

No: 08-2003-PL-UBTVQH11

## **ORDINANCE ON COMMERCIAL ARBITRATION**

In order to contribute to the resolution of disputes arising from commercial activities, ensuring the right to freely conduct business, protecting the lawful rights and interests of parties, and developing the socialist-oriented market economy;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 of Legislature X of the National Assembly at its 10th session on 25 December 2001;

Pursuant to Resolution 12-2002-QH11 of Legislature XI of the National Assembly at its 2nd session on 16 December 2002 on the program for formulation of laws and ordinances in 2002;

This Ordinance governs commercial arbitration.

### Chapter 1 **General Provisions**

#### **Article 1**      *Governing scope*

This Ordinance regulates arbitration organizations and arbitration proceedings for the resolution of disputes arising from commercial activities in accordance with an agreement between the parties.

#### **Article 2**      *Interpretation of terms*

In this Ordinance, the following terms shall be interpreted as follows:

1. *Arbitration* means a method for resolving disputes arising from commercial activities, agreed by the parties and conforming with the order and procedures for arbitration proceedings stipulated in this Ordinance.
2. *Arbitration agreement* means an agreement between the parties to commit to use arbitration to resolve disputes which may arise or which have arisen from commercial activities.

3. *Commercial activities* means the performance of one or more commercial acts by a business organization or individual including the purchase or sale of goods or the provision of services; commercial distribution, representation or agency; bailment; leasing out or leasing; hire-purchase; construction; consultancy; technical activities; licensing; investment; finance and banking; insurance; exploration and exploitation; transportation of goods and passengers by air, sea, rail or road; and other commercial acts pursuant to law.
4. *Dispute with a foreign element* means a dispute arising from commercial activities in which a participating party or parties are foreigners or foreign legal entities, or [where] the grounds for establishing, altering or terminating a relationship the subject of a dispute arise abroad, or where assets relating to the dispute are located abroad.
5. *Arbitrator* means a person satisfying all the conditions set out in article 12 of this Ordinance and chosen by the parties or appointed by an arbitration centre or a competent court to resolve a dispute.
6. *Relatives* means people belonging to the three inheritance ranks stipulated in the Civil Code.
7. *Act of force majeure* means an unforeseeable event which occurs objectively and which cannot be remedied despite the taking of all possible and lawful measures.

**Article 3**      *Principles for dispute resolution by arbitration*

1. A dispute shall be resolved by arbitration if the parties reach an arbitration agreement before or after the occurrence of the dispute.
2. When resolving a dispute, an arbitrator must be independent, objective and impartial, must follow the law, and must respect the agreement of the parties.

**Article 4**      *Form of dispute resolution by arbitration*

A dispute between parties shall be resolved by an arbitration tribunal organized by an arbitration center or by an arbitration tribunal established by the parties pursuant to the provisions of this Ordinance.

An arbitration tribunal shall consist of three arbitrators or of a sole arbitrator as agreed by the parties.

**Article 5**      *Competence to resolve a dispute in cases where there is an arbitration agreement*

Where a dispute already has an arbitration agreement but one party institutes court proceedings, the court must refuse to accept jurisdiction unless the arbitration agreement is invalid.

**Article 6**      *Effect of an award<sup>1</sup>*

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<sup>1</sup> PF Note: The literal translation is “arbitral decision” which is translated throughout as award, although not defined in the Ordinance. See article 44.

An award shall be final and the parties must carry it out, except in cases where a court annuls an award in accordance with the provisions of this Ordinance.

**Article 7**      *Principle of which [substantive] law is applicable to dispute resolution*

1. With respect to a dispute between Vietnamese parties, the arbitration tribunal shall apply the law of Vietnam in order to resolve the dispute.
2. With respect to a dispute with a foreign element, the arbitration tribunal shall apply the law chosen by the parties. The choice of a foreign law and its application shall not be inconsistent with the fundamental principles of the law of Vietnam.

**Article 8**      *Applicability of international treaties*

In the case of any inconsistency between an international treaty signed or acceded to by the Socialist Republic of Vietnam and the provisions of this Ordinance, the provisions of the international treaty shall apply.

Chapter II

**Arbitration Agreements**

**Article 9**      *Form of arbitration agreements*

1. An arbitration agreement must be made in writing. An arbitration agreement may be passed<sup>2</sup> via a letter, telegram, telex, facsimile, electronic mail or any other written form which clearly shows the parties' intention to resolve disputes by arbitration which shall be deemed to be a written arbitration agreement.
2. An arbitration agreement may be an arbitration clause in a contract or it may be a separate agreement.

**Article 10**      *Invalid arbitration agreements*

An arbitration agreement shall be invalid in the following circumstances:

1. The dispute which arises does not belong to commercial activities as defined in article 2.3 of this Ordinance.
2. A signatory to the arbitration agreement lacks authority to enter into it pursuant to law.
3. One party to the arbitration agreement lacks full civil legal capacity.
4. The arbitration agreement fails to specify or clearly specify the subjects of the dispute, [or] the arbitration organization is authorized to resolve disputes but the parties have failed to enter any supplementary agreement.

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<sup>2</sup> Alternative translations "accepted/approved".

5. The arbitration agreement was not made in accordance with the provisions of article 9 of this Ordinance.
6. A party to the arbitration agreement was deceived or threatened, and requests that the arbitration agreement be declared invalid; the limitation period for requesting that an arbitration agreement be declared invalid shall be six (6) months as from the date of entering into it, but must be prior to the date on which the arbitration tribunal or sole arbitrator opens the initial resolution hearing stipulated in article 30 of this Ordinance.

**Article 11**     *Relationship between arbitration clause and the contract*

An arbitration clause shall exist independently from the contract. Any contract modification, extension, rescission or invalidity shall not effect the validity of the arbitration clause.

Chapter III  
**Arbitrators**

**Article 12**     *Arbitrators*

1. Any Vietnamese citizen who satisfies all the following conditions may act as an arbitrator:
  - (a) Having full civil legal capacity;
  - (b) Having good ethics and being honest, impartial and objective;
  - (c) Having a university degree and at least five years' work experience in the branch of his/her studies.
2. Any person under administrative arrest, currently being prosecuted for a criminal offence or subject to an unexpired jail sentence shall be barred from acting as an arbitrator.
3. Judges, prosecutors, investigators, enforcement officers, and officials currently working in the people's courts, the people's procuracy, investigative bodies or enforcement agencies shall be barred from acting as arbitrators.

**Article 13**     *Rights and obligations of arbitrators*

1. Arbitrators shall have the following rights:
  - (a) To accept or refuse dispute resolution;
  - (b) To remain independent during dispute resolution;
  - (c) To refuse to provide information concerning a dispute;
  - (d) To receive remuneration.
2. Arbitrators shall have the following obligations:
  - (a) To comply with the provisions of this Ordinance;
  - (b) To be impartial and objective during dispute resolution;

- (c) To refuse to resolve a dispute in the circumstances set out in article 27.1 of this Ordinance;
- (d) To retain confidentiality of the contents of the dispute which he/she resolves;
- (dd) Not to accept bribes and not to commit other acts in breach of the ethics of an arbitrator.

Chapter IV  
**Arbitration Centres**

**Article 14**     *Conditions for establishing arbitration centers*

1. Depending on the status of socio-economic development in localities, arbitration centers may be established in a number of localities pursuant to regulations of the Government.
2. If there is a request from at least five founding members qualified to act as arbitrators in accordance with article 12 of this Ordinance and they are introduced by the Vietnam Lawyers Association, the Minister of Justice shall consider and make a decision on issuance of a licence for the establishment of an arbitration center.
3. An application file for establishment of an arbitration center shall comprise the following:
  - (a) Application for establishment of an arbitration centre;
  - (b) Full names, addresses and occupations of the founding members;
  - (c) Charter of the arbitration centre;
  - (d) Letter of introduction from the Vietnam Lawyers Association.
4. An application for establishment of an arbitration centre shall contain the following particulars:
  - (a) Date of the application;
  - (b) Full names, addresses and occupations of the founding members;
  - (c) Sector of operation of the arbitration centre;
  - (d) Proposed office location of the arbitration center.
5. Within a time-limit of forty (40) days from the date of receipt of a valid application file, the Minister of Justice may issue a licence for the establishment of an arbitration centre and approve its charter. In a case of refusal there must be a written reply specifying the reasons therefor.
6. Within a time-limit of thirty (30) days from the date of receipt of its establishment licence, an arbitration centre must register its operations with the Department of Justice of the province or city under central authority (hereinafter referred to as the *Department of Justice*) in the locality where the arbitration centre has its office. If at the expiry of this time-limit an arbitration center has failed to register, its licence shall be revoked.

The Government shall provide regulations on the order and procedures for arbitration centers to register their operations.

**Article 15** *Publication of an announcement of the establishment of an arbitration centre*

1. Within a time-limit of thirty (30) days from the date an establishment licence is issued, an arbitration centre must advertise in three consecutive issues of a central daily newspaper or daily newspaper in the locality where it registers its operation, the following main items:
  - (a) Title and address of the arbitration centre;
  - (b) Sector of operation of the arbitration centre;
  - (c) Number of certificate of registration of operation, the issuing authority and date of issuance;
  - (d) Commencement date of operations of the arbitration centre.
2. An arbitration centre shall display at its office a notice of the items stipulated in clause 1 of this article and a list of arbitrators at the arbitration center.

**Article 16** *Legal status and organizational structure of an arbitration center*

1. An arbitration centre shall be a non-governmental organization with legal entity status, its own seal and bank account.
2. An arbitration centre may establish branches and representative offices.
3. An arbitration centre shall have an executive board and arbitrators.

The executive board of an arbitration centre shall include a chairman and one or more deputy chairmen. The chairman of an arbitration centre may appoint a permanent secretary.

Any individual invited by an arbitration centre to act as an arbitrator must satisfy all the conditions stipulated in article 12 of this Ordinance.

**Article 17** *Duties and powers of an arbitration center*

Arbitration centres shall have the following duties and powers:

1. To draw the charter and procedural rules of the arbitration center which shall not be inconsistent with the provisions of this Ordinance.
2. To invite individuals who satisfy all the conditions stipulated in article 12 of this Ordinance to act as arbitrators for the center.
3. To appoint arbitrators to establish an arbitration tribunal in accordance with the provisions of this Ordinance.
4. To provide administrative and office services for arbitration tribunals to resolve disputes.
5. To collect arbitration fees and to pay remuneration to arbitrators in accordance with the charter of the arbitration center.
6. To hold courses for arbitrators to gain experience and to improve their expertise and technical skills in dispute resolution.

7. To report periodically on the operations of the arbitration center to the Ministry of Justice, the Vietnam Lawyers Association, and the Department of Justice in the locality where the arbitration center registers its operation.
8. To remove an arbitrator's name from the list of arbitrators of an arbitration centre when an arbitrator seriously violates the provisions of this Ordinance and the charter of the arbitration center.
9. To archive files, and to provide copies of awards at the request of parties or of competent State bodies.
10. Other duties and powers pursuant to law.

**Article 18** *Termination of operation of arbitration centers*

1. The operation of an arbitration centre shall be terminated in the following circumstances:
  - (a) In the circumstances specified in the charter of the arbitration center;
  - (b) If its establishment licence is revoked.
2. Upon termination of its operation, an arbitration centre shall return its establishment licence to the issuing authority.
3. The Government shall provide regulations on the order and procedures for termination of operation of arbitration centers.

Chapter V

**Arbitration Proceedings**

**Article 19** *Right to choose the form of dispute resolution by arbitration*

Parties shall have the right to choose an arbitration center or an arbitration tribunal established by the parties to resolve their dispute pursuant to the procedural provisions in this Ordinance.

**Article 20** *Statement of claim*

1. In order for a dispute to be resolved by an arbitration centre, the claimant shall draw a statement of claim and file it with the arbitration centre.

A statement of claim filed with an arbitration center shall contain the following basic particulars:

- (a) Date on which the statement of claim is drawn;
- (b) Names and addresses of the parties;
- (c) Summary of the points in dispute;
- (d) Relief sought by the claimant;
- (dd) Value of the assets claimed by the claimant;

- (e) Arbitrator at the arbitration center which the claimant selects.
2. In order for a dispute to be resolved by an arbitration tribunal established by the parties, the claimant shall draw a statement of claim and forward it to the respondent. The particulars of the statement of claim shall be as stipulated in clause 1 of this article.
  3. The claimant shall annex to the statement of claim the original or copy arbitration agreement, and originals or copies of documents and evidence. Copies must be validly certified.
  4. Arbitration proceedings shall commence when an arbitration centre receives a statement of claim from a claimant, or in the case of dispute resolution by an arbitration tribunal established by the parties when a respondent receives a statement of claim from a claimant.
  5. Within a time-limit of five (5) working days from the date of receipt of a statement of claim, an arbitration centre shall forward a copy of it, together with the annexures referred to in clause 3 of this article, to the respondent.

**Article 21** *Limitation period for initiating proceedings for dispute resolution by arbitration*

1. With respect to a dispute for which the [substantive] law stipulates a limitation period for initiating proceedings, such limitation period shall apply.
2. With respect to a dispute for which the [substantive] law does not stipulate a limitation period for initiating proceedings, the limitation period for initiating proceedings for dispute resolution by arbitration shall be two (2) years from the date of occurrence of the dispute, except in cases of force majeure. The period from the date of occurrence of an event of force majeure up until the date it no longer exists shall be excluded when calculating the limitation period.

**Article 22** *Arbitration fees*

1. A claimant shall pay arbitration fees in advance unless the parties have some other agreement .
2. In the case of dispute resolution by an arbitration center, the executive board of the arbitration center shall fix the arbitration fees in accordance with the charter of the center.
3. In the case of dispute resolution by an arbitration tribunal established by the parties, the arbitration tribunal shall fix the arbitration fees.
4. The party which loses the case shall bear the arbitration fees, unless the parties otherwise agree.

**Article 23** *Place of arbitration*

Parties shall have the right to agree on a location for the dispute resolution. In the absence of any such agreement the arbitration tribunal shall decide the location, but it must ensure convenience to the parties during the dispute resolution.

**Article 24** *Statement of defence*

1. Where the parties have chosen dispute resolution by an arbitration center and unless the parties otherwise agree, the respondent shall file a statement of defence with the arbitration centre within a time-limit of thirty (30) days from the date of receipt of the claimant's statement of claim and annexed documents from the arbitration center.

With respect to dispute resolution by an arbitration tribunal established by the parties and unless the parties otherwise agree, the respondent shall forward to the claimant a statement of defence and the name of the arbitrator selected by the respondent within a time-limit of thirty (30) days from the date of receipt of the claimant's statement of claim and annexed documents pursuant to articles 20.2 and 20.3 of this Ordinance.

2. A statement of defence shall contain the following basic particulars:
  - (a) Date on which the statement of defence is drawn;
  - (b) Name and address of the respondent;
  - (c) Reasons and evidence in support of the defence, including refutation of part or all of the particulars in the statement of claim. In addition to the items stipulated in this clause, if the respondent alleges that the arbitrator lacks jurisdiction over the dispute or that there is no arbitration agreement or that the arbitration agreement is invalid, the respondent shall have the right to raise these matters in the statement of defence.
3. At the respondent's request, the time-limit for the respondent to send a statement of defence annexing evidence may be extended for a further thirty (30) days, but it must be prior to the date on which the arbitration tribunal holds the hearing stipulated in article 30 of this Ordinance.

**Article 25** *Establishment of an arbitration tribunal at an arbitration center*

1. Unless the parties otherwise agree, within a time-limit of five (5) working days from the date of receipt of a statement of claim, an arbitration centre shall forward the respondent a copy of the statement of claim, the name of the arbitrator selected by the claimant, the annexed documents and a list of the arbitration centre's arbitrators. If the parties do not otherwise agree, within a time-limit of thirty (30) days from the date of receipt of the statement of claim and annexed documents from the arbitration centre, the respondent shall select an arbitrator from the centre's list of arbitrators and inform the centre or request the chairman of the arbitration centre to appoint an arbitrator for him. If at the expiry of this time-limit a respondent fails to select an arbitrator or fails to request the chairman of the arbitration centre to appoint an arbitrator, the chairman of the arbitration centre shall appoint an arbitrator for the respondent from the centre's list of arbitrators within a time-limit of seven (7) working days from the date of expiry of the time-limit set out in this clause.
2. If a dispute involves many respondents, the respondents shall reach unanimity on the selection of an arbitrator within a time-limit of thirty (30) days from the date of receipt of the arbitration centre's request to select an arbitrator. If at the expiry of this time-limit the respondents fail to select an arbitrator, the chairman of the arbitration centre shall appoint an arbitrator for the

respondents from the centre's list of arbitrators within a time-limit of seven (7) working days from the date of receipt of a request<sup>3</sup>.

3. Within a time-limit of fifteen (15) days from the date of selection of two arbitrators by the parties or by appointment by the chairman of the arbitration centre, these two arbitrators shall appoint a third arbitrator from the centre's list of arbitrators to act as president of the arbitration tribunal. If at the expiry of this time-limit the two selected or appointed arbitrators fail to select a third arbitrator, then within a time-limit of seven (7) working days from the date of expiration and on request from one party or from the parties, the chairman of the arbitration center shall appoint a third arbitrator from the centre's list of arbitrators to act as president of the arbitration tribunal.
4. Where the parties agree to dispute resolution by a sole arbitrator of an arbitration center but fail to choose an arbitrator, then at the request of one party the chairman of the arbitration center shall, within a time-limit of fifteen (15) days from the date of receipt of the request, appoint a sole arbitrator for the parties and notify them.

A sole arbitrator shall carry out duties the same as an arbitration tribunal. The decision of a sole arbitrator shall be enforceable the same as an award of an arbitration tribunal.

#### **Article 26**     *Arbitration tribunal established by the parties*

1. Unless the parties otherwise agree, within a time-limit of thirty (30) days from the date a claimant forwards a statement of claim to the respondent, the respondent shall select an arbitrator and inform the claimant of the selected arbitrator. If at the expiry of this time-limit the respondent fails to notify the claimant of the selected arbitrator, the claimant shall have the right to request a court of a province or city under central authority (hereinafter referred to as a *provincial court*) where the respondent has his/her office or residence to appoint an arbitrator for the respondent. Within a time-limit of seven (7) working days from the date of receipt of a request, the presiding judge of the court shall assign a judge to appoint an arbitrator for the respondent and to inform the parties.
2. If a dispute involves many respondents, the respondents shall reach unanimity on the selection of one arbitrator within a time-limit of thirty (30) days from the date of receipt of the statement of claim and annexures from the claimant. If at the expiry of this time-limit the respondents fail to select an arbitrator, the claimant shall have the right to request a provincial court where one of the respondents has his/her office or residence to appoint an arbitrator for the respondents. Within a time-limit of seven (7) working days from the date of receipt of a request, the presiding judge of the court shall assign a judge to appoint an arbitrator at the request of the claimant and to inform the parties.
3. Within a time-limit of fifteen (15) days from the date two arbitrators are selected or appointed by the court, these two arbitrators shall unanimously appoint a third arbitrator to act as president of the arbitration tribunal. If at the expiry of this time-limit the two selected or appointed arbitrators fail to select a third arbitrator, then the parties have the right to request a provincial court where the respondent has his/her office or residence to appoint a third

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<sup>3</sup> PF Note: This is the literal translation. Presumably at the expiry of the 30 day period, one of the parties or the arbitration center may send a request to the chairman to appoint an arbitrator for the respondents.

arbitrator. Within a time-limit of seven (7) working days from the date of receipt of a request, the presiding judge of the court shall assign a judge to appoint an arbitrator to act as president of the arbitration tribunal and to inform the parties.

4. Arbitrators selected by the parties or appointed by the court may be arbitrators listed in the lists of arbitrators of the arbitration centres in Vietnam or may be other arbitrators.
5. Where the parties agree to dispute resolution by a sole arbitrator but fail to choose an arbitrator, then at the request of one party the presiding judge of the court where one of the respondents has his/her office or residence shall, within a time-limit of fifteen (15) days from the date of receipt of the request, assign a judge to appoint a sole arbitrator for the parties and to inform the parties.

A sole arbitrator shall carry out duties the same as an arbitration tribunal. The decision of a sole arbitrator shall be enforceable the same as an award of an arbitration tribunal.

#### **Article 27**     *Replacement of arbitrators*

1. An arbitrator must refuse to resolve a dispute and the parties shall have the right to request replacement of the arbitrator to resolve a dispute in the following circumstances:
  - (a) The arbitrator is a relative of a party or a representative of that party;
  - (b) The arbitrator has an interest in the dispute;
  - (c) There are clear grounds for considering that the arbitrator will not be impartial or objective in the performance of his duties.
2. From the moment an arbitrator is selected or appointed and throughout arbitration proceedings, an arbitrator must publicly and promptly disclose anything which may cause doubt about his objectiveness or impartiality.
3. In the event that the parties only discover that an arbitrator falls within one of the cases set out in clause 1 of this article after they have selected him, they have the right to request such arbitrator to refuse to resolve the dispute.
4. The replacement of an arbitrator shall be decided by the other arbitrators in the arbitration tribunal. In the event that a decision is unable to be made or if two arbitrators or a sole arbitrator refuse to resolve a dispute, the replacement of an arbitrator shall be regulated as follows:
  - (a) In the case of dispute resolution by an arbitration centre, the chairman of the arbitration centre shall decide;
  - (b) In the case of dispute resolution by an arbitration tribunal established by the parties, then at the request of the claimant it shall be the presiding judge of the provincial court where the respondent has his/her office or residence who shall assign a judge to consider and make a decision. The decision of the court shall be final.
5. If during arbitration proceedings an arbitrator cannot continue his participation, the arbitration tribunal established by the arbitration center or by the parties shall replace such arbitrator in accordance with the provisions of clause 4 of this article.

6. In necessary cases and after consulting the parties, a newly established arbitration tribunal may reconsider the issues already considered in previous hearings of the dispute resolution.

**Article 28** *Amendment and addition to, or withdrawal of statement of claim*

A claimant may amend, add to or withdraw the statement of claim before the arbitration tribunal issues an award.

**Article 29** *Counter-claim*

1. A respondent shall have the right to file a counter-claim against the claimant on issues relevant to the claimant's statement of claim.
2. A counter-claim shall be filed with the arbitration tribunal and concurrently forwarded to the claimant before the arbitration tribunal holds a hearing to resolve the claimant's statement of claim.

The claimant shall forward the respondent and the arbitration tribunal a defence to counter-claim within thirty (30) days from the date of receipt of the counter-claim.

3. Counter-claim procedures shall be implemented the same as the procedures for resolving the claimant's statement of claim and as concurrently decided by the arbitration tribunal.

**Article 30** *Consideration of the arbitration agreement, jurisdiction of the arbitration tribunal for dispute resolution*

1. If prior to consideration of the contents of a dispute one of the parties lodges a complaint that the arbitration tribunal lacks jurisdiction to resolve the dispute or that there is no arbitration agreement or that the arbitration agreement is invalid, the arbitration tribunal must consider and decide these issues in the presence of the parties unless the parties otherwise agree. If a complainant has validly convened a meeting but then is absent without a legitimate excuse, the complaint will be deemed to have been withdrawn and the arbitration tribunal may proceed with the dispute resolution.
2. If the parties disagree with the ruling of the arbitration tribunal on the matters set out in clause 1 of this article, then within a time-limit of five (5) working days from the date the parties receive the ruling, they shall have the right to request the provincial court where the arbitration tribunal issued its ruling to reconsider the ruling. The party making such a request must also notify the arbitration tribunal about it.

A request shall contain the following basic particulars:

- (a) Date on which the request is drawn;
- (b) Name and address of the applicant;
- (c) Particulars of the request.

Validly notarized copies of the statement of claim, the arbitration agreement and the ruling of the arbitration tribunal shall be enclosed with the request.

Within a time-limit of five (5) working days from the date of receipt of a request, the presiding judge of the court shall assign a judge to consider and make a decision on the request. The court's decision shall be final.

If the court decides that the arbitration tribunal lacks jurisdiction to resolve the dispute, or that the dispute does not have an arbitration agreement or that the arbitration agreement is invalid, the arbitration tribunal shall issue a decision staying the dispute resolution. Unless there is 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 as stipulated in article 21 of this Ordinance, but excluding the time from the date the applicant issues court proceedings in respect of the [ruling of the] arbitration tribunal until the date the court issues its decision as stipulated in this article.

**Article 31**     *Documentation study and fact verification*

1. After being selected or appointed, arbitrators shall study documents and verify facts if that is considered necessary.
2. An arbitration tribunal shall have the right to meet the parties to hear them present their views. At the request of one party or the parties or on the arbitrator's own initiative, the arbitration tribunal may conduct fact-finding with a third person in the presence of the parties or after having notified the parties.

**Article 32**     *Collection of evidence*

1. Parties shall have the burden of leading evidence to prove the facts they allege. The arbitration tribunal shall have the right to require the parties to provide evidence pertaining to the dispute.
2. When necessary, an arbitration tribunal may itself collect evidence, and may arrange an evaluation at the request of one party or of the parties and must inform the parties. The party requesting an evaluation shall provisionally pay the costs of the evaluation, or all the parties shall together provisionally pay the costs where all parties request an evaluation.

**Article 33**     *Right to request application of interim emergency measures [injunctive relief]*

If during the course of dispute resolution by an arbitration tribunal the lawful rights and interests of parties are infringed or are in danger of being directly infringed, the parties shall have the right to apply to the provincial court in the place where the arbitration tribunal accepted jurisdiction over the dispute to take one or a number of the following interim emergency measures:

1. To preserve evidence when it is being destroyed or is in danger of being destroyed;
2. To attach assets in dispute;
3. To prohibit removal of assets in dispute;
4. To prohibit any change in the status quo of assets in dispute;
5. To attach and freeze assets in deposit or trust accounts;
6. To freeze bank accounts.

**Article 34**     *Procedures for application of interim emergency measures*

1. An applicant for the injunctive relief prescribed in article 33 of this Ordinance shall file an application at the provincial court in the place where the arbitration tribunal accepted jurisdiction over the dispute.
2. An applicant for injunctive relief shall file, together with the application, a copy of the statement of claim and all the documents stipulated in article 20, and a copy of the arbitration agreement stipulated in article 9 of this Ordinance. Copies must be validly notarized.

Depending on the type of injunctive relief sought, the applicant shall provide the court with specific evidence on the evidence which needs to be preserved, [or] evidence on the respondent's dispersal or concealment of assets which may make it impossible to enforce an award.

3. An applicant for injunctive relief shall pay a security sum to be fixed by the court, not to exceed the [amount of the] asset obligation which the obligor must discharge in order to protect the interests of the respondent to the application and to prevent abuse of injunctive relief on the part of the applicant. Such sum shall be held in a trust account in a bank in the same place as the court which makes a decision granting injunctive relief.
4. After receipt of an application together with the documents stipulated in clauses 1, 2 and 3 of this article, the presiding judge of the provincial court specified in clause 1 of this article shall assign a judge to consider and decide the application. Within a time-limit of five (5) working days from the date of such assignment, the judge shall inspect the accuracy of the documents pursuant to the provisions in clause 2 of this article, within the scope of the applicant's application, and may issue a decision granting one or more of the items of injunctive relief stipulated in article 33 of this Ordinance. If any of the orders in clauses 2 to 6 inclusive of article 33 are made, the assets which are subject to such order shall not be of a higher value than the asset obligation which the obligor must discharge.
5. Any decision granting injunctive relief must be immediately sent to the arbitration tribunal, to the parties to the dispute, and to the procuracy at the same level.  
Any decision granting injunctive relief shall be immediately enforceable, and it shall be enforced in accordance with the law on execution of civil judgments.
6. Within a time-limit of three (3) working days from the date of receipt of a decision granting injunctive relief, the director of the procuracy at the same level shall have the right to recommend, [and] the respondent shall have the right to request the presiding judge of the court which granted the injunctive relief to consider and make a decision on altering, rescinding or maintaining the status quo of such order. Within a time-limit of three (3) working days from the date it receives a recommendation from the procuracy or a request from the respondent, the presiding judge shall issue a decision and reply to the procuracy or respondent.

**Article 35**     *Alteration or rescission of interim emergency measures*

An applicant for interim emergency measures may also apply for their alteration or rescission when such measures are no longer appropriate or necessary.

Within a time-limit of five (5) working days from the date of receipt of an application for alteration or rescission of interim measures, the presiding judge of the provincial court which made the initial decision on interim measures shall assign a judge to consider and issue a decision altering or rescinding such measures. This decision must be immediately sent to the arbitration tribunal, to the parties to the dispute, and to the procuracy at the same level.

In a case of rescission of interim emergency measures, the judge shall consider and decide whether the security sum stipulated in article 34 of this Ordinance should be returned to the applicant, unless the provisions in article 36 of this Ordinance are applicable.

**Article 36**     *Responsibilities of applicant for interim emergency measures*

An applicant for interim emergency measures shall be responsible for its request.

If the applicant was incorrect and causes loss to another party or to a third person, then such applicant shall pay compensation.

**Article 37**     *Conciliation*

1. Parties may themselves conciliate the dispute during the course of arbitration proceedings. If the parties achieve a settlement, the arbitration tribunal shall stay the proceedings.
2. Parties may request the arbitration tribunal to conduct a conciliation, and if it is successful the parties may request the arbitration tribunal to produce minutes of settlement and to issue a decision recognizing the successful conciliation. Minutes of settlement shall be signed by the parties and by the arbitrators. Any decision recognizing a successful conciliation issued by an arbitration tribunal shall be final and shall be enforceable pursuant to article 57 of this Ordinance.

**Article 38**     *Hearings for dispute resolution*

1. Unless the parties otherwise agree, the president of an arbitration tribunal shall decide the time of the hearing for dispute resolution.
2. Unless the parties otherwise agree, summonses to parties to attend the hearing for dispute resolution shall be forwarded to them at least thirty (30) days prior to the date of commencement of the hearing.
3. Hearings shall be held in camera. If the parties consent, the arbitration tribunal may permit other persons to attend the hearing.

**Article 39**     *Attendance at hearings for dispute resolution*

Parties may directly attend hearings or sign powers of attorney authorizing their representatives to attend. Parties shall have the right to invite witnesses, and lawyers to protect their legal rights and interests.

**Article 40**     *Absence of parties*

1. If a claimant has been summonsed to attend a hearing for dispute resolution but fails to attend without a legitimate reason, or leaves the hearing without the consent of the arbitration tribunal, the claimant shall be deemed to have withdrawn its statement of claim. In such a case the arbitration tribunal shall continue the dispute resolution if the respondent so requests or if there is a counter-claim as prescribed in article 29 of this Ordinance.

If a respondent has been summonsed to attend a hearing for dispute resolution but fails to attend without a legitimate reason, or leaves the hearing without the consent of the arbitration tribunal, the arbitration tribunal shall continue the dispute resolution based on the currently available documentation and evidence.

2. If requested by the parties, an arbitration tribunal may rely on the file to conduct the dispute resolution without requiring the presence of the parties.

**Article 41**     *Adjournment of a hearing for dispute resolution*

1. Parties may request an arbitration tribunal to adjourn a hearing if there is a legitimate reason.
2. An arbitration tribunal must adjourn a hearing if it considers there are insufficient grounds for the dispute resolution.

**Article 42**     *Principles for issuing an award*

Except in the case of dispute resolution by a sole arbitrator, an award shall be made on the majority principle. The view of the minority shall be recorded in the minutes of hearing.

**Article 43**     *Minutes of hearing of dispute resolution*

1. An arbitration tribunal shall prepare minutes of hearing and the president of the arbitration tribunal shall sign them.
2. Parties have the right to study the contents of minutes and to request that they be amended or supplemented. If the arbitration tribunal rejects such a request, it shall record this in the minutes.

**Article 44**     *Award*

1. An award shall contain the following basic particulars:
  - (a) Date and place of issuance. If the dispute resolution is held at an arbitration centre, the award shall contain the title of that center.
  - (b) Names and addresses of the claimant and respondent.
  - (c) Names of the arbitrators or sole arbitrator.
  - (d) Summary of the statement of claim and the matters in disputes.

- (dd) Grounds for issuance of the award.
  - (e) Decision on the dispute, decision on arbitration fees and other costs.
  - (g) Period for enforcement of the award;
  - (h) Signatures of the arbitrators or sole arbitrator.
2. If an arbitrator does not sign an award, the president of the arbitration tribunal shall confirm this fact in the award and specify the reasons for it.
  3. The parties shall have the right to request the arbitration tribunal not to record in the award the matters in dispute or the reasons for the award.
  4. An award shall be of full force and effect as from the date of its announcement.

**Article 45**     *Announcement of the award*

1. An award may be announced immediately at the final hearing or after the final hearing, but shall be announced no later than thirty (30) days from the date the final hearing is completed. The full text of the award shall be sent to the parties immediately after it is announced.
2. At the request of the parties, an arbitration centre or an arbitration tribunal established by the parties shall provide a copy of the award to the party requesting it.

**Article 46**     *Correction of the award*

1. Within a time-limit of fifteen (15) days from the date of receipt of an award, a party may request the arbitration tribunal to correct any errors in computation, any typing or printing mistakes or any other technical mistakes. Within a time-limit of thirty (30) days from the date of receipt of a request, the arbitration tribunal shall make the corrections and inform the other party.
2. Any decision making a correction shall be a part of the award and must be signed by the arbitration tribunal.

**Article 47**     *Stay of dispute resolution*

An arbitration tribunal shall stay a dispute resolution in the following circumstances:

1. The claimant withdraws its statement of claim or is deemed to have withdrawn its statement of claim pursuant to article 40.1 of this Ordinance, unless the respondent requests that the dispute resolution continue.
2. The parties agree to terminate the dispute resolution.

**Article 48**     *Archiving arbitration files*

1. Where dispute resolution is held by an arbitration centre, the file, the award or the minutes of settlement shall be archived at the arbitration centre.

2. Where dispute resolution is held by an arbitration tribunal established by the parties, within a time-limit of fifteen (15) days from the date of announcement of the award or minutes of settlement, the arbitration tribunal shall forward the award or minutes of settlement together with the dispute resolution file to the provincial court in the area where the arbitration tribunal issued the award or prepared the minutes of settlement, for archiving.

**Article 49** *Resolution of disputes with a foreign element by arbitration*

1. A dispute with a foreign element as agreed between the parties may be resolved by an arbitration tribunal held by an arbitration center or by an arbitration tribunal established by the parties in accordance with the provisions of this Ordinance.
2. An arbitration tribunal held by an arbitration center or an arbitration tribunal established by the parties may apply other procedural rules if the parties agree.
3. An arbitrator selected by the parties or appointed by a court may be an arbitrator either listed or not listed in the lists of arbitrators of the arbitration centres in Vietnam or may be a foreign arbitrator in accordance with the laws on arbitration of that country.
4. In a case where one party or the parties request a foreign court to appoint an arbitrator, *a court competent to appoint an arbitrator* means a court which has been authorized in accordance with the laws of that country.
5. The parties shall have the right to agree on choice of [substantive] law pursuant to article 7.2 of this ordinance, [and] on international commercial practice for the dispute resolution.
6. The parties shall have the right to agree on the location for the dispute resolution to be in Vietnam or in a foreign country. If the parties fail to agree then the arbitration tribunal shall decide, but it must ensure convenience to the parties during the resolution.
7. The parties shall have the right to agree on the language to be used in arbitration proceedings. If they do not have such an agreement, the language to be used in the arbitration proceedings shall be Vietnamese.

## Chapter VI

### **Cancellation of Awards, Enforcement of Awards**

**Article 50** *Right to apply for cancellation of an award*

Within a time-limit of thirty (30) days as from the date of receipt of an award, a party who disagrees with an award shall have the right to file an application requesting cancellation of the award with the provincial court in the place where the arbitration tribunal issued the award.

If an application is filed out of time due to an event of force majeure, the duration of the event of force majeure shall be excluded when calculating the above time-limit.

**Article 51** *Application for cancellation of an award*

1. An application for cancellation of an award shall contain the following basic particulars:

- (a) Date on which the application is drawn;
  - (b) Name and address of the party applying for cancellation of the award;
  - (c) Reasons for the application for cancellation of the award.
2. The following documents shall be enclosed with the application:
    - (a) Original or validly notarized copy of the award;
    - (b) Original or validly notarized copy of the arbitration agreement.
  3. Enclosures in a foreign language must be translated into Vietnamese and the translations must be validly notarized.

**Article 52**     *Jurisdiction over the application*

1. On receipt of the documents stipulated in article 51 of this Ordinance, the court shall immediately notify the applicant to pay the fees.

The court shall have jurisdiction as from the date the applicant pays the fees.
2. The court shall have the right to require the applicant to explain any unclear particulars in the application for cancellation of the award.

**Article 53**     *Consideration by a court of an application for cancellation of an award*

1. After a court has accepted jurisdiction over an application for cancellation of an award, the court shall notify the arbitration center or the arbitration tribunal established by the parties, the parties to the dispute, and the procuracy at the same level. In the case of dispute resolution held by an arbitration center, the arbitration center shall transfer the file to the court within a time-limit of thirty (30) working days from the date of receipt of the court's notice.
2. Within a time-limit of thirty (30) days from the date the court accepts jurisdiction, the presiding judge of the court shall appoint a trial council consisting of three judges, one of whom shall act as chief judge, and shall open a court hearing to consider the application for cancellation of the award.

Seven (7) working days prior to the court hearing, the court shall transfer the file to the procuracy at the same level.
3. The court hearing shall take place in the presence of the parties to the dispute, their lawyers (if any), and the director of the procuracy at the same level. If one of the parties making the application requests the court to hear it in his absence, or if party who has been validly summonsed to attend the hearing fails to attend without a legitimate reason or leaves the hearing without the consent of the trial council, the trial council may continue to deal with the application.
4. The trial council shall not reconsider the issues in the dispute but shall only inspect the documents stipulated in article 51 of this Ordinance and compare the award with the provisions in article 54 of this Ordinance in order to issue its decision.

5. After the trial council has considered the application and enclosures, heard the evidence (if any) and the opinions of the people summonsed and of the prosecutor<sup>4</sup>, the trial council shall debate the application and issue a majority decision.

A trial council shall have the right to issue a decision canceling or not canceling the award; and to stay consideration of the application if the applicant withdraws the application or fails to attend without a legitimate reason after having been summonsed to attend or leaves the hearing without the consent of the trial council.

Within a time-limit of fifteen (15) days from the date the trial council issues a decision, it shall forward a copy of the decision to the parties, to the arbitration center or to the arbitration tribunal established by the parties, and to the procuracy at the same level.

6. If the trial council cancels an award, the parties shall have the right to bring such dispute before a court for resolution, unless the parties have some other agreement.
7. If the trial council does not cancel the award, the award shall be enforceable in accordance with the provisions in article 57 of this Ordinance.

#### **Article 54** *Grounds for cancellation of an award*

A court may issue a decision canceling an award if the applicant proves that the arbitration tribunal issued an award in one of the following sets of circumstances:

1. There was no arbitration agreement;
2. The arbitration agreement was invalid pursuant to article 10 of this Ordinance;
3. Membership of the arbitration tribunal or arbitration proceedings was inconsistent with the agreement of the parties pursuant to the provisions of this Ordinance;
4. The dispute was outside the jurisdiction of the arbitration tribunal. If an award has any section outside the jurisdiction of the arbitration tribunal, then that section may be cancelled.
5. The applicant proves that during the dispute resolution an arbitrator breached the obligations of an arbitrator stipulated in article 13.2 of this Ordinance.
6. The award is contrary to the public interest of the Socialist Republic of Vietnam.

#### **Article 55** *Appeal or objection to the decision of the court*

1. Within a time-limit of fifteen (15) days from the date the court issues a decision pursuant to article 53 of this Ordinance, the parties shall have the right to appeal, and the procuracy at the same level or the people's supreme procuracy shall have the right to object to the court's decision. The time-limit for an objection by the procuracy at the same level shall be fifteen (15) days, and for an objection by the people's supreme procuracy thirty (30) days from the date the court issued its decision.

A notice of appeal or a decision raising an objection must specify the reasons for the appeal or objection and the relief sought. A notice of appeal or a decision raising an objection shall be

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<sup>4</sup> PF Note: "Prosecutor" in the sense of the officer from the procuracy.

forwarded to the court which issued the decision. After the court receives the appeal, the court shall immediately notify the appellant to pay fees for the appeal.

2. If any party was not present at the hearing of the court of first instance, the time for lodging an appeal stipulated in clause 1 of this article shall be calculated as from the date a copy of the decision is delivered to such party; if an appeal is lodged out of time due to an event of force majeure, the time-limit shall be calculated from the date the event of force majeure ends.

Within a time-limit of fifteen (15) days from the date the court receives a decision raising an objection or a notice of appeal and the appellant has paid fees for the appeal, the court which issued the decision shall transfer the file to the people's supreme procuracy.

#### **Article 56**     *Consideration of an appeal or objection*

1. Within a time-limit of thirty (30) days from the date of receipt of an appeal file or a decision raising an objection, the people's supreme procuracy shall hold a hearing to consider and make a decision. If it is necessary to require the appellant or objector to provide further explanation of the particulars of appeal or objection, the time-limit for holding a hearing may be extended but shall not exceed sixty (60) days from the date of receipt of the appeal file or objection.

Seven (7) working days prior to the hearing, the court shall transfer the file to the procuracy at the same level.

2. Membership of the trial council to hear the appeal or objection shall consist of three judges, one of whom shall be appointed by the people's supreme procuracy to act as chief judge.

The court hearing shall take place in the presence of the parties to the dispute, their lawyers (if any), and the director of the procuracy at the same level.

If the appellant requests the court to hear the appeal in his absence, or if a party who has been validly summonsed to attend the hearing fails to attend without a legitimate reason or leaves the hearing without the consent of the trial council, the trial council may continue to hear the appeal.

After the trial council has considered the notice of appeal or the decision raising an objection and enclosures, heard the evidence (if any) and the opinions of the people summonsed and of the prosecutor<sup>5</sup>, the trial council shall debate the appeal and issue a majority decision.

A trial council shall have the right to retain, or to alter a part or the whole of the decision of the court of first instance; or to stay consideration of the appeal if the applicant withdraws the appeal or fails to attend without a legitimate reason after having been validly summonsed to attend or leaves the hearing without the consent of the trial council.

The decision of the people's supreme procuracy shall be final and enforceable.

#### **Article 57**     *Enforcement of awards*

1. If any party has failed to voluntarily carry out an award thirty (30) days after the date of expiry of the time-limit for its execution, and that same party has not applied for cancellation pursuant to article 50 of this Ordinance, the award creditor shall have the right to apply to the judgment

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<sup>5</sup> PF Note: "Prosecutor" in the sense of the officer from the procuracy.

execution agency in the area where the award creditor has its office or residence or where the award debtor has assets, to enforce the award.

2. If any party applied to the court for cancellation of the award, the award shall be enforceable as from the date of effectiveness of the decision of the court not to cancel the award.
3. The provisions of the law on execution of civil judgments shall apply to the order, procedures and time-limits for enforcement of awards.

**Article 58** *Court fees and charges regarding arbitration*

The Government shall provide regulations on court fees and charges for applications to suspend an arbitrator, applications for injunctive relief, applications for cancellation of an award, and appeals against court decisions.

Chapter VII

**State Administration of Arbitration**

**Article 59** *Contents of State administration of arbitration [shall be:]*

1. Promulgation of legal instruments on arbitration.
2. Implementing guidelines for legal instruments on arbitration.
3. Issuance and revocation of establishment licences for arbitration centers and of certificates of registration of operation of arbitration centers .
4. Creation and training of a team of arbitrators; international co-operation in the arbitration sector.
5. Inspection; resolution of complaints and denunciation; and dealing with violations of the law on arbitration.

**Article 60** *Agency in charge of State administration of arbitration*

1. The Government shall exercise uniform State administration of arbitration.
2. The Ministry of Justice shall be responsible before the Government for carrying out the function of State administration of arbitration.
3. The Ministry of Justice shall coordinate with the Vietnam Lawyers Association in carrying out State administration of arbitration.

Chapter VIII  
**Implementing Provisions**

**Article 61**     *Application of this Ordinance to arbitration organizations established prior to the date of validity of this Ordinance*

1. Arbitration centers which were established prior to the date of promulgation of this Ordinance shall not have to apply for re-establishment. Within a period of twelve (12) months from the date this Ordinance takes effect, these centers must amend and supplement their charters and their arbitration procedural rules for consistency with the provisions of this Ordinance, and if they fail to do so at the expiry of that period, they must terminate their operation.
2. Arbitration agreements which were signed prior to the date of validity of this Ordinance shall be implemented in accordance with provisions of the law which was in effect at the date such arbitration agreements were signed.
3. If any of the following awards have not yet been enforced, they shall be enforceable pursuant to articles 6 and 57 of this Ordinance, namely: Awards of arbitration centers established and operating pursuant to Decree No. 116-CP of the Government dated 5 September 1994; awards of the Vietnam International Arbitration Center established and operating pursuant to Decisions of the Prime Minister of the Government No. 204-TTg dated 28 April 1993 and No. 114-TTg dated 16 February 1996.

**Article 62**     *Effectiveness*

1. This Ordinance shall be of full force and effect as from 1 July 2003.
2. The effectiveness of the following legal instruments shall terminate as from 1 July 2003:
  - (a) Decree No. 116-CP of the Government dated 5 September 1994 on Organization and Operation of Economic Arbitration;
  - (b) Decision No. 204-TTg of the Prime Minister of the Government dated 28 April 1993 on Organization of the International Arbitration Centre of Vietnam;
  - (c) Decision No. 114-TTg of the Prime Minister of the Government dated 16 February 1996 on Extension of Authority for Dispute Resolution of the International Arbitration Centre of Vietnam.

**Article 63**     *Implementing provision*

The Government, the people's supreme court and the people's supreme procuracy shall, depending on their respective functions, duties and powers, provide detailed regulations and guidelines for the implementation of this Ordinance.

Hanoi, 25 February 2003  
On behalf of the Standing Committee of the National Assembly  
Chairman

NGUYEN VAN AN  
[Signed]