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# Litigation 2024

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## **Vietnam: Law & Practice and Trends & Developments**

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and Nguyen Ha Thanh Vu

LE & TRAN



# VIETNAM



## Law and Practice

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**LE & TRAN** was founded in 2011 upon the principles of integrity, diligence, and intellectual rigour. After nearly a decade of upholding its core values, its formidable attorneys have worked hard and smart to earn a prestigious position in the legal industry, both nationally and internationally. One of the core practice areas at Le & Tran is civil and business litigation. The firm's strength is based upon its top-tier lawyers with years of knowledge in the field and experience in handling a wide array of disputes ranging

from intellectual property, commercial matters, real estate, employment, technology, and numerous others. In addition, the firm pursues a uniquely multidisciplinary and holistic approach to clients' issues, spotting potential problems that are not specifically litigation-related. With years of experience, Le & Tran's litigation lawyers are highly skilled at preparing clients' cases and recommending the necessary steps to achieve a favourable outcome.

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## 1. General

### 1.1 General Characteristics of the Legal System

Vietnam's legal system is influenced by both French civil law and Soviet legal models due to its historical background. As such, the Vietnamese legal system is based on civil law, and mainly established by statutes. In recent years, the legal system of Vietnam has developed case law, but the number of precedents is quite limited and, currently, the total number is under 100 citable cases.

The legal system follows an inquisitorial model, where judges play an active role in investigating cases and gathering evidence. In the last two decades, Vietnam has undertaken legal reforms to introduce elements of an adversarial system – particularly in commercial matters, as part of its efforts to align with international standards and modernise its legal practices. This evolving approach aims to balance the weight of written submissions and oral arguments within the legal process.

While written submissions are integral to legal proceedings, oral arguments also hold significance, often taking place during hearings and trials.

### 1.2 Court System

The courts form the judicial branch of the Socialist Republic of Vietnam, exercising judicial power. The courts are responsible for the protection of justice, human rights, citizen rights, the socialist regime, the interests of the state, and the legitimate rights and interests of organisations and individuals.

The Vietnamese court system is comprised of the following four levels:

At the top of the hierarchy is the Supreme Court, which acts as the highest court of appeal and is responsible for:

- reviewing legally effective judgments and decisions of courts which are appealed or protested against, under cessation or re-opening procedures;
- supervising the adjudication of other courts, summarising adjudication practices of all courts,
- ensuring the consistent application of the law in adjudication; and
- providing training and continuing education for judges, assessors, and other court officials.

Subordinate to the Supreme Court, there are regional High Courts (3 High Courts for the North, Centre, and South of Vietnam). Each high court handles appeals trials of cases in which first instance judgments or decisions of the provincial and municipal courts within their territorial jurisdiction, which have not yet taken legal effect, are appealed or protested against.

At the provincial and municipal levels, there are courts responsible for their respective regions. The organisational structure is divided into civil, commercial, labour, criminal, family and juvenile, and administrative courts. These intermediate courts hear both first instance cases and appeals from the district-level courts that have not become legally effective and are appealed or protested against. In addition, they also review legally effective judgments and decisions of the district-level courts, and request the Chief Justice of the High Court or Chief Justice of the Supreme Court to reconsider such judgments if there are violations of the law or new facts.

Below provincial and municipal levels are the district-level courts. These courts conduct first instance trials of cases.

Each court above is also divided into specialised courts to address specific types of cases. For instance, economic courts deal with business disputes, while administrative courts handle matters related to decisions of the bureaucracy and government actions. Labour courts focus on labour disputes and employment-related cases, whereas family and juvenile courts deal with issues like divorce, child custody, and inheritance.

Along with the above courts, there are specialised military courts to hear cases related to the military's confidential information or damages to the military.

### 1.3 Court Filings and Proceedings

Vietnam's legal framework reflects a commitment to transparency within its judicial system, ensuring that civil proceedings are held publicly. While this fundamental principle mandates open court hearings, practical constraints may, at times, limit the accessibility of unrelated parties to these proceedings. Although prevailing laws and regulations do not specifically address this issue, these documents are typically only available to the parties directly involved in the legal matter.

However, it is worth noting that the legal system also recognises the significance of preserving sensitive information and individual rights. Therefore, in extraordinary cases involving the protection of state secrets, cultural traditions, minors, or the confidentiality of professional, business, personal, or family matters, the court exercises discretion to decide on the necessity of a private hearing or the non-disclosure

of certain documents based on the reasonable request of the litigants.

Normally, the judgments and decisions not falling within these exceptional categories are made publicly available on court websites or within the [database](#) of the Supreme Court. At the trial, the trial panel will ask the litigants for their consent to the publishing of such decisions/judgments of the court; however, the decision to disclose such decisions/judgments is ultimately decided by the authorities, not the litigants (with the exception of cases regarding sensitive personal or business secrets as detailed above).

This balanced approach aims to maintain transparency while safeguarding the interests and privacy of the parties when required by exceptional circumstances.

### 1.4 Legal Representation in Court

Regarding regulations on legal representatives, Vietnamese law stipulates two cases of legal representation, namely the legal representation of individuals and the legal representation of legal entities.

Legal representatives of individuals include:

- parents for minor children;
- guardians for wards or individuals with cognitive and behavioural difficulties, appointed by the court;
- court-appointed representatives when parents or guardians cannot be identified; and
- court-appointed representatives for individuals with limited civil capacity to act.

Legal representatives of legal entities include:

- individuals appointed by the legal entity according to the charter;

- individuals authorised to represent the entity as prescribed by law; and
- court-appointed representatives during legal proceedings; notably, a legal entity may have multiple legal representatives, each with the right to represent it.

According to the above regulations, these legal representatives will be the natural legal representatives when participating in civil transaction processes as well as participating in and resolving cases in court.

In addition, the Civil Code also provides for authorised representation, meaning that individuals and legal entities can authorise other individuals and legal entities to establish and perform civil transactions. Normally, lawyers can obtain authorisation from their clients to participate in resolving the cases.

However, it should be noted that the rights and obligations of litigants in a case will differ from those of lawyers in a lawsuit. Therefore, once a lawyer has participated in the settlement as an authorised representative, they will not be able to participate in the settlement as a lawyer at the same time.

In addition, the 2015 Civil Procedure Code (CPC) does not allow authorisation to resolve some specific cases, such as divorce cases, in which lawyers are only allowed to participate as advocates.

In any court proceeding, the rights of audience are required to be a licensed attorney-at-law, and lawyers are required to be appointed by the client and registered to the court to participate in the case.

Foreign lawyers do not enjoy automatic rights of audience in Vietnamese courts. However, a foreign lawyer could participate in arbitration as an authorised representative of the involved party or as a lawyer (if a practice certificate in Vietnam is obtained).

## 2. Litigation Funding

### 2.1 Third-Party Litigation Funding

Vietnamese laws are silent on third-party litigation funding, and it is not a common practice in the country. As such, third-party litigation funding is acceptable as long as it complies with the applicable laws of Vietnam, such as the Civil Code and regulations on funding. The funder is not recognised as a party in the litigation proceedings.

### 2.2 Third-Party Funding: Lawsuits

Third-party funding lawsuits are unregulated in Vietnam.

### 2.3 Third-Party Funding for Plaintiff and Defendant

Vietnamese laws are silent on third-party litigation funding. Generally speaking, both parties are considered to have access to third-party funding.

### 2.4 Minimum and Maximum Amounts of Third-Party Funding

There is no regulatory law governing this practice regarding the minimum or maximum amount of third-party funding.

### 2.5 Types of Costs Considered Under Third-Party Funding

As Vietnamese laws are silent on third-party litigation funding, the cost shall be subject to the agreement between the funder and litigants.

## 2.6 Contingency Fees

Contingency fees are treated as a conditional transaction. However, the Law on Lawyers, as well as the Code of Professional Ethics of Lawyers, prohibits the following acts:

- receiving or demanding any additional amount of money, or any other benefits from the client other than the remuneration and costs agreed with the client in the legal service contract; or
- promising or committing to ensuring the outcome of a case beyond the lawyer's ability and condition to perform.

Therefore, when entering into a legal service contract, lawyers must clarify the terms and conditions related to this fee to avoid violations.

In addition, for civil lawsuits, there is no limitation on the fee amount, but in criminal cases, the fee is limited in proportion to the applicable base salary.

## 2.7 Time Limit for Obtaining Third-Party Funding

Vietnamese laws are silent on time limits for obtaining third-party litigation funding.

## 3. Initiating a Lawsuit

### 3.1 Rules on Pre-action Conduct

There are pre-action conduct rules applicable in some types of lawsuits concerning labour relationships or land use rights disputes. In specific instances, parties may be obligated to engage in mediation proceedings prior to initiating legal action in court or conduct pre-action steps as stipulated in agreements between the parties. Failure to fulfil these pre-action requirements can result in the court refusing to initiate the lawsuit.

### 3.2 Statutes of Limitations

The statute of limitation differs depending on the type of dispute:

- civil contract disputes: three years;
- tort disputes: three years;
- commercial contract disputes: two years;
- disputes with a logistics trader: nine months;
- maritime transport disputes: two years;
- inland waterway transport disputes or compensation for damages; loss of goods according to shipping document in maritime transport; or disputes on refund of compensation in excess of liability in maritime transport: one year;
- railway business contract disputes: two years;
- labour disputes: one year (for some types of labour dispute, the pre-action conduct is mediation – the time limitation for requesting the mediation is six months);
- insurance disputes: three years;
- inheritance disputes: three years, ten years or 30 years, depending on the type of dispute;
- disputes related to transfer instruments: three years;
- claims for damage to passengers, luggage or goods in air transport: two years;
- claims for damages of a third person on the ground in connection with air transport: two years;
- personal injury claims: three years; and
- protection, or land use rights disputes: unlimited.

Generally, the statute of limitation commences from the time the plaintiff becomes aware, or reasonably should have become aware, of the violation of their legitimate rights.

### 3.3 Jurisdictional Requirements for a Defendant

In Vietnam, the determination of a court's jurisdiction over a case hinges on several critical factors as outlined in the CPC. These factors include subject matter jurisdiction, which ensures that the court has the authority to adjudicate disputes of a particular nature, and the existence of valid agreements designating alternative dispute resolution forums, like arbitration.

Equally vital is the court's assessment of its jurisdictional competence based on the hierarchical structure of the judicial system and territorial boundaries. When assessing the court hierarchy, it must ascertain whether the case aligns with the jurisdiction of a district court or a provincial court, while territorial jurisdiction traditionally mandates filing the lawsuit in the court associated with the defendant's place of residence, registered office, or business activities, unless the parties have mutually agreed to an alternative jurisdiction.

In real estate disputes, the court in the locality of the property in question typically assumes jurisdiction.

Furthermore, the CPC provides instances where the plaintiff is entitled to exercise the right to select the court's jurisdiction, a prerogative notably exercised in tort cases and specific categories of labour disputes.

### 3.4 Initial Complaint

In Vietnam, the initial document filed to initiate a lawsuit is known as the "petition". This pivotal document is submitted by the plaintiff, marking the formal commencement of legal proceedings against the defendant.

The petition serves as the foundation of the case and includes critical elements such as the identification of the parties involved, a comprehensive account of the facts underpinning the dispute, the legal basis for the claim, and the specific relief sought from the court. It often features supporting documents and evidence substantiating the claims made.

Importantly, parties are generally permitted to amend the initial complaint, albeit subject to certain conditions and restrictions. Amendments must not substantially alter the nature of the case or unduly prolong the proceedings, and court approval is typically required.

The capacity to amend the complaint provides flexibility for parties to adapt their claims or defences as the case evolves, ensuring that the litigation process remains responsive to changing circumstances while adhering to the relevant procedural rules and court guidelines.

### 3.5 Rules of Service

In Vietnam, the rules of service, a fundamental aspect of the civil litigation process, dictate how an adversary is informed of a lawsuit. It is primarily the responsibility of the plaintiff or their legal representative to ensure that the defendant is adequately served with the necessary legal documents.

Several methods of service are available, including personal service, postal service with acknowledgment of receipt, courier services, and, in some cases, electronic means with the defendant's prior consent. Personal service, where documents are handed directly to the defendant or an authorised representative, is commonly preferred to ensure that the defendant is made aware of the lawsuit.

However, when a party needs to sue someone located outside the jurisdiction, specific procedures come into play. Permission from the court is typically required to serve documents abroad, and this process often involves co-ordination with the central authority of Vietnam. International agreements or treaties may also streamline the service of process with certain countries.

It is worth noting that translations of documents may be necessary when serving documents outside of Vietnam, adhering to the language requirements of the foreign jurisdiction. Effective service of process is essential to uphold due process rights and grant the defendant an opportunity to respond to the lawsuit, making it imperative for parties to navigate these procedures diligently and often with legal guidance.

### 3.6 Failure to Respond

The defendant's failure to respond to a lawsuit shall not prevent the court from resolving the matter. To resolve the case, the court will rely on the evidence presented by the litigant and the evidence collected as part of the case file.

When a summons is delivered, and the defendant fails to appear without a valid reason or leaves the courtroom without permission during a hearing, the court may grant a default judgment.

This approach underscores the commitment to due process and the equitable resolution of disputes, even in situations where a defendant is absent from their residence.

### 3.7 Representative or Collective Actions

Currently, the CPC does not regulate the concept of class actions.

However, the law does allow multiple entities or individuals to join cases against one or more entities or individuals regarding one or more legally related matters to be resolved within the same case. Although the law allows multiple individuals to jointly participate in a lawsuit, the essence of the process is that when individuals perceive their rights or property to be violated, they must directly sign the petitions and independently submit them. Afterward, they can delegate authority to a representative to act on behalf of a group of plaintiffs seeking compensation.

During the jurisdictional process, the court may decide to consolidate separate cases for resolution within the same lawsuit when it determines that there is a common defendant, and the scope of the claims is similar. However, whether multiple cases are consolidated or remain separate is entirely at the court's discretion and not based on the plaintiffs' preferences. Even in cases where multiple plaintiffs authorise a single attorney to represent them, each case is typically filed separately, and the court handles them independently.

### 3.8 Requirements for Cost Estimate

Vietnam does not have specific requirements mandating lawyers or legal professionals to provide clients with a cost estimate of potential litigation at the outset of a case. However, ethical and professional standards in the legal profession generally encourage transparency in client communication, including discussions about the potential costs associated with legal services.

## 4. Pre-trial Proceedings

### 4.1 Interim Applications/Motions

In Vietnam, it is possible to make interim applications or motions before the trial or substantive hearing of a claim. These interim applications can cover various issues and are not limited to just case management matters. Parties may seek remedies from the court through interim applications to address specific legal issues, protect their rights, or request provisional measures.

Common types of interim applications in Vietnam may include requests for injunctive relief, temporary orders, preservation of evidence, appointment of experts, and other measures to preserve the status quo or prevent irreparable harm until the main trial or substantive hearing takes place.

The ability to make interim applications allows parties to address urgent matters or seek preliminary remedies before the full adjudication of the case, enhancing the flexibility of the legal process and ensuring that parties have access to interim relief when necessary.

### 4.2 Early Judgment Applications

In general, the litigants cannot obtain a decision on all or parts of the issues before the case is heard and ruled on by the judge. However, to protect their rights, they can make requests to the court through interim applications/motions when they have valid legal grounds for relief.

### 4.3 Dispositive Motions

In common law systems, dispositive motions are requests seeking an order from the trial court dismissing all or a portion of the claims in favour of the moving party without further trial court proceedings.

The equivalent of dispositive motions does not exist in Vietnamese law. However, the court may refuse to accept the case or dismiss it after it has been accepted, if, upon obtaining the case documents, it determines that the requirements for initiating a lawsuit have not been met. For example, if the case was already resolved by a previous judgment/decision, or the plaintiff fails to proceed with the mediation process as required by laws before they bring the case to court.

### 4.4 Requirements for Interested Parties to Join a Lawsuit

In Vietnamese civil lawsuits, interested parties are defined as those who are not directly involved as plaintiffs or defendants, but whose interests and/or obligations are affected by the resolution of the lawsuit. These individuals or entities have the right to participate in the legal proceedings due to their vested interest in the case's outcome.

Where the resolution of a civil lawsuit is related to an interested party but no one requests to include such party in the proceedings, the court is required to include that party in the proceedings in the capacity of an interested party.

### 4.5 Applications for Security for Defendant's Costs

This is not directly applicable under Vietnamese law. However, if the costs are actual and could be determined, the defendant has the right to counterclaim for such costs and apply for an interim injunction in form of freezing the assets of the plaintiff/claimant to ensure their ability to pay the defendant's costs.

## 4.6 Costs of Interim Applications/Motions

The applicant/requester shall pay the advance payment of the costs. Depending on the agreement of the parties (if any) or the outcome of the case, the court will decide the actual amount borne by each party. In general, if the interim applications/motions are improper or unreasonable, the court may award costs against the applicant.

## 4.7 Application/Motion Timeframe

The timeframe for a court to deal with an application/motion in Vietnam varies depending on the complexity of the application/motion and the workload of the court.

In general, the court aims to handle applications or motions efficiently to ensure a timely resolution of the dispute. If a party requests that an application/motion be dealt with on an urgent basis, the court will typically consider the seriousness of the matter and the potential harm that may be caused if the application/motion is not dealt with quickly.

In general, within 48 hours or 72 hours from the time of receiving the request, the judge must consider and issue a decision to apply temporary emergency measures; if the request is not accepted, the judge must notify the requester in writing and clearly state the reason.

## 5. Discovery

### 5.1 Discovery and Civil Cases

In Vietnam, the laws do not provide for a discovery mechanism.

In Vietnam, the involved parties are mainly responsible for producing evidence and sub-

mitting it to the court. Based on the submitted evidence, the court will resolve the case. Should the court find a need for more evidence, it has the discretion to request the parties to produce supplemental evidence.

A party should present evidence to either establish or refute the facts upon which its claims are based. If a party fails to provide evidence or if the evidence provided is insufficient to support the purported claims, the party with the burden of proof will bear the adverse consequences.

Before the trial, the court shall hold meeting(s) monitoring the handover, access and disclosure of evidence between the involved parties.

### 5.2 Discovery and Third Parties

It is possible to obtain evidence from third parties in a legal proceeding who are neither the plaintiff nor defendant. For instance, if for objective reasons the parties are unable to collect certain evidence on their own, they may request that the court assist in the collection of such evidence. The court may then issue an order to mandate the production of such evidence from a third party.

In addition, the court has the discretion to collect evidence from third parties (including relevant entities and individuals) on its own initiative. Failure to comply with such order may result in administrative or criminal sanctions.

### 5.3 Discovery in This Jurisdiction

Vietnamese law is silent on discovery mechanisms.

### 5.4 Alternatives to Discovery Mechanisms

In Vietnamese civil cases, the emphasis is on the parties presenting their evidence during the trial,

rather than extensive pre-trial discovery. Parties are expected to prepare and produce their evidence, including documents and testimonies of witnesses, as part of the trial procedure. There is typically no formal process for deposing witnesses or extensive pre-trial document production.

The responsibility for gathering and presenting evidence primarily lies with the litigants themselves. They are expected to submit the necessary evidence and documents in support of their claims or defences to the court during the trial.

However, in some cases, the court's involvement in the collection of evidence is available upon the parties' request, if they are able to show that best efforts were made to collect evidence but failed to do so. This request must identify the issues that need to be proven by the evidence, the relevant evidence to be gathered, and the reasons why the requesting party cannot gather the evidence in question. The court will then decide whether to formally require the individuals or organisations with possession of, or control over, the evidence in question, to provide it to the court.

## 5.5 Legal Privilege

Vietnamese law does not recognise the concept of legal privilege (attorney-client or work product protection) in the same way that common law jurisdictions do. However, the Law on Lawyers does impose a duty of confidentiality on lawyers. This means that lawyers are prohibited from disclosing information that they obtain in the performance of their professional responsibilities, except where the client agrees in writing to such disclosure or as stipulated by law.

The Law on Lawyers does not distinguish between external and in-house counsel. There-

fore, both external and in-house counsel have a duty of confidentiality concerning their clients.

There are a few exceptions to the duty of confidentiality. For example, lawyers are required to disclose information that is necessary to prevent the commission of a crime or to comply with a court order.

## 5.6 Rules Disallowing Disclosure of a Document

The law is silent on situations where a party is allowed to withhold a specific document during the proceedings. In practice, even if the evidence contains state secrets, trade secrets, or private information, it must be presented in court. The court shall have its own discretion to allow a party to not disclose confidential information as specified under the laws.

# 6. Injunctive Relief

## 6.1 Circumstances of Injunctive Relief

Vietnam has provisional emergency measures (roughly akin to temporary injunctive relief in certain other jurisdictions). Provisional emergency measures are where courts can temporarily address the urgent requests of the involved parties to preserve the status quo or prevent irreparable harm.

The court may grant the following injunctive relief measures:

- distraining the property in dispute;
- prohibiting any transfer of property rights concerning the property in dispute;
- prohibiting any change in the status quo of the property in dispute;

- permitting the harvest and sale of subsidiary food crops or of other products or commodities;
- freezing accounts at banks, other credit institutions, and the State Treasury and/or freezing property at places of bailment;
- prohibiting a party to the litigation from conducting or compelling a party to conduct certain acts; or
- other injunctive relief measures as stipulated by law.

## 6.2 Arrangements for Obtaining Urgent Injunctive Relief

In Vietnam, provisional emergency measures can be obtained relatively quickly, especially in urgent cases. If the court receives the dossier for the application of provisional emergency measures before the trial session is opened, the judge assigned to resolve the case shall consider the application within three working days from the day the applications are received. If the application is submitted at trial, the trial panels shall consider such motion at the time of adjudication.

## 6.3 Availability of Injunctive Relief on an Ex Parte Basis

Provisional emergency measures can be obtained on an ex parte basis – ie, without notice to the defendant and without the defendant being present.

## 6.4 Liability for Damages for the Applicant

In Vietnam, an applicant for a provisional emergency measure can be held liable for damage suffered by the respondent if the respondent later successfully discharges the provisional emergency measures. This is because the applicant must ensure that they have a reasonable basis for applying for the provisional emergency measures, and that they have made all reason-

able attempts to notify the defendant of the application.

Some injunctive measures, such as freezing or distraining assets, require the applicant to submit a security deposit to the court before the injunction is granted. The amount of the security deposit must be equal to the value of the property subject to the injunction. It is designed to protect the interests of the person subjected to the injunction order, and to prevent the abuse of injunctive measures by applicants. The security deposit is deposited in an escrow account at a bank within the time limit set by the court.

## 6.5 Respondent's Worldwide Assets and Injunctive Relief

In Vietnam, injunctive relief is typically granted within the territorial jurisdiction of the Vietnamese courts. This means that any injunctive relief issued by Vietnamese courts generally applies to assets and activities solely within Vietnam. Parties seeking to freeze or restrain the worldwide assets of a defendant would need to pursue legal action in the relevant foreign jurisdictions.

## 6.6 Third Parties and Injunctive Relief

The CPC allows the court to grant provisional emergency measures against any person who is not a party in a legal dispute, but whose actions or conduct are directly connected to the subject matter of the dispute and have a significant impact on the rights or interests of the parties involved.

## 6.7 Consequences of a Respondent's Non-compliance

If a respondent fails to comply with the terms of an injunction in Vietnam, they may be found in contempt of court. Contempt of court is a serious offence and it can result in a fine, imprisonment, or both.

## 7. Trials and Hearings

### 7.1 Trial Proceedings

Trials in Vietnam are typically conducted in an oral and adversarial manner. This means that the parties to the case have the opportunity to present their arguments and evidence to the court through oral argument and witness/expert examination.

The trial process begins with the opening statements of the parties. The plaintiff's attorney will present the plaintiff's case, the defendant's attorney will then present the defendant's case, and the interested parties' attorney may present an opinion on the case.

After the opening statements, the parties will present their evidence. This may include witness testimony, expert testimony, and documentary evidence. The parties will also have the opportunity to cross-examine each other's evidence and witnesses.

The court and the procuracy will then cross-examine the litigants.

After the parties have presented their evidence, the attorneys will give their closing arguments. The plaintiff's attorney will summarise the plaintiff's case and argue for a favourable judgment. Afterwards, the defendant's attorney summarises the defendant's case and argues for a favourable judgment.

Then, the procuracy will give their opinion on the resolution of the case.

The court will then deliberate on the case and issue a judgment. The judgment will be based on the evidence presented at trial and the applicable law.

If a party is dissatisfied with the judgment, they may have the right to appeal to a higher court. The appeals process includes a review of the case record, written arguments, and, in some cases, oral arguments at the appellate level.

### 7.2 Case Management Hearings

Shorter hearings in Vietnam are designed to address specific issues efficiently and effectively, allowing the legal process to move forward while ensuring that parties have an opportunity to present their arguments and seek relief when necessary.

The court will typically begin by hearing from the attorneys for the parties. The attorneys will present their arguments for or against a motion or application. The court may then ask questions of the attorneys.

If the court determines that a hearing is necessary, the parties will be allowed to present witnesses and evidence. However, the court may limit the scope of the hearing to the specific issue that is being considered.

After the parties have presented their evidence, the attorneys will have an opportunity to make closing arguments. The court will then deliberate on the motion or application and issue a ruling.

Case management hearings are typically held before more complex trials or hearings to help the court manage the timetable leading up to the hearing or trial. These hearings can be held at any time during the pre-trial process, but they are most common in cases where there are many complex issues to be addressed.

The purpose of a case management hearing is to:

- identify the key issues in the case;
- set a timetable for the discovery process;
- schedule pre-trial conferences and hearings; and
- address any other issues that may arise before the trial or hearing.

Case management hearings are an important tool for the court to help ensure that complex trials and hearings are conducted efficiently and fairly. Here are some specific examples of circumstances in which the court may hold a case management hearing:

- the case involves many complex issues;
- the parties have a history of difficulty communicating with each other;
- the parties have different expectations for the trial or hearing; or
- the case is expected to be lengthy and expensive.

### 7.3 Jury Trials in Civil Cases

There are no jury trials in Vietnam. However, at the first instance trial, there are People's Assessors who are elected by the People's Council upon the recommendation of the Vietnam Fatherland Front Central Committee of the same level, to participate in hearing the case.

The trial panel in a first instance trial consists of two People's Assessors and one judge. When voting on decisions regarding the settlement of civil lawsuits, the vote of the People's Assessors has equal weight to that of the judge.

### 7.4 Rules That Govern Admission of Evidence

In Vietnam, the admission of evidence at trial is governed by a set of rules and procedures designed to ensure fairness and the presentation of reliable evidence.

- **Objectivity:** Evidence is only admissible if it is factual.
- **Relevancy:** Evidence is only admissible if it is relevant to the issues at trial.
- **Legality:** Evidence is only admissible in the forms prescribed by the law, and only if duly submitted to the court, including:
  - (a) readable, audible or visible material, and electronic data;
  - (b) exhibits;
  - (c) involved parties' testimonies;
  - (d) witness testimonies;
  - (e) expert conclusions;
  - (f) on-site appraisal minutes;
  - (g) property evaluation and price appraisal results;
  - (h) written records of legal facts or acts that are formulated by official functionaries;
  - (i) notarised/authenticated documents.

Normally, only the litigants or their legal/authorised representatives and lawyers can access the evidence in the court's case files. Copying and photocopying documents must be approved by the court.

### 7.5 Expert Testimony

The CPC does not provide specifically for expert testimony at the trial.

However, the CPC recognises expert appraisals as evidence. At the request of one party, or at the discretion of the court, the court may appoint an appraiser. If a party contests the appraiser's opinion or the court deems it necessary, the appraiser is required to testify in court.

For example, if the expert testimony is incomplete, unclear or violates the law, at the request of a litigant or when deemed necessary, the court will request the expert to explain the assessment conclusion and summon the expert to the trial

or session to directly present testimony or evidence to support their conclusion.

## 7.6 Extent to Which Hearings Are Open to the Public

The Vietnamese CPC states that hearings and transcripts of hearings are open to the public unless the court orders otherwise. The court may order a hearing to be closed to the public if it determines that there is a compelling reason to do so, such as:

- to protect the privacy of a child or other vulnerable person;
- to protect the confidentiality of a trade secret or other confidential information; or
- cases involving state secrets.

## 7.7 Level of Intervention by a Judge

The level of intervention by a judge during a hearing or trial in Vietnam varies depending on the judge and the case. Generally, the judge retains complete control over the proceedings, and the litigants are only permitted to speak at the hearing if they are allowed.

In some cases, the judge may issue a judgment or make decisions at the hearing. This is more likely to happen in cases where the evidence is clear and there are no complex legal issues to be resolved. For example, the judge may issue a judgment at the hearing in a case where:

- the defendant admits liability;
- the parties have reached a settlement agreement; or
- the court has all of the evidence it needs to make a decision.

In other cases, the judge may reserve judgment for a later date. This is more likely to happen in cases where the evidence is complex or there

are difficult legal issues to be resolved. For example, the judge may reserve judgment for a later date in a case where:

- the parties have not reached a settlement agreement;
- the court needs to obtain additional evidence; or
- the court needs to consider complex legal issues.

## 7.8 General Timeframes for Proceedings

Under Vietnamese law, the timeframe for proceedings from the commencement of claim through to trial is four months.

However, in reality, the timeframe for proceedings from commencement of the claim to trial, and the typical duration of trials for commercial disputes in Vietnam, can vary depending on the complexity of the case and the workload of the court. Accordingly, the process from filing a claim to the issuance of a first instance judgment in a commercial dispute can typically take anywhere from several months to a few years.

# 8. Settlement

## 8.1 Court Approval

The parties to a lawsuit have the right to reach a settlement without court approval. In these cases, the parties will withdraw their claims against each other.

If the parties desire to reach a settlement agreement during the proceedings with the court's approval, at the request of the parties the court will issue the minutes of a successful mediation and decisions to recognise the involved parties' agreement. The decisions to recognise the involved parties' agreements shall take effect

immediately after they are issued and are not eligible for appeal under the appellate procedures.

## 8.2 Settlement of Lawsuits and Confidentiality

### Out-of-court Settlement

In the event of an out-of-court settlement, which is usually followed by the withdrawal of the lawsuit, only the withdrawal is made public. Consequently, an out-of-court settlement can remain confidential.

### Judicial Settlement

As set forth in **1.3 court Filings and Proceedings**, in Vietnam, except for cases regarding confidential information (ie, regarding state secrets, cultural traditions, minors, or professional, business, personal, or family matters), judgments and decisions may be publicly available via court-related websites. As such, the content of the settlement is likely to be made public, with the details of the involved parties being encrypted.

## 8.3 Enforcement of Settlement Agreements

For out-of-court settlement agreements, such as when the litigant withdraws the case, the enforcement agency cannot directly enforce the settlement agreement. In the event of a violation, the party must file a claim for breach of contract with the appropriate court to obtain a judgment that is enforceable.

However, judicial settlement agreements shall have the same effect as a final and binding judgment. If a party fails to fulfill their obligations under the settlement agreement, the other party may initiate legal action to enforce the agreement, namely requesting the enforcement agency to enforce the judgment/decision.

## 8.4 Setting Aside Settlement Agreements Out-of-court Settlement Agreements

These are binding agreements between the parties, which can only be revoked if one party requests the court to nullify such settlement agreement. In such cases, parties can invoke a justification provided by the Civil Code, such as lack of civil capacity, misunderstanding, fraud, or coercion.

### Judicial Settlement Agreements

They can only be set aside according to the cassation procedures and only if there are grounds to believe that such agreement was reached as a result of mistake, deception, intimidation, force or if it contravenes the law or social ethics.

# 9. Damages and Judgment

## 9.1 Awards Available to the Successful Litigant

The forms of award available to a successful litigant in Vietnam vary depending on the type of case and the relief sought by the litigant. However, some of the most common forms of award include:

- **Damages:** Damages are a monetary award that is intended to compensate a litigant for the losses that they have suffered as a result of the defendant's wrongful conduct. Damages can be awarded for both economic losses (such as lost profits or medical expenses) and non-economic losses (such as pain and suffering or emotional distress).
- **Specific performance:** Specific performance is an order that requires the defendant to perform a specific act, such as returning property to the plaintiff or performing a contract. Specific performance is typically only awarded in

cases where monetary damages would be an inadequate remedy.

- **Injunction:** An injunction is an order that prohibits the defendant from engaging in certain conduct. Injunctions are typically awarded in cases where the defendant's conduct is causing or is likely to cause harm to the plaintiff.
- **Declaratory relief:** Declaratory relief is an order that declares the rights of the parties or the legal relationship between the parties. Declaratory relief is typically awarded in cases where there is a dispute about the parties' rights or obligations.
- **Costs:** Costs are the expenses that a litigant incurs in bringing or defending a lawsuit. Costs can include filing fees, legal fees, and expert witness fees. The losing party may be ordered to pay all of the successful party's court costs.

In addition to these common forms of award, attorney fees may be awarded to the prevailing party if there is a prior agreement, or the dispute relates to intellectual property rights.

## 9.2 Rules Regarding Damages

There are a number of key rules regarding damages:

- A causal relationship must exist between the acts and the damage that occurs.
- Actual damage must be compensated in full and in a timely manner.
- The aggrieved party must adopt necessary and reasonable measures to prevent or mitigate its damages.
- Damages are paid in correspondence to the degree of fault. The defendant may be discharged from the duty to compensate should the damage be entirely due to the fault of the aggrieved party or due to a force majeure event.

Vietnamese law does not have a concept of punitive damages for compensation, but it may impose a "penalty" as a punishment on the breaching party in a contractual relationship. For a civil contract, the party may set an unlimited penalty but in some cases the court will often limit the penalty to a reasonable amount. For a commercial contract dispute, the amount of the penalty shall be agreed upon between the parties but shall not exceed 8% of the value of the breached portion of the contract (or 12% of the value of the breached portion of a construction contract in certain circumstances).

## 9.3 Pre-judgment and Post-judgment Interest

### Pre-judgment Interest

The prevailing party may request and be awarded pre-judgment interest, with the interest rate based on the parties' agreements if available. Parties may agree on the applicable interest but it should not be higher than 20%/year. In case there is no agreement on the applicable interest, the claiming party may apply interest at 10%/year.

### Post-judgment Interest

After the first instance judgment is rendered, the interest shall continue to be calculated from the next day until the actual payment day if so requested by the prevailing party. In practice, the involved parties should clearly request this amount so that such claim will be included in the judgment to ensure enforceability at the enforcement stage.

## 9.4 Enforcement Mechanisms of a Domestic Judgment

The prevailing party may request that the enforcement agency enforce the judgment. The judgment debtor will then receive a notice with a compliance deadline from the enforcement

agency. The enforcement agency may seize, suspend, transfer, or sell the judgment debtor's property if such party fails to comply with the obligations specified in the notice.

Additionally, if a judgment debtor refuses to perform the acts specified in the judgment, the enforcement agency may compel the judgment debtor to perform the act and the judgment debtor will be responsible for the costs associated with the compulsion.

In addition, the enforcement agency may issue orders limiting the judgment debtor's spending to the amount necessary to maintain a reasonable standard of living. If the judgment debtor evades enforcement on purpose, they may face judicial detention or even criminal liability.

## 9.5 Enforcement of a Judgment From a Foreign Country

To have a foreign judgment recognised and enforced in Vietnam, a letter of request must be sent to the Ministry of Justice of Vietnam (MOJ) or to the competent court, depending on the requirements of the international treaty (to which both Vietnam and the country that renders the judgments are members). In the case of submitting the dossiers to the MOJ, the MOJ will forward the letter, along with any attached documents, to a competent court within seven days. The court will then notify the procuracy at the same level within three working days. Within four months, the court must decide whether to reject the request for recognition or open a court meeting to consider the case. If necessary, this period may be extended by two months for further clarification from the involved parties.

The court will not review the merits of the foreign judgment, and will grant the execution judgment if:

- the foreign judgment is final and conclusive;
- the jurisdiction of the foreign court is recognised by laws, regulations, conventions, or treaties;
- the party that has lost the case has been properly served or has appeared without being properly served;
- the content of the judgment and the litigation proceedings do not violate public policy; and
- there is a guarantee of reciprocity.

Once the foreign judgment has been recognised and accepted to be enforced by the court, it is as final and binding as a domestic judgment.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigation

Any litigants dissatisfied with the decision of the court of first instance can bring an appeal to the court of appeals. The appellate court is an immediate court at a higher level than the first instance court in the hierarchy of the court system. In Vietnam, the first instance court can only be the district or provincial level court; meaning, the appellate court will be the provincial level court or the high court, respectively.

Within three working days from the date of acceptance, the appellate court must send a written notice of acceptance for settlement of the case to the litigants, authorities, organisations, individuals initiating the lawsuit, and the equivalent-level procuracy.

### 10.2 Rules Concerning Appeals of Judgments

Appeals of judgments in Vietnam are governed by a number of rules:

- Appeals must be filed within a certain period after the decision of the lower court. This period is typically 15 days.
- Appeals must be filed in writing and must include specific grounds for appeal. The grounds for appeal must be based on errors of law or fact in the decision of the lower court.
- The appellate court will review the decision of the lower court based on the written submissions of the parties and on the evidence that was presented in the lower court.
- The appellate court may uphold the decision of the lower court, overturn the decision of the lower court, or order a new trial.

An appeal to a higher court in Vietnam may be granted if the lower court made an error of law, fact, or procedure. Errors of law can include misinterpreting the law or applying the law incorrectly to the facts of the case. Errors of fact can include finding the facts incorrectly or weighing the evidence incorrectly. Errors of procedure can include failing to give the parties a fair hearing or failing to consider all of the evidence.

### 10.3 Procedure for Taking an Appeal

According to Article 273 of the CPC, the time limit for appealing against the first instance judgment is 15 days from the date of judgment pronouncement; for a party who was absent from the court hearing or was absent at the time of the pronouncement of the judgment for a plausible reason, the time limit for filing an appeal shall be counted from the date the judgment is handed over to him/her or publicly displayed.

Therefore, to appeal a first instance judgment, the appellant must file an appeal within 15 days of the date of the date of judgment pronouncement. In the appeal, the appellant should specify the grounds for the appeal, outlining the errors

or issues in the court's judgment that warrant review.

After receiving the appeal application, the appellate court must examine its validity as provided for by the CPC. Within three working days from the date of acceptance, the appellate court must send a written notice of acceptance for settlement of the case to the litigants, the authorities, the organisations, the individuals initiating lawsuits, and the equivalent-level procuracy regarding the acceptance for settlement of the case. The appellate court may uphold the decision of the lower court, overturn the decision of the lower court, or order a new trial.

The triggering event for the appellate procedure is the actual receipt of the written judgment by the appellant. Once the appellant receives the written judgment, the clock starts ticking, and they must file an appeal within the prescribed timeframe if they wish to challenge the first instance judgment.

### 10.4 Issues Considered by the Appeal Court at an Appeal

The appellate court may consider a variety of issues in an appeal, including:

- whether the lower court made an error of law (this could include an error in interpreting the law or applying the law to the facts of the case);
- whether the lower court made an error of fact (this could include an error in finding the facts of the case or in weighing the evidence);
- whether the lower court failed to follow proper procedures (this could include failing to give the parties a fair hearing or failing to consider all of the evidence); and
- whether the lower court's decision is fair and reasonable (this could include whether the

lower court's decision is consistent with other similar cases or whether the lower court's decision is in the best interests of the parties involved.

The appellate court may also consider any other issues that are relevant to the case, such as new evidence that has been discovered since the first instance judgment was issued.

The appellate court in Vietnam may also order a rehearing of the case, or it may simply review the first instance decision. The decision of whether to order a re-hearing or simply review the decision is at the discretion of the appellate court.

If the appellate court orders a rehearing, the case will be retried from the beginning. The appellate court may order a rehearing if it believes that the lower court made a serious error in the first trial. If the appellate court simply reviews the first instance decision, it will review the evidence and the findings of fact and law made by the lower court. The appellate court may uphold the decision of the lower court, overturn the decision of the lower court, or order a new trial.

## 10.5 Court-Imposed Conditions on Granting an Appeal

The court in Vietnam can impose conditions on granting an appeal. These conditions may include:

- **Payment of court fees:** The court may require the appellant to pay any outstanding court fees or costs associated with the first instance proceedings before the appeal is allowed to proceed. Failure to pay these fees may result in the appeal being dismissed.
- **Compliance with procedural requirements:** The appellant may be required to comply with specific procedural requirements, such as

submitting a complete and properly formatted appeal within the prescribed timeframe. Failure to meet these requirements may lead to the rejection of the appeal.

Failure to comply with these conditions may result in the appeal being dismissed.

## 10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal in Vietnam, the appellate court possesses several powers and options, depending on the findings and the circumstances of the case:

- **Uphold the decision of the lower court:** The appellate court may uphold the decision of the lower court if it finds that the lower court did not make any errors of law or fact.
- **Amend the decision of the lower court:** The appellate court may amend the decision of the lower court if it finds that it can amend the first instance decision without needing to order a new trial.
- **Overturn the decision of the lower court:** The appellate court may overturn the decision of the lower court if it finds that the lower court made an error of law or fact.
- **Order a new trial:** The appellate court may order a new trial if it finds that the lower court made a serious error in the first trial.

The appellate court may also render other orders, such as:

- **Granting or denying relief to the parties:** The appellate court may grant or deny relief to the parties, such as awarding damages or ordering specific performance.
- **Imposing costs on the parties:** The appellate court may impose costs on the parties, such

as the costs of litigation or the costs of expert witnesses.

## 11. Costs

### 11.1 Responsibility for Paying the Costs of Litigation

In Vietnam, the responsibility for paying the costs of litigation, including court fees and expenses, primarily falls upon the losing party in a legal proceeding. Court fees, which are determined based on the value of the claim, are typically borne by the party initiating the lawsuit, but if the plaintiff prevails, these fees may be recoverable from the defendant. Additionally, expenses related to the litigation, such as witness fees and travel expenses, may also be recoverable by the prevailing party.

However, the recovery of attorney's fees is not automatic in Vietnam. Generally, each party is responsible for its own attorney's fees, unless there are specific legal provisions allowing for the recovery of such fees, as is the case in some intellectual property disputes.

Parties do have the option to challenge the amount of costs awarded by the court if they believe it is insufficient or unjust. The court will revise its decision if it makes errors in distributing court costs between the parties.

### 11.2 Factors Considered When Awarding Costs

In general, the losing party will bear the court cost. In some situations, if the losing parties are elderly, employees, or a specified person under the law, court costs may be waived.

### 11.3 Interest Awarded on Costs

The laws are silent concerning the interest on court costs. However, the prevailing party may specifically request the court to impose interest on court costs.

## 12. Alternative Dispute Resolution (ADR)

### 12.1 Views of ADR Within the Country

Alternative dispute resolution (ADR) is increasingly being used in Vietnam as a way to resolve commercial disputes. ADR methods such as mediation and arbitration play a valuable role in dispute resolution by offering parties more flexible, efficient, and collaborative avenues to resolve their conflicts.

Arbitration is the most popular ADR, particularly in international commercial disputes. Vietnam has several arbitration centres, including the Vietnam International Arbitration Center (VIAC), which provides a platform for resolving disputes through arbitration.

Mediation is also a frequently selected ADR method in Vietnam, commonly used in both civil and commercial disputes. Many Vietnamese businesses and organisations have recognised its advantages and have incorporated mediation clauses into their contracts.

### 12.2 ADR Within the Legal System

The Vietnamese legal system promotes ADR in several ways.

First, the Law on Commercial Arbitration (LCA) provides a comprehensive framework for the use of arbitration in Vietnam. In principle, the parties may freely choose ADR as their dispute resolution method.

Second, the Vietnamese government has issued a number of decrees and circulars that promote the use of ADR. For example, Decree No 22/2017/ND-CP provides a framework for the use of mediation in Vietnam, as well as the regulations for establishing mediation centres.

ADR is completely voluntary, and no sanction will be imposed if a party refuses to resolve their case by ADR.

### 12.3 ADR Institutions

In Vietnam, institutions offering and promoting Alternative Dispute Resolution (ADR) are relatively well-organised and have made significant strides in recent years. Here is an overview of the organisation and functioning of these institutions:

- The Vietnam Mediation Center (VMC): The VMC is a non-profit organisation that is responsible for promoting and supporting the use of mediation in Vietnam. The VMC provides mediation services to businesses and individuals, and it also offers training and support to ADR practitioners.
- The Vietnam Arbitration Center (VAC): The VAC is a non-profit organisation that provides arbitration services to businesses and individuals. The VAC also offers training and support to ADR practitioners.
- The Vietnam International Arbitration Center (VIAC): The VIAC is a non-profit organisation that provides international arbitration services to businesses and individuals. The VIAC also offers training and support to ADR practitioners.

## 13. Arbitration

### 13.1 Laws Regarding the Conduct of Arbitration

The law that governs the conduct of arbitrations and the recognition and enforcement of arbitral awards in Vietnamese courts is the 2010 Law on Commercial Arbitration (LCA). The LCA provides a comprehensive framework for commercial arbitration in Vietnam, including rules on the composition of arbitral tribunals, the conduct of arbitral proceedings, and the recognition and enforcement of arbitral awards. For more detailed instructions, Resolution No 01/2014/NQ-HDTP of the Council of Judges of the Supreme Court provides further guidelines for the LCA regarding the conduct of arbitrations.

In addition, the enforcement of arbitral awards is subject to the provisions of the Vietnamese laws on civil judgment enforcement.

The recognition and enforcement of foreign arbitral awards in Vietnam is currently governed by the CPC.

### 13.2 Subject Matters Not Referred to Arbitration

Article 2 of the LCA sets forth the subject matters that fall under the jurisdiction of arbitration, which are:

- disputes between parties that arise from commercial activities;
- disputes between parties, in which at least one party conducts commercial activities; and
- other disputes subject to arbitration by law.

Based on the above regulation, disputes that are not prescribed above may not be referred to arbitration in Vietnam. Generally speaking, non-commercial disputes are not subject to arbitra-

tion, which may include: labour, family, marriage, inheritance, criminal, administrative, and environmental matters.

### 13.3 Circumstances to Challenge an Arbitral Award

Parties to an arbitration agreement can challenge an arbitral award in Vietnamese courts on a limited number of grounds. These grounds are set out in Article 68.2 of the LCA, including:

- the arbitration agreement is invalid or unenforceable (this may be because the agreement was not in writing, or because it was entered into under duress or fraud);
- the arbitral tribunal was not properly constituted or did not follow the applicable procedural rules (this may include cases where the arbitrators were biased or where the tribunal failed to give the parties a fair hearing);
- the evidence provided by a party on which the arbitral tribunal has relied on to issue the award was falsified;
- an arbitrator has received money, assets, or other material benefits from a party, affecting the objectivity and impartiality of the award; or
- the award contravenes the fundamental principles of Vietnamese law.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

A domestic arbitral award, if not overturned by the competent court, may be enforced by applying for enforcement to the enforcement agency, similar to a domestic court's judgment.

Foreign arbitration awards must additionally go through the procedures for recognition and enforcement of a foreign arbitral award at the competent court before going to the enforcement agency. The application must be accom-

panied by a copy of the arbitration award, a copy of the arbitration agreement, and a certificate of authenticity of the award if it is in a foreign language. The court will review the application and the supporting documents and may refuse to enforce the award if it finds that the award is not final or binding, the arbitration agreement is invalid or unenforceable, the party seeking enforcement failed to comply with the applicable procedural rules, or the award violates public policy in Vietnam.

## 14. Outlook

### 14.1 Proposals for Dispute Resolution Reform

In general, the roadmap for reform of dispute resolution in Vietnam, from now to 2030, are:

- clarifying and supplementing the legal system regarding the judiciary, organisation of courts, judges, and assessors;
- clarifying and supplementing the tasks, competence, and organisation of the judicial apparatus;
- renewing the task of promulgating case law and guiding the uniform application of law;
- building an open and transparent trial regime;
- improving the quality of human resources, especially judges;
- ensuring the minimum necessary quantity and appropriate structure of courts;
- obtaining facilities and resources to build modern and effective courts;
- building e-courts, and developing the methods for electronic proceedings; and
- strengthening international co-operation.

## Trends and Developments

### Contributed by:

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**LE & TRAN**

**LE & TRAN** was founded in 2011 upon the principles of integrity, diligence, and intellectual rigour. After nearly a decade of upholding its core values, its formidable attorneys have worked hard and smart to earn a prestigious position in the legal industry, both nationally and internationally. One of the core practice areas at Le & Tran is civil and business litigation. The firm's strength is based upon its top-tier lawyers with years of knowledge in the field and experience in handling a wide array of disputes ranging

from intellectual property, commercial matters, real estate, employment, technology, and numerous others. In addition, the firm pursues a uniquely multidisciplinary and holistic approach to clients' issues, spotting potential problems that are not specifically litigation-related. With years of experience, Le & Tran's litigation lawyers are highly skilled at preparing clients' cases and recommending the necessary steps to achieve a favourable outcome.

## Authors



**Stephen Le Hoang Chuong** is a senior trial lawyer and founder of Le & Tran. He is highly respected as one of the top-ranked litigation lawyers in Vietnam. Stephen's mindset centres

around critical thinking and business ethics, which form the core of defending his clients' interests. From there, he builds an undefeatable strategy and legal grounds to realise a winning verdict. With years of extensive experience, Stephen has an impressive litigation, arbitration, and criminal defence background, as well as a deep understanding of how Vietnam's legal system, courts, and authorities operate.



**Benjamin (Hong) Truong** is a senior lawyer and his practices are commercial, corporate, and labour disputes. Benjamin's current main practice includes commercial dispute settlement,

litigation in court and arbitration, judgment/arbitral award enforcement, and advisory matters. His practice has broadened to include the areas of contracts, corporations, investment, commerce, bankruptcy, construction, real estate, intellectual property, labour, and family law. With the goal of achieving satisfying results and minimising risks, Benjamin ensures his practice is grounded in integrity, legitimacy, and professionalism.

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**Nguyen Ha Thanh Vu (Victor)** is an attorney at Le & Tran who has significant experience in advising and representing various individuals and corporate clients in litigation,

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## Legal Issues Regarding Cryptocurrency in Vietnam

A review of the current legal regulations shows that Vietnamese law does not have a clear and complete legal framework to govern cryptocurrency and there remain many legal issues related to this area of law that have yet to be resolved. At present, it can be said that cryptocurrency is situated in the Vietnamese “legal gap”, as it is neither banned nor recognised by the law.

Currently, there are four fields of law in Vietnam related to cryptocurrency, as outlined below.

### Monetary and Banking Law

Cryptocurrency is not a lawful means of payment in Vietnam. The issuance, supply, and use of cryptocurrency as a means of payment is a prohibited act, according to Article 1.2 of Decree No 80/2016/ND-CP dated 1 July 2016, which amended and supplemented parts of Decree No 101/2012/ND-CP dated 22 November 2012, concerning non-cash payments.

Further, issuing, supplying, and using illegal means of payment will be subject to administrative penalties, ranging from VND50,000,000 to VND100,000,000 according to Article 26.6.d of Decree No 88/2019/ND-CP dated 14 November 2019, related to administrative sanctions for violations in the field of monetary and banking.

### Civil Law

Cryptocurrency is not currently considered an asset/property in Vietnam. Article 105.1 of the Civil Code defines property as follows: property includes objects, money, valuable papers, and property rights. According to this article and related provisions, property only exists in four forms:

- An object is a part of the physical world that exists in solid, liquid, or gas form, and has unique features and characteristics that humans can manage, exploit, and use such as gold, silver, vehicles, land, and houses.
- Money is a means of payment issued by and protected by the state to evaluate, exchange, and pay for other types of property. Money includes domestic and foreign currency.
- Valuable papers are evidence confirming a debt repayment obligation between an organisation licensed to issue valuable papers and the owner of the valuable papers within a certain period of time, including conditions for payment of interest and other conditions. Valuable papers include government bonds, corporate bonds, stocks, bills of exchange, promissory notes, and cheques.
- Property rights are rights that can be valued in money, including property rights to the subjects of intellectual property, land use rights, and other property rights such as surface rights, and usufruct rights.

Accordingly, as cryptocurrency does not belong to one of the four categories mentioned above, it is not considered property under the law. Therefore, owning, using, buying, selling, and trading cryptocurrency as a property will bring substantial risks to owners and participants of cryptocurrency transactions as they are not recognised or protected by the law. At the same time, because there are no clear legal regulations on cryptocurrency, it causes many difficulties for the competent authorities in resolving disputes regarding cryptocurrency. Disputes related to cryptocurrency that often arise include ownership of cryptocurrency, buying and selling cryptocurrency, borrowing cryptocurrency, inheriting cryptocurrency, and compensation for damage in cryptocurrency transactions.

## Investment and Business Law

Current law does not prohibit investment in businesses related to cryptocurrency. In the list of businesses that are banned from investment, and conditional businesses and professions specified in Articles 6 and 7 of the 2020 Law on Investment, business activities related to cryptocurrency are not listed. Based on the principle that “everyone has the right to freely conduct business and professions that are not prohibited by law” under Article 33 of the Constitution, corporations that conduct business activities, or buy, sell, transfer, and mobilise capital using cryptocurrency, are not prohibited.

Taking advantage of this loophole, in recent times, many organizations and individuals have established investment platforms or cryptocurrency trading platforms on the basis of a pyramid scheme and “ghost” trading platforms to mobilise money from “investors”. Meanwhile, “investors” are pouring money into these platforms without carefully studying the potential risks and drawbacks of cryptocurrency trading, only seeing the immediate benefits of quick, high-profit margins from the pyramid scheme. However, when an “incident” occurs, such as the collapse of the cryptocurrency investment platforms, the “investors” are typically shocked and realise that reclaiming their assets from the platforms is impossible.

## Criminal Law

In addition, according to the amended Article 206 on the crime of violating regulations on banking activities and other activities related to banking activities found in the 2015 Penal Code (amended and supplemented in 2017), dated 1 January 2018, any person who commits acts, including acts of issuing, providing, and using payment instruments causing property damage from VND100,000-300,000 to less than VND300

million will be fined from VND50-300 million or imprisoned from six months to three years.

The State Bank of Vietnam has also repeatedly affirmed that Bitcoin and other similar cryptocurrencies are not legal means of payment in Vietnam. On 21 July 2017, the State Bank of Vietnam sent Official Letter No 5747/NHNN-PC to the government office, to respond to these cryptocurrency issues.

## Trends Related to Cryptocurrency Cases

Recently, the Court of Ho Chi Minh City held a trial in a criminal case against 16 defendants for the crime of “robbery” according to Article 168.4 of the 2015 Penal Code. The amount of stolen electronic money was 168 Bitcoins, which was roughly equivalent to more than VND37 billion or USD1.6 million. Initially, after the Supreme People’s Procuracy completed the indictment and proposed to prosecute the defendants, there were many different opinions regarding the merit of the prosecution of the defendants for the crime of robbery.

Vietnam’s current legal framework does not recognise cryptocurrency (including Bitcoin) as a form of legal tender or a means of payment. This ambiguity raised questions about the applicability of robbery charges in this case. Convicting the defendants would effectively acknowledge Bitcoin as a form of property.

There is a different view that, although Bitcoin is not considered money, the rights of the holder cannot be denied, and Bitcoin can be valued at a specific amount of money. The 2015 Civil Code stipulates that property rights are rights that can be valued in money. Thus, rights that can be converted and evaluated according to a specific monetary value are considered property rights. Accordingly, Bitcoin is considered a prop-

erty right, which should be identified as property; hence, the wrongful appropriation of Bitcoin is an act of robbery.

From a civil law perspective, Vietnamese law does not currently recognise cryptocurrency as property. However, from the perspective of criminal science, the crime of robbery is a crime identified by acts. In the context of the aforementioned criminal case, the suspects perceived cryptocurrency as money or property, and this perception influenced their decision to commit the robbery. Their plan to rob the victim, combined with the use of force and awareness of their actions to carry out unlawful appropriation, aligns with the definition of robbery under criminal law.

Previously, Joint Circular No 02/2001/TTLT-TANDTC-VKSNDTC-BCA-BTP dated 25 December 2001, guiding a number of regulations on property infringement crimes, confirmed that robbery is a crime identified by acts and considered the value of the appropriated property: “In cases where there are sufficient grounds to prove that the person committing an act of property infringement intends to infringe upon the property of specific value according to their subjective consciousness, the value of that property will be used to consider the criminal prosecution of the person who commits the act of infringement...”. Although the above document expired on 8 October 2021, it provides specific guidance on how to determine the crime in this case.

However, in 2017 the Court of Ben Tre province heard the first case regarding tax arrears on Bitcoin. Specifically, an individual made a cryptocurrency transaction via a bank account and the authority demanded personal income tax from this individual for the cryptocurrency transaction. Accordingly, this individual filed an

administrative lawsuit against the authority’s decision. Judgment No 22/2017/HC-ST, found that: “Up to now, there has not been any legal document governing digital money (cryptocurrency) as goods or services used for production, business, and consumption”. Accordingly, the Court of Ben Tre province determined that cryptocurrencies are generally not property or goods, according to the 2005 Civil Code and Commercial Law.

As such, if we refer to Judgment No 22/1017/HC-ST of the Court of Ben Tre, which does not recognise cryptocurrency (including Bitcoin) as a means of payment, the prosecution of the 16 defendants would have no basis.

In the end, the court ruled that the Ho Chi Minh City defendants had successfully converted some of the stolen Bitcoin into VND18.8 billion in currency and, in addition to lengthy prison sentences, were compelled to jointly compensate the victim in this amount. As such, the court was able to award compensation without declaring that the cryptocurrency was “money” or “property”.

From the above analysis, Vietnamese law does not currently have a legal framework to govern the issuance, purchase, sale, and exchange of cryptocurrency and virtual assets, nor does the law assign a specific authority to manage the issuance and trade of cryptocurrency and virtual assets. Therefore, in Vietnam, the trade and exchange of cryptocurrency via international platforms such as Binance, Coinbase, and others, or even by face-to-face agreement, pose significant potential risks.

## Legal Issues Related to the Recognition and Enforcement of Foreign Arbitral Awards

In order to recognise and enforce a foreign arbitral award in Vietnamese territory, the foreign arbitral award must be recognised and permitted to be enforced by a Vietnamese court. This procedure is intended to resolve jurisdictional conflicts and ensure respect for each country's jurisdiction. The overall aims are to guarantee the legal rights of the judgment debtor and to avoid having the same case tried twice.

Under Vietnamese law, the recognition of foreign arbitral awards is governed by Chapters XXXV and XXXVI of the 2015 Code of Civil Procedure (CCP 2015); while the enforcement of foreign judgments is governed by the 2008 Law on Civil Enforcement, as amended in 2014.

Accordingly, where the involved parties wish to recognise and enforce a foreign arbitral award in Vietnamese territory (if the judgment debtor resides in Vietnam or has its head office in Vietnam, or if property that is the subject of the foreign judgment is available in Vietnam at the time of the request), the involved parties or their lawful representatives must submit an application to the Vietnamese courts or the Ministry of Justice for recognition or permission to enforce.

## Grounds for Courts in Vietnam to Refuse to Recognise Foreign Arbitral Awards

A frequent justification for courts in Vietnam not to recognise a foreign arbitral award is when individuals, businesses, or organisations as judgment debtors are not instructed in a timely and appropriate manner on the procedure for appointing an arbitrator and dispute resolution at an international arbitration centre, or are otherwise hindered from exercising their litigation rights due to other reasonable grounds.

This reason is often invoked to deny foreign arbitral awards when the judgment debtors fail to receive a fair opportunity to present their case. As such, the judgment debtor will have to prove that they were deprived of the right to a fair trial at the international arbitration centre. This situation includes the following scenarios:

- the judgment debtor was not provided notice of the appointment of an arbitrator;
- the judgment debtor was not provided notice of the arbitration procedure; or
- the judgment debtor was not able to present their case.

The type of notice to be provided regarding an arbitrator appointment, arbitration procedure, or arbitration session is governed by the arbitration rules selected by the parties involved in the arbitration agreement. The regulations in the CCP 2015 on notices and announcements do not apply to foreign arbitral awards.

## *Signatories of arbitration agreement do not possess signing capacity*

One basis for non-recognition includes the lack of physical or mental capacity, the lack of authorisation, or if the signatory is underage (a minor).

Article 459.1(a) of CCP 2015 (Article 370 of CCP 2004, amended and supplemented in 2011) provides that the capacity-determining jurisdiction refers to each party's "respective jurisdiction". The reviewing court must base its decision on the laws that apply in the jurisdiction of each signatory to determine whether or not said signatory has the legal capacity to sign the arbitration agreement.

In other words, the court is not permitted to use Vietnamese legal provisions to determine if a for-

foreign signatory has the legal capacity to sign the foreign arbitration agreement in question. Conversely, the court is likewise not allowed to use foreign legal provisions to deny the legal capacity of a Vietnamese signatory to sign the same arbitration agreement.

In practice, the legally applicable law that is to be applied to assess the signing capacity of each signatory must be determined via the court's conflict avoidance principles.

For foreign signatories, the court must apply the conflict avoidance principles pursuant to Article 466 (for foreign persons) and Article 467 of CCP 2015 (for foreign entities) to ascertain the applicable law. The conditions are as follows:

- The legal capacity of a foreigner shall be determined according to the laws of the country that they are a citizen of (Article 466.1 of CCP 2015).
- The legal capacity of a foreign agency or organisation shall be determined according to the laws of the country where such agency is established (Article 467 of CCP 2015).
- The application of foreign laws to determine the legal signing capacity of the signatories must also comply with the provisions of Article 481 of CCP 2015, on selecting and providing foreign laws to apply to a civil dispute resolution involving foreign elements.

The rules are different for Vietnamese signatories. When assessing the legal capacity of Vietnamese individuals, businesses, and organisations, the court must take into consideration the relevant requirements of the Criminal Code, the Law on Enterprises, and other relevant legislative codes.

### *Violations by arbitration tribunal members and breaches of protocols and procedures*

Article 459.1(dd) of CCP 2015 (Article 370.1(dd) of CCP 2004, amended and supplemented in 2011) provides that a judgment or arbitral award may be denied due to (i) violations committed by members of the arbitration tribunal; or (ii) a failure to comply with arbitration protocols and procedures.

Regarding the arbitration tribunal members, the provisions of Article 459.1(dd) of CCP 2015 are applicable if one party has been deprived of the right to appoint an arbitrator or to request arbitration tribunal members that are suitable to the parties' arbitration agreement. To determine whether or not a violation has occurred, the court takes into account: (i) the arbitration agreement; or (ii) if said agreement does not provide any provisions in this regard, the laws of the country where the arbitration agreement was executed will be utilised.

Regarding violations of arbitration protocols and procedures, the provisions of Article 459.1(dd) of CCP 2015 apply if one party has been deprived of an arbitration procedure under the agreement established by the relevant parties. This reason is similar to the provisions concerning the annulment of domestic arbitral awards, as stated in Article 68.2(b) of the Vietnamese Law on Commercial Arbitration. However, one needs to note that the legal basis for the assessment of the arbitration procedure's legality is not found in the typical litigation procedures of the Vietnam CCP. Instead, it is based on the agreement made and signed by the relevant parties, the rules of arbitration set by the foreign arbitration centre, and the law regarding arbitration of the country where the parties agreed to formalise their commitment.

## *Conflict with the fundamentals of the laws of Vietnam*

The concept and extent of a “conflict with the laws of Vietnam” are currently a topic of debate. According to Resolution No 01/2014/NQ-HDTP, the Council of Judges explained that “violations against the fundamentals of the laws of Vietnam” denote any decisions that “infringe upon the basic principles of conduct effectively in all matters regarding the construction and execution of the Laws of Vietnam”. However, such a description is certainly vague and lacks sufficient detail.

Moreover, this Resolution only provides instructions to apply the provisions of the 2010 Law of Commercial Arbitration to annul domestic arbitral awards instead of explaining how to navigate the CCP 2015 to recognise and enforce foreign judgments and arbitral awards in Vietnam. This reason for non-recognition is, arguably, the most unsettling to the judgment creditor.

## **Trends and Predictions**

Not all foreign arbitral awards will be accepted and considered by the courts in Vietnam. Whether or not arbitral awards will be taken into consideration depends on existing international treaties or diplomatic relations between Vietnam and the relevant nations.

In principle, the Vietnamese court will only recognise and enforce foreign arbitral awards that are:

- in accordance with the provisions of international treaties signed and participated in by Vietnam;
- based on a reciprocal agreement; and
- compliant with the laws of Vietnam.

The Vietnam Ministry of Justice published a database regarding the recognition and enforcement

of foreign court judgments or arbitral awards in Vietnam from 2012 to 30 September 2019, (the Database), which indicates that only 49% of foreign court judgments or arbitral awards would be recognised and enforced in Vietnam.

This figure sheds light on the alarmingly low rate of recognition and enforcement of foreign court judgments or arbitral awards in Vietnam. The Database specifies that five out of the 26 foreign court judgments and 30 out of the 82 foreign arbitral awards were not recognised in Vietnam.

There are two possible reasons behind this low rate of recognition. First, certain foreign courts or arbitration centres may be of inadequate quality or have violated dispute resolution procedural regulations. A second reason to consider is that some provisions that frame the recognition and enforcement of foreign court judgments or arbitral awards by the CCP 2015 and the 2010 Law on Commercial Arbitration may not be properly adhered to or contain vague language without guidelines.

The recognition and enforcement of an arbitral award help to reduce the costs borne by the parties to the dispute. However, recognition and enforcement must comply with certain rules and principles, which serve to demonstrate a nation’s right to jurisdictional independence. This principle precludes the unilateral imposition of another nation or international organisation’s legal judgments and awards. As such, it not only underscores Vietnam’s sovereignty but also aligns the country with the current values espoused by the global legal community.

Therefore, when concluding and performing an international commercial contract, it is very important to select a dispute resolution jurisdiction, as this will affect the recognition and

enforcement of foreign arbitral awards in Vietnam. As such, the parties should pay close attention to this choice. In addition, in cases where a foreign arbitration has already issued an arbitral award, the judgment creditor should carefully prepare the relevant documents that must be attached to the application, so that processing will be streamlined and take less time.

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