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IBA ARBITRATION COMMITTEE

Arbitration Guide

VIETNAM

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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 report of Vietnam Lawyers Association (VLA) in 2022, from 2011 to 2020, 2900 disputes had been brought to arbitration. However, it should be noted that the number of disputes resolved by arbitration was still limited which accounted for nearly 1 per cent of all commercial disputes.

Significant advantages of arbitration in Vietnam include quicker proceedings in comparison with litigation; the arbitral proceedings are conducted in private; parties are free to choose their arbitrators and agree on procedures, language and the seat of arbitration.

Meanwhile, its disadvantages include: the challenge to an arbitral award in the place of issuance; the difficulties that might be met in recognition and enforcement of foreign arbitral award 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 who have expertise in arbitration and low awareness of the business community needs regarding 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. There are 43 arbitration institutions in Vietnam up to now. Among them, the Vietnam International Arbitration Center (VIAC) is the largest and most commonly-used arbitration centre. VIAC Rules of Arbitration (the latest published version and coming into force on 1 March 2017) is 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.

(iii) What types of disputes are typically arbitrated?

In accordance with the 2022 Annual Report of the VIAC, during 1993 – 2022, 40.7 per cent of disputes resolved in this centre arose from the sale of goods, 18.1 per cent from construction (including projects energy and infrastructure), 3.1 per cent from finance/banking, 2.2 per cent from real estate, 7 per cent from leasing, 8.3 per cent from insurance, 4.2 per cent from joint ventures, 2.2 per cent from logistics, 3.1 per cent from mergers and acquisitions and 11.3 per cent 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 6 to 12 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 clients, there is no restriction on foreign counsels to act for clients in arbitration in Vietnam. Also, there is no restriction on the nationality to serve as arbitrators 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 the Law on Commercial Arbitration (LCA) which was approved by the National Assembly in 2010 and took effect on 1 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). Additionally, the LCA is also explained and guided by the Decree No. 124/2018/ND-CP amending and supplementing some articles of the Government's Decree No. 63/2011/ND-CP dated 28 July 2011.

The LCA is fundamentally based on the UNCITRAL Model Law on Commercial Arbitration 2006 with some local adaption. 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 1 July 2016. Besides, the enforcement of such arbitral awards is regulated by the Law on Enforcement of Civil Judgments 2008 amended in 2014 and 2022 (LEJ).

(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 means a dispute arising in commercial relations, or in some other legal relationships, involving a foreign element. A foreign element is defined in the 2015 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 (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Vietnam became a member of the New York Convention on 12 September 1995 and the Convention entered into force on 11 December 1995. The content of this Convention is adopted in Part Seventh (VII) of CPC 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 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 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 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 an 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 is 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 [].**'*

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration 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 (eg 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 a 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 negotiations before commencing arbitration in order to avoid the situation that the arbitral award may be set aside at a later stage.

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

LCA does not provide any provision related to a multi-party arbitration agreement except for one provision on the appointment of an arbitrator in the case of many respondents. In this circumstance, all respondents 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 respondents.

Nonetheless, under the 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 allow the consolidation of disputes for resolution in a single proceeding.

Reflecting the regulations of the Resolution No. 01, the VIAC Rules of Arbitration also provide for a 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.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The LCA does not expressly provide for the determination of the governing law of the arbitration agreement. Pursuant to the LCA, the arbitration agreement is *'entirely independent from the contract'*. Therefore, it can be understood that the law governing the arbitration agreement might not necessarily be the same as the law governing the contract. Also, adopting the UNCITRAL Model Law, Article 459(1)(b) of CPC 2015 states that foreign arbitral awards may be refused to be recognised in Vietnam if *'The arbitration agreement is not legally effective according to the law of a country which is chosen to be applied or according to the law of where the award is made in case the parties cannot choose a law to be applied to such agreement'*. It is impliedly understood that the governing law of the arbitration agreement shall be subject to the choice of the party or absence of such choice, the law of the seat of arbitration would be applicable. Furthermore, given the separability of the arbitration agreement to the main contract, the general principle of conflict of laws that *'the law of the country that closely associates with the relations'*, which provides in Article 664 of the 2015 Civil Code, would be applicable to determine the law governing the arbitration agreement.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Article 3.8 of the LCA provides that *'Dispute resolution location means the location where the arbitral tribunal conducts the dispute resolution as agreed by the parties, or as decided by the arbitral tribunal if the parties do not have such an agreement. If the dispute resolution location is within the territory of Vietnam then the award must be deemed to have been rendered in Vietnam irrespective of the location at which the arbitral conducted hearings in order to issue such award'*. Though the definition is not clear, it appears that the Vietnamese law does distinguish between the 'seat of arbitration' and the 'place of hearing'.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

It is unclear. Blockchain and NFT are not recognized as properties under Vietnamese laws. There is no regulation on the arbitrability of these matters in Vietnam.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

There is no clear distinction between ‘inoperable arbitration agreement’ and arbitration agreement that ‘incapable of being performed’. However, Resolution No. 01 provides a list of circumstances under which the arbitration agreement is considered as ‘incapable of being performed’, namely:

- (1) The parties concerned have an agreement to resolve their disputes at a specific arbitration centre which has now shut down without any arbitration centre that inherit its cases, and the parties concerned fail to reach an agreement on another arbitration centre to resolve their disputes.
- (2) Both parties have an agreement on appointment of a specific arbitrator to resolve disputes, but when the dispute arises, because of force majeure events or objective difficulties, such arbitrator cannot resolve the case, or the arbitration centre or court cannot find a substitute arbitrator as agreed by the parties concerned, and the parties concerned also fail to reach an agreement to select a substitute arbitrator.
- (3) Both parties have an agreement on appointment of a specific arbitrator to resolve disputes, but when the dispute arises, such arbitrator refuses the appointment or the arbitration centre refuses the arbitrator appointment, and the parties concerned also fail to reach an agreement to select a substitute arbitrator.
- (4) The parties concerned have an agreement to resolve their disputes at a specific arbitration centre but also agreed on the application of a set of arbitration rules of another arbitration centre (which is different from the arbitration rules of the agreed arbitration centre), and the charter of the arbitration selected by both parties does not allow the application of arbitration rules of other arbitration centres, and the parties concerned fail to reach an agreement on substitute set of arbitration rules.
- (5) The goods/service seller and consumers have an overall agreement on provision of goods/services that contain arbitration terms drafted by the seller, but the consumers refuse to have the dispute that arises resolved by an arbitral tribunal.

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 court will not be resolved by arbitration. For example: criminal, marriage and matrimonial, employment disputes and administrative matters.

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.

There is no guidance on whether the arbitrability would be considered as a matter of jurisdiction or admissibility. The opinion varies depending on the decision of each arbitral tribunal or each court handling the specific cases.

(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 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 the arbitral tribunal is comprised of three arbitrators, the presiding arbitrator will be selected by the two arbitrators appointed by the parties. If the two appointed arbitrators failed 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 provides 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 one of 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;
- 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 clause (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 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 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 by referring and adopting some parts of IBA's Rules on Ethics of International Arbitrators and the 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 and Emergency Arbitration

(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 tribunal can grant the following types of interim reliefs:

- 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 it with an 'award' which means the final decision of the arbitral tribunal resolving the entire dispute and terminating the 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 reliefs granted by the court will remain 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 reliefs 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 the interim reliefs only upon the request of any party.

Besides, the court also supports the arbitral tribunal in collecting evidence and summoning witnesses. 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.

(iv) Are decisions by emergency arbitrators enforceable in your country?

No, decisions by emergency arbitrators are not enforceable in Vietnam. Given that on the one hand, under Vietnamese laws, there are no definitions or applications of emergency arbitration. On the other hand, only the foreign arbitral awards which '*settle the entire dispute, terminate the arbitral proceedings and be effective*' are the subject for recognition and enforcement in Vietnam. Accordingly, other decisions of the tribunal, including the that of emergency arbitrators, would not be enforceable in Vietnam.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

The Vietnamese laws do not regulate anti-suit injunctions or any other injunctions of that effect. Under the LCA, in case of the prima facie existence of an arbitration agreement, the court shall refuse to accept the case.

Furthermore, even in case the anti-suit injunctions or injunctions are enacted by arbitral tribunals/arbitrators in a foreign arbitration, they shall not be enforceable in Vietnam for the reason stated in section VI.(iv) above.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Under the LCA and its bylaws, Vietnamese courts only provide assistance in aid of arbitration seated in Vietnam. Thus, the court would not grant assistance, eg in issuing interim measures or collection of evidence, if the arbitration is not seated in Vietnam.

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 stated 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 the 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. Besides, the arbitral tribunal can also question the witnesses at the hearing. As 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 regarding an 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 (eg legal representative, director or employee) and the testimony of unrelated witnesses?

There is no provision specified on 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 is no specific rule 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 have not been any rules or requirements regarding this issue in Vietnamese legislation. The secretaries of arbitration institutions often support the arbitral tribunal in administrative works of arbitration. However, their rights and obligations have not been regulated in any official documents.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Vietnamese counsels are generally bound by the ethical codes of conduct of lawyers, which are issued by the Vietnam Bar Federation.

So far, there is no code of conduct of arbitrators in Vietnam. Nonetheless, each arbitration institution may have its own ethical codes, which are applicable to arbitrators conducting proceedings within its rules.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

Arbitral tribunals are not empowered by any rules of arbitration institutions or provisions of laws to exclude counsels. In case of conflicts of interests between the arbitrators and counsels of the parties, de facto, the arbitrators may be subject to consideration of being replaced.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

The Vietnam National Assembly adopted Resolution 33/2021/QH15 on conducting virtual hearings empowering the courts to do the same.

Furthermore, the arbitration institution rules, such as VIAC, allows the arbitral tribunal to '*conduct the hearings by means of teleconference, video-conference or by any other appropriate means if the parties have agreed so.*'

In fact, subject to parties' agreement, many arbitration hearings have been conducted virtually.

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 contains such content:

- (a) Date and location of issuance of the award;
- (b) Names and addresses of the claimant and of the respondent;
- (c) Full names and addresses of the arbitrator(s);
- (d) Summary of the statement of claim and matters in dispute;
- (e) Reasons for issuance of the award, unless the parties agree it is unnecessary to specify reasons for the award;
- (f) Result of the dispute resolution;
- (g) Time-limit for enforcement of the award;
- (h) Allocation of arbitration fees and other relevant fees;
- (i) Signature(s) 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 the 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 reliefs. Upon the requests 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 judgments issued by the arbitral tribunals:

- *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 arbitral awards can be enforced in accordance with the LECJ. Interim or partial awards are regarded as arbitral decisions 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 LECJ related to application of interim reliefs 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 centre to reflect this matter in its 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 arbitrator may not sign the arbitral award, however, the presiding arbitrator must record it in the award and clearly state the reason. Therefore, it can be inferred that the 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 dies, 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 days from the date of receipt of an arbitral award unless otherwise agreed by the parties 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 days from the date of receipt of the request. The explanation provided shall form a 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 costs, legal costs and other reasonable costs.

In general, arbitration costs often comprise:

- Remuneration and travel 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?

An arbitral tribunal does have jurisdiction to decide and allocate its own cost 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, an arbitral tribunal has discretion to allocate the costs between the parties. The arbitral tribunal will apportion the cost on the basis that it finds 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 an arbitral tribunal's decision on costs.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time 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?

Under the LCA, within thirty 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:

- (a) There was no arbitration agreement or the arbitration agreement is void;
- (b) The composition of the arbitral tribunal or the arbitral proceeding was inconsistent with the agreement of the parties or contrary to the provisions of the LCA;
- (c) 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;
- (d) 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;
- (e) 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. Subsequently, 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, an 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 of three judges) considers it appropriate, they may adjourn a petition to set aside an arbitral award for a period not to exceed sixty 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.

(v) Is there a specialist arbitration court in your jurisdiction?

In Vietnam, there is no specialised arbitration court. The matters related to arbitration are usually handled by the commercial or civil division of the court.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Party autonomy is the ultimate principle of not only arbitration law but also civil law. This is also applicable in case of the choice of applicable law. Accordingly, the arbitrators are likely to not arbitrarily amend/replace the law invoked by the parties. In case the arbitrators ignore the parties' agreement on the invoked law, there might be a risk that the award could be set aside for violation of fundamental principles of Vietnamese laws.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

Vietnamese laws do not provide for the immunity of the arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings.

(ii) Does this immunity, if any, extend to criminal liability?

The above are not subject to immunity of criminal liability.

XIV. 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 awards, 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 enforce 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 enforce 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 or the country where the award creditor is resided).
- Within three working days as from the date of receiving petitions and its supporting documents, the competent courts must accept the case and notify the award debtors as well as the procuracies of the same level thereof.
- The court will have two months (which can be extended to another two months) to examine the case files to decide to (i) suspend the proceeding or (ii) terminate the proceeding 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 debtors resides (in cases of individual) or has its headquarter (in cases of entity or organization) or the place in which the property relating to the enforcement is located, shall have the 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 day of receipt of 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 requesting 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?

As per a published report of the Ministry of Justice (MOJ) on 25 September 2020 on the database on recognition and enforcement of foreign court judgments and decisions, and of foreign arbitral awards in Vietnam (the Database), from 1 January 2012 to 30 September 2019, among 55 provincial courts in Vietnam (out of the total number of 66 courts), there are 84 foreign arbitral awards applying for recognition and enforcement in Vietnam.

Based on the Database, 46.4 per cent of the applications (39 of 84 foreign arbitral awards) were recognized and enforced in Vietnam while 39.3 per cent (33 of 84 foreign arbitral awards) were rejected.

The Database, however, was not updated afterwards. So far, updated statistics have not been officially published by either the MOJ or the Supreme People's Court of Vietnam. Nonetheless, recently, in a conference held by the Supreme People's Court (SPC) of Vietnam, it was stated that according to an unofficial report that the rate of recognition of foreign arbitral awards in the period from 2020 to 2024 has increased to 57.89 per cent.

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 four to six months for both first instance and appellate procedure, in practice, the recognition procedure of foreign arbitral 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 three years as from the date the award takes effect.

In accordance with the LECJ, with regard to the domestic arbitral awards and the foreign arbitral awards recognized by the Vietnamese court, the time bar to seek for the enforcement by the state enforcement agency is five years as from the date the awards become effective or the foreign awards are effectively recognised by the Vietnamese court.

XV. 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 enter 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 the 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.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No. There are no special requirements for arbitrations involving sovereign entities. Normal procedure shall be applied.

XVI. 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 yet a member of the Washing Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

However, as of October 2024, Vietnam is a party to 17 Free Trade Agreements (FTAs) with provisions on protection of investments and is taking part in the negotiation process of two others. There are some notable agreements which were concluded recently such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the European - Vietnam Free Investment Protection Agreement (EVIPA) and the Regional Comprehensive Economic Partnership (RCEP) with the involvement of the ASEAN+6 (being Japan, South Korea, Australia, New Zealand, India and China).

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

As of October 2024, according to a report of the MOJ, Vietnam is a member to 67 Bilateral Investment Treaties (BITs).

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No, as of October 2024, there has not been any court decisions in relation to intra-European investor-state arbitration.

XVII. Resources

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

Several publications related to arbitration in Vietnam have been published in recent years. For a better understanding about arbitration in Vietnam, these English books and articles may be referred:

- Nguyen Manh Dzong, Nguyen Thi Mai Anh, Vietnam - National Report - World Arbitration Reporter (WAR) - 2nd Edition, 2022;
- The Supreme people's Court of Vietnam Judicial Manual on Arbitration And Mediation, 2021;
- International Investment Treaties and Arbitration Across Asia, November 2018;
- '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;
- Institute Of Developing Economies, The Alternative Dispute Resolution in Vietnam, March 2002;
- Polkinghorne, M. 'Vietnam' in: Pryles, Michael, ed., Dispute Resolution in Asia, second ed., (Kluwer Law International, the Hague 2002) pp. 382 – 383;
- Vietnam' chapter in Gerhard Wegen and Stephan Wilske, Getting the Deal Through – Arbitration, 9th ed (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?

In recent years, the Vietnam Institute for International Arbitration Research and Training (VIART) and VIAC have conducted several training courses on arbitration. In addition, VIAC regularly organizes seminars and conferences on different topics of arbitration and dispute resolution. Notably, VIAC, together with several sponsors and supporters, host an annual event called ‘Vietnam ADR week’ where a number of topics pertaining to arbitration are open for discussion.

ADR Vietnam Chamber also regularly hosts webinar series on arbitration to provide basic and advanced knowledge on arbitration to the community.

Furthermore, the MOJ and the SPC, being sponsored by the 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.

XVIII. 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 method 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, promulgates a legislation governing the commercial mediation, namely Decree No. 22/2017/ND-CP on Commercial Mediation which came into force on 15 April 2017. The 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 for 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 the Decree on Commercial Mediation are regarded as new legislations, which are believed to positively affect the development of ADR in Vietnam. Significantly, the 2015 CPC shifts the burden of proof in the procedure of 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 agreement in the 2015 CPC is considered as a step forward with the international trend on enforcement of the mediated settlement agreement which is reflected in the Singapore Convention on the enforcement of international commercial settlement agreements resulting from mediation.

Furthermore, the SPC is also working on draft bylaws to guide the recognition and enforcement of foreign arbitral awards under the 2015 CPC, which is believed to contain several positive developments.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

Recently, the Vietnam Lawyers Association is leading the review and preparation of the draft of Amendment to the LCA. In the most recent draft, several points of the UNCITRAL Model Law are expected to be adopted. It is hoped that the upcoming amended LCA would come closer to the standards of the UNCITRAL Model Law.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

There is no provision governing third-party funding under Vietnamese laws. As such, there is no provision providing for the obligation to disclose the identity of a third-party funder.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Vietnamese laws do not provide guidance on the implementation of economic sanctions in Vietnam.