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Vietnam

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Vietnam.

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VIETNAM LITIGATION



1. What are the main methods of resolving commercial disputes?

In Vietnam, disputes can be settled in court, or out of court via negotiation, mediation or arbitration. In general, disputes are mainly resolved via litigation. For commercial disputes, commercial arbitration is also a significant dispute resolution method.

2. What are the main procedural rules governing commercial litigation?

Litigation proceedings in Vietnam are mainly governed by the Civil Procedure Code (“**CPC**”). Litigation rules can also be found in some other substantive rules such as the statute of limitations under the Civil Code or the pre-litigation procedures under the Land Law or the Labour Code.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Under Vietnamese law, the highest court in the country is the Supreme People’s Court (“**Supreme Court**”). Below the Supreme Court are three levels of courts, in descending order of hierarchy: High People’s Courts (“**High Courts**”), Provincial People’s Courts (“**Provincial Courts**”), and District People’s Courts (“**District Courts**”).

There are three High Courts, based in Hanoi, Da Nang, and Ho Chi Minh City. Each High Court is responsible to generally handle appellate proceedings for the northern, central, and southern region of the country.

Under the CPC, for disputes involving at least one foreign individual/entity, the Provincial Courts will be the courts of first instance, and the High Courts will handle the appellate proceedings. In certain cases, the appeal judgments may be reviewed under the cassation or retrial proceedings if there are firm and sufficient grounds as specified by law.

4. How long does it typically take from commencing proceedings to get to trial?

The compulsory timeframe to prepare for a trial depends on the nature of the case. For a commercial case, the trial must be opened within two months from the date on which the case is accepted by the court, extendable for another month. However, in practice, more often than not, the preparation periods for the trial often last longer than the compulsory timeframes – typically from eight to twelve months.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

As one of the fundamental principles of civil proceedings, trials will be held in public. However, in practice, in certain cases, it may not be easy for uninvolved parties to attend the court hearing. Additionally, while the applicable laws and regulations do not address this matter, in practice, documents filed at court may only be available to the involved parties.

In exceptional cases where there is a need to protect state secrets, preserve the people’s fine traditions, or protect juveniles, or to protect the professional secrets, business secrets, individual privacy, or family privacy of the involved parties, the court will have the discretion to decide if a private hearing is needed or certain documents may not be disclosed to the involved parties.

Judgments and decisions not containing information in the above listed exceptional cases may be made public on the websites of the courts or the database of the Supreme Court at <https://congboanan.toaan.gov.vn/>.

6. What, if any, are the relevant limitation periods?

The statute of limitations for contractual (other than commercial) disputes or compensation claims is three years. For commercial disputes, the applicable statute of

limitation is two years. The statute of limitations is triggered on the date on which the plaintiff knows or ought to have known his/her legitimate rights are infringed.

The statute of limitations is not applicable to certain claims or disputes such as claims related to personal non-property rights or protection of ownership, or disputes related to land use rights.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Pre-action conduct requirements may only be applied in certain disputes related to labour relationships or land use rights. In particular, it may be required that the parties must undergo a mediation procedure before filing any lawsuit with the court. Failing to meet the pre-action conduct requirements will lead to the court not accepting the lawsuit.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

In Vietnam, proceedings are commenced when the court accepts the case, which occurs when the court receives the statement of claims and supporting documents of the plaintiff and the evidence of payment of the court fee by the plaintiff. Within three working days from the date of acceptance, the court must issue a notice of acceptance of the case.

The service is required to be done by the court. However, each party is also under the obligation to provide the other party with copies of the statement of claims or supporting documents and evidence, except for documents that the other party already possesses or are exempt from disclosure as listed under the CPC.

9. How does the court determine whether it has jurisdiction over a claim?

Generally, to determine its jurisdiction over a claim, a court needs to assess whether the dispute relates to a subject matter that is under the jurisdiction of the court as provided under the CPC, whether the parties have a valid agreement on the choice of another dispute resolution forum (such as arbitration), and whether the court has jurisdiction over the claim based on rules on

the hierarchy of the courts and territorial jurisdiction.

With regard to the hierarchy of the courts, the court will consider if the subject matter falls under the jurisdiction of a District People's Court or that of a Provincial People's Court.

With regard to territorial jurisdiction, in general, a dispute will be handled by the court where the defendant is located, unless the parties have agreed that the dispute will be submitted to the court where the plaintiff is located. For a dispute relating to real estate, the court of jurisdiction is the court where the property is located. Further, the CPC sets out cases where the plaintiff has the right to select the jurisdiction of the court, such as in tort cases or certain types of labour dispute.

10. How does the court determine what law will apply to the claims?

The determination of the law governing the claims is only needed in cases where there are foreign elements (such as when a party to the dispute is a foreigner). The governing law is determined based on international treaties to which Vietnam is a member, or, if there is no applicable international treaty, Vietnamese law or the agreement between the parties (to the extent that such agreement is allowed under Vietnamese law or any international treaty to which Vietnam is a member). If the governing law cannot be determined based on the above grounds, the law having the closest connection to the civil transaction will be the governing law.

11. In what circumstances, if any, can claims be disposed of without a full trial?

The CPC provides some circumstances in which the claims could be disposed of without a full trial. For example, the court decides not to further proceed with the trial because under an involved party's request, the court finds that the statute of limitations of the claims is expired. Such decision to terminate the proceedings could be appealed under appellate proceedings. In another case, if the involved parties are able to reach any agreement to fully settle all claims before the issuance of a judgment, the court must issue a decision recognizing such settlement and will not proceed with the trial. The decision is enforceable and not subject to appellate proceedings.

12. What, if any, are the main types of

interim remedies available?

The CPC provides a list of 17 different types of interim remedies, in which the following types are popular in practice: (i) prohibiting/forcing the involved parties from performing/to perform specific acts; (ii) freezing bank accounts and/or assets of the obligor; (iii) prohibiting any transfer or changes of the rights related to the disputed properties; and (iv) prohibiting the obligor from leaving Vietnam.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

Within 15 days from the date of receiving a notice of acceptance issued by the court, the defendant(s) and any parties with related interests and obligations must submit its/their statement of defence, counter-claims, and statement of independent claims along with supporting documents and evidence to the court. Moreover, the judge in charge of a case may require the involved parties to submit additional documents and evidence and decide on the timetable for such submissions, but in no case exceeding the trial preparation period. Other than the above cases, the involved parties can in fact submit any additional documents and evidence (not required by the judge in charge) at any time prior to or even at the hearing.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

In a meeting(s) for mediation and disclosure of evidence during the trial preparation period, the judge will disclose all documents and evidence that the parties submitted to the court or the court proactively collected, except for documents or evidence related to the protection of state secrets, preservation of the people's fine traditions, or protection of juveniles, or the protection of professional secrets, business secrets, individual privacy or family privacy of the involved parties.

Moreover, the involved parties could request any individuals or organizations to disclose relevant documents or evidence within 15 days from the date of receipt of the request. The court, at its own discretion, or by the request of an involved party, could also order any individuals or organizations to disclose such documents or evidence. Failing to comply with the court's order

without any justifiable reasons could lead to administrative sanctions or criminal liabilities. However, under the Law on Lawyers, to the extent allowed by criminal law, the privilege of non-disclosure of information between clients and their lawyers is recognized. It is also worth noting that requesting other individuals or organizations to provide documents or evidence is almost always a challenge, even with the involvement of the court.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

At the request of an involved party or based on the opinion of the judge, procedures to obtain witness testimony may be carried out. Witness testimony is made in writing and may be obtained at or outside the office of the court.

A cross-examination may also be conducted at the request of an involved party or if the judge finds that there are conflicts in the involved parties' or witnesses' testimony. Also, the witnesses may be required to deliver their testimonies at the hearing.

Although Vietnamese law is silent on depositions, in practice, the court may accept statements of a third party if such statements are witnessed and recorded in writing by a bailiff officer.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

An involved party may request the court to, or may by itself (if the court rejects its request), obtain an expert opinion/assessment. If the involved party obtains an expert opinion/assessment by itself, it may only do so before the court issues its decision on the first-instance trial. The court may also decide to obtain an expert opinion/assessment as it deems necessary.

The experts must be present and provide explanations and clarifications at the order of the court, notify the court in writing if they cannot provide the expert opinion/assessment, and not collect materials by themselves or disclose the assessment results to any people other than the judge in charge.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

All decisions on the application of any interim remedies are subject to a complaint proceeding handled by the chief judge of the court issuing the decisions within three working days from the date of the decision.

For other decisions, the appeal timescales depend on their nature. For example, the appeal timescale for a decision on termination or suspension of the proceedings is within seven days from the date on which such decision is received or publicly posted. Meanwhile, the timescale applicable to the first-instance judgment is 15 days from the issuance date, or from the date of receipt of the judgment if individuals or representatives of a party involved cannot attend the hearing because of a legitimate reason.

Moreover, at the request of an involved party (within one year after the effective date of the decision) or if he/she finds it necessary, the Chief Judge of a High Court, the Chief Procurator of a High People's Procuracy, the Chief Justice of the Supreme Court, or the Chief Procurator of the Supreme People's Procuracy may file a protest against an enforceable decision under cassation or retrial proceedings. The retrial proceedings must be conducted within one year from the date that a basis for retrial is found, while the time-limit for conducting cassation is three years from the effective date of the decision and could be extended for up to two years, subject to specific requirements under the law. The cassation and retrial proceedings will be handled by the Judge Committee of the High Court or the Council of Justices of the Supreme Court.

The Council of Justices of the Supreme Court may also review its own decisions under a special procedure at the request of the Standing Committee of the National Assembly or on the recommendation of the Judicial Committee of the National Assembly, the Chief Justice of the Supreme Court or the Chief Procurator of the Supreme People's Procuracy.

18. What are the rules governing enforcement of foreign judgments?

A foreign civil judgment or decision may be recognized and enforced in Vietnam based on international/bilateral treaties to which Vietnam is a member or the principle of reciprocity or Vietnamese law.

An application for recognition and enforcement of a foreign judgment must be submitted to the Ministry of

Justice or the court within three years from the effective date of the judgment or decision. Vietnamese provincial courts have the power to consider applications for recognition and enforcement of foreign judgments or decisions unless stipulated otherwise under the relevant international/bilateral treaties.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

In general, the liability to pay the costs of litigation, including the court fee and assessment fee (if any), will lie upon the losing party of the case. In the judgment, the court will allocate the litigation costs to the parties. However, except for IP disputes, the attorney fee for commercial disputes will not be allocated to the losing party unless agreed by the parties.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Vietnamese laws are silent on class action. The CPC only recognizes the right to file a lawsuit by a representative organization of employees or consumers in order to protect their lawful rights and interests.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Any third parties having interests or obligations related to a civil suit could request the court to be allowed to participate in the proceedings. Further, at the request of an involved party, or at its own discretion, the court can summons the third parties to participate in the proceedings. In principle, the participation of any third parties must be decided during the trial preparation period.

Consolidating two or more sets of proceedings is allowed under Vietnamese law if such consolidation ensures compliance with the law or if different plaintiffs sue the same defendant in separate lawsuits.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be

made liable for the costs incurred by the other side?

Vietnamese law is silent on the funding of litigation by third parties. However, such funding may be allowable to the extent that it is not contrary to any principles of civil law. If such funding is allowable, the third-party funders would not be directly liable for any costs incurred by the other side under a judgment because they are not the involved parties participating in the proceedings.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Because of the lack of technological facilities, Vietnamese courts have not yet adopted remote hearings. Recently, most of the local courts have decided to postpone hearings until further notice in response to the outbreak of the COVID-19 pandemic.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

For foreign parties, the main advantage of litigating international commercial disputes in Vietnam is that the court fee is low and judgments are easier to enforce in comparison to judgments of foreign courts or arbitration awards. Meanwhile, the uncertainty in the timeframe of the court remains the chief disadvantage of litigating international commercial disputes in Vietnam. It is often difficult for the parties to estimate the accurate timeline for their dispute to be settled in the proceedings and, more often than not, the actual timeline is longer than the statutory one.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

With the recent outbreak of the COVID-19 pandemic,

good supply chains have been shaken due to the systematic failure of performance of international trade contracts. Thus, contractual disputes may be the most likely growth area in the near future.

Additionally, the sharp development of technology and the Vietnamese government's encouragement of the trend to harness the potential of digital transformation have been witnessed, while the legal framework related to digital and media activities may be slow to adapt, potentially spurring the growth of disputes related to digital media services, IP-tech and privacy.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

Since January 2021, all provincial courts have allowed the online submissions of petitions and receipt of procedural documents. This is a part of Vietnam's efforts to digitalize and simplify administrative procedures in litigation with the aim to establish a comprehensive and accessible e-court system in the near future.

27. What, if any, will be the long-term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

It is undeniable that the COVID-19 pandemic has posed a wide range of challenges to the Vietnamese judicial system, such as restrictions in transportation, delivery, etc. However, to some extent, these challenges have simply highlighted changes to Vietnam's judicial system that are already necessary, including developing online platforms for submission and delivery of court documents, evidence, and other supporting documents, and even converting from physical trials to virtual trials. Such potential changes could benefit the litigation of international commercial disputes in the future.

The COVID-19 pandemic has also set out some circumstances where relevant aspects of the substantive laws need to be further developed, such as the application of the hardship clause, or under which circumstances a party's obligation could be discharged by claiming the COVID-19 pandemic as a force majeure event.

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