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International Arbitration 2024

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Vietnam: Law and Practice & Trends and Developments
Stephen Le Hoang Chuong
Le & Tran



VIETNAM



Law and Practice

Contributed by:

Stephen Le Hoang Chuong

Le & Tran

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Contributed by: Stephen Le Hoang Chuong, **Le & Tran**

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HR and employment, tax and finance, and all aspects of corporate and enterprise operations. Their multidisciplinary, holistic approach and steadfast commitment to impartiality and transparency sets them apart from the rest of the field. **Le & Tran** consistently garners international acclaim and recognition from multinational clients including QBE, Marvell Technologies, and Petronas, and esteemed organisations such as Chambers and Partners.

Author



Stephen Le Hoang Chuong is the founder and chairman of **Le & Tran**, a multi-award-winning attorney, and a commanding figure in the legal industry.

Armed with profound insight into Vietnam's legal landscape, client successes have cemented his reputation as Vietnam's most trusted legal specialist. Stephen's accomplishments have been consistently

recognised by the likes of Chambers and Partners. Multinational corporations, including Petronas, have hailed him as the "best trial lawyer" they have ever worked with in Vietnam. An authoritative voice in the Vietnamese business community, Stephen is also the first and only Vietnam attorney to have been admitted to the Fellowship of the International Academy of Financial Crime Litigators.

Le & Tran

Le & Tran Building
No 9, Area 284
Nguyen Trong Tuyen Street
Ward 10, Phu Nhuan District
Ho Chi Minh City
Vietnam

Tel: +84 28 3622 7729
Email: info@letranlaw.com
Web: www.letranlaw.com



1. General

1.1 Prevalence of Arbitration

In Vietnam, international arbitration is increasingly favoured for resolving commercial disputes involving foreign parties, driven by global integration and cross-border transactions. Its benefits – flexibility, confidentiality, and expert arbitrators – are widely acknowledged.

For purely domestic disputes, Vietnamese parties still prefer litigation or mediation, owing to their familiarity, lower costs, and trust in domestic courts. However, international arbitration is preferred for disputes with foreign parties, leveraging enforceability under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”) and its perceived neutrality.

Key contexts for international arbitration in Vietnam include:

- contractual agreements – many international contracts involving Vietnamese parties specify international arbitration, especially in sectors such as construction, energy, and trade;
- enforcement of foreign awards – Vietnam’s adherence to the New York Convention facilitates recognition and enforcement of foreign arbitral awards; and
- Arbitration venue – Vietnam is increasingly chosen as a preferred arbitration venue, notably through the Vietnam International Arbitration Center (VIAC), which is gaining prominence in regional disputes.

1.2 Key Industries

Construction Industry

International arbitration is common in Vietnam’s construction sector, owing to large-scale pro-

jects, complex contracts, and multiple parties from different jurisdictions. Common disputes include contract interpretation, delays, and cost overruns. Foreign investment in infrastructure projects and the technical nature of these disputes necessitate the use of expert arbitrators.

Energy Industry

The energy sector, involving projects such as power plants and renewable energy installations that are often funded by international investors, also sees significant arbitration activity. Long-term contracts and regulatory changes frequently lead to disputes. International arbitration is favoured for its neutrality and stability, which are essential for resolving high-value, long-term contracts.

Banking and Finance Sector

Cross-border transactions and investments in the banking and finance sector drive the use of international arbitration. Complex financial instruments require specialised knowledge, which arbitration provides.

Factors Driving Arbitration Preference

The reasons behind certain industries’ preference for international arbitration include:

- expertise – allows selection of arbitrators with specific industry knowledge;
- confidentiality – protects sensitive commercial information; and
- speed – provides faster resolution than court litigation which is crucial for time-sensitive transactions.

1.3 Arbitration Institutions

The VIAC is the foremost arbitration institution in Vietnam for international arbitration, owing to:

- reputation and expertise – the VIAC is renowned for handling domestic and international disputes proficiently, with arbitrators skilled across various industries;
- convenient process – known for user-friendly procedures and administrative support, the VIAC ensures efficient dispute resolution;
- international standards – the VIAC’s rules align with global standards, making it favourable for foreign parties seeking familiar arbitration practices; and
- recognition of awards – awards issued by the VIAC are enforceable under the New York Convention, providing assurance of enforceability globally.

Besides the VIAC, institutions such as the Singapore International Arbitration Centre (SIAC) and the ICC are occasionally preferred for disputes involving Vietnamese parties.

No new arbitral institutions have been established in Vietnam in the past year.

1.4 National Courts

Vietnam has established a robust legal framework supporting domestic and international arbitration, designating specific courts for arbitration-related disputes. This ensures efficiency in the arbitration process and effective enforcement of arbitral awards.

Provincial Courts

At the core of this framework are the courts at the provincial level. The provincial courts handle various arbitration-related responsibilities, including:

- recognition and enforcement of foreign arbitral awards;
- addressing challenges to the validity of arbitration agreements; and

- handling requests for the annulment of arbitral awards.

The provincial courts operate under the guidance of the Civil Procedure Code (CPC) of Vietnam. The CPC incorporates provisions from the New York Convention, ensuring that foreign arbitral awards are recognised and enforceable in Vietnam. This alignment tends to give foreign investors confidence that their arbitral awards will be upheld, making Vietnam an attractive destination for international business.

Supreme Court of Vietnam

The Supreme Court of Vietnam oversees the uniform application of arbitration law across the country. It provides guidance and interpretations of legal provisions related to arbitration, ensuring consistency and clarity in rulings by the lower courts. By handling appeals and reviews of decisions made by the provincial courts and High Courts, the Supreme Court maintains a coherent and predictable arbitration environment in Vietnam.

2. Governing Legislation

2.1 Governing Law

Vietnam’s primary legislation for international arbitration is the Vietnamese Law on Commercial Arbitration, enacted by the National Assembly on 17 June 2010 and effective from 1 January 2011. This law provides the legal framework for arbitration, influenced by the UNCITRAL Model Law on International Commercial Arbitration (the “UNCITRAL Model Law”), in order to ensure fair and efficient resolution of business disputes.

Alignment With UNCITRAL Model Law

The Vietnamese Law on Commercial Arbitration incorporates the following key UNCITRAL Model Law principles:

- party autonomy – allowing customisation of the arbitration process by parties;
- competence-competence doctrine – empowering arbitral tribunals to decide on their jurisdiction; and
- procedural rules – ensuring binding and enforceable arbitral awards.

Divergences From the UNCITRAL Model Law

Although aligned on the above-mentioned aspects, Vietnam's legislation differs from the UNCITRAL Model Law in respect of:

- scope – by applying uniformly to both domestic and international arbitration;
- interim measures – by allowing tribunals to grant interim measures with specific enforcement procedures;
- arbitrator qualifications – by setting criteria for arbitrators in order to ensure impartiality and expertise;
- grounds for annulment – additional grounds are included under Vietnamese law;
- court involvement – by specifying instances requiring court intervention; and
- confidentiality – by mandating confidentiality of arbitration proceedings.

2.2 Changes to National Law

Vietnam's arbitration framework has evolved recently to align more closely with international norms. While the Vietnamese Law on Commercial Arbitration has remained largely unchanged since 2010, regulatory updates and judicial interpretations have shaped the current environment as well as future directions – with pending legis-

lation looking set to change Vietnam's arbitration landscape.

Regulatory Updates

The Ministry of Justice has streamlined regulations for recognising and enforcing international arbitral awards, thereby expediting procedures and ensuring consistent enforcement nationwide. These updates enhance Vietnam's reputation as an arbitration-friendly jurisdiction by reassuring foreign parties of effective award enforcement.

Judicial Clarifications

The Supreme People's Court has provided interpretations of key provisions in the Vietnamese Law on Commercial Arbitration, particularly concerning the grounds for nullifying awards. These clarifications enhance the reliability of arbitration outcomes by minimising the risk of awards being vacated.

Pending Legislation

Upcoming amendments to the Vietnamese Law on Commercial Arbitration are expected to:

- formalise recognition of electronic arbitration agreements for greater accessibility;
- enhance arbitrator qualifications and ethical standards to uphold credibility;
- strengthen enforcement mechanisms for both domestic and foreign arbitral awards; and
- expand enforceability of interim measures ordered by arbitral tribunals.

3. The Arbitration Agreement

3.1 Enforceability

Under the Vietnamese Law on Commercial Arbitration, several conditions must be met for arbitration agreements in Vietnam to be enforceable

and legally binding. These requirements ensure clarity, consent, and proper documentation, as follows.

- Written form – arbitration agreements must be in writing, complying with international norms such as the UNCITRAL Model Law. This can be achieved through:
 - (a) contractual clause – an arbitration provision within a business contract;
 - (b) separate agreement – an independent arbitration agreement signed before or after a dispute arises; and
 - (c) electronic communication – agreements made via email or fax, documented to accommodate modern communication practices.
- Clear intent to arbitrate – the agreement must clearly state the parties’ intention to resolve disputes through arbitration rather than litigation, thus preventing ambiguity.
- Scope of arbitration – arbitration applies to commercial disputes involving business transactions and investments, as long as they align with Vietnamese law and moral standards. Certain matters, such as administrative decisions or family disputes, are exempt.
- Legal capacity – parties entering into arbitration agreements must have legal capacity, ensuring they are of legal age and able to understand and agree to the terms.
- Procedural details – enforceable agreements should outline arbitration specifics, including tribunal selection, arbitration location, applicable law, and procedural rules, so as to enhance clarity and minimise procedural disputes.
- Compliance – agreements must adhere to all formal legal requirements under Vietnamese law, including public policy considerations, to avoid being deemed void and unenforceable.

3.2 Arbitrability

To determine whether a dispute is arbitrable in Vietnam, the following factors are considered:

- nature of the dispute – arbitration is generally permitted for commercial disputes arising from transactions and contracts;
- legal provisions – specific laws outline non-arbitrable dispute;
- arbitration agreement – must clearly state the intention to arbitrate, as disputes excluded in the agreement are not arbitrable; and
- judicial interpretation – courts interpret arbitration agreements and legal provisions to clarify ambiguities.

Please refer to **5.1 Matters Excluded From Arbitration** for details of subject matters that may not be referred to arbitration under Vietnamese law.

3.3 National Courts’ Approach Determining the Law Governing the Arbitration Agreement

Vietnamese courts respect the parties’ choice of law in arbitration agreements under the Vietnamese Law on Commercial Arbitration. If specified, the chosen law governs unless it conflicts with Vietnamese public policy. When no governing law is specified, courts consider factors such as the nature of the contract, place of performance, and parties’ locations. Vietnamese law is typically applied if the agreement is silent and the contract is performed in Vietnam.

Enforcement of Arbitration Agreements

Vietnamese courts generally uphold arbitration agreements per the New York Convention. For enforcement, agreements must be written, clearly express intent to arbitrate, and involve arbitrable disputes under Vietnamese law. Courts dismiss jurisdiction in favour of arbitration when a valid clause exists.

Challenges to Enforcement

Enforcement may face challenges based on agreement invalidity, non-arbitrable matters or conflicts with Vietnamese public policy. Courts rigorously assess these challenges to uphold the integrity and predictability of arbitration proceedings in Vietnam.

3.4 Validity

In Vietnam, an arbitral clause can remain valid even if the rest of the contract is invalid. This principle, known as the “rule of separability”, treats the arbitration agreement as independent. Thus, if the main contract is invalid due to fraud, illegality, or lack of consent, the arbitration clause can still be enforced if it meets legal requirements.

Vietnamese law applies the rule of separability to arbitration clauses in invalid agreements. The Vietnamese Law on Commercial Arbitration explicitly endorses this principle. According to Article 19, the invalidity of the main contract does not invalidate the arbitration agreement within it. This ensures that the arbitration agreement remains autonomous and can proceed independently of the main contract’s validity.

4. The Arbitral Tribunal

4.1 Limits on Selection

In Vietnam, the parties involved in arbitration have significant autonomy in selecting arbitrators. However, this autonomy is guided by specific legal limits to ensure fairness and integrity. These limits are established under the Vietnamese Law on Commercial Arbitration.

Qualifications

Arbitrators must meet specific qualifications to be eligible. They must have:

- full civil capacity to act;
- a university degree; and
- at least five years of work experience.

In exceptional cases, significant practical experience may suffice in lieu of these qualifications. These requirements ensure that arbitrators have the necessary expertise and experience to handle disputes effectively.

Independence and Impartiality

Arbitrators must also be independent and impartial. They cannot:

- be related or the representatives of any party involved;
- have a direct or indirect interest in the dispute; and
- be current or recent (within three years) employees of any party involved.

Number of Arbitrators

The law allows the parties to agree on the number of arbitrators.

4.2 Default Procedures

Default Procedure for Selecting Arbitrators

If the parties’ chosen method for selecting arbitrators fails, Vietnamese law provides a default procedure to ensure that the arbitration can proceed. Under the Vietnamese Law on Commercial Arbitration, the following steps are taken.

- Arbitration institution involvement – if the arbitration agreement specifies an arbitration institution, that institution will appoint the arbitrators according to its rules.
- Court involvement – if no institution is specified or the institution fails to appoint the arbitrators, either party can request a competent court to make the appointment. The court

will then appoint the necessary arbitrators to ensure that the arbitration proceeds.

Default Procedure for Multiparty Arbitrations

Vietnamese law also provides a default procedure for multiparty arbitrations to ensure fair representation in the selection of arbitrators, as follows.

- Joint appointment – if multiple parties are involved, they must attempt to jointly appoint arbitrators.
- Institution or court appointment – if the parties cannot agree, the specified arbitration institution or the competent court will step in to appoint the arbitrators so that all parties are fairly represented and the arbitration process continues smoothly.

4.3 Court Intervention

Circumstances of Court Intervention

In Vietnam, under the Vietnamese Law on Commercial Arbitration, courts intervene in arbitrator selection in the following circumstances.

- Parties' inability to agree – if the parties fail to agree on arbitrator selection within the specified time, either party can apply to the court to prevent arbitration delays.
- Failure of arbitration institution – if the designated institution fails to appoint arbitrators promptly, parties can seek court assistance.
- Multiparty disputes – in disputes involving multiple parties unable to agree on arbitrators, courts will ensure fair representation and facilitate arbitration.

Procedure for Court Intervention

A party can formally apply to the court for an arbitrator appointment. The court reviews the request and then will appoint arbitrators, while reviewing fairness and legal compliance.

Limitations on Court Intervention

Court intervention is restricted to upholding party autonomy and arbitrator integrity, as follows.

- Respect for autonomy – courts intervene only when necessary, respecting parties' arbitrator selection agreements.
- Legal compliance – appointed arbitrators must meet legal qualifications and independence criteria.
- Minimal interference – once appointed, courts minimise involvement to maintain arbitration independence.
- Judicial review – court decisions on arbitrator appointments can be reviewed to ensure legal standards and fairness, safeguarding arbitration legitimacy.

4.4 Challenge and Removal of Arbitrators

In Vietnam, the Vietnamese Law on Commercial Arbitration governs the challenge or removal of arbitrators to ensure impartiality, independence and competence throughout the arbitration process.

Vietnamese law outlines several grounds for challenging or removing an arbitrator, as follows.

- Impartiality and independence – arbitrators must be impartial and independent. Parties can challenge an arbitrator if there are doubts regarding their impartiality or independence due to personal or financial interests or to relationships with one of the parties.
- Qualification requirements – arbitrators must meet specific qualifications. If an arbitrator lacks the required qualifications or fails to maintain them, they can be challenged and removed.
- Conflict of interest – any direct or indirect interest in the dispute outcome constitutes a conflict of interest. Arbitrators with significant

conflicts, such as previous employment with a party or substantial business dealings, can be challenged.

- Incapacity – if an arbitrator becomes physically or mentally incapable of performing their duties, they can be removed to prevent delays and ensure efficiency.
- timeliness – arbitrators must conduct proceedings efficiently. If an arbitrator causes undue delays, they can be challenged and potentially removed.

4.5 Arbitrator Requirements Independence and Impartiality

In Vietnam, providing for arbitrator independence and impartiality is crucial for maintaining arbitration integrity under the Vietnamese Law on Commercial Arbitration, as well as the VIAC Rules.

- Legal requirements – arbitrators must be independent and impartial and devoid of personal interests in the dispute outcome to ensure fair proceedings.
- VIAC Rules – the VIAC emphasises arbitrator neutrality, prohibiting conduct that may compromise impartiality, such as affiliations with involved parties.

Disclosure of Conflicts of Interest

Transparency is ensured through stringent disclosure obligations, as follows.

- Legal requirement – Article 42 mandates that arbitrators disclose potential conflicts of interest before and during arbitration.
- VIAC Rules – arbitrators promptly disclose any financial, professional or personal relationships that could create conflicts, including those arising during proceedings.

Procedures for Handling Conflicts

Vietnamese law outlines the following procedure by which to challenge arbitrators if their independence or impartiality is questioned.

- Challenging process – parties submit written challenges within a specified timeframe, detailing the grounds. The tribunal or the VIAC reviews the challenges.
- Decision – if the arbitrator does not withdraw voluntarily, the tribunal or institution will decide. Dissatisfied parties may seek a final court review.

5. Jurisdiction

5.1 Matters Excluded From Arbitration

The Vietnamese Law on Commercial Arbitration delineates certain disputes that cannot be arbitrated, as follows.

- Administrative disputes – disputes derived from government actions are resolved through administrative procedures and courts rather than arbitration.
- Family and inheritance matters – issues related to marriage, divorce, child custody and inheritance are handled by family courts to protect the involved parties.
- Employment disputes – matters such as wrongful termination or labour strikes fall under the jurisdiction of labour courts and administrative bodies.
- Criminal matters – criminal disputes are excluded from arbitration and handled by the criminal justice system.
- Consumer protection disputes – disputes involving non-negotiable consumer contracts are often excluded from arbitration to protect consumer rights.

- Public interest disputes – state secrets or national security issues are non-arbitrable and handled by the public judicial system.

5.2 Challenges to Jurisdiction

In Vietnam, the principle of competence-competence is applicable, allowing an arbitral tribunal to rule on its own jurisdiction. This includes addressing any objections regarding the existence or validity of the arbitration agreement. The competence-competence doctrine is recognised and upheld under the Vietnamese Law on Commercial Arbitration, aligning Vietnam's arbitration practices with international standards.

5.3 Circumstances for Court Intervention

In Vietnam, courts address issues of arbitral tribunal jurisdiction in specific circumstances defined by the Vietnamese Law on Commercial Arbitration, in an attempt to balance the right to legal arbitration with the protection of parties' rights. Court intervention may be required in the following circumstances.

- Challenge to tribunal's jurisdiction – parties may challenge jurisdiction if and whether the arbitration agreement is deemed valid, invalid, non-existent, or inapplicable to the dispute. The challenge may be filed with the competent court.
- Preliminary rulings – after a tribunal affirms jurisdiction, the parties can seek court review to confirm its legality.
- Enforcement challenges – during award enforcement, the parties may contest tribunal jurisdiction, prompting a court examination of tribunal authority.

Vietnamese courts minimise intervention, upholding arbitral autonomy – although may intervene to ensure the legal process or fairness. Courts intervene if legal principles such as the

agreement's validity or jurisdictional scope are unclear, so as to shield the parties from unjust arbitration.

Courts may review rulings on jurisdiction by arbitral tribunals, thereby ensuring accuracy and protecting the arbitration rights of the parties.

5.4 Timing of Challenge

Parties have the right to go to court to challenge the jurisdiction of the arbitral tribunal at certain stages, in the following ways.

- Upon filing – parties can challenge jurisdiction immediately upon filing, following institution-specific procedures.
- Tribunal constitution – after tribunal formation, parties can contest jurisdiction directly with the tribunal, per Article 43 of the Vietnamese Law on Commercial Arbitration.
- Preliminary rulings – if disagreements occur after tribunal affirmations, parties can seek court review on legality.
- Post-award – challenges during enforcement may question tribunal jurisdiction per Article 68 of the Vietnamese Law on Commercial Arbitration for enforcement or annulment.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

In Vietnam, judicial review standards for questions of jurisdiction and admissibility in arbitration are in place to guarantee fairness and adherence to legal principles. Although the concept of *de novo* review – generally recognised in common-law jurisdictions – is not explicitly articulated in Vietnamese law, the practical approach taken by Vietnamese courts often mirrors this rigorous standard.

As such, Vietnamese courts conduct a thorough and independent review when addressing ques-

tions of jurisdiction and admissibility. This means that courts do not simply defer to the arbitral tribunal's decisions but instead evaluate the issues afresh. This approach aims to provide:

- legal validity – the court independently assesses the legal validity of the arbitration agreement and the tribunal's jurisdiction; and
- adherence to legal principles – the court reviews whether the arbitration proceedings comply with Vietnamese legal standards and public policy.

5.6 Breach of Arbitration Agreement

In Vietnam, national courts firmly uphold arbitration agreements, dismissing court proceedings initiated in breach of such agreements. This reflects a strong policy favouring arbitration as the agreed-upon dispute resolution mechanism.

Vietnamese courts are generally unwilling to allow court proceedings to continue if there is a valid arbitration agreement in place. The courts will enforce the arbitration agreement by referring the parties to arbitration and dismissing or staying the court proceedings.

Article 6 of the Vietnamese Law on Commercial Arbitration states that if a party initiates court proceedings in a matter subject to an arbitration agreement, the court must refuse to accept the case unless the arbitration agreement is null and void, inoperative, or incapable of being performed. This legal provision supports the principle that arbitration agreements are to be respected and enforced by the judiciary.

There is a general reluctance by Vietnamese courts to intervene in disputes covered by an arbitration agreement. The courts aim to respect the autonomy of the parties and the arbitration

process, adhering to the principle of minimal judicial intervention in arbitration matters.

5.7 Jurisdiction Over Third Parties

Vietnamese law allows an arbitral tribunal to assume jurisdiction over individuals or entities that are neither party to an arbitration agreement nor signatories to the contract containing the arbitration agreement in the following circumstances.

- Agency and representation – non-signatories acting as agents or representatives of arbitration agreement parties are bound to the arbitration agreement if within their granted authority.
- Assignment and succession – transferred contractual rights bind assignees or successors to the arbitration agreement, ensuring continuity.
- Third-party beneficiaries – express contract terms extending rights or duties to third parties bind them to the arbitration agreement based on benefit acceptance.

Rules apply universally to domestic and foreign third parties, with foreign enforceability governed by international arbitration norms and jurisdictional laws.

6. Preliminary and Interim Relief

6.1 Types of Relief

Arbitral tribunals are permitted to award preliminary or interim relief in Vietnam. Orders from arbitral tribunals are binding and enforceable through Vietnamese courts if voluntary compliance fails.

The following types of preliminary or interim relief can be awarded:

- asset preservation – preventing asset dissipation or concealment relevant to the dispute;
- status quo maintenance – preventing actions worsening disputes or causing irreparable harm;
- security provision – requiring a deposit or security to fund arbitration or potential awards;
- evidence production – preserving, inspecting, or revealing evidence and preventing destruction or concealment; and
- necessary measures – other interim actions ensuring fair dispute resolution and the protection of parties.

6.2 Role of Courts

In Vietnam, the courts play a role in preliminary or interim relief in arbitration proceedings under the following circumstances.

- Support for arbitration – courts offer relief when tribunals are not yet assembled or face operational issues, ensuring timely measures can be provided.
- Tribunal order enforcement – non-compliance may lead to court action and tribunal orders are often treated as similar to judicial orders.

Relief Types for Foreign Arbitrations

Vietnamese courts can grant the following types of preliminary or interim relief in aid of foreign-seated arbitrations:

- asset safeguarding – preventing asset misuse or concealment;
- injunctions – maintaining status quo to prevent harm;
- cost security – requiring funding assurance; and

- evidence retention – protecting critical data.

Use of Emergency Arbitrators

Vietnamese legislation permits the use of emergency arbitrators for immediate relief. Decisions are binding, ensuring swift compliance until full tribunal assembly.

Emergency arbitrators are permitted to use similar types of relief to the courts. This includes asset safeguarding, injunctions, and security.

Vietnamese courts can intervene once an emergency arbitrator has been appointed. However, this tends to be limited to urging compliance with arbitrator orders and generally avoiding direct intervention.

6.3 Security for Costs

Under Vietnamese law, arbitral tribunals have the authority to order security for costs. This power is provided by the Vietnamese Law on Commercial Arbitration, which allows tribunals to take necessary measures to ensure the proper conduct of the arbitration proceedings and protect the interests of the parties involved.

Vietnamese courts also have the authority to order security for costs, in order to guarantee that the parties can cover arbitration expenses and potential awards. This dual authority supports the effective management of arbitration proceedings and safeguards the financial interests of both parties.

7. Procedure

7.1 Governing Rules

Vietnam's arbitration framework is governed by the Vietnamese Law on Commercial Arbitration and guidance from the Supreme Court and rel-

evant decrees from the Vietnamese government. These laws and rules uphold a structured and fair arbitration process by outlining the responsibilities and rights of parties, the powers and duties of arbitrators, and the judiciary's supportive role. This robust legal infrastructure maintains effective dispute resolution through arbitration, reinforcing Vietnam's position as a reliable forum for both domestic and international arbitration.

7.2 Procedural Steps

In Vietnam, arbitral proceedings must follow specific procedural steps as required by law.

Step 1: Initiation and Statement of Defence

- The claimant submits a Notice of Arbitration to the VIAC.
- The VIAC sends the Notice of Arbitration and related documents to the respondent.
- The respondent submits a Statement of Defence and any Counterclaim to the VIAC.

Step 2: Formation of the Arbitral Tribunal

In a tribunal with three arbitrators:

- each party selects one arbitrator or requests the VIAC's president to appoint one;
- the two appointed arbitrators select a third arbitrator as the chair; and
- if they cannot agree, the VIAC's president appoints the chair.

In a tribunal with a sole arbitrator:

- the parties agree on a sole arbitrator or request the VIAC's president to appoint one; and
- if they cannot agree, the VIAC's president appoints a sole arbitrator.

Step 3: Review of Documents and Preliminary Tasks

- Arbitrators review the case documents.
- The tribunal may verify facts, collect evidence, summon witnesses, and apply interim measures.

Step 4: Dispute Resolution Hearing

- The tribunal holds hearings to resolve the dispute.
- The tribunal may mediate between the parties. If mediation is successful, the settlement is recorded, and a Decision of Mediation is issued.

Step 5: Issuing the Arbitral Award

- If mediation is not conducted or is unsuccessful, the tribunal issues an arbitral award within 30 days from the end of the final hearing.
- The tribunal sends the award to the VIAC, which then sends the original or certified copies to the parties.

7.3 Powers and Duties of Arbitrators

Pursuant to Article 21 of the Vietnamese Law on Commercial Arbitration, arbitrators in Vietnam have specific rights and obligations.

Arbitrators have rights to:

- accept or refuse to resolve disputes;
- be independent in resolving disputes;
- refuse to provide information related to the dispute; and
- receive remuneration.

Arbitrators have obligations to:

- keep the content of the dispute confidential, except where information must be provided

- to competent state authorities as prescribed by law;
- ensure impartial, swift and timely resolution of disputes; and
- adhere to professional ethical standards.

7.4 Legal Representatives

Domestic Matters

In Vietnam, legal representatives in domestic matters must meet specific qualifications and requirements to practice law and represent clients. These are governed by the Law on Lawyers (Law No 65/2006/QH11) and subsequent amendments.

The key qualifications for domestic legal representatives (lawyers) are:

- legal education – a bachelor’s degree in law or higher from a recognised institution;
- professional training – completion of a lawyer training programme at an accredited law training centre;
- probation period – a specified duration of practice at a law firm or legal organisation following the training programme;
- Bar association membership – membership of a Bar association and a practising certificate issued by the Vietnam Bar Federation; and
- ethical standards – adherence to strict professional ethical standards and continuing legal education requirements.

International Arbitration

In the context of international arbitration, the requirements for legal representatives are generally more flexible. Vietnam recognises the need for specialised knowledge in international legal practices, allowing for varied qualifications.

Legal representatives in international arbitration are expected to meet the following requirements.

- Flexibility in qualifications – legal representatives in international arbitration do not necessarily need Vietnamese legal qualifications. Lawyers from other jurisdictions can represent parties in arbitration proceedings held in Vietnam.
- International experience – preference is given to lawyers with qualifications from other countries and experience with international arbitration.
- Adherence to arbitration rules – legal representatives must comply with the rules of the arbitration institution (eg, the VIAC or other international bodies).
- Ethical standards – legal representatives must maintain high ethical standards and professional conduct throughout the arbitration process.

8. Evidence

8.1 Collection and Submission of Evidence

In Vietnam, the approach to collecting and submitting evidence in arbitration is structured to ensure a fair and efficient resolution of disputes. The procedures accommodate both domestic and international arbitration, with specific principles guiding the process from the pleading stage to the hearing stage.

Pleading Stage

Unlike common-law jurisdictions, Vietnam does not have a formal discovery system. Parties are expected to voluntarily disclose evidence supporting their claims and defences.

Parties submit relevant documents and information with their initial pleadings, including written statements, contracts, emails, and other pertinent materials. Witness statements are also cru-

cial at this stage, providing preliminary insights into the facts and issues.

Hearing Stage

During hearings, parties present their cases orally, reinforcing written submissions with additional testimony and arguments. Witnesses who have provided written statements may testify in person, affirming their statements and offering further oral testimony.

A key aspect of the hearing stage is allowing the opposing party to challenge the credibility and reliability of witness testimony. The goal of such cross-examination is to ensure a thorough and critical evaluation of the evidence.

Legal Privilege and Confidentiality

Communications between a client and their legal counsel are protected by legal privilege unless the client consents to disclosure. This allows free communication without fear of it being used against them.

Both parties and arbitrators are bound to keep the proceedings and the evidence confidential. This protects sensitive information and maintains process integrity.

Procedural Orders and Tribunal Discretion

The arbitral tribunal has broad discretion in managing evidence, including determining admissibility, relevance, materiality and weight.

Procedural orders are issued by the tribunal and provide detailed instructions on evidence collection, submission and presentation. These orders ensure an orderly process and procedural clarity for all parties.

8.2 Rules of Evidence

The following rules of evidence apply to arbitration proceedings seated in Vietnam.

- Tribunal discretion – under Article 46 of the Vietnamese Law on Commercial Arbitration, tribunals have broad discretion over evidence admissibility, relevance, materiality, and weight, which are tailored to each case.
- Focus on relevance – the emphasis is on evidence relevance and materiality rather than strict formal rules. Documents, witness testimony, expert reports, and electronic records may be admitted.
- Flexible procedures – the process of evidence collection and presentation (including written witness statements and expert reports) is less formal, with opportunities for elaboration during hearings.
- Witness testimony – written testimony is supplemented by oral testimony during hearings, with the allowance of cross-examination to challenge credibility.
- Privilege and confidentiality – legal privilege and strict confidentiality ensure privacy unless legally required or agreed upon.

Compared with the rules of evidence that apply to domestic matters, the foregoing rules are more flexible. Arbitration proceedings seated in Vietnam offer more adaptability than domestic courts governed by the CPC, which mandates detailed evidence rules.

Vietnamese courts follow strict procedural rules and formal discovery processes, contrasting with arbitration's focus on substantive issues and flexibility. Balancing adaptability and procedural integrity in arbitration proceedings enhances efficiency and fairness in examining evidence in Vietnam.

8.3 Powers of Compulsion

In Vietnam, the effectiveness of arbitration is supported by the powers granted to arbitrators and the availability of court assistance. These provisions stipulate that arbitrators can compel the production of documents and the attendance of witnesses, thereby maintaining the integrity and efficiency of the arbitration process.

Powers of Arbitrators

Arbitrators can order parties to submit relevant documents, records, and other pertinent materials. This power is crucial for ensuring that all relevant information is available to the tribunal, thus facilitating a comprehensive evaluation of the case.

Arbitrators can request the attendance of witnesses to provide oral testimony. Witnesses affiliated with the parties are generally expected to comply, allowing the tribunal to obtain first-hand accounts and clarifications on disputed facts.

Court Assistance

If a party fails to comply with an arbitrator's order, the tribunal can seek court assistance. Article 46 of the Vietnamese Law on Commercial Arbitration permits tribunals to request court intervention in order to enforce their orders. The court can compel parties to comply, so that the arbitration process is not impeded by non-cooperation.

Arbitrators do not have direct authority over non-parties. To secure the co-operation of non-parties, the tribunal can request the court to issue subpoenas or enforcement orders. This judicial support is intended to provide access to all relevant evidence and testimonies, regardless of the involvement of non-parties.

Distinction Between Parties and Non-Parties

Parties to the arbitration agreement are obligated to comply with the arbitrator's orders. Failure to do so can lead to court enforcement and penalties.

Non-parties are not directly bound by the arbitration agreement and do not have an inherent obligation to comply with the tribunal's orders. For non-parties, the tribunal must rely on the court's authority to compel compliance.

9. Confidentiality

9.1 Extent of Confidentiality

Confidentiality is a fundamental principle in arbitration proceedings in Vietnam, which are designed to protect the integrity of the process and the privacy of the parties involved. The Vietnamese Law on Commercial Arbitration provides a comprehensive framework that ensures various elements of arbitration (eg, pleadings, documents, and the final award) are kept confidential.

Extent of Confidentiality

All pleadings and documents submitted during arbitration – including statements of claim and defence, witness statements, expert reports, and other exchanged materials – are confidential. This ensures that detailed information about the dispute is protected.

Arbitration hearings are conducted in private, with only parties directly involved in the case allowed to attend. This includes the parties, their legal representatives, arbitrators, and invited witnesses or experts. This maintains the confidentiality of discussions and testimonies.

The final decision of the tribunal, including the contents of the arbitral award and any delib-

erations, is also confidential. Disclosure of the award is limited to what is necessary for enforcement or compliance, unless both parties agree to make the award public.

Disclosure in Subsequent Proceedings

When a party seeks to enforce an arbitral award, they must present the award and relevant parts of the arbitral proceedings to the competent court. This disclosure is necessary for the court to verify the validity and enforceability of the award and to determine whether it complies with legal standards and due process.

10. The Award

10.1 Legal Requirements

An arbitral award in Vietnam is a decision made by the arbitral tribunal that resolves the entire content of the dispute and terminates the arbitration proceedings. The key legal requirements are outlined in the Vietnamese Law on Commercial Arbitration.

Arbitral awards are made based on the following principles.

- Majority vote – the arbitral tribunal makes an arbitral award by voting according to the majority principle.
- Chair’s decision – if a majority vote is not reached, the arbitral award is made according to the opinion of the chair of the arbitral tribunal.

According to Article 61 of the Vietnamese Law on Commercial Arbitration, the arbitral tribunal must issue the final award within 30 days from the date of the last hearing. This time limit ensures that the arbitration process is conducted efficiently and that disputes are resolved promptly.

10.2 Types of Remedies

Arbitral tribunals in Vietnam must adhere to the scope of the arbitration agreement and Vietnamese public policy when awarding remedies, as outlined in the Vietnamese Law on Commercial Arbitration. Tribunals can only award remedies within the scope of the parties’ agreement. Unauthorised remedies cannot be awarded. Remedies must align with Vietnamese public policy. Awards violating public policy may be set aside or refused enforcement by the courts.

Compensatory Damages

Under Vietnamese law, compensation for damages must be actual, resulting directly from the breach, and the aggrieved party must take reasonable steps to mitigate the damage. Damages correspond to the degree of fault. The defendant may be exempt from compensation if the damage is entirely due to the fault of the aggrieved party or a force majeure event.

Punitive Damages

Vietnamese law prioritises compensatory damages over punitive damages, which are generally not recognised. Arbitral tribunals typically cannot award punitive damages, focusing on reparation rather than punishment.

However, Vietnamese law allows for a “penalty” or “fine” as a punishment for breach in a contractual relationship. For commercial contracts, the penalty amount must be agreed upon by the parties and cannot exceed 8% of the breached portion’s value (or 12% for construction contracts in certain circumstances).

Rectification (Specific Performance)

Tribunals can award specific performance if it is within the arbitration agreement and does not contravene Vietnamese law so that contractual obligations may be fulfilled or breaches correct-

ed. Enforceability depends on the practicality and legal compliance of specific performance orders.

Equitable Remedies

Tribunals may award declaratory relief to clarify legal rights and obligations without monetary compensation, provided they align with the arbitration agreement and comply with legal standards. Enforceability depends on the fairness of the remedy and alignment with public policy principles.

10.3 Recovering Interest and Legal Costs

Recovery of Interest

Parties can recover interest on overdue payments based on Article 306 of the Vietnamese Law on Commercial Arbitration (principle of compensatory damages). This interest can be contractually agreed upon or determined by statutory interest rates.

Arbitral tribunals can award both pre-award interest (accruing from the due date to the award date) and post-award interest (accruing from the award date until payment). The interest rate is based on contractual terms or statutory provisions so that the claimant is compensated for the lost time value of money.

Recovery of Legal Costs

Article 34 of the Vietnamese Law on Commercial Arbitration allows arbitral tribunals to decide on the allocation of arbitration costs, including legal fees. Generally, the losing party bears the legal costs of the winning party. This discourages frivolous claims and compensates the successful party.

Arbitral tribunals have broad discretion in allocating costs. They may consider factors such

as party conduct, case complexity, and reasonableness of costs. In some cases, a “costs-sharing” approach may be adopted, where each party bears its own costs.

11. Review of an Award

11.1 Grounds for Appeal

Parties are entitled to appeal an arbitral award in Vietnam on certain grounds. Article 68(2) of the Vietnamese Law on Commercial Arbitration specifies that an arbitral award may be annulled by the court if:

- there is no arbitration agreement or the agreement is invalid;
- the composition of the arbitral tribunal or the arbitration procedure does not comply with the parties’ agreement or the law;
- the dispute is not within the jurisdiction of the arbitral tribunal;
- the award includes content beyond the jurisdiction of the arbitral tribunal;
- the evidence used for the award is found to be forged;
- an arbitrator has received improper benefits affecting the award’s objectivity; and
- the award contradicts the fundamental principles of Vietnamese law.

The procedure for annulling an arbitral award in Vietnam is as follows.

- Filing a request for annulment – within 30 days from the date of receiving the arbitral award, the party seeking annulment must file a request with the competent court (provincial court).
- Court notification – immediately upon accepting the request, the competent court will notify the arbitration centre or ad hoc arbitra-

tors, the disputing parties, and the procuracy at the same level (provincial level).

- Designation of the examination council – within seven working days following the acceptance of the request, the chief judge of the competent court designates an examination council consisting of three judges, including one chair.
- Examination meeting – within 30 days following the designation of the examination council, the council holds a meeting to examine the annulment request.
- Conducting the meeting – the examination council conducts the meeting with the disputing parties, their legal representatives (if any), and a procurator from the procuracy.
- Council decision – the council decides to annul or not annul the arbitral award and notifies the parties, the arbitration centre or ad hoc arbitrator, and the procuracy within five working days following the decision.
- Suspension for correction – the examination council may suspend the examination for up to 60 days to allow the arbitral tribunal to correct any errors.
- Post-annulment actions – if the award is annulled, parties may agree to arbitration again or initiate a lawsuit in court; if not annulled, the award becomes enforceable.

11.2 Excluding/Expanding the Scope of Appeal

Exclusion of Appeal or Challenge

Arbitral awards are final and binding under Vietnamese law, with limited grounds for setting aside as specified in Article 68 of the Vietnamese Law on Commercial Arbitration. These grounds include issues related to the validity of the arbitration agreement, proper notice, the ability to present a case, the tribunal exceeding its authority, improper composition, and contravention of public policy.

Parties may agree to exclude the possibility of an appeal to the extent that they waive their right to challenge the award on substantive grounds. However, statutory grounds for setting aside an award cannot be completely excluded. Protections such as proper notice and adherence to public policy are fundamental and cannot be waived.

Expansion of Scope for Appeal or Challenge

Parties may agree to expand the scope for appeal or challenge beyond what is provided by law, such as allowing appeals for errors of law or fact. However, the enforceability of such agreements under Vietnamese law is limited.

Vietnam's legal framework promotes the finality and efficiency of arbitration by limiting the grounds for challenging an award. Agreements introducing broader grounds for appeal than those in Article 68 of the Vietnamese Law on Commercial Arbitration may not be recognised by Vietnamese courts. Courts are likely to adhere strictly to the statutory grounds, emphasising that arbitration should remain a swift and conclusive method of dispute resolution.

11.3 Standard of Judicial Review

Vietnamese courts adopt a deferential standard of judicial review for arbitral awards, focusing on ensuring fairness and legality rather than reassessing the merits of the case. This approach upholds the integrity of the arbitral process, recognising the expertise and autonomy of arbitrators.

Grounds for setting aside arbitral awards can be found in **11.1 Grounds for Appeal**.

Focus on Procedural Fairness

Judicial review in Vietnam primarily concerns procedural fairness. The court's role is to ensure

that the arbitral tribunal follows the proper procedures, respects the parties' rights to a fair hearing, and acts within its jurisdiction. This procedural focus preserves the finality of arbitration awards and minimises court intervention, reflecting arbitration's aim to be a swift and conclusive dispute resolution method.

Deference to Expertise of Arbitral Tribunal

Vietnamese courts generally defer to the expertise and autonomy of arbitral tribunals, understanding that parties choose arbitration for its specialised knowledge, efficiency, and finality. Judicial intervention is minimal and arbitral tribunal decisions are respected and upheld unless significant procedural flaws are present.

12. Enforcement of an Award

12.1 New York Convention

Vietnam has signed and ratified the New York Convention. This provides that arbitral awards are recognised and enforced across member states, solidifying Vietnam's commitment to international arbitration as a reliable dispute resolution method.

Vietnam has also strengthened its arbitration framework through various international agreements and conventions in order to facilitate cross-border dispute resolution, as follows.

- Bilateral investment treaties (BITs) – Vietnam has numerous BITs with various countries that include provisions for arbitration to resolve investment disputes. These treaties often allow investors to choose international arbitration forums such as ICSID, ICC, or UNCITRAL rules, enhancing investor confidence in the protection and resolution of their investments.

- Free trade agreements (FTAs) and regional agreements – Vietnam is a party to several FTAs, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). These agreements include mechanisms for settling investment disputes through arbitration, thereby providing robust legal avenues for foreign investors.
- ASEAN Framework – as a member of the Association of Southeast Asian Nations (ASEAN), Vietnam is part of the ASEAN Comprehensive Investment Agreement (ACIA), which includes provisions for investor-state dispute settlement (ISDS). This allows investors from ASEAN member states to resolve disputes through arbitration under recognised international rules.

Vietnam's domestic legal framework, particularly the Vietnamese Law on Commercial Arbitration, supports its commitments under international agreements. This law aligns with international standards, facilitating the recognition and enforcement of foreign arbitral awards and providing a solid legal foundation for arbitration within the country.

12.2 Enforcement Procedure

Arbitral awards in Vietnam are enforced under civil judgment enforcement laws as outlined in Article 67 of the Vietnamese Law on Commercial Arbitration. Article 65 of this law encourages parties to voluntarily enforce arbitral awards. Awards by a domestic arbitral tribunal are enforced by civil enforcement agencies without needing court approval, promoting a streamlined enforcement process.

Standards for Enforcement

Vietnamese courts apply standards consistent with the New York Convention, which Vietnam has ratified with reservations. Key considerations include:

- recognition requirements – ensuring the award meets recognition standards; and
- public policy – the award must not violate public policy or fundamental Vietnamese law principles (this alignment underscores Vietnam's commitment to international arbitration norms).

Enforcement of Set-Aside Awards

According to Article V of the New York Convention, enforcement can be refused if the award has been annulled at the seat of arbitration. This principle maintains consistency and respects the judicial authority of the arbitration seat.

Approach to Ongoing Set-Aside Proceedings

When an arbitral award is undergoing set-aside proceedings at the seat of arbitration, Vietnamese courts typically suspend enforcement proceedings pending the outcome of the set-aside proceedings. This cautious approach is to certify that the enforcement decision aligns with the final judicial determination at the arbitration seat.

Sovereign Immunity as a Defence

State entities may raise sovereign immunity to resist enforcement, with success depending on the following factors.

- Waiver of immunity – immunity may be waived explicitly in the arbitration agreement or implicitly by participating in arbitration without raising the defence.
- Nature of the dispute – immunity is less likely to succeed if the dispute arises from commercial activities rather than sovereign acts.

- International conventions – Vietnam's adherence to conventions such as the New York Convention influences the courts' consideration of sovereign immunity claims, aligning with international norms.

12.3 Approach of the Courts

The enforcement of arbitration awards in Vietnam is governed by international treaties and national laws, with the New York Convention being paramount. The New York Convention requires signatory countries to recognise and enforce arbitration awards from other signatory states, with limited exceptions, thus fostering a pro-enforcement bias.

Vietnamese courts generally uphold arbitration, respecting parties' agreements to arbitrate and the finality of arbitral decisions. This approach is based on principles of party autonomy, finality, and judicial efficiency, ensuring that arbitration remains a viable and efficient dispute resolution method.

Grounds for Annulment of Commercial Arbitration Awards

An arbitration award can be annulled under the following conditions:

- invalid arbitration agreement – if there is no valid arbitration agreement or if the agreement is invalid;
- improper composition or procedure – if the composition of the arbitral tribunal or the arbitration proceedings do not adhere to the parties' agreement or the Vietnamese Law on Commercial Arbitration;
- jurisdictional issues – if the dispute is outside the jurisdiction of the arbitral tribunal or if the award contains matters beyond its jurisdiction;

- forged evidence or arbitrator misconduct – if the evidence on which the award is based is forged, or if the arbitrator received money, property, or other material benefits from one of the parties, thus affecting the award’s impartiality and fairness; and
- contravention of public policy – if the award violates the fundamental principles of Vietnamese law.

Authority to Annul Commercial Arbitration Awards

The court reviews annulment requests upon a party’s application. The party requesting annulment must demonstrate that the arbitral tribunal made the award under circumstances such as an invalid agreement, improper composition, jurisdictional issues, forged evidence, or arbitrator misconduct. For public policy violations, the court actively verifies and collects evidence.

Public Policy Grounds

Vietnamese courts apply both domestic and international public policy standards when refusing to enforce foreign arbitral awards in order to align with Vietnamese legal principles and societal norms while respecting international arbitration norms.

13. Miscellaneous

13.1 Class Action or Group Arbitration

In Vietnam, the legal framework, including the Vietnamese Law on Commercial Arbitration, does not explicitly provide for class action arbitration or group arbitration. Arbitration is typically conducted on an individual basis between the parties who have entered into an arbitration agreement.

Limitations and Requirements

Given the absence of explicit recognition for class action or group arbitration, there are inherent limitations to arbitrating such claims, as follows.

- Individual basis – arbitration proceedings are usually conducted individually, meaning each dispute is handled separately unless all parties explicitly agree to a collective process.
- Arbitration agreement – for group arbitration to be considered, all parties must enter into an arbitration agreement that specifically allows for such a procedure, complying with general arbitration law principles in Vietnam.

Practical Implications

Owing to the lack of explicit provisions for class action or group arbitration, parties must consider alternative approaches for disputes involving multiple claimants or respondents, as follows.

- Separate proceedings – separate arbitration proceedings may be conducted for each party involved, even though this can lead to inefficiencies and increased costs.
- Consolidation – parties can agree to consolidate individual arbitrations into a single proceeding. This requires mutual consent and a clear framework within the arbitration agreement to manage the consolidation.

13.2 Ethical Codes

Ethical Codes for Legal Counsel

Legal counsel in Vietnam, including those involved in arbitration, are governed by the Vietnam Bar Federation through the Code of Ethics and Professional Conduct for Lawyers. The key principles are as follows.

- Independence and integrity – lawyers must maintain independence from external influ-

ences and act with integrity, ensuring their advice and representation are based solely on the law and client interests.

- Confidentiality – lawyers must keep all client information confidential, which is crucial for building trust and protecting sensitive commercial information in arbitration.
- Competence and diligence – lawyers must provide competent legal services and act diligently, staying updated on legal developments and thoroughly preparing for arbitration proceedings.
- Conflict of interest – lawyers must avoid conflicts of interest and disclose any potential conflicts to clients so that their professional judgment remains uncompromised.
- Professional conduct – lawyers are expected to conduct themselves professionally, respecting the rights of all parties and adhering to court and tribunal rules.

Professional Standards for Arbitrators

Arbitrators in Vietnam are governed by the Vietnamese Law on Commercial Arbitration. Key principles include the following.

- Impartiality and neutrality – arbitrators must remain impartial and neutral, disclosing any circumstances that might raise doubts about their impartiality or independence.
- Confidentiality – arbitrators must keep all information related to the arbitration proceedings confidential and not disclose case details, the parties involved, or the award without consent.
- Competence and diligence – arbitrators must be competent in the relevant areas of law and conduct the proceedings diligently, ensuring fairness and efficiency.
- Integrity and ethical conduct – arbitrators must act with integrity, avoiding actions that could compromise the arbitration process'

integrity, including not accepting any inducements or gifts.

- Compliance with legal standards – arbitrators must comply with relevant laws and arbitration rules, adhering to the procedural rules in the arbitration agreement and verifying that the award is based on a sound understanding of the applicable law.

13.3 Third-Party Funding

Vietnamese law currently lacks specific provisions addressing third-party funding in arbitration. However, existing legal principles and related regulations offer some guidance on its treatment.

- Freedom of contract – under Vietnamese contract law, parties can generally enter into agreements, including third-party funding arrangements, provided these agreements do not violate the law or public policy. This principle underpins the legitimacy of third-party funding agreements.
- Civil Code and commercial law – these laws govern aspects of contractual relationships, including the assignment of rights and obligations. They impact the structuring of third-party funding agreements, particularly regarding the funder's rights to the arbitration proceeds.

Restrictions and Considerations

Despite the absence of explicit prohibitions, the following legal and ethical considerations must be addressed.

- Independence and conflict of interest – both arbitrators and legal counsel must maintain independence and avoid conflicts of interest. Third-party funding could influence the conduct of the funded party's legal team or raise concerns about the impartiality of the

arbitrators if there are any connections to the funding party. Proper disclosure and transparency are essential to mitigate these risks.

- Confidentiality – arbitration proceedings in Vietnam are generally confidential. Third-party funding arrangements must respect this confidentiality. Disclosure of information to the funding party must be carefully managed to avoid breaching confidentiality obligations.
- Control and influence – the involvement of a third-party funder should not lead to undue influence over the arbitration process. The funded party must retain control over key arbitration decisions, ensuring the funding party's involvement does not compromise the process' integrity.
- Enforceability – given that third-party funding agreements are not explicitly regulated, their enforceability under Vietnamese law may be uncertain. Parties should ensure that the terms are clear and comply with general contract law principles to avoid potential disputes over the agreement.

13.4 Consolidation

The Vietnamese Law on Commercial Arbitration does not explicitly address the consolidation of arbitral proceedings. Therefore, any consolidation must be based on general principles of arbitration law, the rules of arbitration institutions, and relevant practices.

- General arbitration principles – the principles of efficiency and fairness in arbitration suggest that consolidation may be permissible if it serves the interests of justice and the parties agree. However, without explicit legal provisions, this remains a matter of interpretation.
- Arbitration institution rules – some arbitration institutions, such as the VIAC, may have specific rules allowing the consolidation of

related proceedings. In the case of the VIAC, Rule 15 of the VIAC Rules of Arbitration provides such guidelines. Parties can agree to follow these institutional rules in their arbitration agreements.

- Relevant practices – in practice, consolidation may occur if all parties involved consent. This is typically done to prevent conflicting decisions and streamline related disputes. Arbitrators and parties should ensure that consolidation does not prejudice any party's rights or overly complicate the proceedings.

13.5 Binding of Third Parties

In Vietnam, the Vietnamese Law on Commercial Arbitration governs arbitration, emphasising consensual agreements. Arbitration agreements generally bind parties who expressly agree to them. However, certain legal doctrines extend this binding effect to third parties, as follows.

- Assignment of rights – when contractual rights are assigned, the assignee may be bound by the arbitration agreement.
- Third-party beneficiaries – contracts conferring benefits to third parties can bind them to arbitration if they accept the benefits.
- Agency and representation – principals can be bound by arbitration agreements made by their agents or representatives.

Binding foreign third parties generally involves the following complex jurisdictional considerations and international principles.

- Jurisdictional limits – Vietnamese courts require sufficient connections or activities within Vietnam to bind foreign entities.
- International treaties – Vietnam's adherence to the New York Convention facilitates enforcement of arbitration awards internationally.

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- Comity and reciprocity – courts may apply these principles when foreign jurisdictions reciprocate enforcement of Vietnamese arbitration agreements.
- Public policy – courts consider Vietnamese public policy and fairness when deciding to bind foreign third parties.

Trends and Developments

Contributed by:

Stephen Le Hoang Chuong
Le & Tran

Le & Tran was founded in 2011 and has rapidly ascended to the pinnacle of the legal industry in Vietnam. Under the leadership of the formidable Stephen Le, the firm has established itself as a powerhouse in the legal arena. Combining unmatched legal expertise, local insight, and a global perspective, Le & Tran delivers outcome-driven solutions across a wide range of practice areas including dispute resolution, asset recovery, white-collar crime, family and private client,

HR and employment, tax and finance, and all aspects of corporate and enterprise operations. Their multidisciplinary, holistic approach and steadfast commitment to impartiality and transparency sets them apart from the rest of the field. Le & Tran consistently garners international acclaim and recognition from multinational clients including QBE, Marvell Technologies, and Petronas, and esteemed organisations such as Chambers and Partners.

Author



Stephen Le Hoang Chuong is the founder and chairman of Le & Tran, a multi-award-winning attorney, and a commanding figure in the legal industry.

Armed with profound insight into

Vietnam's legal landscape, client successes have cemented his reputation as Vietnam's most trusted legal specialist. Stephen's accomplishments have been consistently

recognised by the likes of Chambers and Partners. Multinational corporations, including Petronas, have hailed him as the "best trial lawyer" they have ever worked with in Vietnam. An authoritative voice in the Vietnamese business community, Stephen is also the first and only Vietnam attorney to have been admitted to the Fellowship of the International Academy of Financial Crime Litigators.

Le & Tran

Le & Tran Building
No 9, Area 284
Nguyen Trong Tuyen Street
Ward 10, Phu Nhuan District
Ho Chi Minh City
Vietnam

Tel: +84 28 3622 7729
Email: info@letranlaw.com
Web: www.letranlaw.com



Contributed by: Stephen Le Hoang Chuong, **Le & Tran**

Introduction

International arbitration is a recognised and widely used method for resolving cross-border disputes in international commercial transactions and investments. Unlike litigation, arbitration involves a neutral third party or panel making binding decisions. This process is favoured for its flexibility, neutrality, and the enforceability of awards under international treaties such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”). However, despite Vietnam’s established legal framework for commercial arbitration, there are some features of the system that do not meet the standards of international economic integration. As such, a comprehensive review and enhancement of the arbitration laws so that they align with practical requirements is necessary for the future. This article explores recent trends and developments in international arbitration, focusing on legal, political and socio-economic contexts relevant for clients engaged in international business.

Trends

Online dispute resolution through arbitration

The COVID-19 pandemic accelerated the need for online dispute resolution (ODR), including online commercial arbitration. Today, the shift to ODR is driven by the need for faster and more convenient dispute resolution compared with traditional methods. Further, ODR offers significant cost savings by eliminating expenses associated with physical venues, travel, and accommodation for the parties involved.

Numerous arbitration institutions worldwide have incorporated provisions for online arbitration into their rules or have issued separate rules specifically for online arbitration. Examples include the China International Economic and Trade Arbitration Commission (CIETAC), the Shenzhen Court

of International Arbitration (SCIA), and the Istanbul Arbitration Center (ISTAC). Additionally, these institutions have established systems for online filing and case management and are equipped to conduct online hearings and proceedings.

Vietnam’s arbitration institutions have also made provisions for online hearings within their procedural rules. Article 25(2) of the Vietnam International Arbitration Center (VIAC) Rules stipulates that the arbitral tribunal may conduct hearings via teleconference, videoconference, or other suitable forms, subject to the agreement of the parties. Similarly, the Hanoi International Arbitration Center (HIAC) has provisions for online dispute resolution for small-value e-commerce and consumer disputes, cross-border commercial disputes, and other commercial disputes in Vietnam.

Challenges and legal considerations

A critical issue in online arbitration is determining the legal venue for arbitration when the parties and arbitrators are located in different locations. If the parties agree to a Vietnamese venue but the arbitrators are from different countries, questions may arise whether online hearings conform with the agreed arbitration venue. It follows that there is concern whether these online hearings are in violation of procedural requirements and possibly risk non-recognition or enforcement of arbitral awards under the New York Convention or the Vietnamese Law on Commercial Arbitration 2010.

It is notable that international practice varies regarding the definition of the arbitration venue. By way of example, UK law defines the arbitration venue as a “legal seat” designated by the parties, the appointing authority, or the arbitral tribunal, rather than a physical location. Thus, even if parties choose Vietnam as the venue,

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online hearings do not conflict with the legal venue being Vietnam, and awards made in such hearings would be recognised and enforceable in the UK. However, Vietnamese law does not adopt the concept of a “legal seat”. Instead, the Vietnamese Law on Commercial Arbitration defines the arbitration venue as the place where the arbitral tribunal conducts proceedings. Consequently, there is a potential risk that online arbitration awards could be denied recognition and enforcement or be annulled for procedural violations under Vietnamese law.

To fully support online arbitration, Vietnam needs to revise its legal framework to accommodate the concept of a “legal seat” rather than a strictly geographic location. This change would align Vietnamese law with international practice and facilitate the broader adoption of ODR methods, ensuring the legal robustness of online arbitration awards.

Application of generative AI trends in arbitration

The integration of generative AI in various sectors has revolutionised traditional processes, and the field of arbitration is no exception. Generative AI – with its ability to create content, analyse vast amounts of data and predict outcomes – is poised to transform how arbitration is conducted globally. AI’s most significant contribution to arbitration lies in its ability to process and analyse vast amounts of legal documents quickly and accurately. Traditional arbitration involves extensive document review and data analysis, which can be time-consuming and prone to human error. AI tools can expedite this process, ensuring more efficient and accurate handling of cases.

In addition, AI algorithms can predict arbitration outcomes based on historical data, helping

parties make informed decisions about pursuing arbitration or negotiating settlements. By automating repetitive tasks and streamlining processes, AI reduces the need for extensive human resources, thereby lowering the overall cost of arbitration. AI also has the ability to draft legal documents (including arbitration agreements, procedural orders, and awards) by analysing the context and requirements of the case – although qualified human oversight remains a requirement. This automation not only saves time but also ensures consistency and adherence to legal standards.

Global adoption of AI in arbitration

In the USA, AI has been increasingly adopted in arbitration. By way of example, the American Arbitration Association (AAA) has started using AI tools to assist in the management and analysis of arbitration cases. These tools help streamline case management – from filing to final award – by automating administrative tasks and enhancing data analysis capabilities. The UK’s legal sector has also embraced AI, particularly in international arbitration. AI-driven platforms such as Kira Systems and ROSS Intelligence are used to review and analyse contracts, identify relevant case law, and predict outcomes. The result is that the efficiency of legal teams is enhanced and valuable insights are provided for arbitrators. Another example can be found in Singapore, a global arbitration hub that has integrated AI into its arbitration processes through initiatives such as the Singapore International Arbitration Center (SIAC). Additionally, the SIAC has collaborated with tech firms to develop AI systems that assist in case management and document review, improving the speed and accuracy of arbitration proceedings.

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Challenges and legal considerations

The use of AI in arbitration raises concerns about data privacy and security. Arbitrators and parties must guarantee that sensitive information is protected and that AI systems comply with data protection regulations.

AI's decision-making capabilities raise ethical questions about transparency and accountability. It is crucial to ensure that AI systems are used to assist human arbitrators rather than replace them entirely.

Another challenge concerns AI's dependence on quality data. AI systems rely on high-quality data for accurate analysis and predictions. Poor data quality can lead to incorrect outcomes, undermining the arbitration process' integrity.

Application of AI for arbitration in Vietnam

Vietnam's arbitration framework, governed by the Vietnamese Law on Commercial Arbitration of 2010, is relatively young compared with international frameworks. While there have been advancements in arbitration practices, the integration of AI is still in its early stages. However, there is a growing interest in leveraging AI to enhance arbitration efficiency and accuracy. Some Vietnamese legal firms have started experimenting with AI tools for document review and legal research. Although these initiatives are still in the early stages, they demonstrate a willingness to embrace AI's potential in improving legal services, including arbitration.

It should be mentioned that the Vietnamese government and legal institutions have recognised the importance of adopting advanced technologies to enhance the legal framework. Initiatives to modernise legal education and promote technology adoption in the legal sector are currently

being implemented, paving the way for broader AI integration in arbitration.

Overall, generative AI is set to revolutionise arbitration worldwide by enhancing efficiency, accuracy and accessibility. While developed arbitration hubs such as the USA, the UK and Singapore have already integrated AI into their structures, Vietnam is gradually recognising the potential benefits of AI in arbitration. As Vietnam continues to modernise its legal framework and embrace technological advancements, the integration of AI in arbitration is likely to follow, offering significant benefits to the business community and enhancing the entire arbitration process.

Third-party funding

Third-party funding in international arbitration refers to the financial support provided by an external entity, unrelated to the dispute, to a party involved in arbitration. This funding is usually provided in exchange for a share of the monetary award or settlement. Third-party funding has become increasingly prevalent in international arbitration, offering a means for parties to pursue claims without bearing the full financial burden of litigation or arbitration costs.

Global trends and applications

The UK is one of the leading jurisdictions for third-party funding, particularly in London, which is a global arbitration centre. The Association of Litigation Funders (ALF), a self-regulatory body, provides guidelines and a code of conduct for funding parties. The case of *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd* in 2016 highlighted the legitimacy of recovering third-party funding costs as part of arbitration awards in the UK, setting a precedent for other jurisdictions.

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third-party funding is also widely used in the USA, especially in commercial and investor-state arbitrations. Although there are no federal regulations, disclosure of third-party funding arrangements is increasingly becoming a requirement in arbitral proceedings to avoid conflicts of interest. The case *Chevron Corp v Donziger* illustrated the significant role of third-party funding in facilitating access to justice in high-stakes international disputes.

Australia was one of the early adopters of third-party funding, initially in insolvency cases and later expanding into arbitration. The Federal Court of Australia has recognised the legitimacy of third-party funding, ensuring transparency and managing potential conflicts through required disclosures.

As major arbitration centres in Asia, Hong Kong and Singapore have recently revised their legal frameworks to permit third-party funding. In 2017, Hong Kong enacted the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance and Singapore followed with the Civil Law (Amendment) Act 2017. Both jurisdictions require disclosure of third-party funding arrangements to ensure transparency and address potential conflicts of interest.

third-party funding is gaining acceptance in the EU, with jurisdictions such as Germany, France, and the Netherlands witnessing a rise in third-party funding arrangements. The European Parliament is also considering proposals for a unified regulatory framework to ensure consistent standards across EU member states.

Application of third-party funding in Vietnam

Vietnam's arbitration landscape is evolving, with third-party funding gradually being recognised and utilised. The Vietnamese government

and arbitration institutions have been observing global trends and are currently considering incorporating third-party funding into their legal framework. As of 2024, Vietnam does not have specific regulations governing third-party funding in arbitration. However, the VIAC and other arbitration bodies have started acknowledging third-party funding's potential benefits. The Ministry of Justice is also exploring regulatory frameworks that ensure that third-party funding is as transparent and ethical as possible.

Further, there has been a noticeable increase in arbitration cases involving third-party funding in Vietnam. In 2023, approximately 15% of new cases registered with the VIAC were funded by third parties, compared with 10% in 2022. This trend is expected to continue, with projections indicating that cases backed by third-party funding could constitute up to 20% of the VIAC's caseload by the end of 2024. One of the landmark cases in 2023 involved a Vietnamese tech company receiving third-party funding to pursue a USD50 million claim against a multinational corporation. The funding enabled the claimant to hire top-tier legal representation and expert witnesses, significantly improving their chances of success.

In sum, third-party funding allows parties with meritorious claims but limited financial resources to pursue arbitration, facilitating greater access to justice. By transferring the financial risk to the funding parties, claimants can focus on the merits of their case, leading to an increase in case filings as financial barriers are reduced. However, the lack of specific regulations in Vietnam creates uncertainty regarding the legality and enforceability of third-party funding agreements. Ensuring that third-party funding arrangements are disclosed to avoid conflicts of interest is imperative and safeguards are needed to pre-

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vent funding parties from exerting undue influence on the arbitration process.

Arbitration with emergency arbitrators and expedited procedures

Arbitration is often known for its efficiency and time-saving nature compared with traditional litigation. However, many disputes in international arbitration tend to experience delays, particularly at the beginning and end of the arbitration process. In fact, this time lag is the most significant source of dissatisfaction among parties to the arbitration. The 2015 International Arbitration Survey by Queen Mary University of London highlighted that cost and lack of speed are the two major drawbacks of international arbitration. As a result, special mechanisms in arbitration proceedings – such as emergency arbitrators and expedited procedures – have been developed to accelerate dispute resolution.

Global trends and applications

The emergency arbitrator mechanism ensures that interim emergency measures can be implemented promptly before the arbitration tribunal is constituted. This procedure is widely utilised in international arbitration under the rules of various arbitration institutions, including the ICC, the LCIA, the International Center for Dispute Resolution (ICDR), the Stockholm Chamber of Commerce (SCC), the Swiss Arbitration Center (SAC), the SIAC, the Hong Kong International Arbitration Center (HKIAC), and the CIETAC.

To take one example, in Hong Kong the arbitration laws explicitly provide for the application and enforcement of interim measures decided by emergency arbitrators. Although the current Vietnamese Law on Commercial Arbitration allows parties to request interim measures from the courts before the arbitration tribunal is established, this court-supported mechanism

lacks the flexibility and responsiveness of the emergency arbitrator system. There are various reasons that strong support for this mechanism is not provided by Vietnamese courts, which include current workload and the lack of priority for arbitration matters.

Applying for emergency arbitrators and expedited procedures in Vietnam

In order to enhance the rights of disputing parties seeking timely and flexible interim measures and to align Vietnamese arbitration law with international practices, it will likely become necessary to amend Vietnam's Law on Commercial Arbitration to include provisions for emergency arbitrators. Any new provisions will not need to detail the procedures for emergency arbitrators; rather, they are only required to acknowledge the mechanism and delegate the specifics to arbitration centers. The law must also ensure the enforceability of interim measures ordered by emergency arbitrators.

In a similar manner to the emergency arbitrator mechanism, expedited arbitration procedures have been increasingly adopted by global arbitration centres. Expedited procedures are designed to resolve disputes more quickly and at a lower cost than regular arbitration. Several Vietnamese arbitration centers, such as the VIAC, the Mediation Center of Arbitration and Conciliation (MCAC), the Southern Trade Arbitration Center (STAC) and the Ho Chi Minh City Commercial Arbitration Center (TRACENT) have begun to implement expedited procedures, inspired by practices from major international arbitration institutions.

The current Law on Commercial Arbitration in Vietnam does not explicitly address expedited procedures. To provide clearer legal guidance and facilitate the application of expedited

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arbitration, Vietnamese arbitration law should include provisions for these procedures. This legislative support would create a more defined legal framework, allowing arbitration centres to apply expedited procedures effectively.

Developments

Developing Vietnam's commercial arbitration law based on the UNCITRAL Model Law

Vietnam's legislation on commercial arbitration is relatively young compared to international frameworks. In fact, the Vietnamese Law on Commercial Arbitration was enacted on 17 June 2010 and came into effect on 1 January 2011. In contrast, the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law") was adopted in 1985 and amended in 2006. Thus, Vietnam's arbitration law was introduced more than two decades after the UNCITRAL Model Law. To date, Vietnam has not been recognised as a country that follows the UNCITRAL Model Law and this poses a significant barrier to international economic integration, as the country lacks a dispute resolution mechanism aligned with the global legal framework. As such, despite its positive contributions to out-of-court dispute resolution in Vietnam during the past decade, the Vietnamese Law on Commercial Arbitration has revealed several limitations.

First, it must be acknowledged that the UNCITRAL Model Law plays a crucial role in shaping arbitration laws worldwide. According to UNCITRAL's website, 87 countries have adopted or been influenced by the UNCITRAL Model Law when developing their national arbitration laws. While Vietnamese law-makers and experts assert that the Vietnamese Law on Commercial Arbitration has actually referenced the UNCITRAL Model Law and included many provisions drafted accordingly, it has not yet been recog-

nised by UNCITRAL as compliant with the UNCITRAL Model Law.

However, in recent years, the proposal to develop Vietnamese Law on Commercial Arbitration so that it is more in line with the UNCITRAL Model Law has gained support from experts and practitioners. Professor Do Van Dai has noted that "aligning arbitration law with the [UNCITRAL] Model Law is a priority [in order] to meet investors' expectations" and that "revising the law in accordance with the UNCITRAL Model Law to attract arbitration-based dispute resolution is a global trend".

In 2020, the Ministry of Justice conducted a study and published its Report on Assessment, Comparison of the Vietnamese Law and the UNCITRAL Model Law Regarding the Recognition and Enforcement of Arbitration Awards and Recommendations on Applying the UNCITRAL Model Law in Vietnam. This report emphasised: "The [UNCITRAL] Model Law is particularly suitable for countries without a comprehensive arbitration law or those with arbitration laws not fully compatible with international cases. This signifies the harmonisation of arbitration laws. Furthermore, studying the application of the [UNCITRAL] Model Law will help achieve widely accepted international standards across countries with different legal foundations."

The Draft Report on Reviewing the Commercial Arbitration Law (Draft 6) by the Vietnam Lawyers Association also emphasised the need to "improve the institutional framework for commercial arbitration and related laws to ensure arbitration is an effective mechanism for resolving investment, business and commercial disputes" and that "this should align with Vietnam's socio-economic conditions, the UNCITRAL

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Model Law, and international arbitration practices”.

Limiting the annulment and non-recognition of arbitral awards in Vietnam

The efficacy of commercial arbitration in fostering international economic integration and development hinges on a robust enforcement mechanism. To ensure the effectiveness of arbitral awards, it is imperative to minimise the annulment of domestic awards and any arbitrary non-recognition or non-enforcement of foreign arbitral awards.

Under the current Vietnamese Law on Commercial Arbitration, the grounds for annulling domestic arbitral awards are outlined in Article 68(2). These grounds include:

- the absence of a valid arbitration agreement or an invalid arbitration agreement;
- the composition of the arbitral tribunal or the arbitral proceedings not conforming to the parties’ agreement or the Vietnamese Law on Commercial Arbitration;
- the dispute not being within the tribunal’s jurisdiction;
- the award containing matters outside the tribunal’s jurisdiction;
- fraudulent evidence submitted by the parties influencing the award;
- arbitrators accepting bribes or other material benefits affecting the impartiality of the award; and
- the award contravening the fundamental principles of Vietnamese law.

These grounds lack clarity and have been inconsistently applied by the courts – in particular, the ground that the award contravenes the fundamental principles of Vietnamese law. This inconsistency poses significant risks to arbitral

awards and undermines confidence in arbitration among the disputing parties.

It is significant that the recognition and enforcement of foreign arbitral awards in Vietnam are not governed by the Vietnamese Law on Commercial Arbitration but, rather, by the Civil Procedure Code (CPC). Additionally, since 1995, Vietnam has been a party to the New York Convention. Despite this, the enforcement rate of foreign arbitral awards in Vietnam remains low. According to the Ministry of Justice, from 1 January 2012 to 30 September 2019, there were 84 applications for the recognition and enforcement of foreign arbitral awards in Vietnam. Of these applications, 39 were granted recognition and enforcement (47%), 12 were suspended, and 33 were denied recognition and enforcement (39.3%).

The low rate of recognition and enforcement may be attributed to several factors, including unclear and inadequate legal provisions. By way of example, the terminology – whether it refers to “foreign arbitral award”, “decision of a foreign arbitrator” or “foreign arbitration decision” – is not uniformly defined. Further, the grounds for non-recognition and non-enforcement outlined in the CPC are ambiguous, leading to varied interpretations and inconsistent application across different court levels – especially the provision regarding a foreign arbitral award being contrary to the fundamental principles of Vietnamese law.

Given these issues, it is essential to amend the Vietnamese Law on Commercial Arbitration to provide clearer and more specific grounds for the annulment of arbitral awards and to establish a more effective mechanism for protecting and ensuring the enforceability of all arbitral awards. This may include introducing a supervisory

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mechanism for the annulment of arbitral awards by courts. Furthermore, the Vietnamese Law on Commercial Arbitration should clearly define terms such as “foreign arbitral award” and “decision of a foreign arbitrator” and provide specifically worded grounds for recognising or not recognising and enforcing foreign arbitral awards. The CPC can then focus on the procedures for the handling of applications for recognition, non-recognition and enforcement of foreign arbitral awards in Vietnam.

Conclusion

Vietnam’s journey towards establishing a robust framework for international arbitration reflects a broader trend of integrating with the global economy and adhering to international standards. However, the existing legal infrastructure requires significant enhancements in order to fully meet the expectations and demands of international businesses.

The deficiencies in Vietnam’s arbitration laws, particularly regarding the annulment of arbitral awards and the recognition and enforcement of foreign awards, pose substantial risks to the credibility and reliability of arbitration as a dispute resolution method. To address these issues, it is crucial to amend the Vietnamese Law

on Commercial Arbitration to provide clearer and more specific grounds for annulment and to establish a more effective mechanism for protecting and ensuring the enforceability of arbitral awards. Introducing a supervisory mechanism for the annulment process by courts could help further enhance the stability and predictability of arbitration outcomes.

Moreover, clarifying the definitions and criteria related to foreign arbitral awards in the Vietnamese Law on Commercial Arbitration and detailing the procedures for recognition and enforcement in the CPC will help align Vietnam’s arbitration practices with international standards. This will not only boost the confidence of international commercial entities in choosing arbitration in Vietnam but also promote the country as a favourable destination for resolving international disputes.

By refining its legal framework for international arbitration, Vietnam can significantly enhance the efficiency and reliability of its arbitration system. This will facilitate smoother international commercial transactions and investment, reinforcing Vietnam’s position in the global economic landscape and ensuring that it remains competitive and attractive to international business ventures.

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