

Overview of arbitration in Vietnam

Arbitration in Vietnam: Understanding the Process
and Making It Work for your Business

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Ways to resolve business disputes

Article 317 Commercial Law 2005:

- ❖ Reconciliation
- ❖ Mediation
- ❖ Request arbitration (foreign or domestic, if both Parties agree to refer the Dispute to the Arbitration) => Law on Commercial Arbitration 2010
- ❖ Request the Court => Civil Procedure Code 2011
- ❖ WB (DB 2013): 34 steps => 400 days => cost 29% from the total disputed amount

From Reconciliation to Mediation

- ❖ **Reconciliation**
- ❖ You and your business partner decide on the Dispute.
- ❖ **Mediation**
- ❖ Contractual Agreement => appoint a third Party as mediator
- ❖ As Mediator: Local or Ministerial Authority, Business Association, Arbitration Center (VIAC) or any third Party
- ❖ The Mediator may explain to the Parties options, risks, contractual obligations, may help to narrow discrepancy between the disputing Parties, thus facilitating reconciliation to be continued
- ❖ To the end, the disputing Parties decide.
- ❖ **Consider:** Limitation of Civil Action in Vietnam: 2 years from the time your legal right and interest deemed to be infringed, Art. 319 Commercial Law, Art. 427 Civil Code.

Choosing Arbitration

- ❖ **Arbitration at your choice**
 - ❖ Foreign/ Int'l arbitration centers (Court of Arbitration)
 - ❖ Domestic arbitration centers
- ❖ **Consider: *ad hoc* arbitration**
 - ❖ You are expected to provide a more detailed arbitration clause to facilitate the formation and proceedings of the tribunal, for example:
 - ✓ Number of Arbitrators (one single arbitrator or a tribunal of at least three arbitrators);
 - ✓ To agree on Rules of Arbitration
 - ✓ To support the Work of the Arbitration
 - ✓ To Register the Award with the Court in case of need for enforcement

Choosing Foreign Arbitration

- ❖ Vietnam is a signatory of New York Convention 1958
- ❖ Awards need to be recognized and enforced in Vietnam in according to Art. 364-374 Civil Procedure Code 2011
 - ✓ Translate and Legalize the Documents
 - ✓ Submit to Ministry of Justice
 - ✓ Forward the Case to the Court
 - ✓ Hearing (Court, the Parties, and the People's Procuratorate)
 - ✓ Awards may not be recognized:
 - ✓ Misrepresentation in concluding the Arbitration Clause
 - ✓ Void Arbitration Clause (violating governing law)
 - ✓ Violation of Right to be heard, violation of Arbitral Rules
 - ✓ Beyond scope of arbitral jurisdiction and/or the recognition contradicts to basic legal principles of Vietnam

Choosing Foreign Arbitration (continued)

- ❖ Advantage: Arbitration at your choice (language, legal practice you are most familiar with)
- ❖ Consider:
 - ❖ Foreign Tribunal may lack knowledge in law and business practice in Vietnam => Vietnamese witness and Expert's opinions often required
 - ❖ The Procedure for foreign award to be recognized by Vietnam's Court is time consuming, and some time risky (Article 370 Civil Procedure Code)

Choosing Vietnamese Arbitration

No	Licensed Arbitration Centers in Vietnam	Arbitrators	Contacting Address
1	Trung tâm trọng tài quốc tế Việt Nam	139	Số 9, Đào Duy Anh, Đống Đa, Hà Nội. ĐT: 0435744001
2	Trung tâm trọng tài thương mại Á Châu	37	Tầng 3, số 37 Lê Hồng Phong, Ba Đình, Hà Nội. Phone: 0437344677
3	Trung tâm trọng tài thương mại Thành phố Hồ Chí Minh	27	460 Cách mạng Tháng tám, phường 4, Tân Bình, HCM, Phone: 0838446975
4	Trung tâm trọng tài thương mại Cần Thơ	12	296 đường 30/4, phường Xuân Khánh, Ninh Kiều, Cần Thơ. Phone: 0903849428
5	Trung tâm trọng tài quốc tế Thái Bình Dương	50	12 Nam Kỳ Khởi Nghĩa, phường Nguyễn Thái Bình, Quận 1, HCM, Phone: 0838212351
6	Trung tâm trọng tài thương mại Tài chính Ngân hàng Việt Nam	7	Phòng 3, Lầu 7, Tòa nhà TKT Tower số 569-573 Trần Hưng Đạo, Cầu Kho, Quận 1, HCM, Phone: 0839208526
7	Trung tâm trọng tài thương mại Tài chính	6	215/42 Nguyễn Xí, phường 13, quận Bình Thạnh, HCM, Phone: 0838212357

Scope of Arbitration

- ❖ **Art 2 Commercial Arbitration Law**
 - ❖ Disputes arising from commercial activities, or
 - ❖ Disputes involved at least one Party which conducts commercial activities (for example in consumer contract), or
 - ❖ Disputes otherwise provided for by law (for example by the Law on Investment 2005 for Disputes between licensed authorities and companies, typically in PPP Projects)
- ❖ **Consider, following disputes are not under scope of arbitration:**
 - ❖ Civil law disputes (family and marriage) which are not commercial by nature
 - ❖ Administrative disputes between business and local or central authorities (example tax, constructions, environment...), which are to be settled by the administrative court.

Arbitration Clause

- ❖ **You shall consider:**
 - ❖ In which cases you shall may prefer to use arbitration, in which cases you may better refer the Disputes to the Court?
 - ❖ If you already agreed on Arbitration to Settle the Disputes, **the Court may refuse to accept your Case.**
- ❖ **Remain flexible**
 - ❖ You can insert the arbitration clause as internal part into the Contract, or you can agree on arbitration later during the Contract implementation
 - ❖ You can keep the arbitration clause very general or you can make it more specific, for example: to select a certain Arbitration Center, to choose arbitration language and place, to agree on arbitration rules, to nominate arbitrator, etc.

Considering to Arbitration

- ❖ **Expert knowledge needed**
 - ❖ Which knowledge is needed to understand and settle the disputes: legal knowledge or/and professional expertise (construction, telecommunication, petroleum exploitation, etc.)
 - ❖ Check of list of arbitrators and a chance to nominate the most appropriate expert of your choice => Freedom to nominate your arbitrator (nominee must not be from the list).
- ❖ **Keeping Confidential**
 - ❖ Which disputes shall not be disclosed to the public?
- ❖ **Collecting evidence and interim measures**
 - ❖ To settle the dispute fairly, do you need the Court's order to collect evidence, particularly evidences provided by third Parties, or you can provide enough evidence to the Tribunal?

Considering to Arbitration (continued)

- ❖ **Time consideration**
 - ❖ The Arbitration Tribunal's award is final and binding, no appeal => arbitration may save time and money
- ❖ **Business Friendly Proceedings**
 - ❖ You can choose the arbitration language => save time and money to translate and legalize documents and evidence as required by the Court
 - ❖ You can choose the arbitration place, the place for the Hearing (in distinction to the Court: Civil Procedure Code determines the court of jurisdiction)
 - ❖ You can nominate the arbitrator of your choice (in Court: you don't have the right to choose judges).
 - ❖ You can actively exercise your right to present the Case and to be heard, and to determine the jurisdiction of the Tribunal

Preparation for Arbitration – Check List

- ✓ Valid arbitration clause
- ✓ Limitation of litigation (two years)
- ✓ Pre- Arbitral Actions required (reconciliation, mediation)
- ✓ Information about Respondent (contacting address)
- ✓ Interim Measures needed (court order needed)
- ✓ Formulate your Request, Legal Reasoning and Evidence
- ✓ Contacting the Arbitration Secretariat, finalizing pre-arbitral requirements (fee, list of arbitrators, conflict of interest)
- ✓ Making of Statement of Defense or/and Counter-Claim (Time)
- ✓ Correspondences to clarify your point prior to the Hearing
- ✓ Preparation for the Hearing (the final hearing)
- ✓ Check the Award and Request for Clarification in case of need
- ✓ Accept or Challenge the Award