

Resolution of Commercial Disputes

Background

Vietnamese laws emphasize the needs for parties to attempt to settle their disputes by conciliation and mediation. 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 conciliation and mediation are not effective, the parties in various circumstances refer the matters to various arbitral bodies, inside and outside Vietnam, they include:

(i) Commercial arbitration: Vietnamese arbitration or foreign arbitration, with arbitration place located inside or outside Vietnam; and

(ii) Economic court: Civil court and administrative handling court directly under district-level People's Court and Civil court, administrative court, economic court and labour court directly under provincial-level People's Court.

Details about each arbitral 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 arbitrations, including ad-hoc arbitrations and arbitration centers ("CACs"), and

(ii) the economic courts.

It is worthy of note that since the issuance of the Ordinance on Commercial Arbitration (which was no longer valid) on 25 February 2003 ("Ordinance"), no discrimination has been found between the former economic arbitration system established under Decree No.116/CP dated 5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. They are all commercial arbitration centers newly registered under the Ordinance, being non-governmental organizations and having mandate of judging all commercial disputes in general. Until Law on Commercial Arbitrations of 2010, 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 Ministry of Justice 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 center to issue settlement award outside or inside Vietnam. This, however, may not always be a better solution than Vietnamese arbitration because of expensiveness, 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 and passed also the Ordinance on Recognition and Enforcement of Foreign Arbitral Awards in September 1995, which has been replaced by related regulations in the current Civil Proceedings Code adopted on 25 November 2015.

Enforcement

Under applicable regulations, if an award 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 awards 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 quite clear and obviously improved 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 victorious can request the enforcement teams to force the implementation.

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.