

## DISPUTE RESOLUTION BY ARBITRATION

### I. Process of dispute resolution by commercial arbitration

#### 1. Arbitration agreement

An arbitration agreement is used to determine how to resolve a dispute in legal proceedings. The arbitration agreement is independent of relevant contract; and any extension, cancellation, invalidity or enforceability of the contract does not make the arbitration agreement void.

The arbitration agreement is made in writing prior to or after occurrence of the dispute:

- Prior to occurrence of the dispute: The arbitration agreement may be reflected in an arbitration clause of the contract or in an appendix thereto; or by way of a separate agreement.
- After occurrence of the dispute: By way of written arbitration agreement.
  - The followings are deemed as made in writing:
- The agreement is made through communications between the parties by telegram, fax, telex, email and other forms as prescribed by law.
- The agreement is recorded in writing by lawyer(s), notary officer(s) or competent agency(ies).
- In their transactions, the parties refer to a document such as a contract, document, company charter and other instruments in which the arbitration agreement is reflected.
- The agreement is made through communication of a statement of claim and a statement of defence which reflect the existence of such agreement proposed by either party and not denied by the other party.

#### 2. Statement of claim and enclosed documents in occurrence of dispute

- Where the dispute is resolved at an Arbitration Centre: The claimant (who claims that its/his/her lawful rights or benefits are infringed) shall file a statement of claim with the Arbitration Centre.
- Where the dispute is resolved by Ad Hoc Arbitration: The claimant shall make a statement of claim and send it to the respondent.

Enclosed with the statement of claim shall be the arbitration agreement and the originals or copies of relevant documents.

#### 3. Limitation period of claim for dispute resolution by arbitration

Unless otherwise stipulated by specialised laws, the limitation period of claim under arbitral procedures is 2 years from the time of infringement of lawful rights and interests.

#### 4. Arbitral proceedings

Rules of arbitral proceedings (process of arbitral proceedings) shall be in accordance with the Arbitration Rules of relevant Arbitration Centre or as agreed by the parties.



## **II. Matters relating to the procedures of arbitral proceedings**

### **1. Time to commence arbitral proceedings**

- Where the dispute is resolved at the Arbitration Centre, unless otherwise agreed by the parties, the time to commence arbitral proceedings is *from the time when the Arbitration Centre receives the statement of claim from the claimant*.
- Where the dispute is resolved by ad hoc arbitration, unless otherwise agreed by the parties, the time to commence arbitral proceedings is *from the time when the respondent receives the statement of claim from the claimant*.

### **2. Negotiation and conciliation in arbitral proceedings**

During the arbitral proceedings, the parties are free to negotiate and agree with each other to resolve the dispute (through a written agreement or minutes of the agreeing meeting) or request the Arbitration Tribunal to conduct conciliation for the parties to reach an agreement on resolution of the dispute (through a minutes of successful conciliation and a decision acknowledging the conciliation made by the Arbitration Tribunal).

### **3. Composition of the Arbitration Tribunal**

The Arbitration Tribunal may be composed of one or more Arbitrators as agreed by the parties.

Where the parties do not agree upon the number of Arbitrators, the Arbitration Tribunal shall be composed of three Arbitrators.

### **4. Language**

For disputes not involving any foreign element, the language to be used in arbitral proceedings shall be *Vietnamese*.

For disputes involving foreign elements or disputes to which at least one party is a foreign-invested enterprise, the language to be used in arbitral proceedings shall be *agreed by the parties*. If not, *the Arbitration Tribunal shall decide on the same*.

### **5. Venue for dispute resolution**

*As agreed by the parties*. If not, *the Arbitration Tribunal shall decide on the same*.

### **6. Sending notices and order of sending**

Unless otherwise agreed by the parties or stated by the arbitration rules of the Arbitration Centre, the manner and order of sending notices in arbitral proceedings shall be as follows:

Written explanations, correspondences and other documents *must be sent to the Arbitration Centre or the Arbitration Tribunal in sufficient copies so that every member of the Arbitration Tribunal and the other party may have one copy and one copy is archived at the Arbitration Centre*;



Notices and/or documents to be sent by the Arbitration Centre or the Arbitration Tribunal to the parties shall *be sent to their addresses or to their representatives*;

Notices and/or documents may be sent by the Arbitration Centre or the Arbitration Tribunal *by hand delivery or by registered or ordinary mails or by fax, telex, telegram, email or other means with acknowledgement of such sending*;

Notices and/or documents sent by the Arbitration Centre or the Arbitration Tribunal shall be deemed as having been received *on the date when the parties or their representatives receive the same or when such notices and/or documents have been sent in accordance with relevant regulations*.

## 7. Loss of the right to objection

Where either party discovers any violation of the Law on Commercial Law or the arbitration agreement and continues to pursue the arbitral proceedings without objection to such violation within the prescribed period, it shall lose its right to objection at the Arbitration Centre or court.

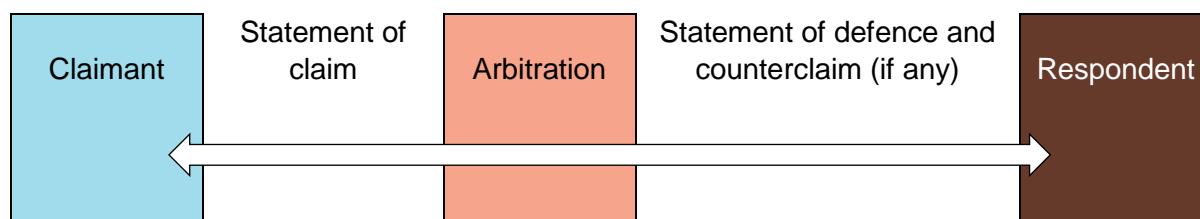
## 8. Applicable law for dispute resolution

For disputes not involving any foreign element, the Arbitration Tribunal shall *apply Vietnamese law*.

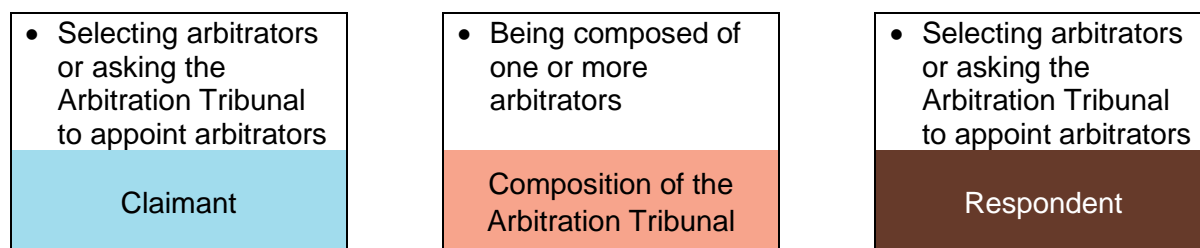
For disputes involving foreign elements, the Arbitration Tribunal shall apply the law as selected by the parties. If the parties do not agree upon the applicable law, the Arbitration Tribunal shall *decide to apply the law which it thinks most appropriate*.

## III. Procedures of arbitral proceedings

### Step 1. Statement of claim and statement of defence

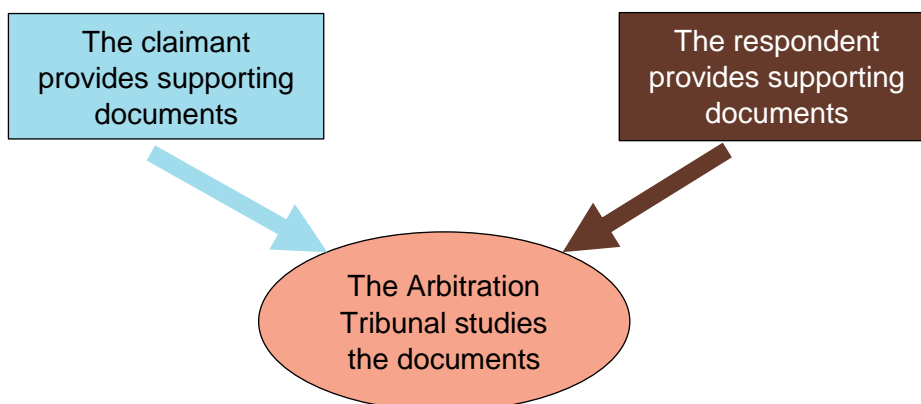


### Step 2. Establishment of the Arbitration Tribunal

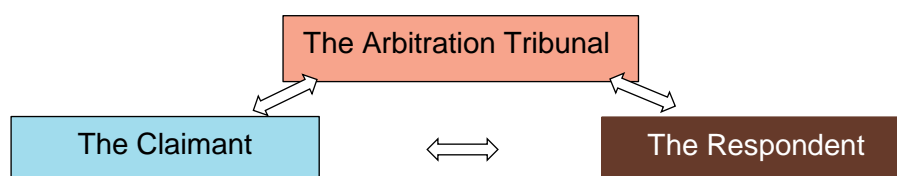




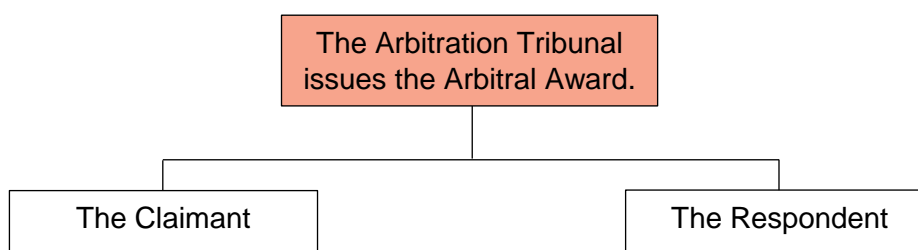
### Step 3. Study of submissions



### Step 4. Meeting for dispute resolution



### Step 5. Issuance of arbitral awards



## IV. Enforcement of arbitral awards

### 1. Voluntary compliance with arbitral awards

*The parties are encouraged by the State to voluntarily comply with arbitral awards.*

### 2. Right to request enforcement compliance with arbitral awards

- At expiry of the period to comply with the arbitral award, if the party against whom the arbitral award has been given does not voluntarily comply with it nor request cancellation of the arbitral award in accordance with law, then the other party in whose favour the arbitral award has been given may *request in writing the competent Civil*



*Judgment Enforcement Agency (the Civil Judgment Enforcement Agency of relevant province or city under central authority) to enforce compliance with the arbitral award.*

- For awards issued under Ad Hoc Arbitration, the party in whose favour the arbitral award has been given may request in writing the competent Civil Judgment Enforcement Agency to enforce compliance with the arbitral award after such award is registered (at the court in the place in which the Arbitration Tribunal has issued the award) in accordance with law.

### **3. Enforcement of arbitral awards**

Arbitral awards shall be enforced in accordance with laws on enforcement of civil judgments.

## **V. Cancellation of arbitral awards**

### **1. Grounds for cancellation of arbitral awards**

- The court shall consider the cancellation of the arbitral award at the request of either party.
- The arbitral award shall be cancelled in any of the following cases:
  - The arbitration agreement is unavailable or invalid;
  - The composition of the Arbitration Tribunal or the procedures of arbitral proceedings are not compliant with the parties' agreement or contravene relevant regulations;
  - The dispute falls beyond the jurisdiction of the Arbitration Tribunal; Where the arbitral award contains anything falling beyond the jurisdiction of the Arbitration Tribunal, such shall be cancelled;
  - Any evidence provided by the parties on which the Arbitration Tribunal relies to issue the arbitral award is false; An arbitrator receives money, assets or other material benefits from a disputing party, affecting the objectivity and impartiality of the arbitral award;
  - The arbitral award contravenes the fundamental principles of Vietnamese laws.

### **2. Right to request cancellation of arbitral awards**

- Within 30 days upon receipt of the arbitral award, if either party holds sufficient grounds by which the court may consider to cancel the arbitral award, it shall have the right to request in writing the competent court for cancellation of such arbitral award.
- The request for cancellation of the arbitral award must be enclosed with supporting documents and evidences.

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*Any feedback on activities of commercial arbitration agencies should be sent to the Department of Justice on the number (028)38.225.368 during the working hours.*



## **List of commercial arbitration agencies located at Ho Chi Minh City**

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### ***Commercial Arbitration Centres***

1. Ho Chi Minh City Commercial Arbitration Centre (TRACENT).
2. Pacific International Arbitration Centre (PIAC).
3. Vietnam Finance Banking Commercial Arbitration Centre (VIFIBAR).
4. Financial and Commercial Centre for Arbitration (FCCA).
5. Global Commercial Arbitration Centre (GCAC).
6. Nam Viet Commercial Arbitration Centre (NVCAC).
7. Saigon Commercial Arbitration Centre (SCAC).
8. Associate Commercial Arbitration Centre (ACAC).
9. Vietnam Lawyer's Commercial Arbitration Centre (VLCAC).
10. Viet Finance Arbitration Centre (VFA).
11. Gia Dinh Arbitration Centre (GDAC).
12. Southern Trade Arbitration Centre (STAG).
13. Thinh Tri Commercial Arbitration Centre (TTCAC).
14. Vietnam Traders Arbitration Centre (VTA).
15. Vietnam Prosperity Arbitration Centre (VNPAC).
16. ATLANTIC International Commercial Arbitration Centre (AICAC).
17. HTA Arbitration Centre (HTA).

### ***Branches/representative offices of foreign arbitration agencies in Vietnam***

1. Branch of the Vietnam International Arbitration Centre (VIAC).
2. Branch of the Asia Continent International Arbitration Centre (ACIAC).
3. Branch of the Nam Viet Commercial Arbitration Centre (NVCAC).

(For contact numbers of the arbitration agencies, please refer to the website of the Department of Justice of Ho Chi Minh City on <https://sotuphap.hochiminhcity.gov.vn/> )