



Arbitration Guide
IBA Arbitration Committee

VIETNAM
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TABLE OF CONTENTS

	PAGE
I. Background.....	3
II. Arbitration Laws	4
III. Arbitration Agreements.....	5
IV. Arbitrability and Jurisdiction.....	10
V. Selection of Arbitrators	12
VI. Interim Measures	14
VII. Disclosure/Discovery	15
VIII. Confidentiality	16
IX. Evidence and Hearings.....	16
X. Awards	18
XI. Costs.....	21
XII. Challenges to Awards	22
XIII. Recognition and Enforcement of Awards	24
XIV. Sovereign Immunity.....	27
XV. Investment Treaty Arbitration	27
XVI. Resources.....	28
XVII. Trends and Developments	29

I. Background

(i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Pursuant to a new report of the Ministry of Justice of Vietnam ('MOJ'), from 2011 to 2015, 879 disputes had been brought to arbitration, 586 arbitral awards having been made. However, it should be noted that the number of disputes resolved by arbitration was still limited and accounted for nearly 1% of all commercial disputes.

Significant advantages of arbitration in Vietnam are: the arbitral proceedings will be conducted in private; parties are free to choose their arbitrators and agree on procedures, language, the seat of arbitration, etc.

Meanwhile, its disadvantages include: the challenge to arbitral award in the place of issuance; the difficulties that might be met in recognition and enforcement of foreign arbitral awards which may cause delay and make the result of arbitration meaningless. Furthermore, arbitration in Vietnam still reveals some limitations as: the scope of the grounds for setting aside arbitral award is too wide in comparison with international law and practice; lack of positive support from the state courts; limitation on the qualification of the arbitrators; lack of judges with expertise on arbitration and low awareness of business community on the advantages of arbitration in comparison with litigation.

(ii) **Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?**

Arbitration in Vietnam is often conducted in the form of institutional arbitration. *Ad hoc* arbitration is rarely used. Among 22 arbitration institutions in Vietnam, Vietnam International Arbitration Center ('VIAC') is the largest and most commonly-used arbitration center in Vietnam. VIAC Rules of Arbitration (the most recent ones having been published and come into force on 1st March 2017) are always invoked in disputes resolved in VIAC. Notably, in 2016, VIAC, for the first time, acted as the administered institution for an *ad-hoc* arbitration applying the UNCITRAL Arbitration Rules. The ratio between domestic and international cases in VIAC changes throughout the years. According to the latest update from the VIAC, recently, the number of domestic cases increases while that of foreign ones slightly decreases. In particular, in 2017, around 71% of the disputes resolved at the VIAC are domestic without the involvement of foreign elements.

(iii) What types of disputes are typically arbitrated?

In accordance with the 2017 Annual Report of the VIAC, 42% disputes resolved in this center arise from sale contracts, 11% from service, 25% from construction, 6% from lease, 5% from insurance, and 11% from other fields.

(iv) How long do arbitral proceedings usually last in your country?

It varies and depends on the complexity and other relevant elements of each case. Usually, the arbitral proceedings may extend from 3 to 16 months. In 2017, the average period to resolve a dispute in the VIAC is around 159 days (5 months).

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Unlike litigation proceedings where only qualified Vietnamese lawyers can represent for clients, there is no restriction on foreign counsels to act for clients in arbitration in Vietnam.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Arbitration in Vietnam (both domestic and international arbitration) is mainly governed by Law on Commercial Arbitration ('LCA') which was approved by the National Assembly in 2010 and took effect on 1st January 2011. In order to improve the effectiveness and feasibility of the LCA, the Supreme People's Court of Vietnam issued Resolution No.01/2014/NQ-HDTP Guiding the Implementation of Certain Provisions of the LCA ('Resolution No.01').

The LCA is fundamentally based on the UNCITRAL Model Law on Commercial Arbitration 2006 with some local adaption.

Besides, the enforcement of arbitral awards is regulated by Law on Enforcement of Civil Judgments 2008, as amended in 2014 ('LECI').

The recognition and enforcement of foreign awards in Vietnam is regulated by Part Seventh (VII) of Civil Procedure Code 2015 ('CPC') which came into force on 1st July 2016.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

There is no significant divergence between domestic and international arbitration in Vietnamese arbitration law. They are both governed by the LCA.

Generally, international arbitration concerns disputes involving foreign elements, which mean a dispute arising in commercial relations, or in some other legal relationships, involving a foreign element. A foreign element is defined in the Civil Code of Vietnam as where *‘at least one party is a foreign agency, organization or individual or overseas Vietnamese or civil relations between the parties being Vietnamese citizens, organizations but the bases for establishing, altering or terminating those relations are foreign laws, arise overseas or assets related to such relations are located overseas’*.

Although there is no definition of domestic arbitration in the LCA, it is generally accepted that domestic arbitration is relevant to disputes arising between Vietnamese parties without the involvement of foreign elements.

- (iii) **What international treaties relating to arbitration have been adopted (e.g. New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Vietnam became a member of the New York Convention on 12th September 1995 and the Convention entered into force on 11th December 1995. The content of this Convention is adopted in Part Seventh (VII) of Civil Procedure Code 2015.

- (iv) **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?**

For disputes without a foreign element, the arbitral tribunal shall apply the law of Vietnam to resolve the dispute. For disputes with a foreign element, the arbitral tribunal shall apply the law chosen by the parties. Absence of the choice of parties on the applicable law, the arbitral tribunal shall apply the law which it considers the most appropriate.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The arbitration agreement is defined in the LCA as an agreement between the parties to use arbitration to resolve a dispute which may arise or which has arisen. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. There is no specific requirement for the content of an arbitration agreement but the mutual consent of parties to resolve their dispute by arbitration. Nevertheless, in order to be binding and enforceable, the arbitration agreement must be made in writing. The agreement shall also be deemed to constitute a written arbitration agreement where:

- An agreement established via an exchange between the parties by telegram, fax, telex, email or other form prescribed by law;
- An agreement established via the exchange of written information between the parties;
- An agreement prepared in writing by a lawyer, notary or competent organization 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 which contain an arbitration agreement; and
- Exchange of a statement of claim and defence which express the existence of an agreement proposed by one party and not denied by the other party.

Therefore, an agreement which is concluded orally or fails to be recorded will not be regarded as an agreement 'in writing'. This lack of formal requirements can be cured by the subsequent conduct of parties, such as signing a new arbitration agreement or expressly or impliedly agreeing to arbitrate the dispute.

Additionally, an arbitration agreement can be included in general terms and conditions of the contract or incorporated in another document containing arbitration clause concluded by the parties during the course of a transaction.

Arbitration centres often provide parties with a recommended arbitration clause. Nonetheless, that provision is not compulsory and parties are free to modify that provision to meet their demand. For example, the model arbitration clause of the VIAC reads as follows:

'Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration'.

or

'Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC) in accordance with its Rules of Arbitration'.

Parties may wish to consider adding:

- (a) the number of arbitrators shall be [one or three].*
- (b) the place of arbitration shall be [city and/or country].*
- (c) the governing law of the contract [is/shall be] the substantive law of [].**
- (d) the language to be used in the arbitral proceedings shall be [].**'*

The VIAC also provides for the model arbitration clause to be used in expedited proceedings:

'Any dispute arising out of or in relation with this contract shall be resolved by arbitration at the Vietnam International Arbitration Centre (VIAC) in accordance with its Rules of Arbitration.

The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Article 37 of the VIAC Rules of Arbitration.'

Parties may wish to consider adding:

- (a) the place of arbitration shall be [city and/or country].*
- (b) the governing law of the contract [is/shall be] the substantive law of [].**
- (c) the language to be used in the arbitral proceedings shall be [].***

Note:

** For disputes which involve a foreign element.*

*** For disputes which involve a foreign element or disputes in which at least one party is an enterprise with foreign investment capital.*

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an agreement will not be enforced?

The Court must refer parties to arbitration upon the *prima facie* existence of an arbitration agreement regardless of its validity. The arbitration agreement will not be enforced only when it is incapable of being performed. Under the Resolution No.01, an arbitration agreement is incapable of being performed in the following circumstances:

- The parties have agreed to resolve the dispute at a specific arbitration centre but such centre has terminated the operation without any successor

arbitration centre, and the parties fail to agree on some other arbitration centre to resolve the dispute.

- The parties have agreed on the choice of a specific Arbitrator for an *ad hoc* arbitration, but at the time a dispute arises, that Arbitrator is unable to conduct the arbitration because of a *force majeure* event or for any other objective reason, or the arbitration centre or the Court cannot find an Arbitrator as the parties have agreed, and the parties fail to agree on any alternative arbitrator.
- The parties have agreed on the choice of a specific Arbitrator for an *ad hoc* arbitration but at the time a dispute arises, the Arbitrator refuses the appointment or the relevant arbitration centre refuses to appoint that Arbitrator and the parties fail to agree on any alternative Arbitrator.
- The parties have agreed to resolve the dispute at a specific arbitration centre but have also agreed to apply the Rules of Arbitration of another arbitration centre, and the charter of the arbitration centre chosen for the dispute resolution does not allow the application of the rules of any other arbitration centre; and the parties fail to agree to apply the rules of the chosen arbitration centre.
- Goods and/or service providers and consumers already have an arbitration clause in the standard conditions on supply of goods and/or services which are drafted and inserted by the providers but when a dispute arises, the consumers do not agree to use Arbitration to resolve the dispute.

(iii) Are multi-tier clauses (e.g. arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

The multi-tier clause is quite common in Vietnam. Multi-tier arbitration agreements provide for Arb-Med or Med-Arb, however, are much less usual than arbitration clauses with negotiation provision. These agreements are enforceable. Though it is not explicitly provided by the laws, it is recorded by a Decision of the Hanoi Court that an arbitral award of the VIAC was set aside on the reason that the negotiation had not been conducted. Usually, in order to avoid such risk, upon the existence of an arbitration clause with negotiation provision, the arbitration centre (such as VIAC) encourage parties to conduct negotiation before commencing arbitration in order to avoid the situation that the arbitral award may be set aside in later stage.

(iv) What are the requirements for a valid multi-party arbitration agreement?

LCA does not provide any provision related to multi-party arbitration agreement except for one provision on the appointment of an arbitrator in the case of many defendants. In this circumstance, all defendants are required to reach an agreement on the appointment of an arbitrator within a certain period of time. Failing to do so, the President of an arbitration institution or a judge of a competent court will have the authority to appoint such an arbitrator for all defendants.

Nonetheless, under Resolution No. 01, the consolidation of disputes is allowed under two following circumstances:

- The parties agree to consolidate their several disputes for resolution in a single proceeding;
- Any applicable arbitration rules allows the consolidation of disputes for resolution in a single proceeding.

Reflecting the regulations of the Supreme People's Court's Resolution No. 01, VIAC Rules of Arbitration also provide for the regime for consolidation and multi-contract arbitration.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

The LCA does not have any provision dealing with this situation. In principle, if parties agree to grant one of the parties a unilateral right to arbitrate, the arbitration agreement based on that decision can be enforceable. However, there has never been any case dealing with one-sided arbitration clauses so far.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

The LCA does not contain any provision directly relating to non-signatories being bound by an arbitration agreement. In general, the arbitration agreement only binds its signatories. Nonetheless, there are circumstances in which a third party may be deemed to be involved:

- As an 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.

However, the above circumstances are still controversial and have to be decided on a case-by-case basis.

Besides, the LCA clearly stipulates that where one of the parties to an arbitration agreement is an organization which must terminate its operation, becomes bankrupt, dissolves, consolidates, merges, demerges, separates or converts its organizational form, then the arbitration agreement shall remain effective on the organization which succeeds to the rights and obligations of the former organization, unless otherwise agreed by the parties.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Under the LCA, the following disputes can be resolved by arbitration: (1) Disputes between parties arising from commercial activities; (2) Disputes arising between parties at least one of whom is engaged in commercial activities, and (3) Other disputes between parties which the law stipulates that it may be resolved by arbitration. As provided by the Commercial Law, ‘commercial’ is defined as activities for profit-making purposes including sale and purchase of goods, services, investment, trade promotion and other profit-making activities.

Although the LCA does not specifically set out types of inarbitrable disputes, the matters which belong to the exclusive jurisdiction of the national courts will not be resolved by arbitration. For example: criminal, marriage and matrimonial, employment disputes, administrative matters, etc.

The arbitral tribunal will decide at the first instance whether a matter is arbitrable or not when they consider their jurisdiction. The Court can review this matter when there is an appeal to the court against the decision of an arbitral tribunal with respect to the validity of the arbitration agreement and jurisdiction of the arbitral tribunal or when a party wants to set aside the arbitral award.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If one party initiates court proceedings despite the existence of an arbitration agreement for the dispute between parties, the Court must refuse to accept jurisdiction unless the arbitration agreement is void or incapable of being performed.

Upon the petition of a party, the Court must examine and consider the documents accompanying with the petition to determine whether such dispute falls within the jurisdiction of the Court or not. Depending on the specific circumstances of the cases, the Court shall proceed as follows:

- Where there is no arbitration agreement or there has been a valid Court judgment or valid arbitration decision or award determining that no arbitration agreement exists in relation to the dispute, the Court shall process and handle the case in accordance with its jurisdiction.
- Where the arbitration agreement prima facie exists, the Court shall return the petitions to the petitioner.
- Where the Court, after accepting the case, discovers that an arbitration agreement exists, the Court shall suspend to case and return the petition and accompanying documents to the petitioner.
- Where a request for arbitration has been filed and the Arbitral Tribunal has already been constituted, even though the Court realizes that the dispute is not subject to the jurisdiction of the Tribunal, there is no arbitration agreement, and one party requests the Court to resolve the dispute, the Court shall return the petition to the petitioner. Where the Court has accepted the petition, it shall decide to suspend the case.

If a court proceeds with a claim despite the existence of an arbitration agreement, objections to jurisdiction can be raised within fifteen (15) days from the date of receipt of the notice of enrolment of the court. This time limit can be extended. Furthermore, objections can also be raised at the hearing.

Participating in the court proceedings is not regarded as a waiver of the right to arbitrate.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The competence-competence principle is recognized by the LCA. The arbitral tribunal must, prior to dealing with the merits of a dispute, consider whether the

arbitration agreement is valid, whether the arbitration agreement is capable of being performed, and whether the tribunal has jurisdiction. However, if any party disagrees with the decision of the arbitral tribunal on the above-mentioned matters, they can petition the competent court to review such decision of the arbitral tribunal. The decision of the court will be final.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Each party is allowed by the LCA to appoint one arbitrator (where the arbitral tribunal constitutes of three arbitrators) or mutually agree to appoint the sole arbitrator. If the Respondent does not appoint the arbitrator in the duration stipulated by the LCA or by the Arbitration Rules of the arbitration institution, the President of the arbitration institution (in case of institutional arbitration) or if there is no agreement on the appointing authority, the competent court (in case of ad hoc arbitration) can appoint one arbitrator for the Respondent. Both the Claimant and Respondent are entitled to request the President of the arbitration centre or the Court to appoint arbitrators for them.

In case of an arbitral tribunal comprised of three arbitrators, the presiding arbitrator will be selected by the two arbitrators appointed by the parties. If the two appointed arbitrators fail to select the presiding arbitrator, the President of the arbitration centre (in case of institutional arbitration) or the competent court (in case of ad hoc arbitration) will appoint the presiding arbitrator.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

The LCA provided that: An arbitrator must, as from the time of his or her selection or appointment, provide written notice to the arbitration centre or arbitral tribunal and to the parties of any circumstances which may affect his or her objectiveness and impartiality. The arbitrator can be challenged in the following circumstances:

- The arbitrator is a relative or representative of a party;
- The arbitrator has an interest related to the dispute;
- There are clear grounds demonstrating that the arbitrator is not impartial or objective; and
- The arbitrator was a mediator, representative or lawyer for either of the parties prior to the dispute being brought to arbitration for resolution, unless the parties provide written consent.

The replacement of an arbitrator will be decided by the remaining arbitrators or the President of the arbitration centre in institutional arbitration or by the Judge appointed by the Chief Judge of the competent Court in ad hoc arbitration.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

According to the LCA, a person must meet these following requirements to serve as an arbitrator:

- (a) Having full civil legal capacity as prescribed in the Civil Code;
- (b) Having a university qualification and at least five years' work experience in the discipline which he or she studied;
- (c) In special cases an expert with highly specialized qualifications and considerable practical experience may still be selected to act as an arbitrator notwithstanding he/she fails to satisfy the requirements prescribed in (b) above.

However, a person with all the qualifications prescribed above but falls into one of the following categories shall not be permitted to act as an arbitrator:

- (a) A person who is currently a judge, prosecutor, investigator, enforcement officer, or official of a people's court, of a people's procuracy, of an investigative agency or of a judgment enforcement agency; or
- (b) A person under a criminal charge or prosecution or who is serving a criminal sentence or who has fully served the sentence but whose criminal record has not yet been cleared.

Since the LCA does not impose any restriction on the nationality of the arbitrator, foreign nationals who meet these requirements can serve as arbitrator.

As stipulated in the LCA, arbitrators must remain independent during dispute resolution; refuse to provide information about a dispute; maintain confidentiality of the contents of the dispute which he or she resolves; ensure that resolution of a dispute is impartial, speedy and prompt and comply with professional ethics rules.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific provisions, guidance or definitions concerning conflicts of interest for arbitrators published by a state authority. However, code of conducts for arbitrators has been issued by some arbitration centres such as VIAC. The guideline for arbitrators of VIAC was drafted on referring and adopting some parts of IBA's Rules on Ethics of International Arbitrators and IBA's Guidelines on Conflict of Interests in International Arbitration. Nonetheless, this guideline is only applied for arbitrators in disputes resolved by arbitration at VIAC and there is no professional body to ensure the enforcement of such code of conduct.

VI. Interim Measures

- (i) **Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Under the LCA, arbitral tribunals can grant the following types of interim relief:

- 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 arbitral 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;
- Prohibition of transfer of asset rights of the assets in dispute.

There is no specific requirement for the form of arbitral tribunal's decision on interim measures. It is often in the form of a 'decision', which is defined as decision of the arbitral tribunal during the dispute resolution process (in order to distinguish with 'award' which means the final decision of the arbitral tribunal resolving the entire dispute and terminate arbitral proceedings).

Interim measures granted by the arbitral tribunal can be enforced as those issued by the Court.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?**

Parties can also request the Court to issue the provisional relief right after they submit the Request for Arbitration regardless of whether the arbitral tribunal has been constituted or not. Even after the constitution of the arbitral tribunal, the power of the Court to order interim measures is still available. The interim relief granted by the Court will remain in effect during the arbitral proceedings. However, it should be noted that before granting the interim relief in support of arbitration, the court shall consult with the parties to make sure that the arbitral tribunal has not granted the same interim relief as requested by one of the parties.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

The Court can grant all types of interim relief which are available to the arbitral tribunal. The measures ordered by the Court do not require the tribunal's consent. However, the Court may grant interim relief only upon the request of any party.

Besides, the Court also supports the arbitral tribunal in collecting evidence and summoning witness. If the arbitral tribunal or one or both parties have already taken necessary measures to collect evidence but without success, then a petition may be made to the competent court to require other bodies, organizations or individuals to provide evidences to the dispute. With regard to summoning witnesses, if a witness who has been validly summoned by the arbitral tribunal fails to attend the session without a legitimate reason, and the absence of such witness constitutes an obstacle to the resolution of the dispute, then the arbitral tribunal may send a written request to the competent court to issue a decision summoning such witness.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The LCA states that parties shall have the right and responsibility to provide evidence to the arbitral tribunal to prove facts relevant to the issues in dispute. Additionally, the arbitral tribunal shall have the right, at the request of one or all parties, to request witnesses to provide information and materials relevant to the dispute resolution. Nonetheless, there is no officially published provision on the types of disclosure/discovery permitted under the LCA and other clarification documents.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

The LCA is also silent on the permissible scope of this matter. The arbitral tribunal is entitled to decide the scope of disclosure and/or discovery.

- (iii) **Are there special rules for handling electronically stored information?**

There are no special rules for handling electronically stored information in the LCA.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

Dispute resolution by arbitration is conducted privately unless otherwise agreed by parties. Furthermore, arbitrators are under duty to maintain confidentiality of the content of the dispute, unless information must be provided to a competent State authority in accordance with law.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No provision in the LCA directly mentions trade secrets and confidential information. However, the arbitrators are required to protect all the information of the dispute in general.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

Rules of privilege are not provided in the LCA or in any other legislation of Vietnam.

IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

It is not common in Vietnam that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern proceedings. These Rules are rather appreciated as a referential source than a binding source in arbitral proceedings.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

The LCA is silent on the procedure for the hearing of witnesses and cross-examination, therefore, unless otherwise agreed by parties, the arbitral tribunal is free to conduct the hearing of witness as they find appropriate.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Witness testimony can be presented in writing and submitted to the Arbitral Tribunal for consideration. The Arbitral Tribunal can also question the witnesses at the hearing. As being influenced by the litigation procedure, oral direct examinations are quite common in arbitration in Vietnam.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

The LCA does not clearly state any rules on who can or cannot appear as a witness. There is no requirement on oath or affirmation of witnesses in arbitration.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (e.g. legal representative) and the testimony of unrelated witnesses?

There is no provision specifying the discrimination between testimony of a witness specially connected with one of the parties and that of unrelated witnesses.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

There are no specific rules regarding the form of expert testimony but it is implied that the testimony must be in writing. The LCA is silent on the requirements regarding independence and/or impartiality of expert witnesses. Nevertheless, sometimes parties may object to a proposed/appointed expert.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

The arbitral tribunal can consult experts on their own initiative or on the request of any party. There is no distinction in value between evidence provided by experts

appointed by the arbitral tribunal on their own initiative or those appointed on the request of parties. No requirements by law on the qualification of experts.

The LCA does not provide any requirement that experts must be selected from a particular list. Therefore, parties and the arbitral tribunal are free to choose the experts they find appropriate.

(viii) Is witness conferencing (hot-tubbing) used? If so, how is it typically handled?

Witness conferencing is not available in Vietnam.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

The concept of ‘arbitral secretaries’ is new in Vietnam. There are no rules or requirements regarding this issue in Vietnamese legislation. The secretaries of arbitration institutions often support the arbitral tribunal in administrative works of arbitration. Recently, the new 2017 Arbitration Rules of the VIAC generally require the secretaries to perform their duties as regulated under these rules and the VIAC’s regulations. However, their rights and obligations have not been regulated in any official documents.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An award must be in writing and contain such contents:

- Date and location of issuance of the award;
- Names and addresses of the claimant and of the respondent;
- Full names and addresses of the arbitrator/s;
- 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;
- Signatures of the arbitrator/s.

As requested by the parties, the arbitral tribunal can award the following relief:

- Specific performance of contracts;
- Penalty for breach;
- Compensation for damage;
- Suspension of performance of contracts;
- Termination of performance of contracts;
- Cancellation of contracts;
- Other remedies agreed upon by involved parties which are not contrary to the fundamental principles of Vietnamese law, treaties to which Vietnam is a contracting party and international commercial practices.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

Vietnamese law does not recognize the concept of ‘punitive or exemplary damages’. The arbitrators can only award the abovementioned relief. Upon the request of the parties, the arbitral tribunal can award interest and compound interest.

(iii) Are interim or partial awards enforceable?

The LCA recognizes two types of judgment issued by the arbitral tribunal:

- *Arbitral decision* means a decision of the arbitral tribunal during the dispute resolution process.
- *Arbitral award* means the decision of the arbitral tribunal resolving the entire dispute and terminating the arbitral proceedings.

Under the LCA, only an arbitral award can be enforced in accordance with the law on enforcement of civil judgments. Interim or partial awards are regarded as an arbitral decision and cannot be enforced like an arbitral award.

Nevertheless, the decision on application of interim measures, modification, supplement or cancelation of interim measures of the arbitral tribunal shall be enforced in accordance with the law on enforcement of civil judgments related to application of interim relief granted by the Court.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

The LCA is silent on the issue of dissenting opinions to the award and allows the arbitration centres to reflect this matter in their arbitration rules. Nevertheless, the LCA provides that an arbitral award shall be issued on the basis of the arbitral tribunal's majority vote. The LCA also allows that one or more arbitrators may not sign on the arbitral award; however, the Presiding arbitrator must record it in the award and clearly state the reason. Therefore, it can be inferred that dissenting opinions will not affect the merit of the arbitral award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

An award by consent is permissible when parties reach agreement on settlement of disputes during arbitral proceedings.

Additionally, termination of proceedings without an award can also be accepted in the following circumstances:

- The claimant or respondent being an individual die, without anyone inheriting his or her rights and obligations;
- The claimant or respondent being an agency or organization has terminated its operation, become bankrupt, dissolved, consolidated, merged, demerged, separated or converted its organizational form without any agency or organization succeeding to the former's rights and obligations;
- The claimant withdraws its statement of claim or the claim is deemed to be withdrawn, except where the respondent requires the dispute resolution to be continued;
- The court issues a decision that the dispute is not within the jurisdiction of the arbitral tribunal, or that there is no arbitration agreement or that such agreement is void or incapable of being performed.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

A party may, within thirty (30) days from the date of receipt of an arbitral award unless the parties have some other agreement about this time-limit, request the arbitral tribunal to rectify obvious errors in spelling or figures caused by a mistake or incorrect computation in the arbitral award or interpret the award, and must immediately notify the other party of such request. If the arbitral tribunal considers such request legitimate, it shall make the rectification or interpretation within thirty (30) days from the date of receipt of the request. The explanation provided shall form part of the award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Usually, the unsuccessful party has to bear the costs of arbitration unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration institution or otherwise allocated by the arbitral tribunal.

(ii) What are the elements of costs that are typically awarded?

It depends on the rules of arbitration centres or the agreement of parties. Commonly, the arbitral tribunal is able to award arbitration cost, legal cost and other reasonable costs.

In general, arbitration cost often comprises:

- Remuneration and travelling and other expenses of arbitrators;
- Fees for expert consultancy and other assistance requested by the arbitral tribunal;
- Administrative fees levied by the arbitration centre;
- Fees for the arbitration centre's appointment of an arbitrator for an *ad hoc* arbitration at the request of the parties in dispute;
- Fees for use of other necessary services provided by the arbitration centre (including hire of hearing rooms, etc.)

- (iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

The arbitral tribunal does have jurisdiction to decide and allocate its own costs and other expenses.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

According to the LCA, arbitral tribunal has discretion to allocate the costs between the parties in case the parties do not have an agreement or the arbitration centre does not have rules on apportionment of costs. The arbitral tribunal will apportion the costs on the basis that they find appropriate. Usually, the principle of costs-follow-the event is applicable.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

The Court does not have power to review arbitral tribunal's decision on costs.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

Within thirty (30) days from the date of receipt of such award, any party objecting to the award of the arbitral tribunal is entitled to lodge a petition with the competent court to set aside the arbitral award. A petition requesting an arbitral award be set aside must be accompanied by materials and evidence proving that such petition has sufficient grounds and is lawful.

An arbitral award which falls within any one of the following cases shall be set aside:

- There was no arbitration agreement or the arbitration agreement is void;

- The composition of the arbitral tribunal was [or] the arbitral proceedings were inconsistent with the agreement of the parties or contrary to the provisions of this Law;
- The dispute was not within the jurisdiction of the arbitral tribunal; where an award contains an item which falls outside the jurisdiction of the arbitral tribunal, such item shall be set aside;
- The evidence provided by the parties on which the arbitral tribunal relied to issue the award was forged; [or] an arbitrator received money, assets or some other material benefit from one of the parties in dispute which affected the objectivity and impartiality of the arbitral award;
- The arbitral award is contrary to the fundamental principles of the law of Vietnam.

According to the LCA, normally, the setting-aside procedure can last up to several months from the day the Court accepts the request of one party. However, this time limit can be extended.

The LCA also provides that the award creditor can only request the state enforcement agency to enforce the award if on expiry of the time-limit for carrying out an arbitral award, the award debtor has not voluntarily implemented such award and has not requested to set aside such award. Therefore, if the award debtor requests to set aside the award, the enforcement procedure will be stayed.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

The right to petition to the Court to set aside an arbitral award is a mandatory rule of the LCA. As such, the parties cannot agree to waive their rights to challenge the arbitral award. Furthermore, it is also not possible for the parties to exclude the right to set aside an arbitral award by an agreement.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Under the LCA, arbitral award is final and not subject to appeal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

In setting-aside procedures, at the request of a party and if the trial panel of the court (comprising three judges) considers it appropriate, they may adjourn a

petition to set aside an arbitral award for a period not to exceed sixty (60) days in order to facilitate the arbitral tribunal in rectifying what in the opinion of the arbitral tribunal were errors in the arbitral proceedings, thereby removing the grounds for setting aside the arbitral award. The arbitral tribunal must notify the court when it has rectified errors in the arbitral proceedings. If the arbitral tribunal does not rectify errors in the proceedings, then the trial panel of the court shall continue to hear the petition to set aside the award.

The courts cannot remand an award to the tribunal in any other circumstances.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

In respect of domestic award, parties are encouraged to voluntarily implement the award. Nevertheless, on expiry of the time-limit for carrying out an arbitral award, if the award debtor has not voluntarily implemented such award and the award is not set aside by the Court, the award creditor can request the enforcement agency to execute the award. In the case of an *ad hoc* arbitral award, the award creditor shall have the right to request the competent civil judgment enforcement agency to execute the arbitral award only after such award has been registered with the competent court.

Regarding foreign arbitral awards, as Vietnam is a member of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), in order to be enforced in Vietnam, the foreign arbitral awards must be recognized by the competent court. Foreign arbitral awards are defined under the LCA as awards rendered in a foreign arbitration either inside or outside the territory of Vietnam. The procedure for recognition and enforcement of foreign arbitral awards is regulated by Part Seventh of the CPC, which can be summarized as below:

- Petitions for recognition and enforcement in Vietnam of foreign arbitral awards and supporting documents (including the original or certified copy of the arbitral award and the arbitration agreement) must be submitted to the competent court (unless otherwise stipulated by the judicial assistance agreement between Vietnam and the country where the award was rendered).
- Within three working days as from the date of receiving the petition and its supporting documents, the competent courts must accept the case and

notify the award debtors as well as the procuracies (prosecuting agencies) of the same level thereof.

- The Court will have 2 months (which can be extended by another 2 months) to examine the case file to decide to (i) suspend the proceedings or (ii) terminate the proceedings or (iii) open a hearing to consider the petition.

Reflecting the New York Convention, the recognition of foreign arbitral awards shall only be refused in the circumstances stated in Article 459 of the CPC which is an adaption of Article V of the New York Convention with some local modification.

Under the CPC, the court of provincial level in which the award debtor resides (in cases of individual) or has its headquarter (in cases of an entity or organization) or the place in which the property relating to the enforcement is located, shall have jurisdiction to resolve the petitions for recognition and enforcement in Vietnam of a foreign arbitral award.

The enforcement of the foreign arbitral award cannot be proceeded without the recognition procedure and there is no chance to obtain leave to enforcement. Foreign arbitral awards must be recognized by Vietnamese Courts to be enforced by the state agency for civil judgment enforcement.

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

After an *exequatur* is obtained, the enforcement of a foreign arbitral award will follow the procedure set out in the LECJ. The parties are encouraged to comply with arbitral awards voluntarily. If on expiry of the time limit for complying with an arbitral award the award debtor has not voluntarily complied with the award, then the award creditor has the right under the LECJ to request the competent state enforcement agency to enforce such an award. Generally, the award creditor has to submit a separate application to the competent state enforcement agency for an order enforcing such award. The enforcement agency then issues an enforcement decision and notifies the award debtor. The award debtor has a time limit of 15 days as from the date of receipt of the enforcement decision to voluntarily comply with such decision. Upon the expiration of the time limit, the award debtor who fails to voluntarily execute the award will be coerced to do so.

At this stage, no recourse to a court is acceptable.

(iii) Are conservatory measures available pending enforcement of the award?

To facilitate a smooth enforcement procedure, award creditors can also consider to request the enforcers to apply a number of provisional measures, as set out in the LECJ, namely:

- Freeze of the debtors' bank account;
- Temporary seizure of the debtors' properties or legal papers; and/or
- Suspension of registration, transfer and change of property status.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Many reports have been made regarding the practice of New York Convention in Vietnam. In particular, it was reported by a representative of the Supreme People's Court of Vietnam (SPC) in a conference held by the Ministry of Justice that from 2005 to 2014, 24 out of 52 applications for recognition were dismissed by the court, accounting for 46.2% of all applications. This is the statistic before the entry into force of the 2015 CPC, which contains several improvements on the procedure for recognition and enforcement of foreign arbitral awards. It is expected that the bad record of refusal of recognition and enforcement of foreign arbitral awards in Vietnam may be improved thereafter. However, updated statistics have not been published by either the MOJ or the SPC.

According to the CPC, foreign arbitral awards are not recognized and enforced in Vietnam if foreign arbitral awards have been cancelled or suspended from enforcement by competent bodies of the countries where the awards were issued or the countries whose laws have been applied.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

Though it is stipulated by the CPC that the procedure for recognition of foreign arbitral awards may take 4 to 6 months for both first instance and appellate procedure, in practice, the recognition procedure of a foreign award may sometimes take up to one to two years.

The time bar to submit the petitions for recognition of the foreign arbitral award in Vietnam is 3 years as from the date the award takes effect.

In accordance with the LECJ, with regard to domestic arbitral awards and foreign arbitral awards recognized by the Vietnamese courts, the time bar to seek for enforcement by the state enforcement agency is 5 years as from the date the award become effective.

XIV. Sovereign Immunity

- (i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?**

State parties such as state-owned companies and government agencies do not enjoy immunities once they have entered into an arbitration agreement under the LCA.

- (ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?**

No. The Court and state enforcement agency will apply the same rules to the enforcement of awards against a State or State entity as those applied for normal citizens and legal entities.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Vietnam has not signed the Washing Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

However, as of January 2018, Vietnam is a party to 11 Free Trade Agreements (FTAs) with provisions on protection of investments and is taking part in the negotiation process of 5 others including remarkable agreements such as the European - Vietnam Free Trade Agreement (EVFTA), the Regional Comprehensive Economic Partnership (RCEP) with the involvement of the ASEAN+6 (being Japan, South Korea, Australia, New Zealand, India and China) and the CPTTP, being the successor of the mega free trade agreement – Trans-Pacific Partnerships (TPP), without the United States.

- (ii) **Has your country entered into bilateral investment treaties with other countries?**

As of October 2016, according to a report of the MOJ, Vietnam is a member to 66 Bilateral Investment Treaties (BITs).

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

There are significantly little materials on arbitration in Vietnam. Furthermore, most of them are written in Vietnamese. However, for a better understanding about arbitration in Vietnam, these English books' chapters can be referred:

- 'Vietnam' Chapter in International Handbook on Commercial Arbitration (ICCA)
- McConnaughay, Philip J. and Ginsburg, Thomas B. 'Chapter 11- Arbitration in Vietnam', in International Commercial Arbitration in Asia, 2nd Edition. Juris Publishing, July 2006;
- Polkinghorne, M. 'Vietnam' in: Pryles, Michael, ed., Dispute Resolution in Asia, second edn., (Kluwer Law International, The Hague 2002) pp. 382 – 383
- 'Vietnam' chapter in Gerhard Wegen and Stephan Wilske, Getting the Deal Through – Arbitration, 9th edn (Law Business Research Ltd 2014) pp. 463 – 471
- 'Vietnam' chapter in Loukas Mistelis and Laurence Shore, Editors, World Arbitration Reporter (WAR)
- 'Vietnam' chapter in Jan Paulsson (ed) (1984), International Handbook on Commercial Arbitration.

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

There have not been any regular educational events or conferences regarding arbitration in Vietnam. However, being the largest and most reputable arbitration centre in Vietnam, VIAC often, on their own initiative or associated with other institutions or organizations, hold conferences and training courses for lawyers and arbitrators on dispute resolution through arbitration.

Furthermore, the MOJ and the SPC, being sponsored by non-governmental organizations such as the International Financial Corporation (IFC) of the World Bank Group or the project of Vietnam Governance for Inclusive Growth (GIG) and other organizations, sometimes organize workshops and training courses on arbitration. These workshops are often held upon the promulgation of new legislation on arbitration as well as other relevant matters.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Though the number of disputes resolved by arbitration is increasing every year, it only constitutes a small number in comparison to litigation. It will take time for arbitration in Vietnam to become a real alternative dispute resolution to court proceedings.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Beside the improvement of the legislation on arbitration, recently, Vietnam, for the first time, promulgated legislation governing commercial mediation, namely Decree No. 22/2017/NĐ-CP on Commercial Mediation which comes into force on 15th April 2017. Decree No. 22 is fundamentally based on the UNCITRAL Model Law on International Commercial Conciliation with some local modification.

Furthermore, the 2015 CPC also dedicated a Chapter of the recognition and enforcement of the mediated settlement agreement, according to which the mediated settlement agreement, after being recognized by the competent court, can be enforced as a judgment of the court.

- (iii) **Are there any noteworthy recent developments in arbitration or ADR?**

The 2015 CPC and Decree No. 22/2017/NĐ-CP on Commercial Mediation are regarded as new legislation which is believed to positively affect the development of ADR in Vietnam. Significantly, the 2015 CPC shifts the burden of proof in the procedure for recognition and enforcement of foreign arbitral award from the

award creditor, as in the old CPC, to the award debtor, to reflect the New York Convention.

With regard to mediation, the Decree on Commercial Mediation and Chapter 33 of the 2015 CPC create a sound legal framework for the development of mediation in Vietnam. Notably, the recognition and enforcement of mediated settlement agreements in the 2015 CPC is considered as a step forward in the international trend on enforcement of mediated settlement agreements which will be reflected in the negotiating of potential Convention on the enforcement of international commercial settlement agreements resulting from mediation, which could have a similar effect as the New York Convention.

In addition, in order to help the judges better understand those legal regulations and apply them properly in resolving arbitration and mediation-related matters, the Supreme People's Court and the International Financial Corporation of the World Bank Group (IFC-WB) recently introduced the 'Judicial Manual for Commercial Arbitration and Mediation'. Earlier this year, the VIAC and the IFC-WB jointly held a workshop on 'Vietnam's Legal Framework for Commercial Medication' dedicated to lawyers and business community.

Furthermore, VIAC has just published its new Rules of Arbitration which came into effect on 1st March 2017 and provided, among other provisions, regulation on consolidation of the dispute and expedited procedures.