

# Resolution of Commercial Disputes

## Background

Vietnamese laws emphasize the needs for parties to attempt to settle their disputes by mediation and conciliation. In practice, both the foreign and local parties are encouraged to seek the assistance of a third party (mediator or conciliator) to find out an amicable solution to any conflict.

If any attempts for mediation and conciliation are not successful, the parties in various circumstances refer the matters to various arbitral bodies, inside and outside Vietnam, they include:

- (i) Commercial conciliations: Vietnamese ad-hoc conciliators and conciliation institutions, with place located inside Vietnam;
- (ii) Commercial arbitration: Vietnamese arbitration or foreign arbitration, with place located inside or outside Vietnam; and
- (iii) Economic court: Economic court directly under provincial-level People's Court, with place inside Vietnam.

Details about each hearing body are described hereunder.

## Bodies resolving disputes in Vietnam

The existing system of bodies, which resolve disputes arising out of or in connection to legal relationship in commercial activities in Vietnam, is comprised of:

- (i) the commercial conciliations, including ad-hoc conciliators, conciliation institutions consisted of conciliation centres, and licensed branches of foreign commercial conciliation institutions; and licensed arbitration centres;

(ii) the commercial arbitrations, including ad-hoc arbitrations and arbitration centres (“CACs”); and  
(iii) the economic courts.

Commercial conciliation or arbitration shall competence for resolving:

(i) Disputes between parties arising from commercial activities;  
(ii) Disputes arising between parties at least one of whom is engaged in commercial activities; and  
(iii) Other disputes between parties which the law stipulates shall or may be resolved by commercial conciliation or arbitration.

A dispute shall be resolved through commercial conciliation or arbitration only if involved parties reach an agreement on dispute resolution through conciliation or arbitration, which may be in the form of a conciliation or arbitration clause in a contract or of a separate agreement, before or after a dispute arises or at any time in the process of dispute resolution. Other than those, disputes shall be resolved through court system, following different court proceedings.

A person (a) having full civil act capacity; having good moral qualities and prestige, and working in an independent, impartial and objective manner; (b) possessing a university or higher degree and having at least 2 years’ working experience in the discipline he/she has studied; and (c) having conciliation skills and knowledge about laws, business and commercial practices and relevant issues; may act as a commercial conciliator. A commercial conciliator may conduct commercial conciliation in the capacity as (a) an ad hoc commercial conciliator after having registered with the provincial-level DOJ of the locality where he/she permanently resides for Vietnamese or where he/she temporarily resides for foreigner; or (b) a commercial conciliator of a commercial conciliation centre.

A Vietnamese citizen who fully satisfies the criteria for a commercial conciliator and wishes to establish a commercial conciliation centre, which must operate not for profit, shall send 1 set of application dossier to the MOJ, comprising, among others, a list of the centre's founders and its draft Conciliation Rule. The commercial conciliation centre's organizational structure is stated in its Charter; however, its chairperson must be a commercial conciliator.

It is worthy of note that since the issuance of the Ordinance on Commercial Arbitration (which was no longer valid) on 25 February 2003 ("Ordinance"), no discrimination has been found between the former economic arbitration system established under Decree No. 116/CP dated 5 September 1994 and Vietnam International Arbitration Center ("VIAC") affiliated to the Vietnam Chamber of Commerce and Industry ("VCCI"). They are all commercial arbitration centres newly registered under the Ordinance, being non-governmental organizations and having mandate of judging all commercial disputes in general. Upon 2010 Law on Commercial Arbitrations, Vietnamese commercial arbitrations become more opened with foreign arbitrators and more powerful with injunction relieves and court support.

They are operating under the national governance by the MOJ and relevant state agencies. To establish one, at least five founding arbitrators are required, who are Vietnamese nationals residing in Vietnam with appropriate qualifications (having full capacity for civil acts, graduate level, 5 years of experience or more, etc.).

Unless otherwise agreed by the parties, the arbitration procedures shall be in Vietnamese and the law governing arbitral proceedings shall be decided by the Arbitration Council. Arbitral awards are delivered by a majority vote. In the event voting majority is not reached, the arbitration award shall be delivered in the opinion of the President of the Arbitration Council within 30 days from the date of an arbitral award, if either party does not agree on arbitral

decision, that party can request the court for cancellation of the arbitral award. The parties then can further forward the disputes to the court for settlement, unless otherwise agreed.

### **Bodies resolving disputes outside Vietnam**

Parties to a dispute can submit their dispute to an international or foreign arbitration centre to issue settlement award outside or inside Vietnam. This, however, may not always be a better solution than Vietnamese arbitration because of costs, meanwhile the local enforcement is unlikely compared to arbitral awards made by Vietnamese arbitration although Vietnam has joined the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) and passed also the Ordinance on Recognition and Enforcement of Foreign Arbitral Awards in September 1995, which has been replaced by the relevant regulations in the current Civil Proceedings Code adopted on 25 November 2015 (“Civil Proceedings Code”).

Additionally, according to a legal case promulgated by the Supreme People’s Court to be applied in hearing as from 15 April 2021, even a model contract executed with consumers has terms to choose foreign arbitration to settle disputes, but when a dispute occurs, consumers still may sue in Vietnamese court; as in this case, the court should understand that consumers do not choose the arbitration and have the right to choose the Vietnamese court for resolution of the dispute.

### **Enforcement**

Under applicable regulations, if a verdict decided by economic court is not voluntarily respected, there are various procedures that can be used to enforce it, such as distraint of property. However, the procedures in practice, have not worked well because of unavailability of specific regulations. As a matter of fact, several regulations on enforcement of civil verdicts have been borrowed for use.

With respect to local arbitral awards, unlike in the past, the enforcement of the arbitral awards has been now identified clearly in the Ordinance and then, Law respectively. If an arbitral award is not voluntarily respected by the losing party, after 30 days from the date of the arbitral award, the winner can request the enforcement teams to force the implementation.

With respect to conciliation agreement, it shall be binding upon the parties in accordance with the civil laws and shall be recognized at the request of either or both related parties in accordance with the Civil Proceedings Code. The Judge shall make decisions to recognize or to not recognize the successful conciliation result depending on the satisfaction of all conditions stipulated by law.

With respect to foreign arbitral awards and court verdicts, they can be applied for recognition and enforcement in Vietnam since the issuance of the two previous ordinances and a separately dedicated part in the present Civil Proceedings Code, governing the recognition and enforcement of foreign arbitral awards and court verdicts. However, at the current time, such recognition is rare. A Vietnamese court will only consider the recognition and enforcement of foreign arbitration awards: (a) where such awards have been made in, or by arbitrators of, a country which is a party to a relevant international treaty of which Vietnam is a participant or a signatory, or (b) on a reciprocal basis without the condition that Vietnam and the relevant country are a signatory or participant of a relevant international treaty.