

Arbitration

in 55 jurisdictions worldwide

Contributing editors: Gerhard Wegen and Stephan Wilske

2013



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Introduction Gerhard Wegen and Stephan Wilske <i>Gleiss Lutz</i>	3
CCBC André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza <i>Barbosa, Müssnich & Aragão</i>	7
CEAC Eckart Brödermann <i>Brödermann Jahn</i> , Christine Heeg <i>Bird & Bird LLP</i> and Thomas Weimann <i>Clifford Chance</i>	12
CIETAC Peter Yuen, Helen Shi and Benjamin Miao <i>Fangda Partners</i>	17
CMA André de Albuquerque Cavalcanti Abbud and Gustavo Santos Kulesza <i>Barbosa, Müssnich & Aragão</i>	20
CRCICA Mohamed Abdel Raouf <i>Cairo Regional Centre for International Commercial Arbitration</i>	24
DIAC Gordon Blanke and Soraya Corm-Bakhos <i>Habib Al Mulla & Co</i>	29
DIS Renate Dendorfer-Ditges <i>Heussen Rechtsanwalts-gesellschaft mbH</i>	32
HKAC Peter Yuen and Doris Yeung <i>Fangda Partners</i>	36
ICC José Rosell and María Beatriz Burghetto <i>Hughes Hubbard & Reed LLP</i>	40
ICSID Nicolas Herzog and Niccolò Gozzi <i>Niedermann Rechtsanwälte</i>	46
KLRC Sundra Rajoo <i>Kuala Lumpur Regional Centre for Arbitration</i>	52
LCIA India Shreyas Jayasimha <i>AZB & Partners</i>	56
The Polish Chamber of Commerce Justyna Szpara and Maciej Łaszczuk <i>Łaszczuk & Partners</i>	60
SCC Dan Engström & Cornel Marian <i>Stockholm Arbitration & Litigation Center (SALC) Advokatbyrå</i>	64
The Swiss Chambers' Arbitration Institution Philippe Bärtsch, Christopher Boog and Benjamin Moss <i>Schellenberg Wittmer</i>	68
Angola Agostinho Pereira de Miranda, Cláudia Leonardo and Jay Fernandes <i>Miranda Correia Amendoeira & Associados</i>	73
Australia Tony Johnson, Michael Bywell and Henry Winter <i>Johnson Winter & Slattery</i>	79
Austria Erhard Böhm and Paul Proksch <i>Specht Böhm Rechtsanwalt GmbH</i>	86
Bahrain Adam Vause <i>Norton Rose (Middle East) LLP</i>	93
Belgium Johan Billiet <i>Billiet & Co</i> and Dilyara Nigmatullina <i>Association for International Arbitration</i>	101
Brazil Hermes Marcelo Huck, Rogério Carmona Bianco and Fábio Peixinho Gomes Corrêa <i>Lilla, Huck, Otranto, Camargo Advogados</i>	110
Canada John A M Judge, Peter J Cullen, Douglas F Harrison and Lev Alexeev <i>Stikeman Elliott LLP</i>	117
Cayman Islands Jeremy Walton and Anna Gilbert <i>Appleby</i>	127
China Peter Yuen, Helen Shi and Benjamin Miao <i>Fangda Partners</i>	136
Colombia Carolina Posada Isaacs and Maria Alejandra Arboleda González <i>Posse Herrera Ruiz</i>	145
Croatia Natalija Perić and Frano Belohradsky <i>Mamić Perić Reberski Rimac</i>	152
Czech Republic Alexander J Bělohávek <i>Law Offices Bělohávek</i>	159
Dominican Republic Marcos Peña Rodríguez and Laura Medina Acosta <i>Jiménez Cruz Peña</i>	167
Ecuador Rodrigo Jijón Letort and Juan Manuel Marchán <i>Perez Bustamante & Ponce</i>	175
Egypt Tarek F Riad <i>Kosheri, Rashed & Riad Law Firm</i>	183
England and Wales Jane Wessel, Claire Stockford and Meriam N Alrashid <i>Crowell & Moring</i>	189
France Nathalie Meyer Fabre <i>Meyer Fabre Avocats</i>	200
Germany Stephan Wilske and Claudia Krapfl <i>Gleiss Lutz</i>	209
Ghana Kimathi Kuenyehia, Sr, Sika Kuenyehia and Atsu Agbemabiase <i>Kimathi & Partners, Corporate Attorneys</i>	216
Hong Kong Peter Yuen and Doris Yeung <i>Fangda Partners</i>	224
Hungary Chrysta Bán Bán, S Szabó & Partners	233
India Shreyas Jayasimha <i>AZB & Partners</i>	241
Indonesia Anderonikus A S Janis <i>Roosdiono & Partners</i>	251
Israel Eric S Sherby and Sami Sabzerou <i>Sherby & Co, Advs</i>	258
Italy Mauro Rubino-Sammartano <i>LawFed Studio Legale e Tributario BRSA</i>	267
Japan Shinji Kusakabe <i>Anderson Mōri & Tomotsune</i>	275
Korea BC Yoon, Kyo-Hwa Liz Chung and Richard Menard <i>Kim & Chang</i>	282
Kuwait Ahmed Barakat and Ibrahim Sattout <i>ASAR – Al Ruwayeh & Partners</i>	290
Lebanon Chadia El Meouchi, Jihad Rizkallah and Sarah Fakhry <i>Badri and Salim El Meouchi Law Firm</i>	298
Lithuania Ramūnas Audzevičius and Rimantas Daujotas <i>Motieka & Audzevičius</i>	310
Luxembourg Fabio Trevisan and Laure-Hélène Gaicio <i>Bonn, Steichen & Partners</i>	317
Malaysia Foo Liang <i>Gan Partnership</i>	325
Mozambique Agostinho Pereira de Miranda, Filipa Russo de Sá and Catarina Carvalho Cunha <i>Miranda Correia Amendoeira & Associados</i>	335
Netherlands D Knottenbelt and M E Koppenol-Laforce <i>Houthoff Buruma</i>	342
Poland Justyna Szpara and Pawel Chojecki <i>Łaszczuk & Partners</i>	349
Portugal Agostinho Pereira de Miranda, Cláudia Leonardo and Catarina Cunha <i>Miranda Correia Amendoeira & Associados</i>	356
Qatar Jalal El Ahdab and Myriam Eid <i>Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm</i>	363
Romania Cristiana-Irinel Stoica, Daniel Aragea and Andrei Buga <i>Stoica & Asociatii</i>	371
Russia Natalya Menshikova, Julia Zaletova and Irina Anishchenko <i>Specht Böhm Rechtsanwalt GmbH</i>	378
Saudi Arabia Jalal El Ahdab and Myriam Eid <i>Ginestié Magellan Paley-Vincent in association with Ahdab Law Firm</i>	387
Serbia Dušan Rakitić and Nikoleta Vučenović <i>Specht Böhm Rechtsanwalt GmbH</i>	397
Singapore Yu-Jin Tay and David Liu <i>DLA Piper</i>	404
Slovakia Roman Prekop, Adrian Barger, Monika Simorova and Boris Halas <i>Barger Prekop sro</i>	414
Spain Ramon Mullerat <i>Jurisvalls</i>	422
Sweden Eric M Runesson and Simon Arvmyren <i>Sandart & Partners</i>	433
Switzerland Thomas Rohner and Nadja Kubat Erk <i>Pestalozzi Attorneys at Law Ltd</i>	440
Taiwan Helena H C Chen and Kitty Shen <i>Formosan Brothers, Attorneys-at-Law</i>	448
Tanzania Wilbert Kapinga, Ofotsu A Tetteh-Kujojje and Kamanga Kapinga <i>Mkono & Co Advocates in association with SNR Denton</i>	455
Thailand Kornkieat Chunhakasikarn and John King <i>Tilleke & Gibbins</i>	461
Turkey Ismail G Esin, Ali Yesilirmak and Dogan Glututan <i>Esin Attorney Partnership</i>	469
Ukraine Oleksiy Filatov and Pavlo Byelousov <i>Vasil Kisil & Partners</i>	477
United Arab Emirates Gordon Blanke and Soraya Corm-Bakhos <i>Habib Al Mulla & Co</i>	487
United States Daniel E González and Richard C Lorenzo <i>Hogan Lovells US LLP</i>	496
Venezuela Fernando Pelaez-Pier and José Gregorio Torrealba <i>Hoet Pelaez Castillo & Duque</i>	503
Vietnam Nguyen Manh Dzong, Nguyen Thi Thu Trang and Nguyen Ngoc Minh <i>Dzungst & Associates LLC</i>	511

Vietnam

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Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

On 12 September 1995, Vietnam became a signatory to the 1958 New York Convention, which then came into force on 11 December 1995. Vietnam made three reservations under the Convention. Accordingly, foreign arbitral awards are enforceable in Vietnam only when:

- the award is made in the territory of another contracting state;
- differences arising out of legal relationship, whether contractual or not, that are considered as ‘commercial’ under Vietnamese law; and
- with regard to awards made in the territory of non-contracting states, Vietnam will apply the Convention only to the extent to which those states grant reciprocal treatment.

Vietnam has been a member of the Association of Southeast Asian Nations (ASEAN) since mid-1997 and of the World Trade Organization (WTO) since 2007. Thus, Vietnam is required to settle disputes according to the dispute settlement understandings (DSUs) of ASEAN and the WTO.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

To date, Vietnam has entered into promotion and protection of investment treaties with approximately 60 countries and territories. The Vietnamese government is also pursuing various bilateral trade agreements with 37 countries.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary statutes governing arbitral proceedings as well as the recognition and enforcement of awards in Vietnam are the 2010 Law on Commercial Arbitration (the LCA), the 2008 Law on Enforcement of Civil Judgments (the LECJ) and the 2004 Civil Procedure Code (the CPC). The LCA generally governs arbitration proceedings in Vietnam, while the CPC contains a whole chapter that deals with the recognition of foreign awards in Vietnam. The LECJ has detailed provision dealing with the enforcement of both domestic and recognised foreign arbitrations awards. Additionally, there are by-laws guiding the implementation of the said legislation, such as the Decree No. 63/2011/ND-CP on detailing and guiding some

articles of the LCA. Moreover, the Supreme People’s Court are soon to draft a Resolution that provides some guidance on the LCA.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

Provisions of the UNCITRAL Model Law have, to some degree, been adopted by the LCA. However, by virtue of local circumstances, there are certain differences between the two instruments, namely:

- commercial activities are defined by Vietnamese laws as all activities for profit-making purposes, including not only the sale or purchase of goods and the provision of services but also investment activities and commercial promotions, a definition intended to correspond to the meaning of commercial activities in international practice, thus extending the jurisdiction of the arbitral tribunal in line with UNCITRAL Model Law;
- the LCA stipulates certain matters, which are not provided under the UNCITRAL Model Law, namely fundamental principles in settling disputes, state administration of arbitration, absence of parties and arbitration fees. Further, ad hoc arbitration awards are required to be registered with national courts in order to guarantee their enforceability;
- the qualification of arbitrators is set out in the LCA to ensure that disputes are settled by reliable tribunals. Under the LCA, the parties may also request the arbitral tribunal to mediate for the parties to reach an amicable agreement and resolve their dispute; and
- one ground for setting aside awards under the UNCITRAL Model Law is public policy. The comparable provision under the LCA is the concept of basic principles of Vietnamese laws, which is a controversial issue among legal practitioners and legislators in Vietnam. It should be noted that basic principles of Vietnamese laws also form a ground for the Vietnamese courts to refuse recognition of foreign arbitral awards.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties are free to agree on certain procedural aspects of the arbitral proceedings where the LCA specifies ‘if the parties agreed’ However, certain mandatory provisions on procedure must be strictly complied with, for example:

- order for service notices;
- procedure of submission of statement of claim, statement of defence and counter claim;
- notification of statement of claim and counter claim;
- procedure of replacement of the arbitrator;
- procedure for the arbitral tribunal to consider the validity of arbitration agreement and its jurisdiction;

- procedure for petition and resolution of the petition against the decision of the arbitral tribunal on the validity of the arbitration agreement and jurisdiction of the arbitral tribunal;
- procedure of the hearing when a party fails to attend;
- procedure of postponement of the hearing;
- procedure for a stay of the proceedings;
- procedures for an arbitral tribunal to order, amend, supplement or remove an interim relief;
- procedure of registration of an ad hoc arbitral award;
- procedure of rectification of arbitral award; and
- procedure for challenging an arbitral award; and
- procedure of the resolution of the petition requesting an arbitral award to be set aside.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Pursuant to the LCA, the arbitral tribunal shall apply Vietnamese laws to disputes without foreign elements. Parties to a dispute involving foreign elements, on the other hand, are free to choose the applicable law and the arbitral tribunal is bound to apply such a law. Where there has been no agreement between the parties, the arbitral tribunal shall apply the law that it deems most appropriate. It should be noted that disputes with foreign elements and related to immovable properties situated in Vietnam are within the exclusive jurisdiction of the Vietnamese courts and are subject to Vietnamese laws.

A civil relation with 'foreign elements' is defined under the 2004 Civil Code of Vietnam as:

- a relationship in which at least one of the related parties is a foreign body, organisation or individual, or is a Vietnamese residing overseas;
- involving a transaction between the related parties who are Vietnamese citizens or organisations but the basis for the establishment, modification, or termination of such a transaction was the law of a foreign country; or
- the dispute arose in a foreign country, or the assets involved in the dispute are located in a foreign country.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

After the LCA came into force, there are about 10 arbitration centres in Vietnam. However, the most used arbitral institution in Vietnam is the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (the VIAC). In respect of disputes with foreign elements, the VIAC Rules of Arbitration prescribe no requirement that an arbitrator needs to be selected from its list of arbitrators.

There is no restriction in relation to the language of the agreements, or applicable law, as long as the parties' agreements meet the requirement of Vietnamese norms. Fees cover remuneration of arbitrators and the VIAC's administrative fees are calculated based on the amount in dispute, which is fixed and announced on its website.

It should be noted that all arbitration centres were required by the LCA to modify their charters and arbitration rules for registration with the Ministry of Justice of Vietnam by 31 December 2011 at the latest.

For further information about the VIAC, please visit its website.

Vietnam International Arbitration Centre (VIAC)

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www.viac.org.vn/en-US/Home/default.aspx

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

The LCA extends the authority of arbitrators to various types of disputes that arise from commercial activities, disputes between parties where at least one of the parties is engaged in commercial activities, and disputes that are required to be resolved or capable of being resolved by arbitration. The term 'commercial' is interpreted in accordance with Vietnamese commercial law as activities for profit-making purposes (see section 4 above).

Although the LCA does not set out the type of matters that shall not be arbitrated, the usual restrictions on arbitrability under Vietnamese law would apply. For example: matters of administrative and criminal origin, matrimonial and employment disputes and other matters purely of private nature.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Article 16.2 of the LCA prescribes that an arbitration agreement must be in writing, which means:

- a telegram, fax, telex, e-mail or other form provided by law;
- written information between the parties;
- an agreement prepared in writing by a lawyer, notary public or competent organisation at the request of the parties;
- reference by the parties during the course of a transaction to a document such as a contract, source document, company charter or other similar documents that contain an arbitration agreement; or
- an exchange of statements of claim and defence that establishes the existence of an agreement proposed by one party and not denied by the other party.

Pursuant to the above provisions, an agreement that has been concluded orally or failed to be recorded shall not be considered as being 'in writing'. The said lack of formal requirements can be cured by the subsequent conduct of parties, for example, by signing a new arbitration clause, with express or implying agreement to arbitrate the dispute. In any event, an arbitration agreement may be included in the terms and conditions of a contract or the parties can agree to arbitrate after the occurrence of the dispute.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

In addition to the lack of arbitrability, there are five other grounds that a party can invoke to claim that an arbitration agreement is invalid:

- the person who entered into the arbitration agreement lacked the authority;
- the person who entered into the arbitration agreement lacked civil legal capacity pursuant to the Civil Code;
- the arbitration agreement lacks a formal requirement;
- one of the parties has been deceived, threatened or coerced during the formulation of the arbitration agreement and requests a declaration that the arbitration agreement is void; or
- the arbitration agreement breaches a prohibition of the laws.

The arbitration agreement can be terminated by mutual agreement of both parties. On the other hand, even if the contract is null and void, by virtue of the doctrine of separability, the arbitration clause is still valid.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

The LCA does not contain any specific provision relating to third parties or non-signatories being bound by an arbitration agreement. Nevertheless, there are some circumstances in which a third party may be deemed to be involved:

- agency – a signatory acting as an agent within his or her authority may bind the non-signatory principal;
- incorporation by reference – an arbitration clause may be incorporated by reference into another agreement to bind non-signatories of the arbitration clause who have actually executed the other agreement; and
- assumption – a party by its conduct may assume the obligation to arbitrate.

One should bear in mind that the above circumstances are still subject to debates and may only be applicable on a case-by-case basis.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

There is no specific provision under the LCA relating to the participation of third parties in arbitration. Since the jurisdiction of an arbitral tribunal derives from the mutual consent of the parties, no third party may be forced to enter into arbitration unless an arbitration clause or agreement to submit to arbitration has been executed by such a person. Therefore, according to a conservative interpretation, if a party, for example a manufacturer, did not take part in a bilateral agreement executed between a seller and an end user, the manufacturer cannot participate in the arbitration unless all parties consent to it.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Under the LCA, there is neither a provision nor a case related to non-signatory parent or subsidiary companies of a signatory company. Thus, this is a matter that has not been clearly resolved or tested under Vietnamese laws.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The LCA contains no detailed provision dealing with situations concerning multiparty arbitration or multiparty arbitration agreements.

Constitution of arbitral tribunal**15 Eligibility of arbitrators**

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

The LCA stipulates a list of compulsory qualifications for arbitrators, such as possessing university diplomas and having worked in the field of their study majors for five years or more. In special cases, an expert with high qualifications and considerable practical experience who

fails to satisfy the above requirements may still be selected to act as an arbitrator. Active judges, prosecutors, investigators, executors and public employees working at the people's courts, public prosecutors, investigating agencies and judgment-executing agencies shall not be allowed to act as arbitrators.

Consequently, foreign nationals who meet these requirements can also serve as arbitrators in arbitration centres or as ad hoc arbitrators. The regulation on criteria of arbitrators under Vietnamese laws is deemed too strict in comparison with the Model Law, which explicitly respects the principle of party autonomy. However, in the Vietnamese context where arbitration has not yet been widely utilised, it is necessary in the view of the Vietnamese lawmakers to provide specific qualifications of arbitrators since such provisions will assure the effectiveness of the dispute settlement proceedings.

Since the LCA does not provide any rule on the selection of arbitrators from a list of arbitrators, parties are free to choose their own arbitrators in ad hoc arbitration. However, as there is a public list of arbitrators for all arbitration centres operating in Vietnam, the court as an appointing authority, may well rely on such lists in selecting an arbitrator at the request of a party. In the case of institutional arbitration, an appointment of an arbitrator will depend on the rules of such an institution.

We are not aware of any case whereby the contractual requirement for arbitrators based on nationality, religion or gender is recognised by the Vietnamese courts. However, the party autonomy principle is respected under the LCA and the draft resolution of the Supreme People's Court guiding some articles of the LCA also provides that the arbitration agreement is incapable of being performed when there is no arbitrator who meets the requirements. Therefore, in theory, it may be possible for parties to agree on any stipulation for arbitrators.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

With regard to institutional arbitration, if parties do not have their prior arrangements or if the chosen arbitration centre does not have specific rules for the selection of arbitrators, then each party shall appoint one arbitrator. The appointed arbitrators shall appoint the presiding arbitrator. Failing to do so, the president of the arbitration centre will appoint the chair arbitrator. In the case of a sole arbitrator, the president of the arbitration centre will appoint the arbitrator at the request of one or both parties.

The same procedure is applied with regard to ad hoc arbitration. However, an authorised arbitration centre, as agreed by the parties or a competent court, shall appoint an arbitrator at the request of one or both parties.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

There are four grounds in the LCA under which an arbitrator can be challenged:

- the arbitrator is a relative or the representative of a party;
- the arbitrator has certain benefits related to the dispute;
- there is clear evidence that the arbitrator is not impartial or objective; and
- the arbitrator previously acted as a mediator or representative or lawyer of any party before the dispute is brought to arbitration, unless the parties provide their written consent that this was acceptable.

If one of the above situations arises, the arbitrator must refuse to handle the case, otherwise the parties can request for the arbitrator to be replaced. It should be noted that there are no explicit provisions, guidance or definitions on impartiality, objectivity or arbitrator's benefits. Codes of conduct for arbitrators have been issued by some arbitration centres such as the VIAC, while the PIAC applies the IBA's Rules on Ethics of International Arbitrators and the IBA's Guidelines on Conflict of Interests in International Arbitration. However, a professional body to ensure the enforcement of such codes does not exist yet.

Authority to decide on the replacement of an arbitrator belongs to the remaining members of the arbitral tribunal, the chairman of the arbitration centre (in the case of institutional arbitration) or the court (in the case of ad hoc arbitration), depending on the actual case.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The LCA is silent on the legal nature of the relationship between parties and arbitrators. In accordance with the provisions of the LCA, an arbitrator has the obligation to be independent during the dispute arbitration process to ensure that the resolution of a dispute is impartial, speedy and prompt regardless of which party has appointed him or her. Hence, an arbitrator has the obligation to disclose any circumstance that may affect his or her objectiveness and impartiality. In ad hoc arbitration, the remuneration of arbitrators is set in their contracts, and in institutional arbitration, it is based on the schedule of fees.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

Under Vietnamese law there is no immunity for arbitrators or judges. Therefore, arbitrators may be held liable to the parties under the general principles of contract law and tort, for example as provided in article 49(5) of the LCA, which stipulates that if an arbitral tribunal orders a different form of interim relief or interim relief that exceeds the scope of the application by the applicant, thereby causing loss to a party or to a third party, then the party incurring the loss shall have the right to claim for compensation in accordance with the law on civil proceedings. The judges' liabilities are stipulated in a number of legal provisions (for example article 620 of the 2005 Civil Code), and it is interesting to note that judges can also be criminally prosecuted for illegally issuing a judgment under article 295 of the 1999 Penal Code of Vietnam.

Jurisdiction

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Where the parties in dispute already have an arbitration agreement but one party initiates court proceedings, the court must refuse to accept jurisdiction unless the arbitration agreement is void or incapable of being performed in accordance with article 6 of the LCA.

However, where one of the parties in a dispute is a consumer, the consumer will have the right to select the method of dispute resolution pursuant to article 17 of the LCA (ie, court proceedings can be initiated despite the existence of an arbitration agreement).

If a court proceeds to hear a dispute despite the existence of an

arbitration agreement, objections on jurisdiction can be raised within the preparation period leading up to the hearing or at the hearing itself pursuant to the CPC. The dispute over jurisdiction may also create a ground for appeal or review of a court ruling.

There is no specific provision on time limits for jurisdictional objections under the LCA or CPC. In practice, the jurisdictional objections should be submitted to the court as soon as the enrolment of the proceedings is known.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

An objection to the arbitral tribunal's jurisdiction should be raised at the same time as the respondent's first submission. During the dispute resolution process, the parties may also make a complaint to the arbitral tribunal if they find that the tribunal has exceeded its jurisdiction. Otherwise, they may be deemed as having waived their right to object.

The arbitration tribunal must, before dealing with the merits of a dispute, consider their jurisdiction over the dispute in accordance with article 43 of the LCA. Within five working days from the date of receipt of the arbitral decision on jurisdiction, a party has the right to petition to a competent court to review such decision. The decision of the court shall be final and cannot be appealed. These provisions efficiently prevent the arbitral proceedings from being delayed or abused and assist in making the process more time and cost-effective.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

For disputes that do not involve a foreign element, the Vietnamese language must be used in arbitration proceedings except in cases where the dispute involves at least one party who is an enterprise with foreign invested capital. If a party in the dispute cannot use Vietnamese, then it may enlist an interpreter. For disputes with foreign elements and disputes in which at least one party is an enterprise with foreign invested capital, if the parties do not have an agreement, the language to be used in the arbitration proceedings shall be as decided by the arbitral tribunal pursuant to article 10 of the LCA.

If the parties do not have an agreement on the place of arbitration, then the location shall be as decided by the arbitration tribunal. The seat of arbitration and the place of hearing can be either within the territory of Vietnam or abroad as allowed by article 11 of the LCA.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Unless otherwise agreed by the parties, the time of commencement of the arbitration proceedings shall either be upon receipt by the arbitration centre of a statement of claim from the claimant in the case of a dispute resolution at an arbitration centre or upon receipt by the respondent of a statement of claim from the claimant, accompanied with the arbitration agreement and originals or copies of relevant materials in the case of ad hoc arbitration.

A statement of claim shall contain the following particulars:

- the date on which the statement of claim is made;

- names and addresses of the parties, and names and addresses of witnesses, if any;
- summary of the matters in dispute;
- grounds and evidence, if any, of the claim;
- specific relief sought by the claimant and value of the dispute; and
- the name and address of the person whom the claimant selects as arbitrator or request for an arbitrator to be appointed.

24 Hearing

Is a hearing required and what rules apply?

According to articles 54–59 of the LCA, the parties, in theory, are free to reach a mutual agreement not to have a hearing. Article 56.3 specifically allows the arbitral tribunal to decide the dispute without the actual presence of the parties and to consider the dispute on documents alone.

Unless agreed by the parties, decisions on the time and location for holding hearing sessions shall be made by the arbitration tribunal or in accordance with the rules of the arbitration centre. With the consent of the parties, the arbitral tribunal may allow other persons to attend the hearing.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Under the LCA, the parties have the right and duty to provide evidence to the arbitral tribunal. The arbitral tribunal, on its own initiative or at the request of one or both parties, may summon witnesses, seek an assessment or evaluation of assets, consult expert opinions, as well as conduct fact-finding with third parties. During the dispute resolution process, the arbitral tribunal also has the right to meet or hold discussions with one party in the presence of the other, by appropriate methods, to clarify issues relevant to the dispute. The rules are silent on whether the tribunal can refuse parties' requests or the requirements for such requests to be valid. Unlike court proceedings, the arbitral tribunal is not bound to comply with rules on evidence as provided in the CPC. In fact, PIAC apply the IBA Rules on the Taking of Evidence in International Arbitration in arbitrating disputes.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The LCA provides for a number of circumstances for courts, at the request of the parties or the arbitral tribunal, to be involved in the arbitration proceedings, for example, to appoint arbitrators, collect evidence, grant interim relief or summon witnesses.

The courts may also intervene in challenging arbitrators, setting aside arbitral awards, reviewing the decision of an arbitral tribunal that the arbitration agreement is null and void or incapable of being performed, as well as on the jurisdiction of the arbitral tribunal.

27 Confidentiality

Is confidentiality ensured?

The LCA stipulates that dispute resolution by arbitration shall be conducted in private. Thus, it can be understood that the confidentiality of the proceedings as well as the dispute itself must be ensured. The arbitral tribunal has the obligation to keep confidential the material submitted and information disclosed in the proceedings, as well as the content of the case in general, unless the tribunal is required to provide information to a competent state authority in accordance with the law. However, whether the parties themselves are under such

an obligation is not clear. Similarly, the confidentiality of the award and subsequent enforcement procedures by the parties themselves is also unclear.

Interim measures

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Competent courts have the authority to order any type of interim relief that is available to arbitral tribunals under the LCA as well as a number of exclusive reliefs under the CPC. Interim relief, however, may only be ordered by courts after the submission of a statement of claim. If a party requests an interim relief before the initiation of the arbitration proceedings, the relief may not be ordered by either the arbitral tribunal or courts as the LCA was not designed to enable this.

Interim relief comprises:

- prohibition of any change in the status quo of the assets in dispute;
- prohibition of acts by or ordering one or more specific acts to be taken by a party in dispute aimed at preventing conduct adverse to the process of the arbitration proceedings;
- attachment of the assets in dispute;
- requirement of preservation, storage, sale or disposal of any of the assets of one or all parties in dispute;
- requirement of interim payment of money as between the parties; and
- prohibition of transfer of property rights of the assets in dispute.

Other relevant interims reliefs under article 102 of the CPC are:

- freezing of accounts at banks, other financial institutions or state treasuries;
- freezing of assets at places of deposit; and
- freezing of obligors' assets.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Vietnamese law is silent on the provision of an emergency arbitrator prior to the constitution of arbitration tribunal. All applications for interim relief before the arbitral tribunal is constituted, as mentioned above, need to invoke the jurisdiction of a competent court.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

It should be noted that the arbitral tribunal's power to order interim relief is within the points outlined in question 28 only under article 49.2 of the LCA including:

- prohibition of any change in the status quo of the assets in dispute;
- prohibition of acts, or ordering one or more specific acts to be taken, by a party in the dispute aimed at preventing conduct adverse to the process of the arbitration proceedings;
- attachment of the assets in dispute;
- requirement of preservation, storage, sale or disposal of any of the assets of one or all parties in dispute;
- requirement of an interim payment of money as between the parties; and
- prohibition of the transfer of property rights of the assets in dispute.

Before the application of an interim relief, the arbitral tribunal can require the applicant to provide financial security by way of a bank guarantee or cash payment, etc, in accordance with article 49.4 of the LCA.

As previously explained, one party may request competent courts for interim relief after the submission of a statement of claim. Such a party will lose the right to further petition the arbitral tribunal for the same interim relief. However, a party also cannot request the courts to order an interim relief if it has previously done so with the arbitral tribunal, except where the relief does not fall within the tribunal's authority. Alternatively put, there cannot be the same interim relief ordered concurrently by a court and an arbitral tribunal in arbitration proceedings, unless one of which can only be exclusively applied by the court.

Awards

31 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

According to the LCA, notwithstanding the parties' agreement, an arbitral award shall be issued on the basis of a majority vote. If voting does not result in a majority decision, then the arbitral award shall be made in accordance with the opinion of the chairman of the arbitral tribunal. The LCA does not provide any provision to address the issue of a dissenting arbitrator. Nevertheless, it can be implied from the principle of a majority vote that the different opinion shall not affect the merit of the arbitral award. Article 61.2 of the LCA further sets out that when an arbitrator does not sign the arbitral award, the arbitral award is still effective and the reason of the award not being signed must be given.

32 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

As an arbitral award is made on the basis of a majority vote, its effectiveness should not be affected by dissenting opinions. However, if a majority decision is not obtained, the arbitral award shall be made in accordance with the opinion of the chairman of the arbitral tribunal. The LCA is silent on this issue and allows the arbitration centre to reflect this matter on its arbitration rules.

33 Form and content requirements

What form and content requirements exist for an award?

An arbitral award must be in writing and contain the following main particulars:

- date and location of issuance of the award;
- names and addresses of the claimant and respondent;
- full names and addresses of the arbitrators;
- summary of the statement of claim and matters in dispute;
- reasons for issuance of the award, unless the parties agree it is unnecessary to specify reasons for the award;
- result of the dispute resolution;
- time limit for enforcement of the award;
- allocation of arbitration fees and other relevant fees; and
- signatures of the arbitrators.

34 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The arbitral award shall immediately be issued in the session or no later than 30 days from the end of the final hearing. Such time limit is mandatory and cannot be extended even with parties' consent.

35 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The arbitral award must be sent to the parties immediately after the date of its issuance. However, within 30 days from the date of receiving the arbitral award, a party may request the correction of the award or challenge the award. In other words, relevant time limits are counted from the date a party receives the arbitral award.

36 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Under the LCA there is a distinction between a decision and an award. The former means a decision of the arbitral tribunal during the dispute resolution process while the latter is a final decision of the arbitral tribunal to resolve the entire dispute and terminate the arbitration proceedings. Thus, under the LCA an award corresponds to a final award. A decision that an arbitral tribunal does not have jurisdiction over a dispute may also be a final award in nature. Normal partial and interim awards on matters such as applicable law may fall within the broad category of arbitral decisions as defined by the LCA. Additionally, the arbitral tribunal may also issue a decision to recognise the parties' settlement agreement, which is deemed by the LCA as having the force of an award. The arbitral tribunal may grant any type of relief that they consider appropriate.

37 Termination of proceedings

By what other means than an award can proceedings be terminated?

The termination of arbitral proceedings can be decided by the chairman of the tribunal when parties agree to do so or when the proceeding cannot continue, for example in the following circumstances:

- one party being an individual dies, without anyone inheriting his or her rights and obligations;
- the claimant or respondent being an agency or organisation has terminated its operation, becomes bankrupt, dissolved, consolidated, merged, demerged, separated or converted its organisational form without any agency or organisation succeeding to the former's rights and obligations;
- the claimant withdraws its statement of claim or is absent from the hearing pursuant to the LCA, except where the respondent requires the dispute resolution to be continued;
- the parties reach an agreement on the termination of the dispute resolution; or
- the dispute is not within the jurisdiction of the arbitration tribunal or there is no arbitration agreement or such agreement is void or incapable of being performed.

The arbitral tribunal shall issue a decision staying the arbitration proceedings. If an arbitral tribunal has not yet been established, then the chairman of the arbitration centre shall issue such a decision.

38 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

The LCA provides that the tribunal shall allocate arbitration fees and other relevant fees in the final award. Court fees relating to the arbitration shall be implemented in accordance with the 2009 Ordinance on Charges and Court Fees and are often insubstantial ranging from around US\$10 to US\$25. To comply with the parties' agreement or the rules of the arbitration centre other fees may be recoverable and will vary on a case-by-case basis.

A winning party may recover its legal costs from the losing party.

It should be noted that litigation costs, such as legal fees and expenses of the case, are often not recoverable in Vietnamese court proceedings. Arbitration is the only method of dispute resolution where parties can expect to recover their legal costs. Court practices should therefore not be relied upon for guidance in respect of this issue.

The losing party must pay the arbitration fees, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre, or unless the arbitration tribunal makes some other allocation of fees.

39 Interest

May interest be awarded for principal claims and for costs and at what rate?

The LCA does not contain any provision relating to interest. Awarding interest is at the tribunal's discretion.

Proceedings subsequent to issuance of award

40 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal may on its own initiative, within 30 days from the date of issuance of the arbitral award, rectify any error in spelling or figures caused by a mistake or incorrect computation in the arbitral award. Similarly, each party has the right to request the tribunal to correct or interpret the arbitral award within 30 days from its receipt of the award.

41 Challenge of awards

How and on what grounds can awards be challenged and set aside?

There are five grounds that a party can rely on to challenge an arbitral award under the LCA:

- (i) there is no arbitration agreement or the arbitration agreement is null and void;
- (ii) the arbitration proceedings were inconsistent with the agreement of the parties or contrary to the laws;
- (iii) the dispute is outside the jurisdiction of the arbitration tribunal;
- (iv) evidence on which the arbitral tribunal relied to issue the award is forged or improper conduct of an arbitrator prejudices the objectivity and impartiality of the arbitral award; or
- (v) the arbitral award is contrary to the fundamental principles of the law of Vietnam.

A party with sufficient evidence proving that the arbitral tribunal issued the arbitral award in any of the cases prescribed above has the right to, within 30 days from the date of receipt of such an award, submit a petition to the competent court to set aside the arbitral award. If a petition is lodged out of time due to an event of force majeure, then the duration of such event shall not be included in the time limit for requesting the arbitral award be set aside. The court shall open a hearing to consider the petition and its decision shall be final and binding.

In applying for an arbitral award to be set aside, the petitioner bears the onus of proof in respect of grounds (i) to (iv). The court itself has the responsibility to collect and verify evidence in order to establish (v).

In theory, courts are not allowed to review the merits of the dispute that the arbitral tribunal has already resolved. However, fundamental principles of Vietnamese laws have, in some cases, been relied upon to justify the retrial of disputes.

42 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Decisions of a court regarding the jurisdiction of an arbitral tribunal as well as the challenge of an arbitral award are final and not subject to appeal. Relevant court fees are regulated by the 2005 Ordinance on Charges and Court Fees and shall be borne by the applicants regardless of the outcome of the court decision. Nevertheless, they are insubstantial, ranging from around US\$10 to US\$15. As already noted, legal costs are not recoverable in Vietnamese court proceedings.

43 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Unless being set aside, arbitral awards rendered by institutional arbitration can be enforced straight after the time limit to implement the awards has run out, in a similar way to domestic court judgments. Ad hoc arbitration awards, on the other hand, are required to be registered with national courts before enforcement.

Foreign arbitral awards, however, must be recognised and permitted for enforcement by a competent Vietnamese court. The awards can be considered for recognition and enforcement in two circumstances, namely:

- where they are declared in countries or by arbitrators of countries that have, together with Vietnam, signed or acceded to the 1958 New York Convention; or
- based on the principle of reciprocity.

Applications for recognition and enforcement must be filed with the Ministry of Justice of Vietnam, which will then forward the same to the competent court. A court hearing will later be opened to consider the applications. In theory, the merits of the case shall not be revisited and the court can only refuse recognition of the award based on the following grounds provided in article 370 of the CPC:

- parties have no capacity to sign an agreement under the law applicable to each party;
- the arbitral agreement is legally invalid under the appropriate law as provision in the CPC;
- the judgment debtors being individuals, agencies or organisations were not promptly and properly notified of the appointment of arbitrators and of procedures for resolution of disputes at a foreign arbitration organisation, or could not exercise their procedural rights for plausible reasons;
- foreign arbitral awards are declared on disputes not requested by the parties for resolution or going beyond the request of the parties to the arbitral agreement;
- the foreign arbitration personnel or the procedures for dispute resolution by foreign arbitrations do not comply with the arbitral agreement or with the appropriate law;
- the foreign arbitral awards are not yet legally binding on the parties;
- the foreign arbitral awards have been cancelled or suspended from enforcement by competent bodies of the countries where the awards were pronounced or the countries whose laws have been applied;
- the disputes cannot be resolved by arbitration under Vietnamese law; and
- the recognition and enforcement in Vietnam of the foreign arbitral awards run counter to the basic principles of Vietnamese law.

Update and trends

At the present time, the Supreme Court is drafting a resolution that provides guidance on some provisions of the LCA. Some controversial issues will be covered including the scope of application of the LCA, the effectiveness of the LCA, grounds for setting aside the arbitral award, etc. The draft resolution is scheduled to be issued by Supreme Court in early 2013. It is expected by legal profession that the new resolution shall become one of the most important resources of arbitration law in Vietnam, which clarifies the interpretation and application of the LCA. The VIAC has revised its Rules of Arbitration, which came into effect from 1 January 2012.

Court decisions on the recognition of arbitral awards rendered abroad are subject to appeal.

44 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Foreign awards that are set aside by the courts at the place of arbitration fall within article 370(1) (g) of the CPC. Foreign awards, which have been recognised and permitted for enforcement in Vietnam, have full legal effect similar to legally effective domestic court judgments and are enforced in accordance with the same procedures applicable for civil judgments. However, domestic courts appear to be reluctant to enforce foreign arbitral awards. One report from the Vietnamese Ministry of Justice reveals that there were only a very small number of foreign arbitral awards enforced in Vietnam.

45 Cost of enforcement

What costs are incurred in enforcing awards?

Costs of enforcement are regulated by the 2008 Law on the Enforcement of Civil Judgment and other guiding by-laws. In particular, according to Decree No. 58/2009/ND-CP of 13 July 2009, detailing and guiding a number of articles of the Law on Enforcement of Civil Judgment regarding procedures for the enforcement of civil judgment, the applicable fee is generally 3 per cent of the total value of money or assets actually received from the enforcement but shall not be over 200 million Vietnamese dong for each application for enforcement.

Court fees for foreign arbitral awards to be recognised and permitted for enforcement range between around 2 million Vietnamese dong and 4 million Vietnamese dong.

Other**46 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

Vietnam is a civil law country; there is no discovery or production of documents in court proceedings. Written witness statements are common practice. Litigating parties tend to rely on the court's support to discover the facts. This feature exerts a strong influence in arbitration proceedings.

47 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Except for the visa requirement, a foreign national who wants to act as a lawyer in Vietnam must have a practising licence issued by the Ministry of Justice. Foreign attorneys are allowed to provide advice on Vietnamese law only if they have a Vietnamese bachelor's degree in law and cannot act as barristers in court proceedings. To act as arbitrators, they need to meet the compulsory requirements under article 20 of the LCA.



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