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The Consolidation of Chile as an Arbitration Friendly Jurisdiction

José Luis Corvalán Pérez (Barros y Errazuriz Abogados) · Tuesday, July 26th, 2016

In a very recent decision (Case Identification Number 7854-2013), the Chilean Supreme Court recognized and authorized the enforcement in Chile of an arbitral award made by a Sole Arbitrator in an ICC arbitration conducted in The Hague, Netherlands. The award ordered Sociedad Contractual Minera Santa Fe, a Chilean mining company ("Minera Santa Fe"), to pay US$ 46,671,609.27 to Qisheng Resources Limited ("Qisheng"), a Hong-Kong based Company.

Minera Santa Fe is a company engaged in the mining, smelting and export of iron ore products. In 2009, Minera Santa Fe and Qisheng secured a contract agreeing that Santa Fe Mining would sell iron to Qisheng. Qisheng lawsuit claimed that this contract was unilaterally terminated by Minera Santa Fe.

Minera Santa Fe tried to resist the recognition of the award, based on two grounds.

First, it argued that the award was not binding on the parties, as required by Article V.1.(e) of the New York Convention and Section 36.1(a)(v) of the Chilean International Commercial Arbitration Act (the "Act"), given that Qisheng had not attached to its request a certificate from the ICC attesting that the parties had not filed a request for setting aside the award or that said request had been rejected by the competent court.

In relation to this allegation, the Chilean Supreme Court remarked that, when accepting the ICC Arbitration Rules, Minera Santa Fe undertook to carry out any award without delay and waived its right to bring any form of recourse. In addition, the Chilean Supreme Court noted that the fact that Minera Santa Fe had filed a request for setting aside the award before the competent Dutch Court was not and obstacle for the recognition and enforcement in Chile because the award had not been set aside or suspended by the Dutch Court.

In the second place, Minera Santa Fe contended that the award was made in violation of due process, particularly its right to be heard (Article V.1.(b) of the New York Convention and Section 36.1(a)(ii) of the Act), in such a way that its recognition and enforcement in Chile would be contrary to the Chilean and international public policy (Article V.2.(b) of the New York Convention and Section 36.1(b)(ii) of the Act). This argument relied on the fact that the award was allegedly based on documents that were extemporaneously presented to the arbitration by Qisheng, once the procedural stage to file those documents had expired, and without giving Minera Santa Fe the opportunity to challenge its validity or pertinence.

In this regard, the Chilean Supreme Court asserted that Minera Santa Fe's arguments aimed at the grounds and substance of the arbitration's decision, and particularly at the assessment and analysis of the evidence provided by the parties, aspects that could not be reviewed in the context of a limited proceeding as the "exequatur" is (the name that is given in Chile to the special procedure

for the recognition of a foreign award).
In particular, the Chilean Supreme Court highlighted that the legal framework that regulates the exequatur aims at facilitating – not impeding or blocking – the recognition and enforcement in Chile of a foreign award.
In this way, the Chilean Supreme Court has ratified once more its longstanding doctrine that the exequatur does not constitute a review of the merits of the award, supporting the efforts that have been made in Chile since 2004 – year in which the Act was enacted – to consolidate Chile as an arbitration hub and an arbitration-friendly jurisdiction.

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