

NEW SUPREME COURT'S GUIDANCE OF LAW ON COMMERCIAL ARBITRATION OF VIETNAM – A PRO-ARBITRATION PERSPECTIVE

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The Supreme Court's Resolution No 01/2014 (the “**Resolution**”) Guiding the Implementation of Certain Provisions of the Law on Commercial Arbitration of Vietnam (the “**LCA**”) has just come into force on 02nd July 2014. The Resolution aims at explaining and clarifying a number of provisions in the LCA to ensure its feasibility and effectiveness. It is regarded as a remarkable improvement of Vietnamese arbitration law. Generally based on the UNCITRAL Model Law 2006, the LCA as well as the Resolution shows a positive attitude of the Court to arbitration. In general, the Resolution continues to promote the spirit of the LCA that is to create favorable conditions for the development of arbitration and limit Court's intervention in arbitral proceedings. This position is particularly highlighted by the following points:

Firstly, Courts are expressly required to always refer parties to arbitration upon the existence of an agreement to arbitrate. Under Article 2 of the Resolution, Courts will only accept a case if “*there is no arbitration agreement or there has been a valid judgment or decision or valid arbitral decision or award determining that no arbitration agreement exists*”. Arbitration now also clearly prevails in a multi-tier clause whereby parties agree to submit their disputes to either Court or arbitration for resolution. Parallel proceedings are now avoidable.

Secondly, Courts appear eager in backing arbitration and in positively exercising their supervisory functions. The Resolution was drafted with the view of preventing serious court intervention in arbitral proceedings as well as promoting Courts' supportive role in arbitration. Procedures under the LCA are further detailed in the Resolution so that Courts can assist Arbitral Tribunals in summoning witnesses and collecting evidences if required. More importantly, by clarifying the elusive phrase of “*fundamental principles of Vietnam laws*” in the direction of favouring a narrow construction, the Resolution limits one of the very few legal bases which a Vietnamese Court can rely upon to arbitrarily review the merit of an arbitral award in setting aside proceedings. This approach also brings this local term one step closer to the widely adopted ground of “*public interest*”.

Although the arbitration law in Vietnam still needs much improvement, this Resolution is the evidence of the progress Vietnamese arbitration law has made in its rather short but interesting history.