

| CISG-online 6248     |  |
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| Jurisdiction         | Vietnam  |
| Tribunal             | People's Court of Binh Duong Province                              |
| Date of the decision | 16 March 2022  |
| Case no./docket no.  | 02/2022/KDTM-ST  |
| Case name            | <i>Company W [...] v. S [...] Production and Trading Co., Ltd.</i> |

### PEOPLE'S COURT OF BINH DUONG PROVINCE applied Art 1(1)(a) and Art. 78 CISG

On March 16, 2022, the People's Court of Binh Duong Province delivered Judgment No. 02/2022/KDTM-ST, in relation to a payment obligation dispute arising from a contract for the international sale and purchase of goods.

The dispute stems from a contract for the international sale and purchase of pesticides entered into between a Chinese commercial seller and a Vietnamese importer. The cause of action arose as a result of the Vietnamese buyer's delay in payment for the goods, leading to legal proceedings initiated by the Chinese seller. The Vietnamese buyer engaged in a deliberate act of circumvention by selling his company to evade payment of outstanding debts. During the dispute resolution process, the buyer proposed a 50% reduction in the volume of goods. The seller, however, refused this offer and insisted on the buyer's payment in full of the order, coupled with the deferred interest, despite the lack of any express provision for late payment interest rates in the contractual agreement between the parties.

The People's Court of Binh Duong Province, in light of Article 1(1)(a) of the CISG, determined that the Convention was applicable to the present dispute, given that both China and Vietnam are Contracting States thereto. The Court held that the Vietnamese buyer is obliged to satisfy the outstanding debt in accordance with the provisions of Article 53 and 54 of the CISG, as well as Article 50 of the Vietnamese Commercial Law of 2005. With respect to the matter of late payment interest, the court concurrently applied both Article 78 of the CISG and Article 306 of the Vietnamese Commercial Law of 2005 stipulating the right of the aggrieved party to claim interest on the sum outstanding in case of late payment. The court then held that, in accordance with Article 306 of the Vietnamese Commercial Law of 2005, in cases where the breaching party fails to pay for goods or services on time or fails to settle reasonable expenses in a timely manner, the aggrieved party is entitled to claim interest on the delayed payment at the prevailing market rate for late payments at the time of payment corresponding to the time of late payment, unless otherwise specified by agreement or statutory provision.

Upon verification by the People's Court of Binh Duong Province, it was established that the average lending interest rate in the market, as announced by three major banks in the province, was 3% per annum. Consequently, the rate of overdue interest was computed as 4.5% per annum, being the product of 3% per annum and 150%. In light of this determination, the seller acceded to the proposed deferred interest rate.

The court ordered the Vietnamese buyer to pay the amount owed plus interest under Art. 78 CISG and Art. 306 of the Vietnamese Commercial Law of 2005.