among the general principles incorporated into Colombian law, the Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce was mentioned as a valuable tool for understanding the rules of the Model Law, and the UNCITRAL Model Law on Electronic Transferable Records and its explanatory note were analysed in order to determine the functional equivalent of transferable documents or instruments.

The Court clarified that the provisions on functional equivalence contained in articles 10 and 11 of the Model Law on Electronic Transferable Records were those required for the legal recognition of an electronic invoice as equivalent to a paper invoice.

The Court noted that the RADIAN decree was a regulatory decree that did not establish any requirements additional to those already established in national law with respect to paper invoices.

It pointed out that the substantive rules governing acceptance of an invoice and the filing of actions for collection in respect of an instrument in paper form also applied to electronic invoices, thus ensuring the equal treatment of paper documents and electronic transferable records. The additional requirements for recognition of an invoice's validity and effectiveness in terms of collection were covered by application of the principles of functional equivalence, non-discrimination and technological neutrality. The Court added that, as long as the matter concerned functional equivalents, the applicable substantive law was the same.

The Court held that RADIAN indisputably offered benefits as far as the Model Law on Electronic Transferable Records was concerned, citing as an example a case involving multiple claims, and that the registration of an invoice in that registry could help to settle the question of who had control or possession of the instrument. It should therefore be understood as serving as a reliable method for ensuring the requirements of singularity, control, integrity and transfer, but could not be considered the only such method since, in accordance with the principle of technological neutrality, it was possible to use other methods, given the relative nature of reliability.

The Court concluded that the evidence furnished by the defendant (screenshots) did not constitute a reliable method for verifying singularity, control and integrity as required under articles 10 and 11 of the Model Law on Electronic Transferable Records.

[1] CLOUT case No. 1420.

Latest CLOUT News

On **16 October 2024**, the **CLOUT Network meeting** was held online, welcoming more than fifty participants from over thirty jurisdictions. Participants took note of several new developments in the CLOUT system, and discussed the role of CLOUT Network members, the possibility of widening the CLOUT collection by including legislative guides, partnership perspectives with other online legal platforms and academic and research centers, and other matters. We would like to thank all participants and look forward to the next CLOUT Network meeting!

The CLOUT Team is excited to announce the **first-ever publication of a case from Latvia** in the CLOUT database. This decision by the Supreme Court of the Republic of Latvia addresses the requirements under articles 38 and 39 of the CISG regarding a buyer's examination of goods and notification of defects to the seller (**CLOUT case 2197** - *pending publication in the six languages*).

To **spread the word about CLOUT** and to **facilitate and encourage the preparation of CLOUT abstracts**, **audio-visual materials explaining the purpose and functions** of the CLOUT system are tentatively scheduled to be released in the six languages of the United Nations during the first half of 2025. Monitor the UNCITRAL official website and social media for updates!

CLOUT continues to showcase cases interpreting and applying UNCITRAL texts from **underrepresented jurisdictions in its system**. In the period September-December 2024, abstracts from **Cameroon**, **Czechia** and **Kenya** have been issued (*CLOUT cases from Cameroon are pending translation in the six languages of the United Nations*).

Latest Transparency News

In the context of the **10th anniversary of the UNCITRAL Transparency Standards**, a **presentation** on the topic has been published in the six languages of the United Nations on UNCITRAL's YouTube channel.

UNCITRAL News

The **Online Module on UNCITRAL Insolvency texts** is finally here! It is designed for those wishing to learn more about the UNCITRAL insolvency law framework, including its interconnection with the CLOUT system and database. It features **five parts of the UNCITRAL Legislative Guide on Insolvency Law**, and **three UNCITRAL insolvency model laws** (MLCBI, MLIJ and MLEGI) and their explanatory texts. Access the course here.

On the occasion of the **45th session of UNCITRAL Working Group VI on Negotiable Cargo Documents** held in Vienna from 9-13 December 2024, explainer videos have been released in the 6 UN official languages on UNCITRAL's YouTube channel!

Latest Press Releases

25/09/2024
Libya signs the Beijing Convention on the Judicial Sale of Ships

30/09/2024
The Dominican Republic signs the Beijing Convention on the Judicial Sale of Ships

18/11/2024
Gabon signs the Beijing Convention on the Judicial Sale of Ships

Further press releases:

Press Release

EVENTS

UNCITRAL Colloquium: Navigating the new era of digital finance - The UNCITRAL Model Law on Secured Transactions on the use of new types of assets for secured financing

20 February 2025 to 21 February 2025

At its fifty-seventh session, in 2024, the Commission noted the emergence of new types of assets that could be used as collateral in international finance (including digital assets, data, verified carbon credits and crop receipts) as well as the development of new international financing practices. The Commission also noted legislative efforts by international and regional organizations to address transactions involving such assets as well as the evolving legislative approaches of States to legally characterize those new types of assets. It thus requested the UNCITRAL secretariat to organize a colloquium to clarify and refine various aspects of possible future work in the area.

Read more here.

For further information on UNCITRAL Events and News check out our official website and our social media pages.

FUTURE CONTRIBUTIONS

The CLOUT Team welcomes any CLOUT Network contributor who would like to make ***short contributions to the Newsletter with articles and information*** *on the application of UNCITRAL texts in their own countries. Send your contributions at:* monica.canafoglia@un.org *and* maria.giannakou@un.org

Universities, training centres, arbitration centres, law professors, judges and other interested law practitioners can contribute to the CLOUT collection *even if they are not National Correspondents. They are strongly encouraged to contact UNCITRAL at* monica.canafoglia@un.org *and* maria.giannakou@un.org *for information.*

CLOUT Network members are encouraged to share with the secretariat ***good quality abstracts from jurisdictions in which decisions are issued in local language*** *other than the six languages of the United Nations.*

The CLOUT Network is encouraged to share with the secretariat ***information on awards being refused solely on the basis of their electronic forms, even if such awards do not refer to the MAL or NYC.***

The CLOUT Network may wish to make suggestions as to its potential contribution to the organization of the ***upcoming 60th anniversary of UNCITRAL in 2026.***

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