

VIETNAM'S LAW ON COMMERCIAL ARBITRATION FOR THE NEW REQUIREMENTS OF THE INTERNATIONAL INTEGRATION

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Abstract: *The article outlines the development of Vietnam's commercial arbitration law; by methods of analyzing written law, comparative method, analytical method - synthesizing to assess the current status of Vietnam's commercial arbitration legal system; analyze the problems posed before the new requirements of international integration, thereby making a number of proposals and recommendations to improve Vietnam's commercial arbitration law to meet the new requirements of current international integration.*

Keywords: *law; commercial Arbitration; dispute; international integration.*

I. Introduction

Arbitration and arbitration law have a history dating back to long before the courts. The birth and development of arbitration law is an inevitable and objective need. Currently, arbitration law develops strongly, is highly international and is a method of dispute settlement commonly used in the world. The birth of global multilateral international treaties on arbitration has created a solid foundation for the existence and development of arbitration. In Vietnam, the law on commercial arbitration is gradually being perfected to meet the country's requirements for extensive international integration. Therefore, the study and proposal to improve the

Vietnamese commercial arbitration law to meet the new requirements of international integration is a matter of theoretical and practical significance.

II. Theoretical background

The article is built on the theoretical basis: Theory and history of state and law; systems theory; theory on the relationship between national law and international law along with the following practical basis:

2.1. The formation and development of Vietnamese arbitration law in the pre-renovation period

The process of formation and development of Vietnam's arbitration law was marked by the fact that on January

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14, 1960, the Government issued Decree No. 20/TTg on the organization of the economic arbitration industry, according to which, Economic arbitration is organized according to administrative levels from central to local. After that, Vietnam issued additional legal documents on arbitration such as: Decree No. 75/CP of the Government dated April 14, 1975 on the charter of organization and operation of State economic arbitration; Decree No. 62/HDBT dated April 17, 1984 of the Council of Ministers on functions, tasks, powers and organization of economic arbitration; The Ordinance on Economic Arbitration was promulgated by the State Council on January 10, 1990. In addition, the law also stipulates two arbitration organizations operating as socio-professional organizations: the Foreign Trade Arbitration Council established under Decree No. 59-CP dated April 30, 1963 of the Government Council; The Maritime Arbitration Council was established under Decree No. 153-CP dated October 5, 1963 of the Government Council. The provisions of these two arbitration systems are only suitable for centrally planned economies.

2.2. The formation and development of Vietnamese arbitration law in the period from renovation until now

On April 28, 1993, the Prime Minister issued Decision No. 204-TTg on the organization of the Vietnam International Arbitration Center (VIAC) next to the Vietnam Chamber of Commerce and Industry (VCCI), VIAC is the non-governmental arbitration organization was established on the basis of merging the Foreign Trade Arbitration Council and

the Maritime Tonnage Council. Then, on September 5, 1994, the Government issued Decree No. 116-CP on the organization and operation of economic arbitration, on that basis many other arbitration centers were also established in: Ha Noi, Noi, Ho Chi Minh City, Can Tho...and operate as professional social organizations.

In the period from 1993 to 2003, arbitration provisions were also reflected in other legal documents such as the Civil Aviation Law of 1991, the Maritime Code of 1990... Along with that, Bilateral international agreements that Vietnam signed with other countries also have provisions on dispute settlement through arbitration, especially in July 1995, Vietnam officially acceded to the 1958 New York Convention on the recognition of disputes. and enforcement of foreign arbitral awards. Since 1995, the country's economy has developed and strongly integrated into the world with great changes in the legal system, the fact that our country has continuously signed and acceded to bilateral and multilateral international treaties on trade. and investment, becoming a member of international economic - trade organizations requires strict implementation of international commitments as well as obligations of organizations to which Vietnam is a member (must legalize international law provisions into those of national law; adjust and amend our country's law in accordance with international law). Thus, the trend of international integration gives rise to the need to settle disputes in domestic as well as international trade in ways consistent with international law, and this is the fundamental reason for

the development of international law. development of commercial arbitration law in our country.

With that fact, on February 25, 2003, the National Assembly Standing Committee issued the Ordinance on Commercial Arbitration. This is the legal foundation for Vietnamese arbitration to approach and integrate with the general trend of international arbitration. The Ordinance marks a big change in law-making work. For the first time, our country has a fairly comprehensive and highly practical regulatory document in the field of commercial arbitration, whose content is basically compatible with the Model Law on commercial arbitration. international arbitration law (UNCITRAL) as well as modern arbitration laws of many countries around the world. The remarkable point and the biggest change in arbitration law is the issue of the validity of the arbitral award. The arbitral award is final and binding on the disputing parties to comply with the provisions of the law on enforcement of civil judgments. Next, the Civil Procedure Code 2004 has made a reasonable addition to the recognition and enforcement of foreign arbitral awards in Vietnam in order to fully implement the commitments in the 1958 New York Convention; The Law on Civil Judgment Execution 2008 contributes to the improvement of civil judgment enforcement in general, and enforcement of arbitral awards and rulings in particular.

Although there have been fundamental changes with many progressive regulations, after more than 07 years of application, the 2003

Ordinance on Commercial Arbitration has revealed limitations and inadequacies that need to be overcome. The disadvantage is that the legal effect of the Ordinance (sub-law document) is not high. Therefore, on June 17, 2010, the 12th National Assembly passed the Law on Commercial Arbitration. The Law on Commercial Arbitration 2010 has upheld the principle of respecting the parties' right to self-determination in commercial arbitration in general and international commercial arbitration in particular, inheriting the relevant contents of the Ordinance on Arbitration. commercial property at the same time amending inappropriate regulations, adding new ones in order to more effectively meet the requirements of legal regulation, ensure compatibility between current legal documents, improve feasibility in practice and more in line with international standards.

III. Research methods

- Method of analyzing written law: analyzing the provisions of Vietnamese arbitration law and international arbitration law to clarify and properly understand the content and meaning of the provisions.

- Comparative method: compare the provisions of the current Vietnamese arbitration law with the previous ones to see the development and improvement; Compare the provisions of Vietnamese arbitration law and international arbitration law to assess the compatibility and suitability of the two legal systems in the field of arbitration.

- Method of analysis - synthesis: analyzing data and figures to assess the formation and development of arbitration

law, thereby synthesizing and drawing out new issues and requirements for arbitration law. commercial property.

IV. Result and Discussion

4.1. Assessment of the current state of Vietnam's arbitration law - issues raised

The Commercial Arbitration Law 2010 (current) has shown more progress and compatibility with international arbitration law such as: recognizing the freedom of choice of enterprises, expanding the types of disputes that can be settled. settlement by arbitration, increasing the authority of the arbitral tribunal, promoting the assistance of the Court (especially in the matter of applying provisional urgent measures), flexibility in the use of language in the proceedings arbitration, increasing the freedom of the parties in arbitration but also requiring the parties to have certain standards when participating in the proceedings..

For more than 10 years, the Commercial Arbitration Law has been an important legal framework in the development of arbitration. In fact, since the introduction of the Law on Commercial Arbitration 2010, the number of arbitration centers has increased, the number of arbitrators has also grown rapidly, so businesses have more options, increasing the choice of arbitrators. within the dispute, so the number of disputes resolved at arbitration increased more than before. Along with that, there has been an increase in the quality of arbitration activities such as: the quality of arbitral awards has been improving day by day, enterprises are increasingly trusting the arbitration system of Vietnam.

However, because it was passed 10 years ago, up to now, the Law on Commercial Arbitration has had inappropriate provisions, becoming a barrier to the development of arbitration; There are still a number of regulations that are not compatible with other documents to be developed or revised in the future. For example, the 2015 Civil Code has provisions to expand the ability to settle civil disputes by arbitration, but the Law on Commercial Arbitration has not yet provided such provisions. Similarly, the Law on Protection of Consumer Rights 2010 provides for the settlement of disputes between consumers and organizations and individuals trading in goods and services by arbitration; The 2019 Intellectual Property Law (consolidation) provides for arbitration to resolve disputes over intellectual property. In addition, the Law on Commercial Arbitration still has unclear provisions, which lead to controversy, which negatively affects arbitration activities, such as the provision that an arbitration award is canceled if it is “contrary to the basic principles of arbitration”. of Vietnamese law”. This is an unclear provision that causes a lot of controversy and is often abused to invalidate the results of arbitration activities..

Unlike countries with a developed arbitration law, the Law on Commercial Arbitration has not clearly stated that the Court should support arbitration. It is the lack of such a clear point of view that has led to the fact that the Court cancels the arbitral award, and the time for the Court to handle arbitration issues is often too long. This is one of the reasons leading to the consequence that in fact, most FDI

enterprises refuse to use the Court to resolve disputes, but the proportion of FDI enterprises (and foreign enterprises that have signed contracts) with Vietnamese enterprises) choose a domestic arbitration lower than foreign arbitration, while Vietnamese arbitration has the advantage that the award is directly enforced, without having to go through the process of applying for recognition and enforcement. . Moreover, in Vietnam, there have been many arbitration organizations, including large international prestigious arbitration centers that have resolved international disputes with large dispute values that are capable of serving businesses. Therefore, the problem is that it is necessary to continue to supplement and perfect the law on commercial arbitration in the new context of the country's development and international integration.

4.2. New requirements of international integration for arbitration law

The Resolution of the 13th Congress of the Communist Party of Vietnam specifies the key tasks to bring our country into a new stage of development, creating a premise for the next terms to successfully implement the development goals the country to 2030, with a vision to 2045, which defines: *“Promote the improvement and construction of a unified, synchronous, modern, feasible, open, transparent and stable legal system, accessible, internationally competitive, ensuring the people’s legitimate rights and interests, promoting innovation, and ensuring the requirements of sustainable economic and social development, as well as national defense and security in new conditions”*.

Along with that is the signing and joining of new generation free trade agreements such as CPTPP; EVFTA; EVIPA; RCEP... which often provide for arbitration mechanisms under the Rules of the United Nations Commission on International Trade Law (UNCITRAL), the Convention on the Settlement of Investment Disputes Between other countries and nationals (ICSID),... This puts new requirements on Vietnamese law in general and arbitration law in particular.

For arbitration law, the new context of national development and international integration sets out the following basic requirements:

- First, arbitration law must be highly compatible with international law.

- Second, Vietnam’s arbitration law in relation to the arbitration laws of countries in the region and the world needs to reach the same level of proficiency, legislative technique as well as content of legal regulations of arbitration law.

- Third, the arbitration law in particular and the legal system related to arbitration need to create favorable conditions and legal environment to increase international competitiveness so that Vietnamese arbitration becomes a reliable address for arbitration. Vietnamese enterprises and foreign partners choose as a place to mediate and settle disputes arising (if any) in international commercial contracts.

4.3. Some recommendations to improve Vietnam’s commercial arbitration law to meet the new requirements of international integration

To meet the above requirements, the author proposes a number of

recommendations to improve the commercial arbitration law as follows::

Firstly, it is necessary to amend and supplement the Law on Commercial Arbitration 2010 in the following directions:

- Regarding the name of the Law, it should be changed to the Law of Arbitration;

- Regarding the exclusive jurisdiction of arbitration, on the basis of the renaming of the supplementary law, it provides for the jurisdiction of arbitration, whereby the arbitrator not only has the authority to resolve disputes in commercial activities (as the current regulations) but also competent to settle civil disputes; consumer rights protection disputes; intellectual property disputes (ensure compliance with the provisions of the Civil Code 2015; Law on Protection of Consumer Rights 2010; Law on Intellectual Property 2019); Về điều kiện hủy phán quyết trọng tài, cần sửa đổi, cụ thể hóa rõ ràng hơn và hạn chế các quy định về điều kiện hủy phán quyết trọng tài đặc biệt là làm rõ khái niệm “các nguyên tắc cơ bản của pháp luật Việt Nam”.

Currently, the Supreme People's Court has issued Resolution No. 01 with some progressive provisions on arbitration such as regulations on handling cases where there is both an agreement to choose a court and an agreement to select an arbitrator in the direction of priority. to the referee. Therefore, when amending and supplementing the Law on Arbitration, it is necessary to legislate these progressive provisions and settlement lines.

Second, along with the deepening international integration process, Vietnamese arbitration faces competition with foreign arbitrations. In fact, many disputes with Vietnamese enterprises are sent to arbitration centers in Hong Kong or Singapore for settlement because the legal system here is very supportive of arbitration and this fact is not beneficial for Vietnamese enterprises. . Because overseas dispute settlement is very expensive in terms of time, finance and must use foreign human resources, it is a loss of revenue for the Vietnamese economy. Therefore, in order to develop arbitration in Vietnam, the State needs to have regulations that clearly show its support for arbitration activities in the national legal system.

V. Conclusion

Although Vietnam's commercial arbitration law has not had a long history of formation and development, the current arbitration law has built up a fairly complete and synchronous system of rules on arbitration activities. compatible with the provisions of international arbitration law. These regulations have created an important legal basis for the development of arbitration in Vietnam. Facing the new requirements of the country's development and international integration, the arbitration law needs to continue to be supplemented and perfected in order to better meet the development of arbitration and increase the competitiveness of Vietnamese arbitration. international arena. Therefore, in addition to promulgating a legal system to regulate and encourage the development of arbitration, the State also needs to have specific policies to support this arbitration

mechanism. The level of State support is an important factor promoting the development of arbitration.

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