Dispute Resolution Around the World

Vietnam
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1. Legal System

Vietnam is a civil law jurisdiction based on communist legal theory, with influence from the French civil law system. In 1992, the National Assembly (NA) adopted a new constitution formally recognizing private ownership and guaranteeing non-nationalization, nonrequisition and nonconfiscation of private, including foreign-owned, assets. It also allowed many forms of business activities which were previously not possible under the 1980 constitution. In 2001, the 1992 constitution was amended to specifically recognize the existence of foreign invested enterprises as well as the rights over capital and assets of foreign individuals and organizations in Vietnam (the “Amended 1992 Constitution”).

According to the Amended 1992 Constitution, the Government, being the executive arm of the NA, is responsible for drafting proposals for legislation and ordinances for submission to the NA and the Standing Committee of the National Assembly (SCNA). The NA, as the highest legislative authority, is responsible for ensuring that the people and government agencies comply with the Constitution and laws. The SCNA acts on behalf of the NA outside its sessions and has the authority to issue ordinances and interpret the Constitution, laws and ordinances.

Laws in Vietnam are derived from legislation (codes and laws) enacted by the NA and ordinances of the SCNA when the former is not in session. These primary sources of laws are supported and implemented by Government decrees and regulations; decisions of the Prime Minister. These primary sources of laws are supported and

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1 The 1992 Constitution was amended by Resolution No. 51/2001/NQ-QH10 dated 25 December 2002 on amendments and supplements to a number of articles of the 1992 Constitution.
3 Article 83 of the Amended 1992 Constitution.
4 Article 91 of the Amended 1992 Constitution.
5 There is no formal process of codification in Vietnamese law. In certain important area where the law issued by the NA is relatively comprehensive and complete, the term “Code” is used. To date, there are the following major codes of Vietnamese laws: the Civil Code, the Civil Procedure Code, the Criminal Code, the Criminal Procedure Code and the Labour Code.
implemented by Government decrees and regulations and decisions of the Prime Minister. Decrees are further elaborated and implemented by ministerial and interministerial circulars. At the local level, these regulations are implemented by decisions and directives of a city or provincial People’s Committee.

The NA, as the main legislature, makes and amends the constitution and laws. It also elects from its members the state president, who acts as head of state and is charged with the proclamation of the constitution, laws and ordinances. The state president is the commander in chief of the armed forces and the chairman of the Defense and Security Council. He has a five-year term of office, corresponding with the term of the NA.

The executive arm of the NA is the government, whose head (the prime minister) is elected by the NA. There are also four deputy prime ministers in charge of key areas. While the prime minister is required to be a member of the NA, other members of the government need not be. The government is organized into twenty-two ministries, ministerial-level bodies and committees.

The judiciary consists of the People’s Courts and the People’s Procuracy. The chief judge of the Supreme People’s Court and the chief of the Supreme People’s Procuracy are appointed by the NA.

2. Courts

Court of Justice

The Amended 1992 Constitution defines the role of the judiciary in Vietnam. In 2002, the NA enacted the Law on Organization of People’s Courts to replace the old law and to provide regulations for the court system in Vietnam. Under the new law, the court system is composed of:

- The Supreme People’s Court;

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6 Article 103 of the Amended 1992 Constitution.
The People’s Courts at the cities and/or provinces under central control (the “Provincial People’s Courts”);

The People’s Courts at the districts and/or towns under provincial control (the “District People’s Court”);

The military courts; and

Other courts as determined by law.

The NA has the power to establish specialized courts for particular purposes.

**Court Jurisdiction**

**Local People’s Courts**

Local People’s Courts consist of Provincial People’s Courts and District People’s Courts. They are accountable to the Supreme People’s Court, which is, in turn, accountable to the NA. The internal organizational structure of the Local People’s Courts and military courts at various levels is analogous to that of the Supreme People’s Court.

The practical administration and management of the Local People’s Courts is a function of the Ministry of Justice (MOJ). The coordination between the MOJ and the chief judge of the Supreme People’s Court is regulated separately by the SCNA.

**District People’s Courts**

The District People’s Courts have jurisdiction to resolve all cases at the first-instance level, such as civil disputes, labor disputes, business and trade disputes, civil requests, and administrative cases, except for special cases mentioned below.

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7 Article 33.1 of the Civil Procedure Code was passed by the National Assembly of Vietnam on June 15, 2004 and amended in 2011 (the CPC). Marriage and family-related disputes and requests and criminal cases are not analysed in this guide.
The following matters will not be resolved by the District People’s Court:

- matters involving foreign elements with regard to civil, economic and labour matters;¹⁰
- matters falling under the jurisdiction of the District People’s Court which are taken to the Provincial People’s Court for resolution;¹¹ and
- other matters which belong to the jurisdiction of the Provincial People’s Courts as specifically provided in the relevant laws (such as IP-related disputes and certain administrative cases).

Unlike the Provincial People’s Courts, the District People’s Courts do not have a judge committee and are not divided into separate courts charged with resolving cases relating to different fields such as criminal, civil, economic, labour or administrative law.

Provincial People’s Courts

Each Provincial People’s Court is comprised of:

- The Judge Committee
- The criminal courts
- The civil courts
- The economic courts

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⁸ Article 33.2 of the CPC.
⁹ Pursuant to Article 29 Law No. 64/2010/QH12 dated 24 November 2010 on Administrative Procedures (the “Law on Administrative Procedures”), the District People’s Court have jurisdiction to resolve lawsuits against administrative decisions made or administrative acts taken by state agencies of the district or lower level on the same territory with the courts or by public employees of such state agencies according to the first instance procedures.
¹⁰ Article 33.3 of the CPC: Disputes involving parties or properties in foreign countries or which must be judicially entrusted to Vietnamese consulates overseas or to foreign courts shall not fall under the jurisdiction of the District People’s Court.
¹¹ Article 34.2 of the CPC.
• The labor courts
• The administrative courts
• Other specialized courts as determined by the SCNA upon the request of the chief judge of the Supreme People’s Court

In terms of adjudicatory competence, the Provincial People’s Courts have the authority to:

• resolve cases at first-instance level, including but not limited to disputes and requests involving foreign elements or matters falling under the jurisdiction of the District People’s Court that are taken to the Provincial People’s Court for resolution as mentioned above;\(^\text{12}\)

• resolve appeals from first-instance judgments of the District People’s Courts which have not yet taken effect;\(^\text{13}\) and

• review judgments or decisions of the District People’s Courts which have taken effect.\(^\text{14}\)

Specifically, with regards to business and trade matters, the economic courts of the Provincial People’s Courts have jurisdiction to resolve at the first-instance level those business and trade matters that do not fall under the jurisdiction of the District People’s Courts. More specifically, business or trade matters falling within the jurisdiction of the economic courts (for first-instance-level settlement) are:\(^\text{15}\)

• disputes over intellectual property rights or technology transfers among individuals or legal entities for the purposes of profit;

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\(^{12}\) Article 34 of the CPC and Article 30 of the Law on Administrative Procedures.

\(^{13}\) Article 28.2 of the Law on the Organization of the People’s Courts 2002.

\(^{14}\) Article 28.3 of the Law on the Organization of the People’s Courts 2002.

\(^{15}\) Article 34.1(a) and (b) of the CPC and Article 7.3 of the Law No. 21/2004/QH11 dated 15 June 2004 on Bankruptcy (the “Bankruptcy Law”).
• disputes between a company and its members and between members of a company in respect to the establishment, operation or dissolution, merger, consolidation, division, separation, and/or organizational transformation of the same company;

• other business or trade disputes prescribed by law;

• bankruptcy cases;

• requests related to the resolution of disputes by Vietnamese commercial arbitrators under the law concerning commercial arbitration;

• requests to recognize and enforce foreign courts’ judgments or decisions on business or commercial matters within Vietnam; or not to recognize foreign courts’ judgments or decisions on business or commercial matters which are not required to be enforced in Vietnam;

• requests to recognize and enforce foreign arbitrators’ decisions on business or commercial matters in Vietnam; and

• other business or commercial requests prescribed by law.

The Supreme People’s Court

The Supreme People’s Court is the highest level of the People’s Court system, with seats located in Hanoi, Ho Chi Minh City and Da Nang. It is the supreme adjudicatory body of Vietnam, headed by a chief judge. The Supreme People’s Court is comprised of:  

16 Article 3 of the Law on Organization of the People’s Courts 2002.

- The Council of Judges of the Supreme People’s Court;

- The Central Military Court;

- The criminal courts;
• The civil courts;
• The economic courts;
• The labor courts;
• The administrative courts;
• The appellate courts; and
• Other specialized courts as determined by the SCNA upon the request of the chief judge of the Supreme People’s Court.

In accordance with appellate procedure, the appellate courts of the Supreme People’s Court have the jurisdiction to review first-instance judgments or decisions of the Provincial People’s Court that have not yet come into force.

The criminal courts, economic courts, labor courts, civil courts and administrative courts of the Supreme People’s Court have the jurisdiction to review legally effective judgments or decisions of the Provincial People’s Courts that are protested against by the chief judge of the Supreme People’s Court or the chief prosecutor of the Supreme People’s Procuracy.

The Council of Judges of the Supreme People’s Court has the jurisdiction to review legally effective judgments or decisions of the criminal courts, the economic courts, the labor courts, the civil courts, the administrative courts and the appellate courts of the Supreme People’s Court that are protested against by the chief judge of the Supreme People’s Court or the chief prosecutor of the Supreme People’s Procuracy.

Statute of Limitations

Under the CPC, the statute of limitations for initiating a civil lawsuit is two years, commencing from the date on which individuals, agencies or organizations become aware that another entity has
infringed upon their rights and legitimate interests.\(^{17}\) The limitation period for requesting the court to resolve civil requests is one year from the date the right to request arises. For certain matters, the statute of limitations on lawsuits and requests is provided in the relevant laws. For example, according to Article 30 of the Insurance Business Law, the statute of limitations on lawsuits involving insurance business contracts is three years from the time the dispute arises.

The statute of limitations does not apply to the following matters:

- Disputes over property ownership
- Disputes over claims for return of properties under others’ management or in others’ possession
- Disputes over land use rights in accordance with land law

**Confidentiality and Language**

In principle, court proceedings are held publicly,\(^{18}\) but under special circumstances, they may be held privately to protect state secrets or the reasonable interests of the relevant parties to the case.\(^{19}\) Recently, the Supreme People’s Court published four volumes of reports containing a number of reviewed decisions made by the Judge Committee of the Supreme People’s Court relating to labor, business, trade and civil cases. It is hoped that such publication will be maintained on a regular basis.

Court proceedings are generally conducted in Vietnamese.\(^{20}\) Persons participating in civil proceedings are entitled to use their own language. The Court must require such persons to have their interpreter attend the conciliation meetings and hearings convened by the court.

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\(^{17}\) Article 159 of the CPC.
\(^{18}\) Article 15.1 of the CPC.
\(^{19}\) Article 15.2 of the CPC.
\(^{20}\) Article 20 of the CPC.
3. Legal Profession

Judges

The chief judge of the Supreme People’s Court is elected and may be removed by the NA upon the recommendation of the president. The chief judge’s term of office corresponds to that of the NA, i.e., five years. The deputy chief judge, judges of the Supreme People’s Court, chief and deputy chief judges and judges of the Central Military Court are appointed and may be removed by the president.

The chief and deputy chief judges of specialized courts; head and vice heads of the Departments of the Supreme People’s Court; chief and deputy chief judges and judges of the lower People’s Courts; and chief and deputy chief judges and judges of the Military Courts are appointed and may be removed by the chief judge of the Supreme People’s Court after consultation with the designated state body.

Prosecutors

The People’s Procuracy acts as a “watchdog” to ensure the compliance of subordinate government legislation with superior statutes. Also known as the “People’s Organ of Control”, the People’s Procuracy has significant prosecutorial powers and is also mandated to supervise compliance with the law. They may initiate a lawsuit or a criminal case on behalf of the Socialist Republic of Vietnam. The chairman of the Supreme People’s Procuracy is elected, removed and recalled by the NA. The local People’s Procuracy in provinces and cities under direct central authority, districts and provincial towns is headed by local chief procurators who are appointed, removed and recalled by the procurator general and are accountable to the local People’s Council.
Lawyers

Lawyers practising in Vietnam must comply with the Law on Lawyers. Recently, the NA has passed the Amended Law on Lawyers, which will take effect from 1 July 2013.

The bar associations in Vietnam are professional organizations of lawyers established in accordance with the Law on Lawyers. To be admitted by a bar association in Vietnam, a candidate must satisfy the following requirements:

- Vietnamese citizenship and residence in Vietnam
- Law degree from a law university
- Graduation from a lawyer training course recognized under Vietnamese law in Vietnam or abroad, unless exempted by relevant regulations
- Having completed the probation period for legal practice
- Good moral character and good health sufficient to practise law
- Not being a state official as defined in the regulations on state officials

If these requirements are satisfied, a candidate may apply for admission to a bar association as a trainee lawyer. A trainee lawyer will not be regarded as an official member of a bar association and has to be under the supervision of a qualified admitted lawyer. A trainee lawyer is subject to limited rights in representing a client in court and is not entitled to sign any legal advice. After a training period of not more than 18 months, a trainee lawyer must pass an examination to

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21 Article 10 of Law No. 65/2006/QH11 dated 29 June 2006 on Lawyers (the “Law on Lawyers”) which was amended by the Law on 20/2012/QH13 dated 20 November 2012, effective from 01 July 2013 (the “Amended Law on Lawyers”).
22 Article 10 of Law on Lawyers.
be admitted as a qualified lawyer. Under the Amended Law on Lawyers, this training period will be reduced to 12 months from 1 July 2013.

A foreign lawyer can only practise in Vietnam after obtaining a permit from the MOJ. To be granted a permit to practise in Vietnam, the following conditions must be satisfied:

- A valid law practice certificate granted by a competent foreign agency or organization
- Respect for the Constitution and law of Vietnam
- Nomination by a foreign law-practising organization to practise law in Vietnam or recruitment by the Vietnam-based branch of a foreign law firm or a Vietnamese law-practising organization.

As well as the above conditions, under the Amended Law on Lawyers, a foreign lawyer must satisfy the additional condition of having experience in advising on foreign laws and international law.

Foreign lawyers may practise in Vietnam as members or employees of Vietnam-based foreign law-practising organizations, or as employees of Vietnamese lawyers’ offices or Vietnamese law partnerships. Foreign lawyers are allowed to give legal advice on foreign laws and international laws, but not on Vietnamese laws, unless they have obtained a Vietnamese law university degree and have fully satisfied the requirements for Vietnamese lawyers. Foreign lawyers are not allowed to participate in legal proceedings before Vietnamese courts as litigators or authorized representatives of clients.24

24 Article 76 of the Law on Lawyers.
4. Procedure for Claims

Commencement of Proceedings

With the exception of criminal and administrative cases, the procedure for the commencement of court cases is set-out in the Civil Procedure Code. A plaintiff commences the lawsuit by submitting a letter of claim in writing to a competent People’s Court (the “Court”). In addition to the letter of claim, the plaintiff is responsible for collecting and submitting all the documents and evidence supporting his or her claims.

Within five working days from the date of receiving the letter of claim and other relevant documents, the Court will consider and make a decision on whether to process, to forward, or to return the letter of claim.\(^{25}\) If the Court needs additional information or evidence, the Court will notify the plaintiff.\(^{26}\) If the case belongs to the Court’s jurisdiction, the Court will send a notice to the plaintiff requesting the payment of a court fee deposit. This payment must be made within 15 days from the date of receiving the Court’s notice.\(^{27}\) The Court will officially accept the case when the plaintiff submits a receipt for the payment of the court fee deposit.\(^{28}\)

Court’s Notice to Defendant

Within three working days from the date of accepting the case, the Court must give notice to the defendant and other relevant parties to the case as stated in the letter of claim.\(^{29}\) The defendant and the other relevant parties, if any, must send to the Court their response in writing to the letter of claim of the plaintiff and attached documents or evidence, if any, within 15 days from notice.\(^{30}\) Upon application to the Court, the deadline may be extended to 30 days. The law requires the

\(^{25}\) Article 167 of the CPC.
\(^{26}\) Article 169 of the CPC.
\(^{27}\) Article 171.2 of the CPC.
\(^{28}\) Article 171.3 of the CPC.
\(^{29}\) Article 174.1 of the CPC.
\(^{30}\) Article 175 of the CPC.
Court to conduct a hearing within one month from the date of its decision to bring the case to a hearing.\textsuperscript{31}

**Conciliation**

Except for a number of specific cases which are not required to undergo conciliation procedures, the Court is responsible for holding at least one conciliation meeting between the parties in dispute. Without this conciliation step, a verdict issued by a Court is not valid under Vietnamese law. Where the parties fail to reach an agreement during the conciliation, the Court must record minutes on the failure of the conciliation, and then issue a decision to bring the case to hearing. If at any stage the parties reach a settlement, the Court can issue a decision on the recognition of such an agreement between the parties. Such a decision comes into force immediately and must be sent to the parties within five days from the date of issuance.\textsuperscript{32}

**Burden of Proof**

The burden of providing evidence in support of their respective positions rests upon the parties. The parties are expected to conduct the dispute on an adversarial basis, with each party bringing evidence and arguments in support of its position. Vietnamese law does not strictly require the parties to provide evidence before the Court opens a hearing for the case. New evidence may be submitted to the Court at the hearing. In economic cases, the Court is not obliged to investigate and collect evidence when deciding the case or to otherwise adopt the inquisitorial procedures that it may use in criminal matters. However, as a matter of custom and practice, or subject to the request of any party to the case, it may do so. To date, Vietnam has not yet passed laws on electronic discovery.

\textsuperscript{31} Article 179.3 of the CPC.
\textsuperscript{32} Articles 187 and 188 of the CPC.
Withdrawal and Discontinuance

The plaintiff is entitled to unilaterally withdraw or discontinue its claim against the defendant at any time before the Court has granted a verdict.33 If the plaintiff withdraws his or her letter of claim and the Court accepts such withdrawal, the Court then issues a decision to suspend the case.34 The advance payment of the Court fees in this case will be refunded to the plaintiff.35

Injunctive Relief Measures

A litigant has the right under the CPC to petition the Court to apply one or more injunctive relief measures.36 However, an injunctive relief measure may only be requested as an interim measure in relation to an existing active case.37 The Court may apply the following injunctive relief measures at a party’s request:38

- Attaching property in dispute
- Prohibiting any transfer of property rights with respect to the property in dispute
- Prohibiting any change in the status quo of the property in dispute
- Permitting the harvest and sale of subsidiary food crops or of other products or commodities
- Freezing accounts at banks, other credit institutions and the State Treasury and/or freezing property at places of bailment
- Prohibiting a party to the litigation from conducting or compelling another party to conduct certain acts

33 Article 218.2 of the CPC.
34 Article 192.1(c) of the CPC.
35 Article 193.3 of the CPC.
36 Articles 99.1 and 261 of the CPC.
37 Article 99.1 of the CPC.
38 Article 102 of the CPC.
• Other injunctive relief measures as stipulated by law

Some injunctive measures (notably the freezing or attachment of assets) require that the applicant deposit cash or other valuables for security (the “Security Deposit”) as determined by the Court, before the requested injunctive relief may be granted. The value of the Security Deposit must be equivalent to the value of the property subject to the injunctive measures in order to protect the interests of the person subject to the injunctive order. The Security Deposit is also designed to prevent the abuse of injunctive measures by applicants. The Security Deposit is deposited in an escrow account at a bank within the time limit fixed by the Court.

After the termination of injunctive relief measures, the Court will release the Security Deposit back to the applicant, except where, in the Court’s opinion, the request for application of the injunctive relief measure was improper and caused damage to the person subject to the injunctive relief or to a third person. In such cases, the applicant is obligated to compensate the subject of the injunctive measures for actual damage incurred, which the Court will deduct from the Security Deposit.

Appeals

Any appeal is required to be sent to the court that held the trial at first instance within 15 days from the date of the judgment, or where the defendant did not attend the hearing, 15 days from the date the judgment was served on the defendant or on the local People’s Committee where he lives. After that period, any appeal is considered an overdue appeal. The court that held the trial at first

39 Article 120 of the CPC.
40 Article 120.2 of the CPC.
41 Article 122 of the CPC.
42 The time limit for lodging an appeal against a decision of temporary suspension or suspension of a proceeding made by the Court of first instance is seven days from the date on which the appellant receives the decision (Article 245.2 of the CPC).
43 Articles 244.2 and 245 of the CPC.
44 Article 247.1 of the CPC.
instance must forward the overdue appeal letter and the report with the reason for the overdue appeal to a competent People’s Court at the appellate level (the “Appellate Court”). If the Appellate Court accepts the overdue appeal, the court of first instance must proceed with the procedure as stipulated in the CPC.45

After accepting the appeal letter, the first-instance court must give notice in writing to the appellant requesting the payment of the appellate court fee deposit. Payment of this fee must be made within 10 days from the date of receiving the court’s notice.46 In addition, the first-instance court must give notice of the appeal letter in writing to the prosecution institute at the same level and to relevant parties to the case. The relevant parties have the right to send their opinions in response to the appeal letter.47

The first-instance court is required to forward the appeal letter to the Appellate Court within five working days from the date it has received the payment receipt for the court fee deposit.48 Upon the receipt of sufficient documents from the first-instance court, the Appellate Court will issue a decision to bring the case to an appellate hearing within two months.49

**Enforcement of Judgments**

The enforcement procedures for civil judgments are mainly subject to the Law on Enforcement of Civil Judgments.50 After a Court’s judgment comes into effect, if a judgment debtor fails to execute it voluntarily, one or more measures for enforcement may be applied by the competent civil judgment enforcement agency, including the taking of an inventory of the debtor’s assets for subsequent appraisal and sale by auction; seizure of assets; attachment of earnings and

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45 Article 247.2 of the CPC.
46 Article 248 of the CPC.
47 Article 253.2 of the CPC.
48 Article 255 of the CPC.
49 Article 258.2 of the CPC.
assets; and forcible stoppage of illegal actions on the part of the judgment debtor.\textsuperscript{51}

To ensure that a creditor is aware of his rights in this respect, the Court issues copies of its judgments and orders to both parties and informs the judgment creditor expressly of its right to initiate enforcement. Where an enforcement application is required, it must be filed within five years from the effective date of the relevant judgment or order.\textsuperscript{52}

Enforcement is conducted by an executor of the civil judgment enforcement agencies under the authority of the MOJ. The executor has extensive powers, including the power to summon the parties to his office or the local People’s Committee in order to execute the judgment or order; set deadlines within which the judgment debtor is bound to comply; and take applicable enforcement measures if the judgment debtor fails to comply in the prescribed time frame and manner. The executor may also request the Court to clarify uncertain points in its judgment or order.

All costs for the execution of judgments are borne by the creditor.\textsuperscript{53} The execution is supervised by the People’s Procuracy, which plays the role of a “watchdog” as to the lawfulness of the execution action. The police may be charged with maintaining order during that process. Other interested parties may attend the execution in order to safeguard their interests. To this end, they may in some cases contest an execution. For example, if title to inventoried assets is disputed by third parties, they may initiate legal action within 30 days in order to obtain a court ruling on the ownership of the assets in question. In the meantime, however, the authorities are free to list the relevant assets, but may not dispose of them until the court has made its decision. If the right to file a suit is not asserted, the authorities may seize the assets and dispose of them (usually by way of auction).

\textsuperscript{51} Article 71 of the Law on Enforcement of Civil Judgments.
\textsuperscript{52} Article 30 of the Law on Enforcement of Civil Judgments.
\textsuperscript{53} Article 60 of the Law on Enforcement of Civil Judgments.
Recognition and Enforcement of Foreign Judgments

Under the current CPC, Vietnamese courts will only consider the recognition of the following:54

(i) judgments and decisions issued by courts in countries that have entered into a judicial agreement in this regard with Vietnam, most of which to date are socialist countries; and

(ii) judgments and decisions of foreign courts whose recognition and enforcement is specifically provided for under Vietnamese laws. To date, there has been no such provision.

The recognition of verdicts issued by courts in countries that have not signed a judicial agreement with Vietnam will in theory be considered for recognition on a reciprocal basis.55 However, as a matter of practice, only a few verdicts issued by courts in foreign countries (most of them socialist countries that have signed judicial agreements with Vietnam) have been reported to be recognized by the courts in Vietnam.

For a foreign verdict to be recognized in Vietnam, a letter requesting the recognition of the same must be sent to the MOJ of Vietnam. The MOJ will forward the letter, together with any attached documents, to a competent court within seven days from the date of receipt of the letter of request for its consideration and action. Within three working day, from the receipt of the letter of request and its attached documents from the MOJ, the competent court must process the dossier and notify the People’s Procuracy of the same level of its process.56 Four months after the court has accepted the case, it is required to issue a decision as to whether it will reject the request for recognition and return all the documents to the MOJ or open a court meeting to consider the case.57 This period may be extended by two

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54 Article 343.1 of the CPC.
55 Article 343.3 of the CPC.
56 Article 353.1 of the CPC.
57 Article 354.1 of the CPC.
months in cases where the court requires further clarifications from the relevant parties.  

5. Commercial Arbitration Law

The new Law on Commercial Arbitration took effect on 1 January 2011 and replaced the 2003 Ordinance on Commercial Arbitration.

The Supreme People’s Court is currently drafting guidelines for the provisions included in the new law.

Vietnam is a member of the New York Convention of 1958. However, Vietnam is not a party to the 1965 Convention by the International Centre for Settlement of Investment Disputes (“ICSID Convention”). On the other hand, Vietnam has entered into a Bilateral Trade Agreement (“BTA”) with the United States providing that in disputes between nationals or companies of either country against the other, any of Vietnam, the United States or the company or national concerned may submit the dispute for settlement by binding arbitration:

- to the International Centre for Settlement of Investment Dispute (the “Centre”) established by the ICSID Convention, if both Vietnam and the United States are members of the ICSID Convention and the Centre is available;
- to the Additional Facility of the Centre, if it is available;
- in accordance with the United Nations Commission on Internal Trade Law (UNCITRAL) Arbitration Rules or any recognized international arbitration rules, if agreed; or
- if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

58 Article 354.1 of the CPC.
However, these remedies are only available if the national or company concerned has not submitted the dispute for resolution to the competent courts or administrative tribunals of Vietnam or the United States in the territory of which the relevant investment had been made nor submitted it in accordance with any applicable and previously agreed dispute settlement procedures. For the above remedies to be available, it is also required that 90 days have elapsed from the date the dispute arose.

In cases involving investment disputes between a US company and the State of Vietnam, Vietnam has explicitly consented to binding arbitration by ICSID in the BTA.

6. Role of Courts in Arbitration

Under Vietnamese law, if parties to contracts have agreed that any dispute arising from the contract will be resolved by way of arbitration, the court will not have jurisdiction to resolve such a dispute.

Parties can request interim relief from the arbitration panel or a court. In addition, courts may set aside a domestic arbitration decision or award in certain circumstances at the request of one of the parties (see Section 8 below). 60

Moreover, during the arbitration proceedings, the court may give timely assistance to the arbitration panel on certain processes such as collecting evidence, summoning witnesses and registering arbitral awards of ad-hoc arbitration for enforcement. These provisions of the Law on Commercial Arbitration aim to guarantee the smooth conduct of arbitration proceedings and speedy enforcement of arbitral awards.

60 Article 68 of the CPC.
7. Institutional and Ad Hoc Arbitration

Institutional Arbitration

Under the Law on Commercial Arbitration, arbitration centers may be established in various localities in accordance with the regulations of the Government. The law sets the conditions and procedures for the establishment of arbitration centres, their duties and powers, as well as causes for the termination of their operations. The law also removed the requirement of Vietnamese citizenship from the qualifications of an arbitrator. This means that foreigners can be appointed as arbitrators in Vietnam if they meet all the requirements under the law.

Moreover, under the current law, foreign arbitration centers are permitted to operate in Vietnam through a branch or representative office after satisfying the conditions and procedures required by law. However, the arbitration awards issued by the local representative office or branch of a foreign arbitration center are considered as foreign arbitration awards and have to go through the process of recognition by the competent court before enforcement can be made in Vietnam.

The following are some of the arbitration centers in Vietnam:

- Vietnam International Arbitration Centre (VIAC)
- Hanoi Commercial Arbitration Centre (HCAC)
- Ho Chi Minh City Commercial Arbitration Center (TRACENT)
- Can Tho Commercial Arbitration Centre (CTCAC)
- Asian International Commercial Arbitration Centre (ACIAC)
- Far East Commercial Arbitration Centre (FECAC)
- Pacific International Arbitration Center (PIAC).
The most well-known arbitration center in Vietnam is VIAC, a non-governmental institutional arbitration center established at the Chamber of Commerce and Industry of Vietnam. VIAC is run on the basis of the Law on Commercial Arbitration and VIAC’s Rules of Arbitration. While the Law on Commercial Arbitration and VIAC’s Rules of Arbitration seem to allow VIAC to apply arbitration rules other than VIAC’s Rules of Arbitration if agreed by parties to a dispute, in practice it is still unlikely that VIAC will resolve such cases.

When a case is brought to VIAC, an arbitration panel comprised of three arbitrators must be set up. Each party has the right to select an arbitrator from the list of VIAC’s arbitrators. The two selected arbitrators must nominate a third arbitrator who is also a VIAC arbitrator. The third arbitrator will be the chairman or chairwoman of the arbitration committee.

The parties in dispute may also nominate a single arbitrator to settle their claim if there is an agreement on this. In this case, the sole arbitrator selected will perform all duties of an arbitration panel.

The activities of the other arbitration centers in Vietnam are less clear. For instance, TRACENT handled only six cases in 2006 and 2007. The other arbitration centers listed above could not be reached for lack of contact information easily accessible to the public.

**Ad hoc Arbitration**

Ad hoc arbitration can be established under the circumstances and through the procedures provided in the Law on Commercial Arbitration. If the parties do not agree on the number of arbitrators, an arbitration panel will consist of three arbitrators. Unless otherwise agreed by the parties, the respondent must select and notify the claimant of the respondent’s choice of arbitrator within 30 days from receiving the claimant’s statement of claims.61 If the respondent fails

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61 Article 41.1 of the Law on Commercial Arbitration.
to do so and the parties have no agreement on the appointment of an arbitrator, then the claimant can request the competent court to appoint an arbitrator for the respondent.62 If the parties agree to a sole arbitrator and are unable to agree on the selection of arbitrator within 30 days from the respondent’s receipt of the statement of claims, then the competent court will appoint the sole arbitrator at the request of one or more parties, unless the parties have an agreement to request an arbitration center to appoint the sole arbitrator.63 So far, we are not aware of cases resolved by way of ad hoc arbitration in Vietnam.

8. Enforcement of Arbitration Awards

Enforcement of Domestic Arbitral Awards

The enforcement procedure for domestic arbitral awards is subject to the Law on Commercial Arbitration and the Law on Enforcement of Civil Judgments. If the award debtor has not voluntarily carried out the award and has not requested that the award be set aside, the winning party may file a written request to the civil judgment enforcement authorities to enforce the arbitral award. In this case, the domestic arbitral award will be enforced similarly to a court judgment.

Power to Set Aside Domestic Arbitral Awards

If a party wishes to set aside a domestic arbitral award, it may submit a request to the Provincial People’s Court where the arbitration panel issued the domestic arbitral award within 30 days from its receipt of the arbitral award.64 Courts may set aside a domestic arbitration decision or award at the request of one of the parties in the following circumstances:65

- There is no arbitration agreement
- The arbitration agreement is invalid

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62 Article 41.1 of the Law on Commercial Arbitration.
63 Article 41.4 of the Law on Commercial Arbitration.
64 Articles 7.2(g) and 69 of the Law on Commercial Arbitration.
65 Article 68 of the CPC.
• The arbitration panel’s composition and/or arbitral proceedings fail to comply with the parties’ agreements and the Law on Commercial Arbitration

• The dispute does not fall under the jurisdiction of the arbitration panel (if only part of the arbitral award does not fall under the jurisdiction of the arbitration panel, then only that part will be cancelled)

• The evidence supplied by the parties on which the arbitration panel relied to issue the award was forged or an arbitrator received money, assets or some other material benefit from one of the parties in dispute which affected the objectivity and impartiality of the arbitral award

• The arbitral award runs counter to the public interests of Vietnam

The court will consider and resolve the case according to procedures stipulated under the Law on Commercial Arbitration. A verdict issued by the court in this regard will be final and effective for enforcement.

Enforcement of Foreign Arbitral Awards

The current CPC allows for enforcement of foreign arbitral awards according to the principles of the New York Convention 1958. In principle, recognition and enforcement in Vietnam may be permitted:66

• if the award is from a country which has signed or acceded to a relevant international convention, (inter alia, a signature State to the New York Convention 1958); or

• on the basis of reciprocity, without requiring the signing of or accession to an international convention. Arbitral awards of foreign arbitrators shall be enforced in Vietnam only after they

66 Articles 343.2 and 343.3 of the CPC.
are recognized and permitted for enforcement by Vietnamese Courts.

Procedures

To be enforced in Vietnam, a foreign arbitral award must be formally recognized and held enforceable by a Vietnamese Provincial People’s Court. To obtain an enforcement order, the party seeking the enforcement of the award must lodge a formal application for its recognition and enforcement to the MOJ. Among the various requirements pertaining to an enforcement application, the most important is that the respondent must either have its head office in Vietnam (for organizations), or must reside or work in Vietnam (for individuals). An application may nevertheless be lodged where this is not the case, provided that the assets relating to the enforcement are located in Vietnam at the time the application is submitted.67

Within seven days from the date of receipt of the application and attached documents, the MOJ must forward the dossier to the competent People’s Court. Within three days from the date of receipt of the dossier sent by the MOJ, the court must process the dossier and notify relevant parties, agencies or organizations, enforcement agencies and the People’s Procuracy at the same level of the process.68 If the case is not suspended as stipulated in the CPC, a decision to commence a court meeting must be issued within two months from the date the dossier is processed.69 A panel of three judges is not empowered to re-open the substantive dispute and may only review the basis on which recognition and enforcement of the award may be allowed. The court meeting will be commenced to consider the application within 20 days from the date of the Court’s decision to commence a court meeting.70 At the end of the court meeting, the Court makes its decision on a simple majority basis. The Court may either grant or refuse recognition and enforcement of the award.

67 Article 344.1 of the CPC.
68 Article 367.1 of the CPC.
69 Articles 368.1 and 369 of the CPC.
70 Article 368.2 of the CPC.
Grounds for Refusal of Recognition and Enforcement

The People’s Courts may refuse recognition and enforcement of a foreign arbitral award on grounds similar to those set out in Article V of the 1958 New York Convention. Recognition may be refused where:

- the parties lacked the capacity to sign the arbitration agreement or arbitral clause;
- the arbitration agreement is invalid under applicable law;
- the respondent did not receive sufficient notice of the appointment of arbitrators or the arbitration proceedings;
- the award was made in respect of a dispute which was not referred to arbitration by the parties or the substance of the award goes beyond the scope of the request for arbitration by the parties;
- the arbitrators or the arbitration procedures have not complied with the arbitration agreement or the applicable law;
- the award has been validly set aside, revoked or suspended;
- the award lacked mandatory binding effect on the parties;
- the subject matter of the dispute is not capable of settlement by arbitration under Vietnamese law; or
- the court deems it contrary to the basic principles of Vietnamese law to allow recognition and enforcement.

The CPC provides that a foreign arbitral award which is recognized and held enforceable by a People’s Court has the same legal effect as any other legally effective decision of a Vietnamese People’s Court.

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71 Article 370 of the CPC.
72 Article 346.2 of the CPC.
It also contains provisions which are designed to ensure that any proceeds or assets realized from the enforcement may be transferred abroad.  

9. Mediation

Vietnamese law does not formally recognize mediation as a separate form of dispute resolution. However, conciliation is a compulsory step if a case is referred to a Court in Vietnam (see Section 4 above).

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73 Article 348 of the CPC.