

## Draft Commercial Arbitration Law for Adoption by the National Assembly in its Imminent Session

This legal update summarises the twenty-second draft of the Commercial Arbitration Law composed of 13 chapters and 81 articles and dated 13 March 2010 (“Draft Law”).

### Governing scope

The Draft Law regulates jurisdiction of commercial arbitration, arbitration forms, arbitration organisations, arbitrators, arbitration proceedings, rights and responsibilities of parties in arbitration procedures, court’s jurisdiction over arbitration activities and enforcement of arbitral awards.

Disputes to be resolved by arbitration comprise

- Disputes between parties arising from commercial activities;
- Disputes in which at least one party conducts commercial activities; and
- Other disputes between parties which may be resolved by arbitration as stipulated by law.

### General provisions on the use of arbitration

Resolution of a dispute by arbitration must comply with the following principles:

- There must be an arbitration agreement;
- Arbitration is to be conducted privately;
- The award rendered is final;
- Once an arbitration agreement is made, the court must refuse acceptance of the statement of claim unless the arbitration agreement is invalid or unenforceable.

The parties to a dispute with a foreign element may mutually agree on the language used in the arbitration proceeding. Failing this, the arbitration tribunal will decide.

When a party finds that the provisions of the arbitration law or an arbitration agreement are violated but does not make any objection within the stipulated time limit, such party will lose its right to later object at the arbitration proceeding or in court.

Arbitration tribunals may apply international practice to resolve disputes provided that such application does not contravene the “public order” of Vietnam.

### Arbitration agreements

An arbitration agreement must be made in writing. The following agreements are regarded as made in writing:

- An agreement established by communication between the parties by telegram, fax, telex, email or other forms as stipulated by law;
- An agreement established by written communication between the parties;
- An agreement recorded in writing by a lawyer, a notary public or a competent authority;
- A document manifesting an arbitration agreement referred to by the parties, such as a contract, documentary evidence, company charter and other similar documents;
- An agreement as evidenced via exchange of statements of claims and statements of defence in which the existence of an arbitration agreement is referred to by a party without objection by the other party.

With respect to a dispute between an enterprise and a consumer, an arbitration agreement will be valid only if it is notified in advance by the enterprise and accepted by the consumer.

An arbitration agreement is void when:

- The dispute arises beyond the jurisdiction of arbitration;
- The person establishing the arbitration agreement is not so authorised by law;
- The person establishing the arbitration agreement has no civil capacity as stipulated in the Civil Code;
- The form of the arbitration agreement is not properly made under applicable arbitration legislation;
- A party is deceived, threatened or coerced in the course of establishing the arbitration agreement and its request to void the arbitration agreement is granted by a court;
- The arbitration agreement violates legal prohibitions.

### Arbitrators

Any person who satisfies all the following conditions may act as an arbitrator:

- Having full civil legal capacity;
- Having a university degree and at least five years' work experience in the field of his/her studies;
- In special cases, an expert with high professional qualifications and ample practical experience but failing to meet the immediately preceding condition may be selected to act as an arbitrator.

Under the Draft Law having Vietnamese nationality is no longer required.

An arbitrator is entitled to:

- Accept or decline to resolve a dispute; and
- Receive remuneration.

and is obligated to:

- Be impartial during the dispute resolution;
- Keep the dispute confidential;
- Ensure quick and timely resolution of the dispute; and
- Observe the professional ethics code.

When performing his duties, an arbitrator will be responsible for his acts only when he intentionally violates the applicable arbitration legislation.

### Arbitration centres

Institutional arbitration will be established by a decision of the Minister of Justice in the form of an arbitration centre. Each centre must have at least 5 founders. The arbitration centre must also register its operation at the Department of Justice.

At variance with the Ordinance on Commercial Arbitration ("Ordinance"), the Draft Law stipulates that an arbitration centre is a non-profit organisation and allows an arbitration centre to establish branches, representative offices both in Vietnam and abroad.

### Statements of claim

For disputes to be resolved at an arbitration centre, the claimant must submit a statement of claim. For disputes to be resolved by ad hoc arbitration, the claimant must prepare a statement of claim and send it to the respondent.

A statement of claim must have the following contents:

- Date of the statement of claim;
- Name and address of parties;
- Name and address of each witness, if any;
- Summary of dispute contents;
- Grounds and evidence of claims, if any;
- Particular requests of the claimant and value of the dispute;
- Name and address of the person whom the claimant selects as arbitrator or proposes to be appointed arbitrator.

The arbitration agreement and originals or copies of relevant documents must accompany the statement of claim.

Arbitration proceedings commence the date a statement of claim is received by the arbitration tribunal unless otherwise agreed by the parties. For ad hoc arbitration, arbitration proceedings commence the date the claimant's statement of claim is received by the respondent unless otherwise agreed by the parties.

The statute of limitation for initiating arbitration proceedings is two years from the date the legitimate rights and interests were infringed upon.

### Arbitration tribunals

The parties may freely agree upon the number of arbitrators and the manner of appointing such arbitrators. Unless otherwise agreed by the parties, an arbitration tribunal is composed of three arbitrators. If the parties agree to select one sole arbitrator, then such arbitrator will resolve the dispute.

At the parties' request, an arbitration tribunal/ arbitrator may summon witnesses for provision of information and documents related to the resolution of the dispute. In necessary cases, the arbitration tribunal/arbitrator may request witnesses to be present at the hearing.

The arbitration tribunal may, at its own initiative or at the request of one or several parties, summon experts and request evaluation of property in dispute. The cost of experts or evaluation is either borne by the party requesting the expert or evaluation or is allocated by the arbitration tribunal.

Where the arbitration tribunal or the parties have taken necessary measures to collect evidence but are unsuccessful, they may seek such assistance from the competent court.

### Injunctive relief

While the Ordinance requires parties to seek interim relief from the competent court, the Draft Law authorises arbitral tribunals to issue interim relief orders upon the application by a party.

### Meetings for dispute resolution

The parties may attend hearings or authorise their representatives to attend and invite witnesses and lawyers.

If a claimant who has been duly summoned to attend the hearing is absent without legitimate reason or leaves the hearing without consent of the arbitration tribunal, the claimant will be regarded as having withdrawn his/her statement of claim. In this case, the arbitration tribunal will continue to resolve the dispute at the respondent's request or counterclaim.

If a respondent who has been duly summoned to attend the hearing is absent without a legitimate reason or leaves the hearing for dispute resolution without consent of the arbitration tribunal, the arbitration tribunal will continue to resolve the dispute based on the available documents and evidence.

At the parties' request, the arbitration tribunal may conduct a hearing based on the documents, without their presence.

The parties may request the arbitration tribunal to attest reconciliation of the dispute. If reconciliation is successful, the arbitration tribunal will make minutes of the successful reconciliation and issue a decision acknowledging successful reconciliation by the parties. This decision will be final and valid as an arbitral award.

### Arbitral awards

An arbitral award is based on a majority vote of the arbitration tribunal. Failing a majority vote, the arbitral award will follow the opinion of the chairman of the arbitration tribunal.

An arbitral award must be in writing and contain the following:

- Date and place of issuance of the award;
- Name and address of the claimant and the respondent;
- Full name of each arbitrator;

- Summary of the statement of claim and the disputed matters;
- Grounds for issuing the award;
- The award on the results of dispute resolution;
- Time limit for execution of the award;
- Allocation of arbitral fees and other relevant fees.
- Signatures of the arbitrators.

Within 30 days from the date of receiving the award, either party may request the arbitration tribunal to correct misspellings and miscalculations in the award or to provide explanation on a specific point or content of the award.

Arbitration centres are responsible for keeping files on the disputes they have officially accepted. Files on disputes resolved by ad hoc arbitration must be kept by the parties or the arbitrators. The time limit for retaining files will not be more than five years.

The parties are encouraged to voluntarily carry out an arbitral award. If any party fails to carry out voluntarily an arbitral award after the date of expiry of the time-limit for its execution, and that same party has not applied for setting aside the award, the arbitral award creditor has the right to apply to the enforcement body to enforce the award.

### Setting aside of arbitration award

The court will consider setting aside an arbitral award upon written application of a party. It will issue a decision setting aside an arbitral award if the requesting party proves that the arbitration tribunal has issued the award in one of the following cases:

- There is no arbitration agreement or the arbitration agreement is invalid;
- The composition of the arbitration tribunal or the arbitration proceedings do not comply with the parties' agreement or are inconsistent with arbitration legislation;
- The dispute falls outside the competence of the arbitration tribunal; where an arbitral award has content beyond the competence of the arbitration tribunal, such content will be set aside.

The court will issue a decision setting aside an arbitral award if such arbitral award is contrary to the fundamental principles of relevant Vietnamese laws.

### Organisation and operation of foreign arbitration centres in Vietnam

A foreign arbitration organisation lawfully established and operating in foreign countries, respecting the Constitution and laws of Vietnam, may operate in Vietnam in the form of branch ("branch") or representative office of such foreign arbitration centre ("representative office").

Additionally, branches and representative offices are entitled to:

- Rent office space, to lease and purchase facilities and things necessary for their operation;
- Recruit Vietnamese and foreign employees in accordance with the provisions of Vietnamese laws;
- Open bank accounts in Vietnamese dong and foreign currency at banks licensed to operate in Vietnam; and
- Own a seal bearing its name.

Branches are entitled to:

- Appoint arbitrators to establish arbitration tribunals as authorised by the foreign arbitration centres and in accordance with arbitration legislation;
- Provide arbitration and reconciliation services;
- Provide administrative, office and other services for dispute resolution by the foreign arbitration centres; and
- Collect arbitration fees and other lawful receipts.

Representative offices may seek and promote opportunities for arbitration activities of their organisations in Vietnam but are prohibited from conducting arbitration activities in Vietnam.

Branches and representative offices are obligated to report annually on their operations to the Department of Justice in the locality where they register operation.

### Effect of the Commercial Arbitration Law

The Draft Law is slated to be discussed at the Vietnamese National Assembly in its May-June 2010 session and if adopted, it will take effect on 1 January 2011 and replace the 2003 Ordinance on Commercial Arbitration.

For information about this Ordinance, see Mayer Brown JSM's 28 April 2003, Client Alert "[New Ordinance On Commercial Arbitration](#)".

Arbitration centres established prior to 1 January 2011 need not perform procedures for re-establishment but must amend and revise their charters and arbitration procedural rules in conformity with the new regulations. Otherwise, such centres will have to terminate their operations.

### Contact Us

#### **Dao Nguyen, Partner**

E: [dao.nguyen@mayerbrownjism.com](mailto:dao.nguyen@mayerbrownjism.com)

#### **Kevin B Hawkins, Associate**

E [kevin.hawkins@mayerbrownjism.com](mailto:kevin.hawkins@mayerbrownjism.com)

#### **Thinh Dan, Associate**

E: [thinh.dan@mayerbrown.com](mailto:thinh.dan@mayerbrown.com)

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