

**LAW 54**  
**ON**  
**COMMERCIAL ARBITRATION**  
**(17 June 2010)**

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**LAW  
ON  
COMMERCIAL ARBITRATION**

**National Assembly of the  
Socialist Republic of Vietnam  
Legislature XII, 7th Session  
(17 June 2010)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10;

The National Assembly hereby promulgates the *Law on Commercial Arbitration*.

CHAPTER 1

**General Provisions**

**Article 1** *Governing scope*

This Law regulates commercial arbitration competence, arbitration forms, arbitration institutions and arbitrators; order and procedures for arbitration; rights, obligations and responsibilities of parties to arbitration proceedings; competence of courts over arbitration activities; organization and operation of foreign arbitration in Vietnam; and enforcement of arbitral awards.

**Article 2** *Competence of arbitration to resolve disputes:*

1. Disputes between parties arising from commercial activities.
2. Disputes arising between parties at least one of whom is engaged in commercial activities.
3. Other disputes between parties which the law stipulates shall [or may]<sup>1</sup> be resolved by arbitration.

**Article 3** *Interpretation of terms*

In this Law, the following terms shall be construed as follows:

1. *Commercial arbitration* means a dispute resolution method agreed by the parties and conducted in accordance with the provisions of this Law.
2. *Arbitration agreement* means an agreement between the parties to use arbitration to resolve a dispute which may arise or which has arisen.

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<sup>1</sup> Allens Arthur Robinson footnote: All square brackets contain translator's comments only.

3. *Parties in dispute* mean Vietnamese or foreign individuals, bodies or organizations which participate in arbitration proceedings in the capacity of claimants or respondents.
4. *Dispute with a foreign element* means a dispute arising in commercial relations involving, or in some other legal relationships involving a foreign element as prescribed in the *Civil Code*.
5. *Arbitrator* means a person selected by the parties or appointed by an arbitration centre or by a court to resolve a dispute in accordance with the provisions of this Law.
6. *Institutional arbitration* means the form of dispute resolution at an arbitration centre in accordance with the provisions of this Law and the procedural rules of such arbitration centre.
7. *Ad hoc arbitration* means the form of dispute resolution in accordance with the provisions of this Law and the order and procedures as agreed by the parties.
8. *Dispute resolution location* means the location where the arbitration tribunal conducts the dispute resolution as agreed by the parties, or as decided by the arbitration tribunal if the parties do not have such an agreement. If the dispute resolution location is within the territory of Vietnam then the award must be deemed to have been rendered in Vietnam irrespective of the location at which the arbitration tribunal conducted sessions in order to issue such award.
9. *Arbitral decision* means a decision of the arbitration tribunal during the dispute resolution process.
10. *Arbitral award* means the decision of the arbitration tribunal resolving the entire dispute and terminating the arbitration proceedings.
11. *Foreign arbitration* means arbitration established in accordance with foreign arbitration law which the parties agree to select to conduct dispute resolution, either inside or outside the territory of Vietnam.
12. *Foreign arbitral award* means an award rendered by foreign arbitration either inside or outside the territory of Vietnam in order to resolve a dispute as agreed by the parties.

**Article 4** *Principles for dispute resolution by arbitration:*

1. Arbitrators must respect the agreement of the parties if it does not breach prohibitions and is not contrary to social morals.
2. Arbitrators must be independent, objective and impartial, and must comply with provisions of law.
3. Parties in dispute shall have equal rights and obligations. Arbitration tribunals shall be responsible to facilitate the parties to exercise their rights and to discharge their obligations.
4. Dispute resolution by arbitration shall be conducted in private, unless otherwise agreed by the parties.
5. An arbitral award shall be final.

**Article 5** *Conditions for dispute resolution by arbitration*

1. A dispute shall be resolved by arbitration if the parties have an arbitration agreement. An arbitration agreement may be made either prior to or after a dispute arises.

2. If one of the parties to an arbitration agreement is an individual who dies or who loses capacity for acts, then the arbitration agreement shall remain effective against the heir or legal representative [respectively] of such former individual, unless otherwise agreed by the parties.
3. If one of the parties to an arbitration agreement is an organization which must terminate its operation, becomes bankrupt, dissolves, consolidates, merges, demerges, separates or converts its organizational form, then the arbitration agreement shall remain effective against the organization which succeeds to the rights and obligations of such former organization, unless otherwise agreed by the parties.

**Article 6** *Court refusal to accept jurisdiction if there is an arbitration agreement*

Where the parties in dispute already have an arbitration agreement but one party institutes court proceedings, the court must refuse to accept jurisdiction unless the arbitration agreement is void or incapable of being performed.

**Article 7** *Determining which court has competence over arbitration activities*

1. If the parties already have an agreement to choose a specific court, then such court as chosen by the parties shall be the competent court.
2. If the parties do not have an agreement to choose a court, then the competent court shall be determined as follows:
  - (a) For appointment of an arbitrator to establish an ad hoc arbitration tribunal, the competent court shall be the court in the place where the respondent resides if the respondent is an individual, or where the respondent has its head office if the respondent is an organization. If there are a number of respondents, then the competent court shall be the court in the place where one of such respondents resides or has its head office.

If the respondent resides or has its head office overseas, then the competent court shall be the court in the place where the claimant resides or has its head office.
  - (b) For the replacement of an arbitrator in an ad hoc arbitration tribunal, the competent court shall be the court in the place where the arbitration tribunal resolves the dispute;
  - (c) For an appeal against the decision of an arbitration tribunal that the arbitration agreement was void or incapable of being performed or about the jurisdiction of the arbitration tribunal, the competent court shall be the court in the place where the arbitration tribunal issued [such] decision;
  - (d) For an application to a court to collect evidence, the competent court shall be the court in the place where such evidence requiring collection exists;
  - (dd) For an application to a court to grant interim relief<sup>2</sup>, the competent court shall be the court in the place where the relief needs to be applied;
  - (e) For summoning witnesses, the competent court shall be the court in the place where the witnesses reside;

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<sup>2</sup> Allens Arthur Robinson footnote: The literal translation is "interim emergency measures" but "injunction" or "injunctive relief" or "interim relief" is used throughout.

- (g) For an application to set aside an arbitral award or to register an ad hoc arbitral award, the competent court shall be the court in the place where the arbitration tribunal rendered such award.
3. Courts with competence over the arbitration activities prescribed in clauses 1 and 2 of this article shall be people's courts of provinces and cities under central authority.

**Article 8** *Determining which enforcement agency has competence to enforce arbitral awards and interim relief decisions of arbitration tribunals*

1. The civil enforcement agency with competence to enforce an arbitral award shall be the civil enforcement agency in the province or city under central authority where the arbitration tribunal rendered the award.
2. The civil enforcement agency with competence to enforce an interim relief decision of an arbitration tribunal shall be the civil enforcement agency in the province or city under central authority where the relief needs to be applied.

**Article 9** *Negotiation and conciliation during arbitration proceedings*

Parties shall have the freedom, during the process of arbitration proceedings, to negotiate and reach agreement with each other to resolve their dispute, or to request the arbitration tribunal to mediate in order for the parties to reach agreement and resolve their dispute.

**Article 10** *Language*

1. For disputes without a foreign element, the language to be used in arbitration proceedings shall be Vietnamese, except in a dispute to which at least one party is an enterprise with foreign invested capital. If a party in dispute cannot use Vietnamese, then it may use an interpreter [to translate] into Vietnamese.
2. For disputes with a foreign element, disputes to which at least one party is an enterprise with foreign invested capital, the language to be used in arbitration proceedings shall be as agreed by the parties. If the parties do not have such an agreement, then the language to be used in the arbitration proceedings shall be as decided by the arbitration tribunal.

**Article 11** *Location for dispute resolution by arbitration*

1. Parties shall have the right to reach agreement on the dispute resolution location; if the parties do not have such an agreement, then the location shall be as decided by the arbitration tribunal. The dispute resolution location may be inside or outside the territory of Vietnam.
2. Unless otherwise agreed by the parties, the arbitration tribunal may conduct sessions at a location which it deems appropriate for mutual consultation between the arbitrators<sup>3</sup>, for taking statements from witnesses, for seeking advice from experts, or for conducting evaluations of goods, assets or other materials.

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<sup>3</sup> Allens Arthur Robinson footnote: The literal translation is "between members of the tribunal".



**Article 12** *Service of notices and order for service of notices*

The method and order for service of notices in arbitration proceedings shall be regulated as follows, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre:

1. Explanatory statements, communications and other materials as served by any one party must be sent to the arbitration centre or arbitration tribunal in sufficient copies so that each member of the arbitration tribunal has one copy, the other party has one copy, and one copy is archived at the arbitration centre.
2. Notices and materials served by an arbitration centre and/or arbitration tribunal on the parties must be sent to the addresses of the parties or to their representatives at the correct addresses as notified by such parties.
3. An arbitration centre and/or arbitration tribunal may serve notices and materials by hand delivery, registered letter, ordinary mail, fax, telex, telegram, email or any other method which acknowledges such service.
4. Notices and materials sent by an arbitration centre and/or arbitration tribunal shall be deemed received on the date on which the parties or their representatives received them or they are deemed received, if such notices and materials were sent in conformity with the provisions in clause 2 of this article.
5. The time-limit for receipt of a notice or material shall be calculated from the day following the day on which such notice or material is deemed received. If the following day is a public or other holiday as prescribed in regulations of the country or territory where such notice or material was served, then this time-limit shall be calculated from the first business day [after such holiday]. If the last day of this time-limit falls on a public or other holiday as prescribed in regulations of the country or territory where such notice or material is served, then the deadline shall be the close of the next business day [after such holiday].

**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<sup>4</sup>, [such party] shall lose the right to object at the arbitration or before the court.

**Article 14** *Applicable law in dispute resolution*

1. For disputes without a foreign element, the arbitration tribunal shall apply the law of Vietnam in order to resolve the dispute.
2. For disputes with a foreign element, the arbitration tribunal shall apply the law chosen by the parties; if the parties do not have an agreement on applicable law, then the arbitration tribunal shall make a decision to apply the law which it considers the most appropriate.
3. If the law of Vietnam [or] the law chosen by the parties does not contain specific provisions relevant to the matters in dispute, then the arbitration tribunal may apply international customs in order to resolve the dispute if such application or the consequences of such application are not contrary to the fundamental principles of the law of Vietnam.

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<sup>4</sup> Allens Arthur Robinson footnote: There does not seem to be a specific time-limit specified in the Law.

**Article 15** *State administration of arbitration*

1. State administration of arbitration shall comprise the following items:
  - (a) Promulgation of legal instruments on arbitration and their implementing guidelines;
  - (b) Issuance and revocation of establishment licences and certificates of registration of operation of arbitration centres, and of branches and representative offices of foreign arbitration institutions in Vietnam;
  - (c) Announcement of lists of arbitrators of arbitration institutions operating in Vietnam;
  - (d) Dissemination and education on the law on arbitration; international co-operation in the arbitration sector; and guidance on training and fostering arbitrators;
  - (dd) Checks and inspections, and dealing with breaches of the law on arbitration;
  - (e) Resolution of complaints and denunciations about the arbitration activities prescribed in sub-clauses (b), (c), (d) and (dd) of this clause.
2. The Government shall exercise uniform State administration of arbitration.
3. The Ministry of Justice shall be responsible before the Government for exercising State administration of arbitration.
4. Departments of Justice of provinces and cities under central authority shall assist the Ministry of Justice to carry out a number of tasks in accordance with Government regulations and the provisions of this Law.

CHAPTER 2

**Arbitration Agreements**

**Article 16** *Form of arbitration agreements*

1. An arbitration agreement may be in the form of an arbitration clause in a contract or it may be in the form of a separate agreement.
2. An arbitration agreement must be in writing. The following forms of agreement shall also be deemed to constitute a written arbitration agreement:
  - (a) An agreement established via an exchange between the parties by telegram, fax, telex, email or other form prescribed by law;
  - (b) An agreement established via the exchange of written information between the parties;
  - (c) An agreement prepared in writing by a lawyer, notary or competent organization at the request of the parties;
  - (d) Reference by the parties during the course of a transaction to a document such as a contract, source document, company charter or other similar documents which contain an arbitration agreement.

- (dd) Exchange of a statement of claim<sup>5</sup> and defence which express the existence of an agreement proposed by one party and not denied by the other party.

**Article 17** *Right of consumers to select dispute resolution method*

For disputes between a goods and/or service provider [on the one hand] and consumers [on the other hand], even if such provider has drafted and inserted an arbitration clause in its standard conditions on supply of such goods and services<sup>6</sup>, a consumer shall still have the right to select arbitration or a court to resolve the dispute. A goods and/or service provider shall only have the right to institute arbitration proceedings if the consumer so consents.

**Article 18** *Void arbitration agreements:*

1. The dispute arises in a sector outside the competence of arbitration prescribed in article 2 of this Law.
2. The person who entered into the arbitration agreement lacked authority as stipulated by law.
3. The person who entered into the arbitration agreement lacked civil legal capacity pursuant to the *Civil Code*.
4. The form of the arbitration agreement does not comply with article 16 of this Law.
5. One of the parties was deceived, threatened or coerced during the process of formulation of the arbitration agreement and requests a declaration that the arbitration agreement is void.
6. The arbitration agreement breaches a prohibition prescribed by law.

**Article 19** *Independence of arbitration agreements*

An arbitration agreement shall exist totally independently of the contract. Any modification, extension or rescission of the contract, or invalidity or unenforceability of the contract shall not result in the invalidity of the arbitration agreement.

## CHAPTER 3

### Arbitrators

**Article 20** *Qualifications<sup>7</sup> of arbitrators*

1. A person with all the following qualifications may act as an arbitrator:
  - (a) Having full civil legal capacity as prescribed in the *Civil Code*;

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<sup>5</sup> Allens Arthur Robinson footnote: Alternative translations are "claim/request to institute proceedings" but "statement of claim" is used throughout.

<sup>6</sup> Allens Arthur Robinson footnote: The literal translation is "even if an arbitration clause has been recorded in the general conditions on supply of such goods and services as such provider has already drafted an arbitration agreement"

<sup>7</sup> Allens Arthur Robinson footnote: The literal translation is "standards".

- (b) Having a university qualification and at least five years' work experience in the discipline which he or she studied;
  - (c) In special cases an expert with highly specialized qualifications and considerable practical experience may still be selected to act as an arbitrator notwithstanding he/she fails to satisfy the requirements prescribed in sub-clause (b) above .
2. A person with all the qualifications prescribed in clause 1 of this article but who falls into one of the following categories shall not be permitted to act as an arbitrator:
- (a) A person who is currently a judge, prosecutor, investigator, enforcement officer, or official of a people's court, of a people's procuracy, of an investigative agency or of a judgment enforcement agency;
  - (b) A person under a criminal charge or prosecution or who is serving a criminal sentence or who has fully served the sentence but whose criminal record has not yet been cleared.
3. An arbitration centre may stipulate higher qualifications than those prescribed in clause 1 of this article as applicable to arbitrators in its institution.

**Article 21** *Rights and obligations of arbitrators:*

- 1. To accept or refuse to resolve a dispute.
- 2. To remain independent during dispute resolution.
- 3. To refuse to provide information about a dispute.
- 4. To receive remuneration.
- 5. To maintain confidentiality of the contents of the dispute which he or she resolves, unless information must be provided to a competent State authority in accordance with law.
- 6. To ensure that resolution of a dispute is impartial, speedy and prompt.
- 7. To comply with professional ethics rules.

**Article 22** *Arbitrators' Association*

The Arbitrators' Association shall be a socio-professional organization of arbitrators and arbitration centres throughout the entire country. Establishment and operation of the Arbitrators' Association shall be implemented in accordance with the law on professional associations.

## CHAPTER 4

### Arbitration Centres

**Article 23** *Functions of arbitration centre*

An arbitration centre shall have the function of organizing and co-ordinating activities of dispute resolution by institutional arbitration, and of assisting arbitrators by providing administrative and office facilities and other assistance during the process of the arbitration proceedings.

**Article 24** *Conditions and procedures for establishment of arbitration centre*

1. An arbitration centre may be established if there is a request for establishment from at least five founding members who are Vietnamese citizens and fully qualified to act as arbitrators in accordance with article 20 of this Law, and if the Minister of Justice issues an establishment licence.
2. An application file for establishment of an arbitration centre shall comprise:
  - (a) Request for establishment;
  - (b) Draft charter of the arbitration centre on the standard form issued by the Ministry of Justice;
  - (c) List of founding members and accompanying documents proving that such members satisfy all the conditions prescribed in article 20 of this Law.
3. The Minister of Justice shall, within thirty (30) days from the date of receipt of a complete and valid application file, issue an establishment licence for the arbitration centre and approve its charter; in a case of refusal, a written reply specifying the reasons must be provided.

**Article 25** *Registration of operation of arbitration centre*

An arbitration centre must, within thirty (30) days from the date of receipt of its establishment licence, register its operation with the Department of Justice in the province or city under central authority where it has its head office. If upon the expiry of this time-limit the arbitration centre has failed to carry out registration, then its licence shall no longer be valid.

The Department of Justice shall issue a certificate of registration of operation for the arbitration centre no later than fifteen (15) days from the date of receipt of the request for registration.

**Article 26** *Announcement of establishment of arbitration centre*

1. An arbitration centre must, within thirty (30) days from the date of issuance of its certificate of registration of operation, publish an announcement in three consecutive issues of a central daily newspaper or daily newspaper in the locality where it registered its operation, with the following main particulars:
  - (a) Name and address of head office of the arbitration centre;
  - (b) Operational activities of the arbitration centre;
  - (c) Serial number of the certificate of registration of operation, issuing body and date of issuance of such certificate;
  - (d) Date of commencement of operation of the arbitration centre.
2. An arbitration centre must display at its head office a notice of the particulars stipulated in clause 1 of this article and a list of arbitrators of the arbitration centre.

**Article 27** *Legal entity status and structure of arbitration centre*

1. An arbitration centre shall have legal entity status, and its own seal and bank account.
2. An arbitration centre shall be a non-profit institution.

3. An arbitration centre shall be permitted to establish branches and representative offices both within Vietnam and overseas.
4. An arbitration centre shall have an executive committee and a secretariat. The structure and apparatus of the arbitration centre shall be as prescribed in its charter.

The executive committee of an arbitration centre shall comprise the chairman and one or more vice chairmen, and it may also include a general secretary appointed by the chairman. The chairman of the arbitration centre shall be an arbitrator.

5. An arbitration centre shall have a list of arbitrators.

**Article 28** *Rights and obligations of arbitration centre:*

1. To formulate the charter and procedural rules of the arbitration centre, which shall be consistent with the provisions of this Law.
2. To prescribe the qualifications required for arbitrators and the rules on selection and removal of the name of an arbitrator from the list of arbitrators of such centre.
3. To send the list of arbitrators of the arbitration centre and any changes to such list to the Ministry of Justice for announcement.
4. To appoint arbitrators to establish an arbitration tribunal in the cases prescribed in this Law.
5. To provide arbitration and mediation services and other commercial dispute resolution methods prescribed by law.
6. To supply administrative and office facilities and other services for dispute resolution.
7. To collect arbitration fees and other lawful fees relevant to arbitration activities.
8. To pay remuneration and other expenses to arbitrators.
9. To hold courses for arbitrators to reinforce their knowledge and skills in dispute resolution.
10. To report annually on the operation of the arbitration centre to the Department of Justice in the locality where the arbitration centre has registered its operation.
11. To archive files and to provide copies of arbitral decisions at the request of the parties in dispute or of a competent State authority.

**Article 29** *Termination of operation of arbitration centre*

1. The operation of an arbitration centre shall terminate in the following circumstances:
  - (a) In the circumstances prescribed in the charter of the arbitration centre;
  - (b) Upon revocation of the establishment licence or certificate of registration of operation of the arbitration centre.

2. The Government shall provide detailed regulations on the circumstances in which an establishment licence or certificate of registration of operation of an arbitration centre shall be revoked, and on the order and procedures for termination of operation of an arbitration centre.

## CHAPTER 5

### Instituting [Arbitration] Proceedings

#### **Article 30** *Statement of claim and accompanying materials*

1. In the case of dispute resolution at an arbitration centre, the claimant prepare a statement of claim and send it to the arbitration centre. In the case of dispute resolution by ad hoc arbitration, the claimant shall prepare a statement of claim and send it to the respondent.
2. A statement of claim shall contain the following particulars:
  - (a) Date on which the statement of claim is made;
  - (b) Names and addresses of the parties, and names and addresses of witnesses, if any;
  - (c) Summary of the matters in dispute;
  - (d) Grounds and evidence, if any, of the claim;
  - (dd) Specific relief sought by the claimant<sup>8</sup> and value of the dispute;
  - (e) Name and address of the person whom the claimant selects as arbitrator or request for an arbitrator to be appointed.
3. The arbitration agreement and originals or copies of relevant materials must accompany the statement of claim.

#### **Article 31** *Time of commencement of arbitration proceedings*

1. In the case of dispute resolution at an arbitration centre and unless otherwise agreed by the parties, the time of commencement of the arbitration proceedings shall be upon receipt by the arbitration centre of the statement of claim from the claimant.
2. In the case of dispute resolution by ad hoc arbitration and unless otherwise agreed by the parties, the time of commencement of the arbitration proceedings shall be upon receipt by the respondent of the statement of claim of the claimant.

#### **Article 32** *Notification of statement of claim*

Unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre, the arbitration centre must, within ten (10) days from the date of receipt of the statement of claim with accompanying materials and a receipt of the provisional advance of arbitration fees, send the respondent a copy of the statement of claim of the claimant together with the materials prescribed in article 30.3 of this Law.

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<sup>8</sup> Allens Arthur Robinson footnote: The literal translation is "Specific requests of the claimant".

**Article 33** *Limitation period for initiating proceedings for dispute resolution by arbitration*

The limitation period for initiating proceedings for dispute resolution by arbitration<sup>9</sup> shall be two (2) years from the date of infringement of legal rights and interests, unless otherwise stipulated by specialized law.

**Article 34** *Arbitration fees*

1. Arbitration fees are the fees collected for the provision of services for dispute resolution by arbitration. Arbitration fees shall comprise:
  - (a) Remuneration and travelling and other expenses of arbitrators;
  - (b) Fees for expert consultancy and other assistance requested by the arbitration tribunal;
  - (c) Administrative fees;
  - (d) Fees for the arbitration centre's appointment of an arbitrator for an ad hoc arbitrator at the request of the parties in dispute;
  - (dd) Fees for use of other necessary services provided by the arbitration centre.
2. The arbitration centre shall fix the arbitration fees. In the case of dispute resolution by ad hoc arbitration, the arbitration tribunal shall fix the arbitration fees.
3. The party which loses the case must pay the arbitration fees, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre, or unless the arbitration tribunal makes some other allocation of fees.

**Article 35** *Defence<sup>10</sup> and submission of the defence*

1. A defence shall contain the following particulars:
  - (a) Date on which the defence is made;
  - (b) Name and address of the respondent;
  - (c) Grounds and evidence, if any, in support of the defence;
  - (d) Name and address of the person whom the respondent selects as arbitrator or request for an arbitrator to be appointed.
2. In the case of dispute resolution at an arbitration centre, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre, the respondent must send the defence to the arbitration centre within thirty (30) days from the date of receipt of the statement of claim and accompanying materials. If one or all parties so request, the arbitration centre may extend this time-limit depending on the particular circumstances of the case.

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<sup>9</sup> Allens Arthur Robinson footnote: The literal translation is "for initiating proceedings pursuant to arbitration proceedings".

<sup>10</sup> Allens Arthur Robinson footnote: The literal translation is "statement of defence" but "defence" is used throughout.



3. In the case of dispute resolution by ad hoc arbitration, unless otherwise agreed by the parties, within thirty (30) days from the date of receipt of the statement of claim and accompanying materials of the claimant, the respondent must send the defence to the claimant and the arbitrator/s and the name and address of the person whom the respondent selects as arbitrator.
4. 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 defence.
5. If the respondent fails to submit the defence as prescribed in clauses 2 and 3 of this article, the dispute resolution process shall still proceed.

**Article 36** *Counterclaim by respondent*

1. A respondent shall have the right to file a counterclaim against the claimant on issues relevant to the dispute.
2. The counterclaim of the respondent must be sent to the arbitration centre. In the case of dispute resolution by ad hoc arbitration, the counterclaim must be sent to the arbitration tribunal and the claimant. Counterclaims must be submitted at the same time as the defence.
3. The claimant must send a defence [to counterclaim] to the arbitration centre within thirty (30) days from the date of receipt of the counterclaim. In the case of dispute resolution by ad hoc arbitration, the claimant must send the defence to counterclaim to the arbitration tribunal and to the respondent.
4. The arbitration tribunal which resolves the statement of claim of the claimant shall also resolve the counterclaim in accordance with the provisions in this Law on order and procedures for resolving a statement of claim of a claimant.

**Article 37** *Withdrawal of statement of claim or counterclaim; amendment or addition to statement of claim, counterclaim or defences*

1. Parties shall have the right to withdraw their statement of claim and/or counterclaim before the arbitration tribunal issues the arbitral award.
2. Parties may amend or add to their statement of claim, counterclaim or defences throughout the process of the arbitration proceedings. The arbitration tribunal shall have the right to disallow such amendments or additions if it considers they are an abuse aimed at causing difficulties or delaying the issuance of an arbitral award, or if they exceed the scope of the arbitration agreement applicable to the dispute.

**Article 38** *Negotiation during arbitration proceedings*

Parties shall still have the right, as from the time of commencement of arbitration proceedings, to voluntarily negotiate and reach agreement on termination of the dispute resolution.

If the parties reach their own agreement on termination of the dispute resolution, they shall have the right to request the chairman of the arbitration centre issue a decision staying the dispute resolution.

## CHAPTER 6

### Arbitration Tribunal

#### **Article 39** *Composition of arbitration tribunal*

1. An arbitration tribunal may consist of one or more arbitrators, depending on the agreement of the parties.
2. If the parties do not have an agreement on the number of arbitrators, an arbitration tribunal shall consist of three (3) arbitrators.

#### **Article 40** *Establishment of arbitration tribunal at arbitration centre*

Establishment of an arbitration tribunal shall be regulated as follows, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre:

1. The respondent shall, within thirty (30) days from the date of receipt of the statement of claim and request to select an arbitrator as sent to the respondent by the arbitration centre, select an arbitrator for the respondent and notify the arbitration centre of same or request the chairman of the arbitration centre appoint an arbitrator. If the respondent has failed to select an arbitrator or to request that the chairman of the arbitration centre appoint an arbitrator, then within a further seven (7) days after expiry of the time-limit provided in this clause, the chairman of the arbitration centre shall appoint an arbitrator for the respondent.
2. If a dispute involves multiple respondents, then the respondents shall agree on selection of an arbitrator or agree on requesting appointment of an arbitrator for such respondents within thirty (30) days from the date of receipt of the statement of claim sent by the arbitration centre. If the respondents have failed to select an arbitrator, then within a further seven (7) days after expiry of the time-limit provided in this clause, the chairman of the arbitration centre shall appoint an arbitrator for the respondents.
3. The arbitrators shall, within fifteen (15) days from the date of their selection by the parties or appointment by the chairman of the arbitration centre, elect another [third] arbitrator to act as chairman of the arbitration tribunal. If such election has not taken place upon the expiry of this time-limit, then within a further seven (7) days after expiry of the time-limit provided in this clause, the chairman of the arbitration centre shall appoint the chairman of the arbitration tribunal.
4. Where the parties agree to have the dispute resolved by a sole arbitrator but fail to select an arbitrator within thirty (30) days from the date on which the respondent receives the statement of claim, then at the request of one or all parties, the chairman of the arbitration centre shall appoint a sole arbitrator within fifteen (15) days from the date of receipt of such request.

#### **Article 41** *Establishment of ad hoc arbitration tribunal*

Establishment of an ad hoc arbitration tribunal shall be regulated as follows, unless otherwise agreed by the parties:

1. The respondent must select an arbitrator for the respondent and notify the claimant of such selection within thirty (30) days from the date on which the respondent receives the statement of claim of the claimant. If upon expiry of this time-limit the respondent has failed to notify the claimant of the name of the selected arbitrator and the parties do not have some other agreement on appointment of an arbitrator, then the claimant shall have the right to request the competent court to appoint an arbitrator for the respondent.

2. If a dispute involves multiple respondents, then the respondents shall reach agreement on selection of an arbitrator within thirty (30) days from the date of receipt of the statement of claim and accompanying materials from the claimant. If upon expiry of this time-limit the respondents have failed to select an arbitrator and the parties do not have some other agreement on appointment of an arbitrator, then one or all parties shall have the right to request the competent court to appoint an arbitrator for the respondents.
3. The arbitrators shall, within fifteen (15) days from the date of their selection by the parties or appointment by the court, elect another [third] arbitrator to act as chairman of the arbitration tribunal. If the arbitrators are unable to elect a chairman and unless otherwise agreed by the parties, the parties shall have the right to request the competent court to appoint the chairman of the arbitration tribunal.
4. Where the parties agree to dispute resolution by a sole arbitrator but are unable to agree on selection of an arbitrator within thirty (30) days from the date on which the respondent received the statement of claim, and if the parties do not have an agreement to request an arbitration centre to appoint an arbitrator, then the competent court shall appoint a sole arbitrator at the request of one or all parties.
5. The chief judge of a competent court must, within seven (7) days from the date of receipt of a request from the parties prescribed in clauses 1, 2, 3 or 4 of this article, assign a judge to appoint an arbitrator and notify the parties thereof.

**Article 42** *Replacement of arbitrators*

1. An arbitrator must refuse to resolve a dispute, and the parties shall have the right to request replacement of an arbitrator resolving the dispute in the following circumstances:
  - (a) The arbitrator is a relative or representative of a party;
  - (b) The arbitrator has an interest related to the dispute;
  - (c) There are clear grounds demonstrating that the arbitrator is not impartial or objective;
  - (d) The arbitrator was a mediator, representative or lawyer for either of the parties prior to the dispute being brought to arbitration for resolution, unless the parties provide written consent.
2. An arbitrator must, as from the time of his or her selection or appointment, provide written notice to the arbitration centre or arbitration tribunal and to the parties of any circumstances which may affect his or her objectiveness and impartiality.
3. In the case of dispute resolution at an arbitration centre, if an arbitration tribunal has not yet been established, then the chairman of the arbitration centre shall make the decision on replacement of the arbitrator. If an arbitration tribunal has already been established, then the remaining members of such tribunal shall make the decision on replacement of the arbitrator. If such remaining members of the arbitration tribunal are unable to make a decision or if the arbitrators or the sole arbitrator refuses to resolve the dispute, then the chairman of the arbitration centre shall make the decision on replacement of the arbitrator.

4. In the case of dispute resolution by an ad hoc arbitration tribunal, the remaining members of the arbitration tribunal shall make the decision on replacement of the arbitrator. If such remaining members are unable to reach a decision or if the arbitrators or the sole arbitrator refuses to resolve the dispute, then within fifteen (15) days from the date of receipt of a request from one or more arbitrators as mentioned above, or from one or all parties to the dispute, the chief judge of the competent court shall assign a judge to make the decision on replacement of the arbitrator.
5. The decision of the chairman of the arbitration centre or of the court in the circumstances prescribed in clauses 3 and 4 respectively of this article shall be the final decision.
6. If for any reason of force majeure or other objective reason an arbitrator is unable to continue his or her participation in the dispute resolution or if such arbitrator is replaced, then selection or appointment of a substitute arbitrator shall be implemented in accordance with the order and procedures stipulated in this Law.
7. The newly established arbitration tribunal may, after consulting the parties, review issues already dealt with in previous dispute resolution sessions held by the former arbitration tribunal.

**Article 43** *Consideration whether an arbitration is void or incapable of being performed and whether the arbitration tribunal has jurisdiction*

1. The arbitration tribunal must, prior to dealing with the merits of a dispute, consider whether the arbitration agreement is valid, whether the arbitration agreement is capable of being performed, and whether the tribunal has jurisdiction. If the case is within the jurisdiction of the arbitration tribunal to resolve, then the tribunal shall proceed to resolve the dispute in accordance with this Law. If the dispute is not within the jurisdiction of the tribunal, or if the arbitration agreement is void, or if it is clearly established that the arbitration agreement is incapable of being performed, then the arbitration tribunal shall decide to stay the proceedings and immediately notify the parties thereof.
2. If it is discovered during the dispute resolution process that the arbitration tribunal has exceeded its jurisdiction, the parties may lodge a complaint with the arbitration tribunal. The arbitration tribunal shall then be responsible to hear such issue and make a decision on it.
3. If the parties have agreed for dispute resolution at one specific arbitration centre, but such centre has already terminated its operation without any other institution succeeding it, then the parties may reach an agreement to select some other arbitration centre; if the parties are unable to reach such an agreement, they shall have the right to institute court proceedings for resolution of the dispute.
4. If the parties already have a specific agreement on selection of an arbitrator for an ad hoc arbitration, but at the time when the dispute arises the arbitrator is unable to conduct resolution of the dispute for any reason of force majeure or for any other objective reasons, then parties may reach agreement on selection of another arbitrator in replacement; if the parties are unable to reach such an agreement, they shall have the right to institute court proceedings to resolve the dispute.
5. If the parties already have an arbitration agreement but do not clearly indicate the arbitration form or a specific arbitration institution, then if a dispute arises the parties must reach agreement on the arbitration form or a specific arbitration institution to resolve the dispute. If the parties are unable to reach such an agreement, then selection of the arbitration form and the arbitration institution to resolve the dispute shall be implemented in accordance with the request of the claimant.

**Article 44** *Petition and resolution of petition against decision of arbitration tribunal concerning whether the arbitration agreement exists, the arbitration agreement is void, the arbitration agreement is incapable of being performed and whether the arbitration tribunal has jurisdiction*

1. If the parties disagree with any decision of the arbitration tribunal prescribed in article 43 of this Law, they shall have the right, within five (5) business days from the date of receipt of such decision, to petition the competent court to review such decision of the arbitration tribunal. The petitioner must simultaneously notify the arbitration tribunal of such petition.
2. A petition shall contain the following main particulars:
  - (a) Date on which the petition is made;
  - (b) Name and address of the petitioner;
  - (c) Relief sought.
3. Copies of the statement of claim, arbitration agreement and decision of the arbitration tribunal must accompany the petition. Accompanying documents in a foreign language must be translated into Vietnamese and translations must be validly certified.
4. The chief judge of the competent court shall, within five (5) business days from receipt of the petition, assign a judge to hear and resolve the petition. Such judge must hear the matter and make a decision on it within ten (10) business days from the date of being assigned. The decision of the court shall be final.
5. The arbitration tribunal may continue to conduct the dispute resolution while the court is dealing with the petition.
6. If the court decides that the dispute does not fall within the jurisdiction of the arbitration tribunal, or that there is no arbitration agreement or that the arbitration agreement is void or incapable of being performed, then the arbitration tribunal shall issue a decision staying the dispute resolution. Unless the parties have some other agreement, the parties shall have the right to institute court proceedings to resolve their dispute. The limitation period for initiating court proceedings shall be determined in accordance with law. Calculation of the limitation period shall exclude the time from when the claimant initiated arbitration proceedings up until the date of issuance of the court decision accepting jurisdiction over the dispute resolution.

**Article 45** *Jurisdiction of the arbitration tribunal to verify the facts*

An arbitration tribunal shall have the right, during the dispute resolution process, to meet or hold discussions with one party in the presence of the other party, by appropriate methods, in order to clarify issues relevant to the dispute. The arbitration tribunal may on its own initiative or at the request of one or all parties, conduct fact-finding with a third person in the presence of the parties or after having notified the parties.

**Article 46** *Jurisdiction of the arbitration tribunal to collect evidence*

1. The parties shall have the right and responsibility to provide evidence to the arbitration tribunal to prove facts relevant to the issues in dispute.
2. The arbitration tribunal shall have the right, at the request of one or all parties, to request witnesses to provide information and materials relevant to the dispute resolution.
3. The arbitration tribunal shall have the right, on its own initiative or at the request of one or both parties, to seek an assessment or valuation of the assets in dispute in order to provide grounds for resolving the dispute. The party requesting an assessment or valuation shall advance the costs thereof, or the arbitration tribunal shall allocate such costs.

4. The arbitration tribunal shall have the right, on its own initiative or at the request of one or both parties, to seek expert advice. Expert fees shall be provisionally paid in advance by the party requesting such advice, or shall be paid in accordance with the allocation made by the arbitration tribunal.
5. If the arbitration tribunal or one or both parties have already taken necessary measures to collect evidence by themselves but without success, then a petition may be made to the competent court to require other bodies, organisations or individuals to provide legible, audible or visual materials or to provide other objects relevant to the dispute. Such petition must specify the matters in dispute currently being resolved by arbitration, the evidence which needs to be collected, the reasons why the evidence has not been collected, and the name and address of the body, organisation or individual currently managing and/or holding the evidence which needs to be collected.
6. The chief judge of the competent court shall, within seven (7) business days from the date of receipt of a request for collection of evidence, assign a judge to hear and resolve such request. Such judge shall, within five (5) business days from the date of being assigned, send a written notice to the body, organisation or individual currently managing and/or holding the evidence requiring it to provide the evidence to the court, and the judge shall also send such notice to the same level procuracy in order for the latter to implement its functions and duties in accordance with law.

The body, organisation or individual currently managing and/or holding the evidence shall be responsible to promptly and completely provide such evidence pursuant to the request of the court within fifteen (15) days from the date of receipt of the request.

The court must, within five (5) business days from the date of receipt of the evidence from the body, organisation or individual supplying it, notify the arbitration tribunal and the applicant so that the evidence may be handed over.

If after expiry of the stipulated time-limit the body, organisation or individual [concerned] fails to provide the evidence pursuant to the request [of the court], the court shall immediately notify the arbitration tribunal and the applicant, and also provide written notice to the competent agency or organization to deal with such failure in accordance with law.

**Article 47** *Jurisdiction of arbitration tribunal to summon witnesses*

1. The arbitration tribunal shall have the right at the request of one or both parties and if the tribunal considers it necessary, to require a witness to attend a dispute resolution session. Witness fees shall be paid by the party requesting that the witness be summoned, or shall be as allocated by the arbitration tribunal.
2. If a witness who has been validly summoned by the arbitration tribunal fails to attend the session without a legitimate reason, and the absence of such witness constitutes an obstacle to resolution of the dispute, then the arbitration tribunal may send a written request to the competent court to issue a decision summoning such witness to attend a session of the arbitration tribunal. Such request must specify the matters currently being resolved by arbitration; the full name and address of the witness; the reason why the witness needs to be summoned; and the time and location where the witness is required to attend.
3. The chief judge of the competent court shall, within seven (7) business days from the date of receipt of a written request from the arbitration tribunal to summon a witness, assign a judge to hear and resolve such request. The judge must, within five (5) business days from the date of being assigned, issue a decision summoning the witness.

The decision summoning the witness must specify the name of the arbitration tribunal which requested that the witness be summoned; the contents of the dispute; the full name and address of the witness; and the time and location where the witness must attend at the request of the arbitration tribunal.

The court must immediately send the decision to the arbitration tribunal, to the witness, and also to the same level procuracy in order for the latter to implement its functions and duties in accordance with law.

A witness shall be obliged to strictly implement the decision of the court.

Witness fees shall be paid as stipulated in clause 1 of this article.

## CHAPTER 7

### Interim Relief

#### **Article 48** *Right to request application of interim relief*

1. Parties in dispute shall have the right to request the arbitration tribunal or a court to order an interim relief in accordance with the provisions of this Law and other relevant laws, unless such parties have some other agreement.
2. A request to a court to order an interim relief shall not be deemed to be a denial of the arbitration agreement or a waiver of the right to dispute resolution by arbitration.

#### **Article 49** *Jurisdiction of arbitration tribunal to order interim relief*

1. The arbitration tribunal may, at the request of one of the parties, order one or more forms of interim relief applicable to the parties in dispute.
2. Interim relief shall comprise:
  - (a) Prohibition of any change in the status quo of the assets in dispute;
  - (b) Prohibition of acts by, or ordering one or more specific acts to be taken by a party in dispute, aimed at preventing conduct adverse to the process of the arbitration proceedings;
  - (c) Attachment of the assets in dispute;
  - (d) Requirement of preservation, storage, sale or disposal of any of the assets of one or all parties in dispute;
  - (dd) Requirement of interim payment of money as between the parties;
  - (e) Prohibition of transfer of asset rights of the assets in dispute.
3. If during the dispute resolution process one of the parties had already applied to a court to order one or more of the forms of interim relief prescribed in clause 2 of this article and then applies to the arbitration tribunal to order interim relief, the arbitration tribunal must refuse such application.

4. The arbitration tribunal shall have the right, prior to ordering interim relief, to require the applicant for the interim relief to provide financial security.
5. If an arbitration tribunal orders a different form of interim relief or interim relief which exceeds the scope of the application by the applicant, thereby causing loss to the applicant or to the party against whom the interim relief was applied or to a third party, then the party incurring loss shall have the right to institute court proceedings for compensation in accordance with the law on civil proceedings.

**Article 50** *Procedures for arbitration tribunal to order interim relief*

1. An applicant for an interim relief must file an application with the arbitration tribunal.
2. An application for an interim relief must contain the following main particulars:
  - (a) Date on which the application is made;
  - (b) Name and address of the applicant for the interim relief;
  - (c) Name and address of the party against whom the interim relief is sought to be applied;
  - (d) Summary of the items in dispute;
  - (dd) Reason for requiring the interim relief;
  - (e) Specific items of interim relief sought.

The applicant for an interim relief must attach to such application evidence provided to the arbitration tribunal to prove the necessity for such interim relief.

3. The applicant for interim relief must, pursuant to a decision of the arbitration tribunal, lodge a sum of money, precious metals, precious stones or valuable papers as fixed by the arbitration tribunal corresponding to the amount of loss that may arise due to unjustified interim relief being ordered, in order to protect the interests of the party against whom the interim relief is sought to be applied. Such sum of money, precious metals, precious stones or valuable papers shall be deposited in an escrow account nominated by the arbitration tribunal.
4. Within three (3) business days from the date of receipt of an application, immediately after the applicant has provided the security prescribed in clause 3 of this article, the arbitration tribunal shall hear the matter and issue a decision ordering [or not ordering] interim relief. If the arbitration tribunal does not agree to the application, it shall provide a written notice to the applicant specifying its reasons.
5. Enforcement of a decision by an arbitration tribunal ordering interim relief shall be implemented in accordance with the law on enforcement of civil judgments.

**Article 51** *Jurisdiction of and procedures for arbitration tribunal to change, supplement or remove interim relief*

1. The arbitration tribunal shall have the right, at the request of one of the parties, to change, supplement or remove interim relief at any time during the dispute resolution process.
2. Procedures for changing or supplementing interim relief shall be implemented in accordance with article 50 of this Law.



3. The arbitration tribunal shall remove interim relief already ordered in the following circumstances:
  - (a) The applicant for the interim relief requests the removal;
  - (b) The party subject to enforcement of the decision ordering the interim relief has already lodged assets or some other person has provided security for discharge of the obligation owing to the applicant;
  - (c) The obligation of the obligor has terminated pursuant to law.
4. Procedures for removing interim relief shall be implemented as follows:
  - (a) The applicant must file a petition for removal of the interim relief with the arbitration tribunal.
  - (b) The arbitration tribunal shall hear the application and issue a decision removing the interim relief and shall also issue a decision that the security prescribed in article 50.3 of this Law be returned to the applicant unless the applicant who applied to the arbitration tribunal to order the interim relief is liable to pay compensation for an unjustified application causing loss to the party against whom the interim relief was applied or to a third party.

The decision removing the interim relief must immediately be sent to the parties in dispute and also to the civil judgment enforcement agency.

**Article 52** *Responsibility of applicant for interim relief*

An applicant for interim relief shall be liable for such application. An applicant for unjustified interim relief which causes loss to the other party or to a third party must pay compensation [for such loss].

**Article 53** *Jurisdiction of and order and procedures for court to order, change or remove interim relief*

1. If after a party has lodged its statement of claim, such party's legal rights and interests have been infringed or there is a direct danger of such infringement, such party shall have the right to file an application with the competent court to order one or more forms of interim relief.
2. The chief judge of the competent court shall, within three (3) business days from the date of receipt of the application for interim relief, assign a judge to hear and resolve the application. The judge assigned must, within three (3) business days from the date of being assigned, hear the application and issue a decision ordering or not ordering interim relief. The judge must issue a decision ordering the interim relief immediately after the applicant implements security measures. If the judge does not grant the application, the judge must provide written notice to the applicant, specifying the reasons.
3. A party shall have the right to apply to a court to change, supplement or remove interim relief. Assignment of a judge to hear and resolve any such application to change, supplement or remove interim relief shall be implemented in accordance with the provisions in clause 2 of this article.
4. The order and procedures for a court to order, change or remove interim relief and for checking compliance with law during the application of interim relief shall be implemented in accordance with the provisions of the *Civil Procedure Code*.
5. If during the dispute resolution process one of the parties which already applied to the arbitration tribunal for one or more forms of interim relief applies to the court for interim relief, the court must refuse such application and return it to the applicant, unless the [former] application for the interim relief was beyond the jurisdiction of the arbitration tribunal.

## CHAPTER 8

### Dispute Resolution Sessions

#### **Article 54** *Preparation for dispute resolution sessions*

1. The arbitration tribunal shall make decisions on the time and location for holding dispute resolution sessions, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre.
2. Summonses to attend a session shall be forwarded to the parties at least thirty (30) days prior to the date of commencement of a session, unless otherwise agreed by the parties or otherwise stipulated by the procedural rules of the arbitration centre.

#### **Article 55** *Composition of and procedures for dispute resolution sessions*

1. Dispute resolution sessions shall be conducted in private, unless otherwise agreed by the parties.
2. Parties may personally attend dispute resolution sessions or may authorize their representatives to attend; and parties shall have the right to invite witnesses and a person<sup>11</sup> to protect their legal rights and interests.
3. The arbitration tribunal may permit other people to attend dispute resolution sessions, if the parties so consent.
4. The order and procedures for holding dispute resolution sessions shall be as stipulated in the arbitration procedural rules of the arbitration centre; or shall be as agreed by the parties in the case of an ad hoc arbitration.

#### **Article 56** *Absence of parties*

1. A claimant who was validly summoned to attend a dispute resolution session but fails to attend without a legitimate reason or who leaves a session without the consent of the arbitration tribunal, shall be deemed to have withdrawn its statement of claim. In such case the arbitration tribunal shall continue the dispute resolution if the respondent so requests or if there is a counterclaim.
2. If a respondent was validly summoned to attend a dispute resolution session but fails to attend without a legitimate reason or leaves a session without the consent of the arbitration tribunal, the arbitration tribunal shall continue the dispute resolution based on currently available materials and evidence.
3. The arbitration tribunal may, at the request of the parties, rely on the file to conduct a dispute resolution session without requiring the presence of the parties.

#### **Article 57** *Adjournment of dispute resolution session*

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<sup>11</sup> Allens Arthur Robinson footnote: This is the literal translation here, but lawyers as representatives are referred to in articles 42.1(d) and 71.3.

One or both parties may, if there is a legitimate reason, request the arbitration tribunal to adjourn a dispute resolution session. A request for adjournment of a dispute resolution session must be in writing, specifying the reason and providing evidence, and must be sent to the arbitration tribunal at least seven (7) business days prior to the [due] date of commencement of the session. If the arbitration tribunal does not receive the request within this time-limit, the applicant for such adjournment must pay all costs arising, if any. The arbitration tribunal shall consider and issue a decision consenting or not consenting to the request for the adjournment, and shall promptly notify the parties.

The period of any adjournment shall be as decided by the arbitration tribunal.

**Article 58** *Mediation and recognition of successful mediation*

The arbitration tribunal [may], at the request of the parties, conduct a mediation in order for the parties to reach an agreement on resolution of their dispute. If the mediation is successful, the arbitration tribunal shall prepare minutes of successful mediation to be signed by the parties and certified by the arbitrator/s. The arbitration tribunal shall issue a decision recognizing the agreement of the parties. Such decision shall be final and shall have the same validity as an arbitral award.

**Article 59** *Stay of dispute resolution*

1. Resolution of a dispute shall be stayed in the following circumstances:
  - (a) The claimant or respondent being an individual dies, without anyone inheriting his or her rights and obligations;
  - (b) The claimant or respondent being an agency or organization has terminated its operation, become bankrupt, dissolved, consolidated, merged, demerged, separated or converted its organizational form without any agency or organization succeeding to the former's rights and obligations;
  - (c) The claimant withdraws its statement of claim or the claim is deemed to be withdrawn pursuant to article 56.1 of this Law, except where the respondent requires the dispute resolution to be continued;
  - (d) The parties reach agreement on termination of the dispute resolution;
  - (dd) The court issues a decision that the dispute is not within the jurisdiction of the arbitration tribunal, or that there is no arbitration agreement or that such agreement is void or incapable of being performed in accordance with article 44.6 of this Law.
2. The arbitration tribunal shall issue a decision staying the dispute resolution. If an arbitration tribunal has not yet been established, then the chairman of the arbitration centre shall issue such decision.
3. After there is a decision staying dispute resolution, the parties shall not have the right to institute arbitration proceedings for re-resolution of such dispute if such proceedings are not different from the former dispute in terms of the claimant, respondent and legal relationship giving rise to the dispute, except for the cases prescribed in sub-clauses (c) and (dd) of clause 1 of this article.

CHAPTER 9

**Arbitral Awards**

**Article 60** *Principles for issuance of award*

1. An arbitration tribunal shall issue an arbitral award on the basis of its majority vote.
2. If voting does not result in a majority decision, then the arbitral award shall be made in accordance with the opinion of the chairman of the arbitration tribunal.

**Article 61** *Contents, form and validity of arbitral award*

1. An arbitral award must be in writing and contain the following main particulars:
  - (a) Date and location of issuance of the award;
  - (b) Names and addresses of the claimant and of the respondent;
  - (c) Full names and addresses of the arbitrator/s;
  - (d) Summary of the statement of claim and matters in dispute;
  - (dd) Reasons for issuance of the award, unless the parties agree it is unnecessary to specify reasons for the award;
  - (e) Result of the dispute resolution;
  - (g) Time-limit for enforcement of the award;
  - (h) Allocation of arbitration fees and other relevant fees;
  - (i) Signatures of the arbitrator/s.
2. If an arbitrator does not sign the arbitral award, the chairman of the arbitration tribunal must record such fact in the arbitral award and specify the reasons for it. In such a case, the arbitral award shall still be effective.
3. The arbitral award shall immediately be issued in the session or no later than thirty (30) days from the end of the final session.
4. The arbitral award must be sent to the parties immediately after the date of its issuance. The parties shall have the right to request the arbitration centre or arbitration tribunal to issue copies of the arbitral award.
5. An arbitral award shall be final and shall be of full force and effect as from the date of its issuance.

**Article 62** *Registration of ad hoc arbitral award*

1. An ad hoc arbitral award may, at the request of one or all parties to the dispute, be registered at the court in the locality where the arbitration tribunal issued such award, prior to any request being made to the competent civil judgement enforcement agency to organize enforcement of the award. Registration or non-registration of an arbitral award shall not affect the contents and validity of such award.
2. Within a time-limit of one year from the date of issuance of an arbitral award, the applicant for registration of an ad hoc arbitral award must send a petition requesting registration of the arbitral award to the competent court as prescribed in clause 1 of this article, together with originals or validly certified copies of the following materials:

- (a) Arbitral award issued by the ad hoc arbitration tribunal;
- (b) Minutes, if any, of the session of the ad hoc arbitration tribunal resolving the dispute;
- (c) Original or validly certified copy of the arbitration agreement.

The applicant must be responsible for the authenticity of the materials lodged with the court.

3. The chief judge of the court must, within five (5) business days from the date of receipt of a petition requesting registration of an arbitral award, assign a judge to deal with such petition. The judge assigned must, within ten (10) days from the date of being assigned, check the authenticity of the materials accompanying the petition and conduct registration. The judge shall refuse to conduct registration if he or she is satisfied that there is in fact no arbitral award, and in such case shall return the petition and accompanying materials and must immediately notify the petitioner and specify the reasons [for the refusal to conduct registration]. The applicant for registration of the arbitral award shall have the right, within three (3) business days from the date of receipt of such notice from the court, to lodge a complaint with the chief judge of the court regarding refusal to register the arbitral award. The chief judge of the court shall, within three (3) business days from the date of receipt of such complaint, hear the complaint and issue a decision resolving it. The decision of the chief judge resolving the complaint shall be final.
4. Registration of an arbitral award shall contain the following particulars:
  - (a) Time and location of conducting registration;
  - (b) Name of the court conducting registration;
  - (c) Name and address of the applicant for registration;
  - (d) The award which was registered;
  - (dd) Signature of the authorized person and seal of the court.

**Article 63** *Rectification and explanation of arbitral award; supplementary awards*

1. A party may, within thirty (30) days from the date of receipt of an arbitral award unless the parties have some other agreement about this time-limit, request the arbitration tribunal to rectify obvious errors in spelling or figures caused by a mistake or incorrect computation in the arbitral award, and must immediately notify the other party [of such request]. If the arbitration tribunal considers such request legitimate, it shall make the rectification within thirty (30) days from the date of receipt of the request.
2. A party may, within thirty (30) days from the date of receipt of an arbitral award unless the parties have some other agreement about this time-limit, request the arbitration tribunal to explain specific points or items in the award, and must immediately notify the other party of such request. If the arbitration tribunal considers such request legitimate, it shall provide an explanation within thirty (30) days from the date of receipt of the request. The explanation provided shall form a part of the award.
3. The arbitration tribunal may on its own initiative, within thirty (30) days from the date of issuance of the arbitral award, rectify any of the errors prescribed in clause 1 of this article and immediately notify the parties.

4. If the parties do not have some other agreement, then within thirty (30) days from the date of receipt of an award, a party may request the arbitration tribunal to issue a supplementary award with matters<sup>12</sup> raised during the process of the proceedings but not yet recorded in the award, and must immediately notify the other party of such request. If the arbitration tribunal considers such request legitimate, it shall issue a supplementary award within forty-five (45) days from the date of receipt of the request.
5. In necessary cases, the arbitration tribunal may extend [the time-limits] for rectification, explanation or issuance of a supplementary award prescribed in clauses 1, 2 and 4 of this article.

**Article 64** *Archiving files*

1. An arbitration centre shall be responsible to archive files on disputes over which it has accepted jurisdiction. Files on disputes resolved by ad hoc arbitration shall be archived by the parties or by the arbitrators.
2. Arbitration files shall be archived for a period of five years as from the date of issuance of the arbitral award or decision staying dispute resolution by arbitration.

CHAPTER 10

**Enforcement of Arbitral Awards**

**Article 65** *Voluntary carrying out of arbitral award*

The State encourages the parties to voluntarily carry out arbitral awards.

**Article 66** *Right to apply for<sup>13</sup> enforcement of arbitral award*

1. If on expiry of the time-limit for carrying out an arbitral award the award debtor has not voluntarily carried out the award and has not requested that the award be set aside pursuant to article 69 of this Law, the arbitral award creditor shall have the right to request the competent civil judgement enforcement agency to enforce such award.
2. In the case of an ad hoc arbitral award, the award creditor shall have the right to apply to the competent civil judgement enforcement agency requesting enforcement of the arbitral award after such award has been registered in accordance with article 62 of this Law.

**Article 67** *Enforcement of arbitral award*

Arbitral awards shall be enforced in accordance with the law on enforcement of civil judgements.

CHAPTER 11

**Setting Aside Arbitral Awards**

**Article 68** *Grounds for setting aside arbitral award*

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<sup>12</sup> Allens Arthur Robinson footnote: The literal translation is "requirements".

<sup>13</sup> Allens Arthur Robinson footnote: The literal translation is "to require"

1. The court shall hear [an application for] setting aside an arbitral award on receipt of a petition from one of the parties.
2. An arbitral award which falls within any one of the following cases shall be set aside:
  - (a) There was no arbitration agreement or the arbitration agreement is void;
  - (b) The composition of the arbitration tribunal was [or] the arbitration proceedings were inconsistent with the agreement of the parties or contrary to the provisions of this Law;
  - (c) The dispute was not within the jurisdiction of the arbitration tribunal; where an award contains an item which falls outside the jurisdiction of the arbitration tribunal, such item shall be set aside;
  - (d) The evidence supplied by the parties on which the arbitration tribunal 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;
  - (dd) The arbitral award is contrary to the fundamental principles of the law of Vietnam.
3. When the court hears a petition to set aside an arbitral award, burden of proof shall be regulated as follows:
  - (a) Any petitioner [relying on the grounds] prescribed in sub-clauses (a), (b), (c) or (d) of clause 2 of this article shall have the burden of proving that the arbitration tribunal issued the arbitral award in one of such prescribed cases;
  - (b) In the case of a petition to set aside an arbitral award [relying on the grounds] prescribed in sub-clause (dd) of clause 2 of this article, the court shall have the responsibility to itself collect and verify evidence in order to decide to set aside or not set aside the arbitral award.

**Article 69** *Right to petition for arbitral award to be set aside*

1. A party with sufficient evidence proving that the arbitration tribunal issued the arbitral award in any of the cases prescribed in article 68.2 on this Law shall have the right, within thirty (30) days from the date of receipt of such award, to lodge a petition with the competent court to set aside the arbitral award. A petition requesting an arbitral award be set aside must be accompanied by materials and evidence proving that such petition has [sufficient] grounds and is lawful.
2. If a petition is lodged out of time due to an event of force majeure, then the duration of such event shall not be included when calculating the time-limit for requesting the arbitral award be set aside.

**Article 70** *Petition requesting arbitral award be set aside*

1. A petition requesting an arbitral award be set aside must contain the following main particulars:
  - (a) Date on which the petition is made;
  - (b) Name and address of the petitioner;
  - (c) Relief sought and grounds for setting aside the arbitral award.
2. The following documents must accompany the petition:

- (a) Original or validly certified copy of the arbitral award;
- (b) Original or validly certified copy of the arbitration agreement.

Documents accompanying a petition in a foreign language must be translated into Vietnamese and the translations must be validly certified.

**Article 71** *Hearing by court of petition requesting arbitral award be set aside*

1. The competent court shall, after it accepts jurisdiction of a petition requesting an arbitral award be set aside, immediately notify the arbitration centre or the arbitrators in an ad hoc arbitration, the parties in dispute, and the same level procuracy.
2. The chief judge shall, within seven (7) business days from the date on which jurisdiction is accepted, assign a council of three judges including one judge to act as chairman of the council as assigned by the chief judge, to hear the petition.

The council of judges must commence a session to hear the petition to set aside the arbitral award within thirty (30) days from the date of being assigned. The court must, seven (7) business days prior to the date of opening the session, transfer the file to the same level procuracy for it to review and participate in the session hearing the petition. Upon the expiry of such time-limit, the procuracy must return the file to the court in order for the court to open the session hearing the petition.

3. The session shall be conducted in the presence of the parties in dispute and their lawyers (if any) and a prosecutor of the same level procuracy. If either of the parties requests the council of judges to hear the petition in his or her absence, or if after being validly summoned a party is absent without a legitimate reason or leaves the session without the consent of the council of judges, then the council of judges shall continue hearing the petition to set aside the arbitral award.
4. When hearing the petition, the council of judges shall rely on the provisions in article 68 of this Law and the materials accompanying the petition in order to reach its decision; and shall not review the merits of the dispute which the arbitration tribunal already resolved. The council of judges shall, after considering the petition and accompanying materials, after hearing witnesses<sup>14</sup>, if any, who have been summoned and after hearing the procurator provide the opinion of the procuracy, discuss and reach a majority decision.
5. The council of judges hearing the petition shall have the right to issue a decision setting aside or not setting aside the arbitral award. If the petitioner withdraws the petition, or if after being validly summoned the petitioner fails to attend the session without a legitimate reason or leaves the session without the consent of the council of judges, then the council of judges shall issue a decision staying the application.
6. The court shall, within five (5) business days from the date of issuing its decision, send the decision to the parties, to the arbitration centre or to the arbitrator/s of an ad hoc arbitration, and to the same level procuracy.

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<sup>14</sup> Allens Arthur Robinson footnote: The literal translation is "persons"



7. The council of judges may, at the request of a party and if the council considers it appropriate, adjourn a petition to set aside an arbitral award for a period not to exceed sixty (60) days in order to facilitate the arbitration tribunal in rectifying what in the opinion of the arbitration tribunal were errors in the arbitration proceedings, thereby removing the grounds for setting aside the arbitral award. The arbitration tribunal must notify the court when it has rectified errors in the arbitration proceedings. If the arbitration tribunal does not rectify errors in the proceedings, then the council of judges shall continue to hear the petition to set aside the award.
8. In a case where the council of judges issues a decision to set aside the arbitral award, the parties may reach a fresh agreement to bring their dispute before arbitration or any one party shall have the right to institute court proceedings. If the council of judges does not set aside the arbitral award, such award shall be enforceable.
9. In all cases, the time taken for dispute resolution by arbitration and the time taken to conduct court procedures to set aside an arbitral award shall not be included when calculating the limitation period for instituting proceedings.
10. The decision of the court shall be final and shall be valid for enforcement.

**Article 72** *Court fees regarding arbitration*

Fees for requests to a court to appoint an arbitrator, to order interim relief, to set aside arbitral awards, to register arbitral awards and any other fees shall be implemented in accordance with the law on legal and court fees.

## CHAPTER 12

### Organization and Operation of Foreign Arbitration in Vietnam

**Article 73** *Conditions for foreign arbitration institutions to operate in Vietnam*

Foreign arbitration institutions which have been legally established and are currently legally operating in foreign countries, and which respect the constitution and law of the Socialist Republic of Vietnam, shall be permitted to operate in Vietnam in accordance with this Law.

**Article 74** *Operational forms of foreign arbitration institutions in Vietnam*

Foreign arbitration institutions shall operate in Vietnam in the following forms:

1. Branch of the foreign arbitration institution (hereinafter referred to as *branch*).
2. Representative office of the foreign arbitration institution (hereinafter referred to as *representative office*).

**Article 75** *Branches*

1. Branch is a dependent unit of a foreign arbitration institution, established and conducting arbitration activities in Vietnam pursuant to this Law.
2. The foreign arbitration institution and its branch shall be liable before the law of Vietnam for the operation of the branch.

3. The foreign arbitration institution shall elect one arbitrator to act as head of the branch. The head of the branch shall be the authorized representative of the foreign arbitration institution in Vietnam.

**Article 76** *Rights and obligations of branch of foreign arbitration institution in Vietnam*

1. To rent an office, and to hire or purchase facilities and materials necessary for the activities of the branch.
2. To recruit Vietnamese and foreign employees to work at the branch in accordance with the law of Vietnam.
3. To open Vietnamese dong and foreign currency accounts at a bank authorized to operate in Vietnam in order to service the activities of the branch.
4. To remit income of the branch overseas in accordance with the law of Vietnam.
5. To have a seal bearing the name of the branch in accordance with the law of Vietnam.
6. To appoint arbitrators to establish arbitration tribunals pursuant to authority delegated by the foreign arbitration institution.
7. To provide arbitration, mediation services and other commercial dispute resolution methods in accordance with law.
8. To supply administrative services, office and other services for dispute resolution by foreign arbitration tribunals.
9. To collect arbitration fees and other lawful fees.
10. To pay remuneration to arbitrators.
11. To provide training to raise the dispute resolution knowledge and skills of arbitrators.
12. To archive files, and to provide copies of arbitral decisions on request by the parties in dispute or by competent State authorities of Vietnam.
13. To operate strictly in the sectors recorded in the establishment licence [and] certificate of registration of operation.
14. To comply with the relevant law of Vietnam on operation of the branch.
15. To provide annual reports on the operation of the branch to the Department of Justice in the locality where the branch is registered for operation.

**Article 77** *Representative offices*

1. Representative office is a dependent unit of a foreign arbitration institution, established, and seeking and promoting opportunities for arbitration activities in Vietnam in accordance with this Law.
2. The foreign arbitration institution shall be liable before the law of Vietnam for the operation of its representative office.

**Article 78** *Rights and obligations of representative office of foreign arbitration institution in Vietnam*

1. To seek and promote opportunities for arbitration activities for its institution in Vietnam.
2. To rent an office, and to hire or purchase facilities and materials necessary for the activities of the representative office.
3. To recruit Vietnamese and foreign employees to work at the representative office in accordance with the law of Vietnam.
4. To open foreign currency and Vietnamese dong accounts at a bank authorized to operate in Vietnam, and only to use such accounts for the operation of the representative office.
5. To have a seal bearing the name of the representative office in accordance with the law of Vietnam.
6. To operate for the correct objectives and within the scope and for the duration stipulated in the licence for establishment of the representative office.
7. Not to conduct arbitration activities in Vietnam.
8. To only conduct promotions and advertising for arbitration activities in accordance with the law on Vietnam.
9. To comply with the relevant law of Vietnam on operation of the representative office.
10. To provide annual reports on the operation of the representative office to the Department of Justice in the locality where the representative office is registered for operation.

**Article 79** *Operation of branches and representative offices of foreign arbitration institutions in Vietnam*

The establishment, operation, and termination of operation of branches and representative offices of foreign arbitration institutions in Vietnam shall be implemented in accordance with the law of Vietnam and international treaties of which Vietnam is a member. The Government shall provide detailed regulations on the procedures for establishment, operation, and termination of operation of branches and representative offices of foreign arbitration institutions in Vietnam.

## CHAPTER 13

### Implementing Provisions

**Article 80** *Application of this Law to arbitration centres established prior to effective date of this Law*

Arbitration centres which were established prior to the effective date of this Law shall not be required to conduct procedures for re-establishment. Arbitration centres must, within twelve (12) months from the effective date of this Law, amend and supplement their charters and arbitration procedural rules for compliance with this Law. If upon the expiry of such time-limit any arbitration centre has failed to amend and supplement its charter and arbitration procedural rules, the establishment licence of such arbitration centre shall be revoked and it must terminate its operation.

**Article 81** *Effectiveness*

1. This Law shall be of full force and effect as from 1 January 2011.
2. The *Ordinance on Commercial Arbitration* 03/2003/PL-UBTVQH11 shall no longer be effective as from the effective date of this Law.

3. Arbitration agreements entered into prior to the effective date of this Law shall be implemented in accordance with the provisions of law effective as at the date when the arbitration agreement was entered into.

**Article 82** *Detailed regulations and guidelines on implementation*

The Government, the People's Supreme Court and the People's Supreme Procuracy shall, within the scope of their respective duties and powers, provide detailed regulations and guidelines for implementation of articles and clauses assigned in this Law; and shall provide guidelines for implementation of other items in this Law necessary to meet State management requirements.

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*This Law was passed by Legislature XII of the National Assembly of the Socialist Republic of Viet Nam in its 7th session on 17 June 2010.*

Chairman of the National Assembly  
NGUYEN PHU TRONG