

**Arbitration and Recognition of  
Foreign Arbitral Awards in Vietnam**

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## I. Introduction

Effective dispute settlement is one of the key concerns for any investor. This is particularly the case when the investor is working within a new and unfamiliar legal system. Many foreign investors therefore see arbitration as an ideal solution to these concerns as it allows them to have some control over the format, timetable and governing law of the dispute resolution process.

Like many other countries Vietnam initially viewed arbitration as a threat to its judicial sovereignty. Nevertheless, in the course of the recent tremendous economic development the Vietnamese Government has made considerable progress with regard to the recognition and enforcement of arbitral procedures and awards.

This newsletter will provide a short summary of the current arbitration situation in Vietnam.

## II. Arbitration in Vietnam

### 1. Convention on the Settlement of Investment Disputes between States and Nationals of other States

Vietnam is not yet a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (commonly referred to as ICSID, International Centre for Settlement of Investment Disputes)

However, several of Vietnam's bilateral investment treaties refer to the ICSID and thus grant specific foreign investors the

right to bring proceedings against the Vietnamese Government. Examples of such bilateral investment treaties include those between Vietnam and: Switzerland, Australia, Italy, the Netherlands, the USA, Japan, and Korea.

### 2. Law on Commercial Arbitration

As a step towards integrating Vietnam's dispute resolution system into the global playground, the National Assembly passed the Law on Commercial Arbitration ("**LOCA**") which came into effect on 1 January 2011. This was followed by Decree 63/2011/ND-CP which came into effect in September 2011.

The LOCA regulates the applicability of commercial arbitration, arbitration forms, arbitration institutions and arbitrators, arbitration orders and procedures, the rights, obligations and responsibilities of parties to arbitration proceedings, court jurisdiction over arbitration activities, foreign arbitration organizations in Vietnam and the enforcement of arbitral awards.

According to LOCA, arbitration can only be used to resolve commercial disputes. A "commercial dispute" is one where at least one party is a commercial individual or entity.

#### (1) Arbitration Agreements

A commercial dispute will be settled by arbitration if the parties to the dispute have agreed to do so in writing either before or after the dispute arose (the "**Arbitration Agreement**"). The Arbitration Agreement can be contained in one clause within a lar-

ger contract or it can be a separate document.

The “in writing” requirement can be satisfied via e-mails, telex and facsimiles if the intention of the parties to conclude an Arbitration Agreement is clearly shown.

In regards to choice of law, Vietnamese law will always apply to disputes between Vietnamese parties. If a foreign party is involved then a foreign law may be chosen so long as the application of such foreign law is “consistent with the fundamental principles of the law of Vietnam”. Unfortunately there is currently little guidance as to how such consistency or inconsistency can be determined.

The parties can also decide within the Agreement which language the arbitration shall be conducted in. If no such provision is included in the Agreement then Vietnamese shall be used even if one or more foreign parties are involved.

Finally, there are six circumstances where an Arbitration Agreement will be declared invalid:

- The dispute is not a commercial dispute;
- One of the parties to the Agreement did not have civil capacity;
- One of the parties to the Agreement did not have sufficient authority;
- The Agreement is not in the correct format;
- One of the parties was deceived, threatened or coerced into signing the Agreement; or
- The Agreement breaches the law on prohibited conduct.

## (2) Ad-hoc arbitration and Arbitration Centres

The LOCA provides for 02 different forms of arbitration tribunals, first an ad-hoc arbitration tribunal and second an Arbitration Centre tribunal.

An ad-hoc arbitration tribunal is one which is created by the parties usually, but not always, after a dispute has arisen. This format gives the parties the freedom to choose (e.g. ICC, UNITRAL) or even draft their own rules of procedure and to choose their own arbitrators.

An Arbitration centre tribunal is one which is convened by one of Vietnam’s Arbitration Centres. There are several such centres in Vietnam, however the most popular is the Vietnam International Arbitration Centre (“**VIAC**”). LOCA also allows foreign arbitration organizations to operate in Vietnam in the form of a branch or representative office.

Please note that under Vietnam law the clause within the Arbitration Agreement which states the location of the arbitration must be very specific. For example “*arbitration shall take place at VIAC*” has previously been rejected by the Vietnamese Courts as too vague. At the very least the full name and location (i.e. branch) of the preferred centre must be stated. If the clause is deemed to be too vague then the plaintiff will have the right to unilaterally choose the arbitration venue.

## (3) Arbitrators

Both Vietnamese and foreign individuals may act as arbitrators in Vietnam. These arbitrators can be employed by one of the aforementioned arbitration centres or they may be employed directly by the parties as part of an ad hoc tribunal. Qualification requirements include a university degree and five years work experience in the relevant field of expertise.

### 3. Proceedings

To initiate arbitration proceedings a statement of claim must be submitted to the appointed arbitration centre, or in case of an ad hoc arbitration, directly to the respondent.

Complaints with regard to the jurisdiction of the arbitration tribunal or the validity of the Arbitration Agreement must be made prior to the consideration of the contents of the dispute. The arbitration tribunal will decide upon such matters in the presence of the parties unless requested otherwise. These decisions can be appealed to the local court.

Counter-claims concerning issues relevant to the statement of claim are possible. Such counter-claims must be made prior to the hearing which is scheduled to resolve the dispute.

The burden of proof lies with the claiming party and the principle of party presentation applies. The arbitrators may directly collect evidence and convene witnesses either upon their own initiative or at the request of one or more of the parties. Legal representation is possible but not mandatory.

Arbitrators are empowered to issue interlocutory injunctions with regards to the preservation of evidence, assets and bank accounts. For enforcement purposes these injunctions are treated the same as court orders.

### 4. Setting Aside Arbitration Awards

The decision of the arbitration tribunal is final unless set aside by the court. Any party has the right to apply for the arbitral award to be set aside. Such application should be made to the provincial court in the place where the arbitral award was issued. Within 30 days of the receipt of the application the court must establish a trial council consisting of three judges to consider its merits. An

arbitral award will only be set aside if one of the following grounds applies;

- There was no or an invalid Arbitration Agreement;
- The arbitration tribunal or the arbitration proceedings were inconsistent with the Arbitration Agreement;
- The dispute or parts thereof was/were beyond the jurisdiction of the arbitration tribunal;
- During the proceedings an arbitrator breached his obligations (bribery, breach of impartiality and objectivity etc.); or
- The arbitral award is contrary to the interest of the Socialist Republic of Vietnam.

A further appeal can be made to the People's Supreme Court. Finally the local inspectorate and the General People's inspectorate have the right to protest against the award.

### III. Recognition of Foreign Arbitral Awards

#### 1. New York Convention on Recognition and Enforcement of Foreign Arbitral Awards

Vietnam acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1995. Thus foreign arbitral awards which are rendered by a recognized international arbitration institution should be respected by Vietnamese courts without a review of the case's merits. However, this commitment only applies to awards which are made within the territory of another contracting State and only to those awards which are commercial in nature.

With regard to arbitral awards from non-contracting States, Vietnam will only recognise and enforce such awards to the extent

that the State in question grants reciprocity to Vietnam based awards.

Furthermore, Vietnam will only enforce arbitral awards where to do so would not conflict with the Constitution and the laws of Vietnam. In practice the only true way to satisfy this requirement is to consider the merits of the case in question. Thus in most instances a party who wishes to enforce a foreign arbitral award in Vietnam will find that they will have to go through the process of having the case re-considered by either a local court or arbitration tribunal.

## 2. Civil Procedures Code

The Civil Procedures Code governs, amongst many other things, the relevant procedures for the recognition and enforcement of foreign arbitral awards in Vietnam.

### (1). Petition Procedures

In order to enforce a foreign arbitral award in Vietnam it must be recognized and approved by the local court. Therefore a petition must be filed either directly by the party seeking enforcement or by his/its representatives.

### (2) Competent Authority

Petitions have to be filed with the Ministry of Justice and must contain:

- the name and address of the person or organization seeking enforcement;
- the name and address of the person or entity against whom/which enforcement is sought or the location and specification of the assets in Vietnam which are related to the enforcement;
- brief outline of the case;
- a copy of the relevant Arbitration Agreement;
- a copy of the arbitral award; and
- further documents as specified in the international treaty on the basis of

which the enforcement is sought (if applicable).

### (3) Competent Court

Within 07 days from the receipt of a valid petition, the Ministry of Justice will forward the file to the competent provincial court.

The place of jurisdiction is either the legal residence of the person against whom enforcement is sought or, in case of an organization, the corporate domicile or the locality of the property affected by the award.

The relevant court has 03 working days to check the file and notify the person or entity against whom/which enforcement is sought as well as the inspectorate. Within 02 months, provided that no further clarification is required, the court will decide on the commencement of a court meeting, which shall then be held within 20 days.

### (4). Evaluation

The court's jurisdiction in this regard extends to verifying that the arbitral award complies with Vietnamese law and the applicable international treaties. Specifically the court will check whether the award comes within the list of cases where an arbitral award must be denied recognition and enforceability.

Specifically, arbitral awards must be denied recognition and enforceability if:

- one of the parties was legally incapable when the Arbitration Agreement was signed;
- the Arbitration Agreement is invalid under Vietnamese law;
- the person or entity against whom/which enforcement is sought was not granted the right to be sufficiently heard during the arbitration proceedings;

- the award concerns a subject or parts thereof that was/were not covered by the Arbitration Agreement;
- the foreign arbitration panel or procedure was inconsistent with the Arbitration Agreement or the applicable law;
- the arbitral award is not yet finally binding;
- the arbitral award has been revoked or suspended;
- the recognition and enforcement would be contrary to the basic principles of Vietnamese law.

While at first this list appears reasonable, problems emerge upon closer inspection. The majority of the reasons for denying enforcement are extremely subjective, For example how the court measures whether a party was “sufficiently heard” or had legal capacity to sign a contract which could have been executed years ago. Further to date there has been no clear guidance as to what is meant by “the basic principles of Vietnamese law.”

## (5) Appeals and Protests

Concerned parties or their legal representatives have the right to appeal the court’s decision regarding enforceability. Such appeals must be made within 15 days of the courts decision or, in case if the decision is made in the parties’ absence within 15 days from the receipt of such decision.

Further the inspectorate of the same jurisdiction or the People’s General Inspectorate is also entitled to protest against the court’s decision.

The appeal and/or protest is heard by the People’s Supreme Court who will make a final decision as to the recognition and enforceability of the award in question.

## (6) Enforceability

Once recognized and declared enforceable, the foreign arbitral award is treated the same as a judgement or decision of a Vietnamese court.

## IV. Summary

In the past 20 years Vietnam has made considerable progress with regard to arbitration and the recognition of foreign arbitral awards.

While some issues do remain, (see III.2.4) the new LCA clearly demonstrates Vietnam’s intention to bring the local arbitration system in line with international norms. Thus it is reasonable to expect that these issues will be resolved in the near future.

*We hope that the information provided in this brochure was helpful for you.  
If you have any further questions, please do not hesitate to contact us.*

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