

VIETNAM

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction?	Hanoi (Capital) and Ho Chi Minh City.
Civil law / Common law environment?	Civil law jurisdiction.
Confidentiality of arbitrations?	Dispute resolution by arbitration shall be conducted in private unless otherwise agreed by the parties. Arbitrators are obliged to keep confidential the contents of the dispute unless the information must be provided to a competent State authority in accordance with law.
Requirement to retain (local) counsel?	None. There is no legal requirement to retain counsel. Parties can self-represent themselves or authorize their representatives during proceedings. A party's representatives may be Vietnamese lawyers, foreign lawyers or non-lawyers.
Ability to present party employee witness testimony?	Parties may submit witness testimonies of their employees. The tribunal has the discretion to weigh such evidence.
Ability to hold meetings and/or hearings outside of the seat?	Parties (or in absence of the parties' agreement, the tribunal) may choose to hold meetings and/or hearings outside of Vietnam.
Availability of interest as a remedy?	Interest is a matter of substantive law and should be expressly stated in the request for relief.
Ability to claim for reasonable costs incurred for the arbitration?	The arbitral tribunal has the discretion to allocate the costs incurred for the arbitration such as legal costs. For example, where parties have won on some claims and lost on others, the arbitral tribunal may allocate the costs in proportion to the relative success of the parties.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Vietnamese law is unsettled on contingency fee arrangements and third-party funding.
Party to the New York Convention?	Yes, with reservations with regard to reciprocity and commercial disputes.
Other key points to note	<ul style="list-style-type: none"> • Vietnamese courts will not intervene in or support foreign-seated arbitrations. • The courts may intervene in and support arbitrations seated in Vietnam but administered by foreign institutions. However, the arbitral awards rendered in these arbitrations are not considered as Vietnamese awards, and as a result, are required to be recognized for enforcement. • Foreign-seated tribunal-granted interim orders and partial awards, which do not deal with the entire contents of disputes and conclude the arbitration proceedings, are not enforceable on their own in Vietnam.
WJP Civil Justice score (2019)	0.46. Vietnam ranked 94 th in 2019, and 89 th in 2020.

ARBITRATION PRACTITIONER SUMMARY

Commercial arbitration seated in Vietnam, including both domestic and international arbitrations, is governed by Law No. 54/2010/QH12 on Commercial Arbitration (“**LCA**”) approved by the National Assembly on 17 June 2010 and effective on 1 January 2011. Although not officially recognized by the UNCITRAL as a Model Law country, the LCA was drafted based on the 1985 UNCITRAL Model Law as amended in 2006. In 2014, the LCA was further guided by Resolution No. 01/2014/NQ-HDTP of the Supreme People’s Court of Vietnam Guiding the Implementation of Certain Provisions of the LCA (“**Resolution No. 01**”). Domestic arbitral awards are enforced in accordance with the Law on Enforcement of Civil Judgments 2008, as amended in 2014 (“**LECJ**”) without having to be entered in court for enforcement. As regards foreign arbitral awards, they need to be recognized by a Vietnamese court first before enforcement can be made pursuant to the LECJ. The recognition of foreign arbitral awards is regulated by Part Seven (VII) of Civil Procedure Code 2015 (“**CPC**”) which came into force on 1 July 2016.

Since mid-2019, the Supreme People’s Court has been working on a draft *Resolution guiding certain provisions of Civil Procedure Code on recognition and enforcement of foreign arbitral awards*. This draft Resolution is aimed at guiding in detail the procedures for recognition and enforcement of foreign arbitral awards and more importantly, at limiting the grounds for refusal. Two other draft resolutions on recognition and enforcement of foreign court judgments and on settlement of civil cases involving foreign elements are also in progress. On 2 October 2019, the Prime Minister announced Decision 1268/QĐ-TTg to approve the plan on completing legislation on contracts and resolution of contractual disputes by commercial arbitration and mediation. As a result, more legislative changes to cure the current problems of the laws of Vietnam in commercial arbitration are expected to come.

Date of arbitration law?	Law No. 54/2010/QH12 on Commercial Arbitration approved by the National Assembly on 17 June 2010 and effective on 1 January 2011 (“ LCA ”).
UNCITRAL Model Law? If so, any key changes thereto?	<p>The LCA was drafted based on the 1985 UNCITRAL Model Law as amended in 2006 with some changes, notably:</p> <ul style="list-style-type: none"> • For purely domestic disputes with no involvement of foreign elements (<i>i.e.</i> there is no involvement of foreign disputing parties, the establishment, change, performance, and termination of their relationship happen in Vietnam, and the subject of their relationship is in Vietnam), the applicable substantive law is Vietnamese law and the language of arbitration is Vietnamese; • The LCA sets out some qualifications for arbitrators such as possessing a university degree and at least 5 years of experience, not currently working in courts, procuracies, investigation authorities, or judgment enforcement authorities, etc. • The LCA does not set out specifically the conditions for granting an interim measure. • Arbitral awards need to be issued within 30 days of the final hearing. <i>Ad hoc</i> arbitral awards are required to be registered with national courts before they can be coercively enforced. • One ground for setting aside awards is based on “<i>fundamental principles of Vietnamese law</i>” instead of the public policy under the UNCITRAL Model Law.

	<ul style="list-style-type: none"> • Another ground for setting aside awards is that the award is issued based on any forged evidence provided by the parties.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialized courts for arbitration-related matters. These matters would normally be handled by the economic division of a court.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Interim measures could only be granted after a request for arbitration is filed. The LCA and the rules of domestic arbitration institutions do not provide for emergency arbitrators.
Courts' attitude towards the competence-competence principle?	<p>The competence-competence principle is recognized under the law. If any party disagrees with the decision of the arbitral tribunal on jurisdiction, they can petition a competent court to review such a decision. The decision of the court will be final.</p> <p>If a party files a lawsuit in court despite an arbitration agreement, the court will have to refer the parties to arbitration unless the arbitration agreement is invalid or inoperable. The law seems to indicate that, on the face of an arbitration agreement, the court should let the arbitral tribunal determine the validity of the arbitration agreement first.</p>
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>The grounds for annulment of arbitral awards are limited to:</p> <ul style="list-style-type: none"> • There is no arbitration agreement or the arbitration agreement is invalid; • The composition of the arbitral tribunal or the arbitral proceedings were inconsistent with the agreement of the parties or contrary to the provisions of the LCA; • The dispute was not within the jurisdiction of the arbitral tribunal; if certain parts of an award fall outside the jurisdiction of the arbitral tribunal, only such parts shall be set aside; • The evidence provided by the parties on which the arbitral tribunal relied to issue the award was forged; or an arbitrator received money, assets or some other material benefits from one of the parties in dispute¹ which affected the objectivity and impartiality of the arbitral award; or • The arbitral award is contrary to the fundamental principles of the law of Vietnam.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Foreign arbitral awards which are annulled or suspended at the seat of the arbitration will not be recognized and enforced in Vietnam.

¹ Although not clearly set out under the laws or confirmed by cases, it is generally understood that the receipt of remuneration from one party does not *per se* constitute a ground for setting aside.

Other key points to note?

- Vietnamese courts will not intervene in or support foreign-seated arbitration.
 - The courts may intervene in and support arbitrations seated in Vietnam but administered by foreign institutions. However, the awards rendered in these arbitrations may not be considered as Vietnamese awards, and as a result, are required to be recognized for enforcement
 - Foreign-seated tribunal-granted interim orders and partial awards which do not deal with entire contents of disputes and conclude the arbitration proceedings are not enforceable on their own in Vietnam.
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JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Commercial arbitration seated in Vietnam is governed by the LCIA. Although not officially recognized by the UNCITRAL as a Model Law country, the LCA was drafted based on the 1985 UNCITRAL Model Law as amended in 2006 with some local adaptations, including *inter alia*:

- (i) For purely domestic disputes with no involvement of foreign elements (*i.e.* there is no involvement of foreign disputing parties, the establishment, change, performance, and termination of their relationship happens in Vietnam, and the subject of their relationship is in Vietnam), the applicable substantive law would be Vietnamese law and the language of arbitration would be Vietnamese.²
- (ii) The LCA sets out some qualifications for arbitrators such as possessing a university degree and at least 5 years of experience, not currently working in courts, procuracies, investigation authorities, or judgment enforcement authorities, etc.³
- (iii) The LCA does not set out specifically the conditions for granting an interim measure.
- (iv) Arbitral awards need to be issued within 30 days since the final hearing.⁴ *Ad hoc* arbitral awards are required to be registered with national courts before they can be enforced.⁵
- (v) One ground for setting aside awards is based on “*fundamental principles of Vietnamese law*” instead of public policy as under the UNCITRAL Model Law.⁶
- (vi) Another ground for setting aside awards is where the award is based on forged evidence provided by the parties.⁷

The recognition of foreign arbitral awards is regulated by Part Seven (VII) of the Civil Procedure Code 2015 (“**CPC**”) which came into force on 1 July 2016. The grounds to refuse recognition of foreign arbitral awards in the CPC resemble the grounds under the New York Convention and the UNCITRAL Model Law, except for the replacement of the public policy concept with the fundamental principles of Vietnamese law.

1.2 When were the arbitration law and other laws governing arbitration proceedings set out under Question 1.1 last revised?

The LCA and CPC have not been revised since they came into force. Prior to the LCA, commercial arbitration in Vietnam was governed by Ordinance No. 08/2003/PL-UBTVQH11 issued on 25 February 2003.

In 2014, the LCA was further guided by Resolution No. 01. Since mid-2019, the Supreme People’s Court has been working on a draft *Resolution guiding certain provisions of Civil Procedure Code on recognition and enforcement of foreign arbitral awards* (“**Draft Resolution**”). This Draft Resolution aims at guiding in detail the procedures for recognition and enforcement of foreign arbitral awards and more importantly limiting the grounds for refusal.

² Art. 14(1) LCA; Art. 10(1) LCA.

³ Art. 20 LCA.

⁴ Art. 61(3) LCA.

⁵ Art. 62 LCA.

⁶ Art. 68(2)(dd) LCA.

⁷ Art. 68(2)(d) LCA.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The LCA does not set out clearly rules to determine the applicable law to an arbitration agreement. Meanwhile, in considering the recognition and enforcement of foreign arbitral awards, the court, pursuant to Art. 459.1(b) of the CPC, shall determine the validity of an arbitration agreement in accordance with the law chosen by the parties or otherwise the law of the seat of the arbitration.⁸ Accordingly, in principle, if the parties have chosen the law applicable to an arbitration agreement, the court would respect the parties' choice of law in determining the governing law of an arbitration agreement. However, absent the parties' agreement on this matter, the court has adopted different approaches in practice. Some courts have applied the law of the seat to determine the validity of the arbitration agreement whereas others have decided for the substantive law applicable to the whole contract.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The separability of an arbitration agreement is recognised under Art. 19 of the LCA which stipulates that: *"An arbitration agreement is entirely independent from the contract. Any modification, extension, cancellation, invalidity or unenforceability of the contract shall not result in the invalidity of the arbitration agreement"*.⁹ During annulment proceedings, the courts have been consistent in confirming the separability of the arbitration agreement and have affirmed that when the underlying contract is invalid or liquidated, the arbitration agreement therein still survives.¹⁰

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement can be made in the form of (i) an arbitration clause in the contract or (ii) a separate agreement on arbitration.¹¹

The LCA requires that an arbitration agreement shall be made in writing.¹² The "writing" requirement is satisfied when:

- (i) The agreement is made through telegram, fax, telex, email or other forms provided by law;
- (ii) The agreement is made through written correspondence between the parties;
- (iii) The agreement is recorded in writing by a lawyer, notary public or competent organisation at the request of the parties;
- (iv) The agreement is made by reference of the parties during the course of a transaction to a document such as a contract, document, company charter or other documents which contain an arbitration agreement; or
- (v) During the exchange of statements of claim and defence, a party mentions the existence of an agreement and the other party does not object.

⁸ Art. 458(1)(b) CPC.

⁹ Art. 19 LCA.

¹⁰ Decision 06/2018/QĐ-PQT dated 11 September 2018 of Hanoi People's Court: The arbitration agreement still existed although the contract was liquidated. Decision 526/2013/KDTM-QĐ dated 15 May 2013 of Ho Chi Minh City People's Court and Decision 112/2006/TTPT dated 2 June 2006 of the Appeal Court of the Supreme People's Court: The arbitration agreements still existed although the contracts were invalid. In these cases, the courts referred to Art. 11 of Ordinance No. 08/2003/PL-UBTVQH11 (the predecessor of the LCA) which resembles Art. 19 of the LCA.

¹¹ Art. 16 (1) LCA.

¹² Art. 16 LCA.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

In principle, an arbitration agreement only binds those who are parties to it. Vietnamese law does not recognize the concept of “piercing the corporate veil” which allows a party to sue shareholders/parent companies of the other signatory to the arbitration agreement.

Nevertheless, third persons may become party to an arbitration agreement as a matter of law in some limited circumstances. Where a party to an arbitration agreement terminates its operation, becomes bankrupt, dissolves, consolidates, merges, demerges, separates or converts its organizational form, the arbitration agreement shall remain effective on the organization which succeeds to the rights and obligations of the former organization, unless otherwise agreed by the parties.¹³ Similarly, if a party who is a natural person deceases or loses behaviour capacity, their heirs or legal representatives would be bound by the arbitration agreement, unless otherwise agreed by the parties.¹⁴ Where rights and obligations arising out of a contract are transferred to third parties, the arbitration agreement therein binds the third parties being the transferee, unless otherwise agreed by the parties.¹⁵

2.5 Are there restrictions to arbitrability?

The LCA does not specifically set out the types of non-arbitrable disputes. The restrictions to arbitrability can be inferred from the scope of matters that can be subject to commercial arbitration under the LCA and the relevant provisions in other laws.

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

Under Art 2 of the LCA, the following disputes can be resolved by arbitration:

- (1) Disputes between parties arising from commercial activities;
- (2) Disputes arising between parties at least one of whom engages in commercial activities, and
- (3) Other disputes between parties that the law stipulates may be resolved by arbitration.¹⁶

As provided by the Commercial Law, “commercial activities” are defined as activities for profit-making purposes including sale and purchase of goods, services, investment, trade promotion, etc.¹⁷ Therefore, matters such as criminal, administrative, and matrimonial disputes are considered to be non-arbitrable.

Considering the wide scope of disputes that can be arbitrated under Art. 2 of the LCA, arguably as long as one of the disputing parties is engaged in commercial activities, tort claims can be arbitrable. However, reportedly there has not been any tort claim resolved by arbitration in Vietnam to shed light on this matter.

Under the Labour Code 2012 as well as the Labour Code 2019 (to be effective on 1 January 2021), the resolution of labour disputes is limited to labour mediation, labour arbitration, settlement by people’s committee, and court litigation.¹⁸ As a result, labour disputes cannot be resolved by commercial arbitration. However, whether other employment-related disputes are arbitrable is unsettled. It is reported that an arbitral award was rendered to settle a dispute arising out of a non-disclosure agreement between an employer and employee.

Pursuant to the Law on Intellectual Property 2005 as amended, generally disputes on intellectual property rights are arbitrable.¹⁹ However, it is understood that not all disputes on intellectual property rights can be

¹³ Art. 5(3) LCA.

¹⁴ Art. 5(2) LCA.

¹⁵ Art. 7(3) Resolution No. 01.

¹⁶ Art. 2 LCA.

¹⁷ Art. 3.1 Commercial Law No. 36/2005-QH11.

¹⁸ Arts. 200 and 203 Labour Code 2012.

¹⁹ Art. 198 Law on Intellectual Property 2005.

resolved by arbitration. As per Example 4 of Art. 22(2) of the Draft Resolution, disputes over the registration or the validity of patents, industrial designs, semiconductor integrated circuit layout designs, trademarks, trade names, geographical indications and other intellectual property rights may not be arbitrable.

Under the Law on Enterprise 2014, parties could use arbitration to resolve disputes over resolutions of the Board of Members or the General Meeting of Shareholders. However, pursuant to Example 3 of Art. 22.2 of the Draft Resolution, disputes relating to enterprise registration and other obligations to register or notify under the Law on Enterprise may not be arbitrable.

2.5.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

State enterprises are generally not restricted from entering into arbitration agreements. Under Civil Code 2015, State authorities are considered as non-commercial legal entities. Therefore, pursuant to Art. 2 of the LCA, disputes between a state authority and other non-commercial entities such as, society organizations, socio-professional organizations, society funds, charitable funds, society enterprises are non-arbitrable.

In addition, under some circumstances, Vietnamese parties may only be allowed to bring their dispute to arbitration in Vietnam rather than to foreign-seated arbitration. For instance, under the Law on Investment 2014, disputes (i) among domestic investors or economic organizations with foreign capital accounting for less than 51% of charter capital or (ii) between a domestic investor or an economic organization with foreign capital accounting for less than 51% of charter capital and a State agency shall be resolved by Vietnamese arbitration or court litigation.²⁰

Under the LCA, when a dispute has arisen but the consumer does not agree to arbitrate, the arbitration clause in the contract between the consumer and the goods/service provider cannot be enforced. The goods/service provider can initiate an arbitration only if the consumer gives its consent.²¹

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Pursuant to both the LCA and CPC, when there is an arbitration agreement covering the same dispute, the court shall suspend the litigation and return the statement of claim and supporting documents, unless such agreement is null and void.²²

In case the parties agree to resolve disputes at arbitration or in court, the claimant is allowed to bring their claim to either arbitration or court. If they have submitted the request for arbitration, the court would not enrol the case or, if already enrolling the case, it would suspend the proceedings. The court would accept to resolve the dispute only if no request for arbitration has been submitted.²³

3.1.1 If the place of the arbitration is inside of the jurisdiction?

The court would bypass the arbitration agreement and continue the litigation only if:

- (i) There has been a court's decision to set aside the arbitral award;
- (ii) There has been an arbitral tribunal's decision to suspend the proceeding due to invalidity or inoperability of the arbitration agreement or lack of jurisdiction; or
- (iii) The arbitration agreement is inoperable because: the chosen arbitral institution no longer exists without successor and the parties fail to agree on a new arbitral institution; the chosen *ad hoc* arbitrators are unable to resolve the dispute due to force majeure or the arbitral institution/court is unable to find the arbitrators as described in the arbitration agreement and the parties fail to

²⁰ Art. 14(2) Law on Investment 2014.

²¹ Arts. 6 and 17 LCA; Art. 4(5) Resolution No. 01; Art. 38 Law on Protection of Consumer Rights No. 59/2010/QH12.

²² Art. 2(2)(b) Resolution No. 01; Art. 472(1)(a) CPC.

²³ Art. 2(4) Resolution No. 01.

agree on new arbitrators; the chosen *ad hoc* arbitrators decline to resolve the dispute or the arbitral institution declines to appoint arbitrators and the parties fail to agree on the new arbitrators; or a consumer party does not agree to arbitrate.²⁴

3.1.2 If the place of the arbitration is outside of the jurisdiction?

In addition to the above, please note that, in case the arbitration agreements are replaced by agreements on choosing Vietnamese courts, or the agreements to choose foreign arbitration are annulled or inoperable, or where the foreign arbitration institutions turn down requests for arbitration, Vietnamese courts may be claimed of the jurisdiction. If foreign arbitral awards are not recognized by Vietnamese courts, Vietnamese courts may also be claimed of jurisdiction to settle such cases.²⁵

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

It is unclear whether an arbitral tribunal can issue an anti-suit injunction under Vietnamese law. Practically, with or without an anti-suit injunction by arbitrators, if the court has knowledge of an ongoing arbitration, the litigation may still be suspended or not commence.²⁶ To be specific, as guided under Resolution No. 01, if the dispute is pending before an arbitral tribunal, the court cannot enrol the lawsuit initiated by a party. If the court is only given to know of the ongoing arbitration after having already enrolled the case, they need to suspend the litigation. Given the ongoing arbitral proceeding, the court is required to refuse enrolment or suspend litigation even when they themselves opine that the arbitral tribunal lacks jurisdiction, there is no arbitration agreement, or the arbitration agreement is inoperable.²⁷

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

For foreign-seated arbitration, the courts do not have grounds to intervene in the proceedings. Interim orders of foreign seated arbitral tribunals cannot be recognized and enforced in Vietnam and the court also will not render interim orders in support of arbitration seated outside Vietnam. It is noted that under Art. 5(5)(a) of Resolution No. 01, the court could intervene in "*foreign arbitration in Vietnam*" which however, is understood to be arbitration conducted by foreign arbitration institutions and seated in Vietnam only.²⁸ In this circumstance, the intervention includes review of the tribunal's decision on jurisdiction, collection of evidence, summons of witnesses and grant of interim measures.

4. The conduct of proceeding

4.1 Can parties retain outside counsel or be self-represented?

Both situations are possible. Parties can self-represent themselves or authorize their representatives during proceedings by way of a power of attorney.²⁹ A party's representative may be a Vietnamese lawyer, foreign lawyer or non-lawyer. Counsel, however, does not automatically gain representative powers just because they are instructed as counsel, *e.g.* through a letter of engagement. They must be specifically authorised to act as a party's representative.

²⁴ Art. 2(3) Resolution No. 01

²⁵ Art. 472(1) CPC.

²⁶ Art. 2(2)(c) Resolution No. 01; Art. 472(1)(d) CPC

²⁷ Art. 2(2)(c) Resolution No. 01.

²⁸ Art. 5(5)(a) Resolution No. 01.

²⁹ Art. 12(2) LCA; Art. 55(2) LCA; Art. 4(1) VIAC Rules 2017.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Generally, independence and impartiality of arbitrators are considered as one of the fundamental principles of the laws of Vietnam.³⁰ Therefore, when arbitrators fail to be independent or impartial, the court shall annul the award upon the request of a party. In addition, under the LCA, the replacement of an arbitrator would be determined by the remaining arbitrators, or otherwise by the court in case of *ad hoc* arbitration.³¹ Parties can request the court to replace an arbitrator in the following circumstances:

- a. The arbitrator is a relative or representative of one party.
- b. The arbitrator has an interest related to the dispute.
- c. There is a clear ground to conclude that the arbitrator is neither impartial nor objective.
- d. The arbitrator was a conciliator, representative or lawyer of one party before the dispute was brought to arbitration for settlement, unless such is consented in writing by the parties.

Outside of the above, the LCA is silent on whether an arbitrator's failure to disclose may suffice in itself as a ground for the court to accept a request to replace an *ad hoc* arbitrator or a request to annul an award. Meanwhile, under Resolution No. 01, in order to accept or reject a challenge to *ad hoc* arbitrator, the competent court would rely on Article 20 'Criteria of arbitrator', Article 21 'Rights and obligations of arbitrator', and Article 42(6) on force majeure of the LCA.³² Although these provisions do not refer explicitly to the disclosure obligation of arbitrator or Article 42(2),³³ it is noted that Article 21 of the LCA provides for among others the following obligations of arbitrators:

*"Article 21. Rights and obligations of arbitrator
7. To adhere to the rules of professional ethics."*

For the time being, there has not been any nationwide rules of professional ethics for arbitrators, but only codes of conduct issued by some arbitration centres such as the Vietnam International Arbitration Centre (VIAC) for their listed arbitrators (rather than *ad hoc* arbitrators) as well as a draft code of ethics for arbitrators of the Ho Chi Minh City Commercial Arbitration Association. Therefore, subject to the rules of professional ethics on independence and impartiality to be issued in the future, a failure to disclose may be a ground for the court to replace an *ad hoc* arbitrator.

In any case, a failure to disclose might be an exacerbating factor in the overall assessment of an arbitrator's impartiality or independence.

³⁰ Art. 14(2)dd of Resolution No. 01

³¹ Art. 42(3) and (4) LCA.

³² Art. 9(4) Resolution No. 01.

³³ Art. 20 LCA ("**Criteria of arbitrators** 1. A person who satisfies all the following criteria may act as arbitrator (a) Having the full civil act capacity under the Civil Code (b) Possessing a university degree and having at least 5 years* work experience in the trained discipline (c) In special cases, an expert who has high professional qualifications and much practical experience, though not satisfying the requirement specified at Point b of this Clause, may also be selected as arbitrator. 2. Persons who satisfy all the conditions specified in Clause 1 of this Article but fall into either of the following cases may not act as arbitrators: (a) Incumbent judges, procurators, investigators, enforcement officers or civil servants of peoples courts, peoples procuracies, investigative agencies or judgment enforcement agencies; (b) The accused, defendants, persons serving criminal sentences or having served the sentences but having their criminal records not yet remitted. 3. Arbitration centers may set criteria for their arbitrators which are higher than those specified in Clause 1 of this Article").

Art. 21 LCA ("**Rights and obligations of arbitrators:** 1. To accept or refuse to settle disputes 2. To be independent in dispute settlement. 3. To refuse to provide dispute-related information 4. To enjoy remuneration 5. To keep secret the circumstances of disputes they settle, unless they have to provide information to competent state agencies under law 6. To ensure impartial, fast and prompt settlement of disputes 7. To adhere to the rules of professional ethics").

Art. 42 LCA ("**Change of arbitrators.** 6. When the arbitrator cannot continue participating in the settlement of a dispute due to force majeure circumstances or objective obstacles or is changed, the selection or designation of a new arbitrator comply with the order and procedures specified in this Law").

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

In *ad hoc* arbitration of three arbitrators, if the respondent fails to nominate an arbitrator within 30 days from the receipt of the request for arbitration,³⁴ the claimant may request the Court to appoint an arbitrator for the respondent.³⁵ If the two nominated or appointed arbitrators fail to appoint the presiding arbitrator within 15 days from the date of their nomination or appointment, a party may request the Court to appoint the presiding arbitrator.³⁶ In case of sole arbitrator, if the parties fail to nominate the sole arbitrator within 30 days since the date the respondent receives the request for arbitration, a party may request the Court to appoint the sole arbitrator.³⁷

When appointing an arbitrator, the Court shall rely on Article 20 'Criteria of arbitrator', Article 21 'Rights and obligations of arbitrator' of the LCA, and the list of arbitrators of the arbitration centres as well as the branches of foreign arbitration centres in Vietnam.³⁸

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

Under the LCA and Resolution No. 01, after the submission of the request for arbitration,³⁹ even when the arbitral tribunal has not been constituted, a party may request the Court to order any kind of interim measures that are available to tribunals under Art. 49(2) of the LCA as well as the interim measures that are available to courts under Art. 114 of the CPC unless they previously requested the arbitral tribunal or another Court to order that interim measure.⁴⁰ While the arbitral tribunal may order interim measures only to the disputing parties, the Court may order interim measures against third parties.⁴¹ After requesting the Court to order an interim measure, a party is not considered as waiving their arbitration agreement or excluded from requesting the Court or the arbitral tribunal for another interim measure.⁴²

4.4.1 If so, are they willing to consider *ex parte* requests?

The Court may grant interim measures on *ex parte* basis without a hearing.⁴³

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

The LCA prescribes some principles on the conduct of arbitration which must be strictly applied without any modification by the parties or the tribunal. Besides the arbitrators' duty to be independent, objective and impartial,⁴⁴ the arbitral tribunal is required to grant the parties equal treatment so that they can exercise

³⁴ To be specific, under Art. 30 of the LCA, the request for arbitration or statement of claim is required to contain the following contents:

- (a) The date on which the statement of claim is made;
- (b) Names and addresses of the parties, and names and addresses of witnesses, if any;
- (c) Summary of the matters in dispute;
- (d) Grounds and evidence, if any, of the claim;
- (dd) Specific relief sought by the claimant and value of the dispute;
- (e) Name and address of the person whom the Claimant selects as arbitrator or Request for an arbitrator to be appointed.

³⁵ Art. 41(1) LCA.

³⁶ Art. 41(3) LCA.

³⁷ Art. 41(4) LCA.

³⁸ Art. 8(4) Resolution No. 01.

³⁹ Art. 53 LCA; Art. 12(1) Resolution No. 01

⁴⁰ Arts. 53(1), 53(5) LCA; Arts. 12(1), 12(2), 12(5) Resolution No. 01.

⁴¹ Art. 49(1) LCA.

⁴² Art. 48(2) LCA.

⁴³ Art. 53 LCA; Art. 12 Resolution No. 01; Art. 133 CPC.

⁴⁴ Art. 4(2) LCA.

their rights and fulfil their obligations.⁴⁵ Arbitrators must also ensure that the dispute is resolved in an impartial, fast and prompt manner.⁴⁶ The LCA also contains some provisions applicable to the arbitral proceeding without room for change by parties or tribunal. For example, for purely domestic disputes with no involvement of foreign elements, the applicable substantive law will be Vietnamese law and the language of arbitration will be Vietnamese;⁴⁷ an arbitral award needs to be issued within 30 days since the final hearing;⁴⁸ etc.

Other than that, the principle of party autonomy is recognized under the LCA as a fundamental principle in dispute resolution.⁴⁹ Accordingly, parties are free to decide on aspects of the arbitral proceedings where the law specifies that “if the parties agreed” or “otherwise agreed by parties.” In the absence of an agreement by the parties, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The LCA stipulates that dispute resolution by arbitration shall be conducted in private unless otherwise agreed by the parties.⁵⁰ The tribunal is also obliged to keep confidential the contents of the case, unless the tribunal is required to provide information to a competent State authority in accordance with Vietnamese law.⁵¹

4.5.2 Does it regulate the length of arbitration proceedings?

The LCA sets out the timeline for some procedures of the arbitration proceedings, for example the deadline for the respondent to submit the statement of defence and counterclaim, the deadline for the constitution of the arbitral tribunal, etc. This default timeline would only be applied unless otherwise stipulated under the arbitration rules or agreed by the parties. Other than that, there is no provision on duration of arbitration proceedings and the tribunal is only generally required to settle the dispute in a fast and prompt manner.⁵²

Notably, Article 61(3) of the LCA requires that the arbitral award must be issued within 30 days since the end of the final hearing, without room for the parties or the tribunal to extend.⁵³ If the arbitral award is issued outside the 30-day period, the arbitral proceeding may be deemed as not in compliance with the LCA and the arbitral award may face the risk of being set aside pursuant to Article 68(2)(b) of the LCA.⁵⁴ In practice, the failure to issue the arbitral award within 30 days has been invoked by the award debtors as a procedural violation to request for setting aside of the arbitral award based on Article 68(2)(b) of the LCA.⁵⁵ However, as guided by Resolution No. 01, the court would set aside the arbitral award based on Article 68(2)(b) of the LCA only if the procedural violation is serious.⁵⁶ In a case, although noting that the arbitral tribunal made a procedural violation under Article 30(3) of the 2012 VIAC Rules which is a verbatim adoption of Article 61(3) of the LCA on the 30-day limit, the court set aside the arbitral award based on other grounds rather than that

⁴⁵ Art. 4(3) LCA.

⁴⁶ Art. 21(6) LCA.

⁴⁷ Art. 14(1) LCA; Art. 10(1) LCA.

⁴⁸ Art. 61(3) LCA. In practice, tribunals often hold a final hearing following the main evidentiary hearings just to announce the closing of the proceedings in order to conform with the 30-day requirement.

⁴⁹ Art. 4(1) LCA.

⁵⁰ Art. 4(4) LCA.

⁵¹ Art. 21(4) LCA.

⁵² Art. 21(6) LCA.

⁵³ Art. 61(3) LCA.

⁵⁴ Art. 68 LCA: (“**Grounds for setting aside arbitral award:** 2. Arbitral award shall be set aside if falling within one of the following circumstances: b) Composition of Arbitral Tribunal or arbitral proceedings is not in compliance with the agreement of the parties or contrary to the provisions of this Law”)

⁵⁵ Decision No. 1172/2015/QĐ-PQTT of the People’s Court of Ho Chi Minh City dated 26 October 2015; Decision No. 509/2015/QĐ-PQTT of the People’s Court of Ho Chi Minh City; Decision No. 1598/2012/KDTM-QĐ of the People’s Court of Ho Chi Minh City dated 31 October 2012.

⁵⁶ Resolution No. 01, Art. 14(2)(b).

procedural violation.⁵⁷ Although at that time Resolution No. 01 was not issued, the court in that case also seemed to consider that the failure to render the arbitral award within 30 days was not a serious violation for the arbitral award to be set aside.

In any case, to comply with the 30-day limit and minimize the risk of the arbitral award being set aside, the arbitral tribunals have come up with a practical solution. Accordingly, the arbitral tribunal would agree in advance with the parties or announce at the main evidentiary hearings that these hearings are not final hearings. After having sufficient time to deliberate on the dispute, the tribunal would conduct a short final hearing to meet the formality requirement and then issue the arbitral award within 30 days afterward.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Unless the parties agree otherwise, the arbitral tribunal shall decide on the place of hearings and/or meetings which it deems appropriate for mutual consultation between the arbitrators, for taking statements from witnesses, for seeking advice from experts, or for conducting evaluations of goods, assets or other materials.⁵⁸

4.5.4 Does it allow for arbitrators to issue interim measures?

The arbitral tribunal may, at the request of a party, order one or more forms of interim relief applicable to the parties in dispute.⁵⁹ Interim relief that could be ordered by the arbitral tribunal includes:⁶⁰

- (i) Prohibition of any change in the status quo of the assets in dispute;
- (ii) Prohibition of acts that are adverse to the arbitration proceedings or ordering one or more specific actions to be taken by a party in dispute in order to prevent those acts;
- (iii) Attachment of the assets in dispute;
- (iv) Requirement of preservation, storage, sale or disposal of any of the assets of one or all parties in dispute;
- (v) Requirement of interim payment of money as between the parties; and
- (vi) Prohibition of transfer of property rights of the assets in dispute.

Interim measures granted by the arbitral tribunal can be enforced in the same manner as those issued by the Court.⁶¹

4.5.4.1 In the affirmative, under what conditions?

Unlike the Court, an arbitral tribunal can only issue its interim measures once constituted and against the disputing parties only.⁶² In addition, the LCA and the rules of domestic arbitration institutions do not provide for emergency arbitration. For avoidance of parallel proceedings, the arbitral tribunal cannot order interim measures which have been ordered by the Court.⁶³

In its application for an interim measure, the requesting party must state the reason for such application of interim measure and provide evidence to prove the necessity for such interim measure.⁶⁴ The tribunal may grant interim measures *ex parte*. The requesting party may be required to provide appropriate countersecurity in connection with such measure.⁶⁵

⁵⁷ Decision No. 1598/2012/KDTM-QD of the People's Court of Ho Chi Minh City dated 31 October 2012.

⁵⁸ Art. 11(1) LCA.

⁵⁹ Art. 49(1) LCA.

⁶⁰ Art. 49(2) LCA.

⁶¹ Art. 50(5) LCA.

⁶² Art. 49(1) LCA.

⁶³ Art. 49(3) LCA.

⁶⁴ Art. 50(2) LCA.

⁶⁵ Art. 49(4) LCA.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

There is no standard of proof in arbitration proceedings under Vietnamese law. The LCA is silent on whether the tribunal has the discretion to determine the admissibility and significance of the evidence in the arbitration proceedings.⁶⁶ It is noted however that if the evidence relied on by the arbitral tribunal is forged, the arbitral award would be annulled.⁶⁷

4.5.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?

There is no restriction regarding the ability of a person to act as a witness in arbitration proceedings. There is no provision specifying the discrimination between testimony of a witness specially connected with one of the parties such as a party employee and that of an unrelated witness. The arbitral tribunal has discretion to weigh such testimony.

4.5.6 Does it make it mandatory to hold a hearing?

The arbitral tribunal is specifically empowered to decide the dispute without the actual presence of the parties provided that the parties so agree.⁶⁸ Therefore, both oral hearing and proceeding on the basis of written documents are accepted subject to the parties' agreement. If conducted, the hearing shall be held in accordance with the arbitration institution's rules or agreed by the parties in *ad hoc* arbitration.⁶⁹

4.5.7 Does it prescribe principles governing the awarding of interest?

The LCA does not provide for any rules on the awarding of interest whether being pre-award or post-award interest. The arbitral tribunal can determine the interest pursuant to the applicable substantive law. By implication, being a substantive matter, interest should not be granted on the tribunal's own initiative but based on the request from the parties.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The losing party must pay the arbitration fees, unless otherwise agreed by the parties, stipulated by the rules of the arbitration centre, or determined by the arbitral tribunal.⁷⁰ The arbitral tribunal enjoys wide discretion in the allocation of the costs incurred in the arbitration such as legal costs.⁷¹ For instance, where parties have won on some claims and lost on others, the arbitral tribunal may allocate the costs in proportion to the relative success of the parties.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Similar to the case of judges, the immunity of arbitrators is not recognized by the laws of Vietnam in general and by the LCA in particular. Under the LCA, if an arbitral tribunal orders an interim relief which is different from or exceeds the applicant's request, thereby causing loss to the applicant, the party against whom the interim relief was applied, or a third party, then the party incurring the loss shall have the right to initiate a civil lawsuit against the arbitral tribunal for compensation.⁷²

⁶⁶ Art. 46 LCA.

⁶⁷ Art. 68(2)(d) LCA.

⁶⁸ Art. 56(3) LCA.

⁶⁹ Art. 55(4) LCA.

⁷⁰ Art. 34(3) LCA.

⁷¹ Art. 61(1)(h) LCA.

⁷² Art. 49(5) LCA.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The Criminal Code does not provide for any specific crime relating to arbitral proceedings. In theory, arbitrators and/or participants may arguably be charged with criminal liability if committing certain serious offences in the course of arbitration proceedings, including bribery⁷³ and failure to execute an award.⁷⁴ However, in practice, there is no report on any criminal case against arbitrators or participants in arbitral proceedings.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Parties can waive the requirement to provide reasons for an award; otherwise, the tribunal shall give reasons in the award.⁷⁵

5.2 Can parties waive the right to seek the annulment of the award?

Parties cannot agree to waive their rights to challenge the arbitral award in setting-aside proceedings.

However, during arbitration proceedings, if a party discovers a breach of the provisions of the LCA or of the arbitration agreement, they must object to such breach within the time-limit stipulated in the LCA, the arbitration rules, or the parties' agreement or otherwise before the issuance of the arbitral award. Failing to do so, such a party shall lose the right to rely on the breach to challenge the arbitral award in setting aside proceedings, except for a challenge based on violation of fundamental principles of Vietnamese law.⁷⁶

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

An arbitral award must state the time limit for voluntary enforcement of the award⁷⁷ and as discussed above, must be issued within 30 days since the end of the final hearing.⁷⁸

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

An arbitral award is final as regards the merits.⁷⁹ An award, therefore, constitutes *res judicata*, and could not be appealed on the merits to a second arbitral tribunal or to any court. If the parties have an agreement providing for the appeal of the arbitral award, such an agreement may likely be deemed invalid. Nevertheless, there has not been any case on the issue.

5.4.1 If yes, what are the grounds for appeal?

N/A.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

For Vietnam-seated arbitration, an arbitral award which is final and resolves the whole dispute (rather than a partial award) has the same legal status as a court judgment and is enforced in accordance with the LECJ without the need for seeking leave from the court for enforcement. For an *ad hoc* arbitral award to be

⁷³ Art. 354 Criminal Code 2015 as amended 2017 ("**Criminal Code 2017**").

⁷⁴ Art. 380 Criminal Code 2017.

⁷⁵ Art. 61(1)(dd) LCA.

⁷⁶ Art. 13 LCA; Art. 6 Resolution No. 01.

⁷⁷ Art. 61(1) LCA.

⁷⁸ Art. 61(3) LCA.

⁷⁹ Arts. 4(5), 61(5) LCA.

coercively enforced by the enforcement authority, within one year since its issuance, the award must be registered at the competent Court where the award has been issued.⁸⁰ For clarity, registration or non-registration of an *ad hoc* arbitral award does not affect the contents or validity of such award.⁸¹ However, if an *ad hoc* award was not registered in due time, it cannot be coercively enforced by the competent State enforcement agency. For both institutional and *ad hoc* awards, the time-limits to request the State enforcement agency is five years since the issuance of the award.⁸²

Vietnam acceded to the New York Convention on 12 September 1995 and has signed a number of treaties on mutual legal assistance which govern the recognition of foreign arbitral awards. The recognition of foreign arbitral awards for enforcement is regulated under Part Seven of the CPC. Notable, the foreign arbitral awards to be recognized are defined as “*the final award of the arbitral tribunal dealing with the entire contents of the dispute, concluding the arbitration proceedings, and being effective*”. Accordingly, interim orders and partial awards rendered during foreign-seated arbitrations are not enforceable in Vietnam on their own. In practice, foreign partial awards have never been recognized separately but only jointly with final awards. The time-limit for a party to submit an application for the recognition and enforcement of foreign awards in Vietnam is three years as from the date the arbitral award became legally effective.⁸³ The decisions of the first instance court on the recognition or non-recognition of a foreign arbitral award are subject to appeal and cassation/retrial proceedings.⁸⁴ Under the CPC, the time needed for recognition is around six months at the level of the first-instance court and around two months at the level of the appeal court. However, in practice, this timeframe is expected to be longer due to bureaucracy and the high workload of the court system.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

For Vietnam-seated arbitration, the award debtor can request the annulment of the award within 30 days since the date they received the award. Only when that 30-day period has lapsed without any request for annulment can the award creditor request for coercive enforcement by the State enforcement authority.⁸⁵

While a foreign arbitral award is being reviewed by the court at the seat of arbitration whether in setting aside or appeal proceedings, the Vietnamese Court would temporarily suspend the recognition proceedings.⁸⁶

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The Court would refuse to recognize a foreign arbitral award that has been set aside by the courts at the seat of arbitration.⁸⁷

5.8 Are foreign awards readily enforceable in practice?

The enforceability of foreign arbitral awards in practice is not easy owing to bureaucracy and protectionism. The Supreme People’s Court is drafting *Resolution guiding certain provisions of Civil Procedure Code on recognition*

⁸⁰ Art. 62 LCA; Art. 13 Resolution No. 01.

⁸¹ Art. 62(1) LCA.

⁸² Art. 30(1) LECJ.

⁸³ Art. 451 CPC.

⁸⁴ Arts. 461, 462 CPC.

⁸⁵ Art. 66 LCA.

⁸⁶ Art. 457(2)(a) CPC.

⁸⁷ Art. 459(1)(g) CPC.

and enforcement of foreign arbitral awards at first instance courts⁸⁸ to limit the grounds for refusal of recognition and encourage a friendly-arbitration approach of the court.

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

The Vietnamese law is unsettled on contingency fee arrangements or third-party funding.

In particular, there is no provision under Vietnamese law on contingency fee arrangement. The Law on Lawyers 2006 as amended 2012 only lists four ways to charge lawyer fee which include hourly fee, fixed fee, retainer fee, and fee equivalent to a percentage of the claim amount/contract value.⁸⁹ In other words, contingency fee arrangement is not clearly permitted or prohibited insofar as commercial arbitration is concerned.

Similarly, there is no specific provision on third-party funding in domestic law. Nevertheless, it is regulated in the pending EU – Vietnam Investment Protection Agreement (EVIPA) but in investment arbitration only.

6.2. If so, what is the practical and/or legal impact of such restrictions?

N/A.

7. Is there likely to be any significant reform of the arbitration law in the near future?

Since mid-2019, the Supreme People's Court has studied and circulated its draft *Resolution guiding certain provisions of Civil Procedure Code on recognition and enforcement of foreign arbitral awards* to relevant authorities and practitioners for comment.⁹⁰ This Draft Resolution aims at guiding in detail the procedures to apply for recognition and enforcement of foreign arbitral awards and more importantly limiting the grounds for refusal of such application.

On 2 October 2019, the Prime Minister announced Decision 1268/QĐ-TTg to approve the Plan on completing legislation on contract and resolution of contractual disputes by commercial arbitration and mediation. Later, on 12 February 2020, the Prime Minister also issued Decision 236/QĐ-TTg to establish a working group on reviewing legal documents to spot the current overlaps, conflicts, or ambiguities of the laws. As a result, more legislative changes to cure the current problems of the laws of Vietnam in commercial arbitration are expected to come in the future.

⁸⁸ Draft Resolutions guiding on recognition and enforcement of foreign arbitral awards and foreign civil court judgments and decisions are available at http://vibonline.com.vn/du_thao/du-thao-nghi-quyet-huong-dan-thu-tuc-cong-nhan-va-cho-thi-hanh-tai-viet-nam-doi-voi-phan-quyet-cua-trong-tai-nuoc-ngoai-va-ban-quyet-dinh-dan-su-cua-toa-nuoc-ngoai (available in Vietnamese only) (last accessed on 26 March 2020).

⁸⁹ Art. 55(2) Law on Lawyers 2006 as amended 2012.

⁹⁰ Draft Resolutions guiding on recognition and enforcement of foreign arbitral awards and foreign civil court judgments and decisions are available at http://vibonline.com.vn/du_thao/du-thao-nghi-quyet-huong-dan-thu-tuc-cong-nhan-va-cho-thi-hanh-tai-viet-nam-doi-voi-phan-quyet-cua-trong-tai-nuoc-ngoai-va-ban-quyet-dinh-dan-su-cua-toa-nuoc-ngoai (available in Vietnamese only) (last accessed on 25 May 2020).