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Vietnam and arbitration: will 2023 prove to be the year great strides were made?

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Vietnam and arbitration: will 2023 prove to be the year great strides were made?

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IN SUMMARY

This article provides an overview of the key developments in commercial and investor–state arbitration in Vietnam in 2023. In 2023, Vietnam witnessed positive changes not only in refining problems within the legislative system but also in the Vietnamese courts' attitude towards arbitration. However, further great and considerable efforts are needed for Vietnam to be aligned with international laws and standards on arbitration.

DISCUSSION POINTS

Arbitrability of disputes arising from non-disclosure and non-compete agreements and Precedent No. 69/2023/AL

- New Land Law and its impacts on arbitration-related issues
 - Requirement for legalisation of foreign documents to be used in Vietnam-seated arbitration seated in consideration of fundamental principles under Vietnamese law
 - Multi-contract arbitration and the current Vietnamese court's approach
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REFERENCED IN THIS ARTICLE

- Law on Commercial Arbitration 2010
 - Civil Procedure Code 2015
 - Land Law 2024
 - Resolution 01/2014/NQ-HDTP
 - Precedent No. 69/2023/AL
 - Decision No. 12/2023/QĐ-PQTT dated 04 July 2023 of the People's Court of Ha Noi
 - Decision No. 16/2023/QĐ-PQTT dated 27 November 2023 of the People's Court of Ha Noi
 - Decision No. 1185/2022/QĐ-PQTT dated 29 July 2022 of the People's Court of Ho Chi Minh City
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COMMERCIAL ARBITRATION IN 2023

In 2023, Vietnam made great progress in improving the legal framework for arbitration and has shown genius effort of alignment with international laws and standards in many aspects of arbitration. Specifically, the Vietnam Lawyers Association (VLA) proposed the Draft law for Amendments and Supplements to the Law on Commercial Arbitration (the Draft Amended and Supplemented LCA)^[1] to overcome the shortcomings of the current Law on Commercial Arbitration (LCA). Despite the LCA having adopted the key principles of the UNCITRAL Model Law, in many specific and crucial aspects, the LCA was not entirely aligned with the UNCITRAL Model Law. In 2013, the experts of UNCITRAL pointed out the gap between the LCA and the UNCITRAL Model Law.^[2] In 2021, a report on assessment compared the Vietnamese law and the UNCITRAL Model Law regarding the recognition and enforcement of arbitral awards (the Report) in a series of activities for the Cooperation Programme between the Ministry of Justice and the regional project from the United Nations

Development Programme (UNDP) funded by the UK Prosperity Fund.^[3] This Report also indicates the problems within the current LCA and its application in practice in comparison to the UNCITRAL Model Law.

The vital objective of this amendment is to enable Vietnam to adapt to the global integration environment and to establish Vietnam as a jurisdiction committed to applying the UNCITRAL Model Law in arbitration. To achieve the outlined objective, this Draft Amended and Supplemented LCA envisages the establishment of four main policy groups, including:

- expanding the ambit of the dispute that can be arbitrated by commercial arbitration;
- refining procedures for commercial arbitration;
- extending the jurisdiction of the arbitral tribunal in arbitral proceedings; and
- adjusting provisions regarding arbitral awards, setting aside the arbitral awards and revisiting the decisions of the court on setting aside arbitral awards.

A typical example indicating the arbitration-friendly approach under the Draft Amended and Supplemented LCA^[4] can be found in the below regulation:

“Jurisdiction of arbitration to resolve disputes:

Disputes arising between parties in fields where specialized laws do not prohibit or restrict dispute resolution through arbitration;

Disputes arising between parties in the execution of commercial agreements if such agreements allow for arbitration.”

The Draft Amended and Supplemented LCA is expected to improve the current legal framework for arbitration in Vietnam to be more in line with the international law and standards and, thus, contribute to the competitiveness of Vietnam’s investment environment by securing the prompt, efficient and fair resolution of both domestic and international commercial disputes.

In respect of statistics, as of the end of October 2023, the Vietnam International Arbitration Center (VIAC), the most referred arbitration institution in Vietnam, reportedly recorded 346 new cases, marking an increase of nearly 30 per cent compared to the same period in 2022.^[5] According to the statistics from the database of the Supreme People’s Court (SPC) published as on 28 March 2024,^[6] 18 arbitral awards were challenged and five were set aside in 2023. In terms of recognition and enforcement of the foreign arbitral award, seven foreign arbitral awards were brought before the local court and four of them were refused for recognition in Vietnam.

ARBITRABILITY OF DISPUTES ARISING FROM NON-DISCLOSURE AND NON-COMPETE AGREEMENTS AND PRECEDENT NO. 69/2023/AL

As a persistent approach under Vietnamese law, commercial arbitration is not a mechanism to resolve labour disputes. Both the effective Labour Code 2019 and its predecessor the Labour Code 2012 provide for a list of mechanisms where the labour disputes can be heard.^[7] Neither of them gives commercial arbitration as an available dispute resolution mechanism.

It has been debated for years whether a dispute arising from a non-disclosure and non-compete agreement could be determined a labour dispute and then could not be resolved through commercial arbitration. This issue has now been addressed by [Precedent No. 69/2023/AL](#) (Precedent 69) announced by the Judge Council of the Supreme People's Court on 18 August 2023.

Precedent 69 is based on Decision No. 755/2018/QĐ-PQTT of the People's Court of Ho Chi Minh City dated 12 June 2018 relating to arbitration's jurisdiction over non-disclosure and non-compete agreements.

In Precedent 69, the claimant (ie, the employer) and the respondent (ie, the employee) entered into a non-compete agreement (NCA) inter alia stipulating that after the termination of the labour contract, the respondent would not engage in a similar position for any enterprise that would compete with the claimant within a specific period. The dispute resolution clause therein provides for VIAC arbitration. Later, the claimant alleged that the respondent had breached the NCA and then initiated the VIAC arbitration to claim damages thereunder. Upon the rendering of the arbitral award in favour of the claimant, the respondent requested the local court to set aside the arbitral award on the ground that the dispute, relating to the NCA being a labour dispute, must fall within the court's jurisdiction rather than commercial arbitration. On 12 June 2018, the People's Court of Ho Chi Minh City issued Decision No. 755/2018/QĐ-PQTT to resolve the employee's request. In particular, the Court found that:

"Article 2.2 of the Law on Commercial Arbitration (LCA) states: "Jurisdiction of arbitration to resolve disputes: Dispute arising between parties at least one of whom is engaged in commercial activities". [The claimant] is an enterprise registering its business and engaging in commercial activities under the 2005 Commercial Law. Therefore, the arbitration agreement falls under the jurisdiction of VIAC Arbitration and arbitration for resolution as stipulated in Article 2.2 of the LCA. [...] Article 35.4 of the LCA stipulates: "If the respondent alleges that the dispute is outside the jurisdiction of arbitration or alleges that there is no arbitration agreement or that the arbitration agreement is void or incapable of being performed, the respondent must specify such allegations in the defense." However, under [the respondent's] Statement of Defence and throughout the arbitral proceedings, [the respondent] did not raise any objections to the jurisdiction of the arbitral tribunal but continued to participate in the arbitral proceedings and hearings for dispute resolution. Thus, [the respondent] has lost its right to object to the arbitral tribunal's jurisdiction as stipulated in Article 13 of LCA and the guidelines in Resolution 01/2014/NQ-HĐTP. Additionally, [the respondent] argues that the dispute between the parties is a labor dispute falling under the jurisdiction of the Court because the NCA is an integral part of the labor contracts between the parties. [...], the Court determined that the NCA is independent, and in case of disputes, it falls under the jurisdiction of arbitration as chosen by the parties at the time of conclusion."

Accordingly, Precedent 69 affirms that the NCA is an agreement independent from the labour contract, and the disputes arising therefrom are arbitrable and fall within the arbitral tribunals' jurisdiction where the NCA provides for an arbitration agreement. Notably, the court invoked and applied the principle of losing the right to object under the LCA to reject the employee's

objection to the arbitral tribunal's jurisdiction. To be specific, pursuant to article 13 of the LCA,^[8] because the employee failed to object to the arbitral tribunal's jurisdiction within the provided time limit (ie, at the time of submission of the statement of defence) the employee then lost its right to raise such objection before the court at the setting aside proceedings.

On the bright side, Precedent 69 indicates a pro-arbitration approach of the local court. Indeed, Precedent 69 expressly extends the arbitration's jurisdiction to the non-disclosure and non-compete agreements even though they may relate to labour contracts and reaffirms the principle of losing the right to object under the LCA.

Nevertheless, on the downside, Precedent 69, failing to explain the rationale for the independence between the NCA and the labour contract, would raise certain concerns about the ambit of labour disputes and the matter of the arbitrability of labour disputes.

Under Decision No. 755/2018/QĐ-PQT, the applicable law is the Labour Code 2012. There is a slight discrepancy between the definition of 'labour disputes' under the Labour Code 2012 and the Labour Code 2019. Where the former defines the labour disputes as 'dispute over rights, obligations or interests arising between the parties in a labor relation',^[9] the latter expands the definition to cover inter alia the disputes 'arising directly from labor relation'.^[10] As the engagement of NCA is based on the existence of the labour relation, due to the broad definition of labour disputes under the Labour Code 2019, it would be implausible to hold that NCA disputes do not arise from the labour relation and, hence, should not be deemed as a labour dispute. Therefore, one may opine that the ruling under Precedent 69 is not in accordance with the current effective Vietnamese law.

Given the ambiguity of the scope of labour disputes under Vietnamese law, upon the issuance of Precedent 69, an increase in the number of disputes, which are ill defined as to whether they are labour disputes or not, are expected to be brought to arbitration. This, to a certain degree, would pose a heavy burden on the involved parties since the matter of arbitrability and the jurisdiction of the arbitral tribunal in this regard are problematic.

NEW LAND LAW AND ITS IMPACTS ON ARBITRATION-RELATED ISSUES

In our article for the 2023 edition of this publication,^[11] the exclusive jurisdiction of Vietnamese courts under article 470.1(a) of the Civil Procedure Code 2015 (CPC) over disputes with foreign elements and relating to the rights over real estate in Vietnam has been discussed. The lack of official guidance on the scope of the disputes mentioned in article 470.1(a) lead to a long-standing controversy as to whether such disputes (that subject to the exclusive jurisdiction of the local court, and hence, cannot be arbitrated):

- are only limited to those that relate to the land use right and the ownership of the other real estate,^[12] or
- cover all types of disputes that are generally related to real estate.

The Land Law 2024, passed by the National Assembly on 18 January 2024 and officially coming into force from 1 January 2025, to a certain degree, has eliminated the uncertainty under Vietnamese law. Specifically, article 236 of the Land Law 2024 reads as:

"Article 236. Jurisdiction on resolving land disputes.

...

5. [Disputes between the parties that arise out of commercial activities and relate to land](#) shall be resolved by the People's Courts in accordance with the law on civil procedure or by Commercial Arbitration of Vietnam in accordance with the law on commercial arbitration.”

At the minimum, article 236.5 affirms that not all types of disputes relating to real estate would be subject to the exclusive jurisdiction of the local court. Indeed, ‘disputes between the parties that arise out of commercial activities and relate to land’ are arbitrable. Still, Land Law 2024 does not provide any definition of ‘disputes between the parties that arise out of commercial activities and relate to land’. This may result in great obstacles in the ascertainment of land-related disputes falling within the ambit of article 236.5 and, thus, being able to be arbitrated. Still, the by-laws guiding the Land Law 2024 have been in the process of being prepared. It is hoped that the by-laws could officially guide the understanding of ‘disputes between the parties that arise out of commercial activities and relate to land’ as stipulated in article 236.5.

Controversially, article 236.5 seems to empower domestic arbitration solely to resolve disputes arising from commercial activities related to land, as indicated by the term ‘commercial arbitration of Vietnam’. This can be considered as discrimination between domestic and foreign arbitration. Since Vietnam committed to open the market access for arbitration and conciliation services under the WTO, if the said interpretation of article 236.5 is correct, Vietnamese commitment under the WTO would likely be breached.

In addition, it seems that article 236.5 contradicts the regulation under the Law on Investment 2020. Under the Law on Investment 2020, disputes between investors in which at least one party is a foreign investor can be resolved inter alia through either foreign arbitration or domestic arbitration.^[13] Therefore, it would be unsettled, if a dispute arising from commercial activities related to land but a disputing party was a foreign investor, whether such investor could bring its dispute to the foreign arbitration. Alternatively put, in such a case, which law (ie, the Land Law 2024 or the Law on Investment 2020) would override the other?

The above denotes the problem surrounding article 236.5 of the Land Law 2024. It is hoped that the lawmaker will pay enough attention to and solve this matter in the near future.

REQUIREMENT FOR LEGALISATION OF FOREIGN DOCUMENTS TO BE USED IN VIETNAM-SEATED ARBITRATION IN CONSIDERATION OF FUNDAMENTAL VIETNAMESE PRINCIPLES

The ground of ‘violation of fundamental principles under Vietnamese laws’ for annulment of the arbitral award under the LCA, an equivalent concept of ‘public policy’ under the UNCITRAL Model Law, had been at the centre of a long-standing controversy in Vietnam. Resolution 01/2014/NQ-HDTP (Resolution 01) has endeavoured to define the scope of ‘fundamental principles’ as ‘the award violates basic principles on conduct, of which the most overriding effects are in respect of the development and implementation of Vietnamese law’.^[14] Furthermore, the court shall set aside the arbitral award only after deciding that the award has any content that is contrary to one or more fundamental principles under Vietnamese law and the award violates the interests of the government or the legitimate rights and interests of a third party or parties.^[15] Resolution 01 further provides for two instances of ‘fundamental principles under Vietnamese laws’, namely the principle of party autonomy and the requirement for arbitrators to be impartial and independent.^[16]

Regardless of the attempt to limit the local court's arbitrary application of such an annulment ground, the recent two court decisions still raise deep concerns about the local court's broad and inconsistent interpretation of 'fundamental principles under Vietnamese laws'.

In the Decision No 12/2023/QD-PQTT dated 4 July 2023 (Decision 12), the People's Court of Hanoi declared that by admitting that the foreign documents had not been legalised by a consular, the arbitral tribunal had committed a serious violation of the arbitration procedures and failed to be impartial and independent in dispute resolution. The court then invoked the ground of 'violation of fundamental principles under Vietnamese laws' to set aside the award.

To be specific, in the concerned arbitration involving a Singapore company as the claimant, the claimant's board of directors' resolution (BOD's resolution) and power of attorney (POA) had not been legalised at the time of the request for arbitration but filed later in the proceeding.

Pursuant to article 4.2 of Decree 111/2011/ND-CP of the government on consular certification and legalization (Decree 111), 'to be recognized and used in Vietnam, papers and documents of foreign countries must be consular legalized, except the cases specified in Article 9 of this Decree'. Article 9 of the Decree inter alia provides papers and documents are exempted from consular certification and legalisation if 'the receiving agency in Vietnam . . . does not require for the consular certification and legalization in accordance with the corresponding law in Vietnam'.

The arbitral tribunal under the award ruled that pursuant to article 9.4 of Decree 111, because the tribunal as the receiving agency in Vietnam did not require the legalisation by consular of the documents, the requirement of legalisation is inapplicable. Still, the court at the setting aside proceedings had rejected such a position.

Although admitting that the LCA, the governing law of the arbitration seated in Vietnam, does not require the documents to be legalised to be used in the arbitration, the court found that in the absence of a specific provision under the LCA, the provisions under the Civil Code and the Civil Procedural Code should be invoked as 'corresponding' legal frameworks for dispute resolution. Accordingly, the court relied on article 478 of the Civil Procedure Code mandating the notarisation and authentication of foreign documents and papers for legal validity to conclude that BODs' Resolution and the POA shall be legalised by consular to be used in the arbitration.

Interestingly, in the same year, the People's Court of Hanoi reached a divergent conclusion on a similar matter. In particular, in Decision No. 16/2023/QD-PQTT dated 27 November 2023 (Decision 16), the court upheld the arbitral award and objected to the position that request for arbitration was invalid due to the failure of legalisation. The reasons given by the court were that:

- upon the request of the arbitral tribunal, the relevant party had provided the legalised POA (although it was legalised after the submission of the request for arbitration) authorising the signing of the request for arbitration; and
- pursuant to article 9.4 of Decree 111, the arbitral tribunal, as the receiving party in the sense of article 9.4 of Decree 111, had not requested the legalisation of the request for arbitration.

These contrasting decisions by the same court in the same year highlight the Vietnamese courts' inconsistent application of the annulment ground of 'violation of fundamental principles under Vietnamese laws'. This calls for the urgent attention of lawmakers to overcome this obstacle for Vietnam to become a more friendly seat of arbitration.

MULTI-CONTRACT ARBITRATION AND CURRENT VIETNAMESE COURT'S APPROACH

The LCA and Resolution 01 are two main legal instruments governing the conduct of commercial arbitration in Vietnam. Although the LCA keeps silent on the multi-contract arbitration, Resolution 01 expressly allows the consolidation of a number of legal relationships in dispute for resolution into a single proceeding. In particular, article 7.4 of the Resolution 01 reads as:

"Article 7. Arbitration agreement as provided in Article 16 of the Law on Commercial Arbitration

...

4. The consolidation of a number of legal relationships in dispute for resolution in one single proceeding is carried out in either of the following circumstances:

(a) The parties agree to consolidate a number of legal relationships in dispute for resolution into a single proceeding;

(b) The arbitration rules allow the consolidation of a number of legal relationships in dispute or resolution into a single proceeding"

Accordingly, under Vietnamese law, a number of legal relationships in dispute could be consolidated into a single proceeding where the parties agree or the arbitration rules as chosen by the parties allow so.

The Arbitration Rules of VIAC, the leading arbitration institution in Vietnam, deal with two scenarios relating to the consolidation of a number of legal relationships into a sole arbitration. To be specific, article 6 addresses the scenario where the claimant makes claims arising out of multiple contracts in a single request for arbitration. Article 15 governs the scenario where two arbitrations commenced under the VIAC Rules are consolidated into a single proceeding. These articles read as:

"Article 6. Multiple contracts

Claims arising out of or in connection with more than one contract may be made in a single Request for Arbitration to be resolved in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement

...

Article 15. Consolidation of arbitrations

1. Parties may agree to consolidate two or more arbitrations pending under these Rules into a single arbitration. The Centre shall decide on whether the arbitrations are consolidated upon its consideration on relevant matters.

2. Unless otherwise agreed by the parties, the arbitrations shall be consolidated into the arbitration that commenced first.”

An article was published by the Deputy Secretary General of the VIAC to guide the application and interpretation of article 6 (the VIAC Guidance). Remarkably, the VIAC Guidance appears to be divergent from the ruling of the People’s Court of Ho Chi Minh in its Decision No. 1185/2022/QĐ-PQTT dated 29 July 2022 (Decision 1185).

Pursuant to the VIAC Guidance, the claimant’s right under article 6 is subject to certain conditions and the decision of the competent body, as demonstrated by the text ‘maybe made in a single Request for Arbitration’. To be specific, the VIAC Guidance provides:

- two conditions for the claimant to make multi-contract claims in a single request for arbitration, namely:
 - the arbitration agreements invoked must be compatible; and
 - the disputes that are sought to be made in a single request for arbitration must have the ‘same legal relationship’;
- the claimant will need to submit all claims arising out of different contracts in the initial request for arbitration instead of introducing any new claim based on a different contract by the way of amending its request for arbitration later in the proceeding; and
- the tribunal would have the power to decide whether the claims arising from different contracts are consolidated in a single arbitration.

Nevertheless, article 6 clearly on its face is silent on the restriction of a claimant’s right to make multi-contract claims in a single request for arbitration. The term ‘may’ in the official English version of the VIAC Rules and ‘*có thể*’ in the official Vietnamese version of the VIAC Rule can be construed as either a right or a possibility solely. In the context of article 6, where there is no condition, procedure for or designated competent body to decide on the consolidation of multi-contract claims, there would be a high chance that those applying this rule may understand ‘may’ in the sense that it is a right rather than a possibility. Notably, this approach is upheld by the People’s Court of Ho Chi Minh City in Decision 1185.

In Decision 1185, upon the arbitral award resolving claims arising from four construction contracts in favour of the claimant, the respondent requested the People’s Court of Ho Chi Minh City to annul the award inter alia on the ground that the consolidation of claims arising from these four contracts for resolution in a sole arbitration does not comply with the LCA and the VIAC Rules as the relevant arbitration agreements are not compatible.

Such a position was rejected by the People’s Court of Ho Chi Minh City. The Court found that the compatibility among arbitration agreements invoked is not a condition under LCA and the VIAC Rules for the disputes arising thereunder to be resolved in a single arbitration. The Court further relied on inter alia the wording of article 6 of the VIAC Rules to come to this conclusion. Accordingly, the Court ruled that claimant’s claims based on incompatible arbitration agreements to be resolved in a single arbitration are in line with the LCA.

In this case, the Court opted for a simple approach by relying on the absence of requirement under the LCA and the VIAC Rules to not recognise arbitration agreements being compatible as a condition for consolidating multi-contract claims into a single arbitration. By chance, the easy way out taken by the court in this case is excusable thanks to the fact of the case.

In particular, although in this case at least two arbitration agreements are incompatible, the respondent did not raise any rejection during the arbitral proceedings. This, to some extent, might be deemed as the respondent agreeing to have the tribunal resolve disputes arising from all four contracts or the respondent losing the right to object.

Nevertheless, Decision 1185 does not deal with circumstances where:

- there are two incompatible arbitration agreements between the parties (eg, one provides for the VIAC arbitration and the other provides for the SIAC arbitration);
- a claimant wishes to have claims arising from these incompatible arbitration agreements resolved solely by the tribunal established based on the first arbitration agreement (eg, the VIAC tribunal); and
- a respondent rejects the jurisdiction of the tribunal established based on the first arbitration agreement over the dispute arising from the second arbitration agreement.

In such a case, if the approach of the local court in Decision 1185 is upheld, at rock bottom, there are two questions that should be taken into account. First, what is the basis for the jurisdiction of the tribunal established based on the first arbitration agreement over the dispute arising from the second arbitration agreement that clearly empower another arbitration to resolve the dispute? Second, in this case, how is the principle of party autonomy secured?

Generally, the VIAC Guidance appears to be similar to those under arbitral rules of the leading international arbitral institutions such as the ICC, SIAC and HKIAC and in line with international practice. However, the problem rests on the fact that the VIAC Guidance is unofficial and has not been incorporated into the VIAC Rules. Decision 1185 is a typical example of article 6 being misapplied owing to the lack of clear and official guidance from the VIAC. It is hoped that future revisions to VIAC Rules should cure the aforesaid shortcomings.

INVESTOR–STATE ARBITRATION

From 2019 to 2023, five ISDS cases were reportedly filed against the Vietnamese state, specifically *PowerChina and others v Vietnam* (2023), *Immobilien Partner and others v Vietnam* (2022), *ITACO and Dangelas v Vietnam* (2022), *PowerChina and China Railway v Vietnam* (2022) and *Dangelas and others v Vietnam* (2019).^[17] On 12 September 2023, the Paris Court of Appeals in *ITACO and Dangelas v Vietnam* upheld a jurisdictional award against Vietnam. To be specific, the Court found that the US–Vietnam Trade Relations Agreement did not prohibit claims from investors holding the nationalities of both treaty parties.^[18] On 20 February 2023, the claimant group of the *Immobilien Partner v Vietnam* has completed the payment for arbitration administration fee to request the respondent to pay a trillion-euro fine at the ICC International Arbitration Court in Paris.^[19] For the two cases initiated in 2022 and 2023, where plaintiffs include PowerChina and others, the proceedings are still pending.

Endnotes

^[1] See [the Draft Amended and Supplemented LCA](#), available at the web portal for formulation of legislative documents of the Vietnam Chamber of Commerce and Industry (VCCI).

^[2] See [‘The four main policies in amending the LCA’](#), available at the web portal of the VLA.

^[3] See https://vibonline.com.vn/du_thao/17048.

^[4] See [the Draft Amended and Supplemented LCA](#).

^[5] See <https://www.viac.vn/tin-tuc-su-kien/toa-an-ho-tro-va-thuc-day-trong-tai-thu-ong-mai-de-nang-cao-hieu-qua-giai-quyet-tranh-chap-thuong-mai-va-dau-tu-phu-c-vu-hoi-nhap-kinh-te-n1526.html>.

^[6] Web portal of the Supreme People's Court <https://congbobanan.toaan.gov.vn/0tat1cvn/ban-an-quyet-dinh>.

^[7] See articles 198, 199 and 200 of the 2012 Labour Code; see articles 184, 185 and 187 of the 2019 Labour Code.

^[8] LCA, article 13. Loss of right to object: 'If a party discovers a breach of the provisions of this Law or of the arbitration agreement but continues to conduct the arbitration proceedings and does not object to such breach within the time-limit stipulated in this Law, [such party] shall lose the right to object at the arbitration or before the court.'

^[9] 2019 Labour Code, article 179. Labour disputes: '1. A labor dispute means a dispute over rights, obligations and interests among the parties during the establishment, execution or termination of labor relation; a dispute between the representative organizations of employees; a dispute over a relationship that is directly relevant to the labor relation'.

^[10] 2012 Labour Code, article 3. Definitions: '7. Labor dispute means a dispute over rights, obligations or interests which arise between the parties in industrial relations'.

^[11] See our previous article: <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2024/article/arbitrability-of-land-related-disputes-in-vietnam-divergence-in-setting-aside-and-recognition-procedures>.

^[12] In Vietnam, land is collectively owned by the nation and administered by the government. Therefore, people only have the right to use, rather than own, land, as well as the right to own property attached to land.

^[13] 2020 Law on Investment, article 14. Settlement of disputes over business investment activities: '3. Every dispute between investors, one of which is a foreign investor or a business organization defined in Points a, b and c Clause 1 Article 23 of this Law, shall be settled by one of the following agencies/organizations: [...] (b) Vietnamese Arbitration (c) Foreign Arbitration.'

^[14] Resolution No.01/2014, article 14. Grounds for set aside of arbitral awards prescribed in article 6 of LCA: 'dd) "The arbitral award contravenes the fundamental principles of Vietnam's Law", meaning the arbitral award violates the effective fundamental rules for formulation and implementation of Vietnam's Law'.

^[15] Resolution No.01/2014, article 14. Grounds for set aside of arbitral awards prescribed in article 6 of LCA: 'dd) . . . The Court shall only set aside an arbitral award after proving that it contravenes one or some fundamental rules of Vietnam's law, which are not adhered to by arbitral tribunal when issuing the arbitral award, and the arbitral award seriously infringe upon the interest of the State, the lawful rights and interests of either party or some third person.'

[16] Two examples were set out in the article 14. Grounds for set aside of arbitral awards prescribed in article 6 of LCA: 'Example 1: The parties concerned have an agreement on dispute settlement and such agreement does not contravene the law or social ethics, but the arbitral tribunal does not recognize such agreement in the arbitral award. In this case, the arbitral award violates the right to free and voluntary business agreements prescribed in Article 11 of the Law on Commerce and Article 4 of the Civil Code. The court shall consider canceling this arbitral award because it contravenes a basic rule of Vietnam's law which is prescribed in the Law on Commerce and the Civil Code; Example 2: A party under the dispute provides evidence that the arbitral award involves coercion, fraud, threats, or bribery. In this case, the arbitral award violates the rule "arbitrators must be independent, objective, and impartial" prescribed in Clause 2 Article 4 of LCA.'

[17] See <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/229/viet-nam>.

[18] See <https://www.lexisnexis.co.uk/legal/news/paris-court-of-appeals-rejects-annulment-of-jurisdictional-award-in-favour-of-a-dual-national-in-an>.

[19] See <https://www.wnct.com/business/press-releases/ein-presswire/618917091/an-europe-investment-group-requests-vietinbank-a-trillions-fine-at-icc-international-court-of-arbitration>.



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