

# Vietnam

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VNA Legal

## Litigation

### 1 What is the structure of the legal profession?

The legal profession in Vietnam comprises a legally trained judiciary and lawyers.

Under the Law on Organisation of the People's Court dated 2 April 2002, the judiciary of the Supreme People's Court is appointed by the President of the Socialist Republic of Vietnam. However, the Chief Judge of the Supreme People's Court is appointed by the National Assembly, the highest law making body in Vietnam. The judiciary of District & Provincial People's Courts is appointed by the Chief Judge of the Supreme People's Court based on proposals by the Committee for Selection of Judges.

Candidates must be Vietnamese citizens and have at least four years' legal experience to be selected as a judge of a District People's Court. To be selected as a judge of a Provincial People's Court, at least five years' experience as a judge of a District People's Court is needed, or at least 10 years' legal experience. To be selected as a judge of the Supreme People's Court, a candidate must have at least five years' experience as a judge of a Provincial People's Court or a minimum of 15 years' legal experience.

Judges are appointed for terms of five years and, thereafter, are subject to re-selection by the Committee for Selection of Judges and by the President (for Supreme People's Court judges) or by the Chief Judge of the Supreme People's Court (for Provincial or District People's Court judges).

To become a lawyer, one must undertake academic and professional training and successfully complete the qualification requirements. Once qualified, lawyers can establish their own law office or join a Vietnamese law firm or a foreign law firm. Lawyers may also practice on their own as individual attorneys without establishing or joining a law firm.

A law firm may be established in the form of a law office, a law partnership company, a one member limited liability law company, a limited liability law company with two or more members, or a foreign law firm. A foreign law firm may establish a presence in Vietnam through a branch, a 100% foreign-owned limited liability company, a joint venture limited liability company between a foreign law firm and Vietnamese law firm or a law partnership between a foreign legal practising organisation and a Vietnamese law partnership (collectively referred to as a "foreign law firm"). A foreign law firm can only advise on Vietnamese law if it employs lawyers qualified to practise law in Vietnam.

Vietnamese lawyers working for either a foreign law firm or a Vietnamese law firm may, pursuant to the Law on Lawyers No. 65-2006-QH11 dated 29 June 2006 issued by the National Assembly ("Law on Lawyers"), participate and represent clients of the law office in legal proceedings before Vietnamese courts, but foreign lawyers working for a Vietnamese law firm or a foreign law firm may not do so unless they are qualified to practise law in Vietnam (ie, having a law degree from a Vietnamese law school and completing the academic and professional training). Despite the Law on Lawyers, however, Resolution No. 71-2006-QH11 of the National Assembly dated 29 November 2006 provides that foreign law firms may not appoint a foreign or Vietnamese lawyer within such organisation to participate in legal proceedings in the capacity of representative, defence counsel or person protecting the lawful rights and interests of a litigant before the courts of Vietnam. Whilst from a legal perspective a resolution cannot change a law, this discrepancy has prevented foreign law firms from acting for clients directly before the courts through their Vietnamese employees. The Ministry of Justice is currently reviewing this discrepancy and it is hoped that this matter will be clarified in the near future.

## 2 What is the structure of the court system?

The court system in Vietnam comprises District, Provincial and Supreme People's Courts.

The Civil Proceedings Code (CPC) consolidates many of the provisions of the previous laws on civil court, economic court and labour court procedures including those on the recognition and enforcement of foreign judgments and foreign arbitral awards. The CPC was passed by the National Assembly of Vietnam at its fifth meeting on 15 June 2004 and became effective on 1 January 2005.

Under the CPC, the District People's Courts may, subject to certain exceptions involving foreign parties, hear labour disputes between an individual employee and an employer, civil, marital and family disputes and most other cases involving civil, marital and family issues. It should be noted that there is a difference between disputes and issues and the CPC provides examples of this distinction.

Under the CPC, the District People's Courts may also hear a variety of economic disputes. However this excludes those relating to air or sea transportation of passengers and cargo; sale and purchase of shares, bonds or valuable papers; investment, finance, banking and insurance; exploitation and exploration; disputes on intellectual property rights and technology transfer for profitable purposes; and disputes between a company and its shareholders or between shareholders of a company.

The Provincial People's Court and the Supreme People's Court are divided into specialist courts, which deal with specific criminal, civil, economic, labour and administrative disputes. The Provincial People's Courts normally hear cases which do not fall within the jurisdiction of the District People's Courts, and any cases which are required to be transferred from the District People's Court.

Generally, proceedings must be commenced in the court of the province or district where the defendant resides, works, has its head office or where the performance of a contract was to take place.

## 3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

Judges are active arbiters, ruling on matters of law and fact after hearing evidence and submissions from the parties to the action. There is no doctrine of binding precedent, although as a matter of practice, the People's Courts must follow the Supreme Court's guidelines produced in the form of "resolutions" or "conclusion reports", which have binding effect upon not only inferior courts, but also government authorities.

A civil hearing at first instance in the People's Court is chaired by a judgment board, which comprises a single judge and two People's jurors if it is a civil dispute, three judges if it is a request for recognition and enforcement of foreign judgments or foreign arbitral awards, or a sole judge if it is a civil, marital or family issue.

In special cases for civil disputes, a hearing at first instance may comprise two judges and three People's jurors. People's jurors are individuals from Vietnamese state organisations (including government officials, civil servants and military personnel) appointed by the local People's Council to participate in the court process. In practice, the People's jurors are guided by the judge and generally concur with the judge's views. A public prosecutor may, however, be appointed by the local prosecutor's office to oversee the judicial process in certain civil and commercial cases.

## 4 What are the time limits for bringing civil claims?

The time limit for bringing a civil claim is two years from the date of the breach of a legitimate right or interest (for civil disputes), and one year from the date of the claim rising (for civil issues), unless such claim relates to:

- (i) conflicts on inheritance: the time limit is 10 years from the date of death;
- (ii) the invalidity of a civil transaction: the time limit is two years from the date of the transaction in certain circumstances;
- (iii) movable or immovable assets: the time limit is 10 years (for movable assets) or 30 years (for immovable assets), from the date on which a person first took possession of such assets; or
- (iv) labour disputes: the time limit is six months, one year or three years depending on the type of dispute.

## 5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

To commence a civil action, the plaintiff files a petition and should obtain a receipt for filing from the relevant People's Court. The Court's staff checks the petition to ensure the format and contents comply with the laws and the nature of the case is under its jurisdiction. If all are in order, the court will issue a notice of acceptance to the plaintiff within five days of the petition being filed, requiring an advance payment of the court fee which is determined by the claim amount. Upon such payment, the court records the case in its register and commences an official investigation into the matters set out in the petition. Statements are taken from the parties, from any related third parties and from witnesses to the dispute. In addition, evidence is collected and a court file is prepared in readiness for a hearing.

Prior to the hearing, the court must arrange court-supervised conciliation meetings between the parties with a view to settling the dispute. As a matter of practice, at least two conciliation meetings are held. If the conciliation meetings fail to result in a settlement, the court fixes a date for the hearing.

## 6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

A procedure permitting pre-trial exchange of evidence does not exist in Vietnam. Rather, the court obtains statements and evidence from the plaintiff and the defendant. Each party has a right to see the evidence presented by the other party. However, prior permission of the court must be obtained before a review of the other party's evidence will be allowed. While such permission will normally be granted by the court, it is often only granted to a party's appointed lawyer and not to other persons.

The parties are permitted to photocopy evidence presented by other parties or collected by the court and can request the court to collect evidence on their behalf where they are unable to obtain it themselves.

The primary source of evidence is oral testimony from individuals whom the court has accepted as witnesses with direct knowledge of the matters in dispute. Cross-examination of witnesses is permitted.

Expert witnesses may be called to comment upon technical matters, and written evidence in the Vietnamese language may be submitted directly to the court.

## 7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The court, rather than the parties to the dispute, controls the procedure. The procedural timetable is fixed by law.

If the parties cannot reach a settlement at the court arranged conciliation meetings, then by law the hearing must commence within two to four months from the date on which the court accepted the case. If, however, there is a legitimate reason why a hearing cannot commence (eg, complexity of the case), then this period may be extended by a further two months.

If the court determines that the matters in dispute are of an economic or labour nature, then a hearing must commence within two to three months from the date on which the court accepted the case.

## 8 What interim remedies are available to preserve the party's interests pending judgment?

The court may issue interim orders during proceedings to protect evidence or ensure enforcement of a judgment at a future date. In urgent circumstances, the parties can request interim remedies concurrently with submitting the petition to the court.

Interim orders may be made to take an inventory of the assets in dispute, to freeze a bank account, to prohibit a party from doing something or to require a party to do something, to permit the harvesting or preservation of products and/or permit the sale of perishable products. However, in practice, interim orders are rarely made.

## 9 Are there procedures available for judgment to be obtained without proceeding to trial, on the ground that it is believed there is no defence to the claim? If so, at which stage of the proceedings should such procedures be invoked?

No. There are no such procedures available.

## 10 What substantive remedies are available?

The court has wide powers to provide remedies, including injunctive relief (see above), declarations and orders for an account of profits, transfer of property, or monetary awards of damages to compensate for loss.

Non-compensatory damages are only awarded in instances of particularly oppressive conduct and are extremely rare.

## 11 What means of enforcement are available?

Court orders are currently enforced by reference to procedures set out in the Law on Execution of Civil Judgments dated 14 November 2008 (Law on Execution of Civil Judgments).

The Law on Execution of Civil Judgments provides details of the powers of the “General Department of Civil Judgment Enforcement” under the Ministry of Justice, which is the body responsible for managing the enforcement of civil orders. Provincial and District “Departments of Civil Judgment Enforcement” are responsible for enforcing civil orders from the People’s Supreme, Provincial and District Courts.

A judgment creditor can commence an enforcement action by filing an application for enforcement at the relevant Department of Civil Judgment Enforcement. The Department will review the application and, if it is in order, the Department will issue a “Judgment Enforcement Decision”. The judgment creditor would then normally verify the ability of the debtor to comply with the conditions of the Judgment Enforcement Decision (ie, by taking the Judgment Enforcement Decision to third parties such as banks etc to obtain information in relation to the debtor’s assets and ability to meet the conditions). Where the judgment creditor is unable to verify this, he may request the Department to do so. After verification, the Department will provide a notice to the judgment debtor for voluntary execution of the judgment. If the judgment debtor fails to settle the debt within the stated period, the Department will decide on the most effective method of enforcement. Once a Judgment Enforcement Decision has been issued, the Department of Judgment Enforcement must actively enforce the decision on behalf of the judgment creditor.

The Department of Judgment Enforcement has wide powers including the right to:

- (i) deduct sums from the judgment debtor’s bank account, and recover and /or seize judgment debtors’ monies and valuable papers;
- (ii) deduct sums from the judgment debtors’ income;
- (iii) distrain and settle assets of the judgment debtor, including those being held by third parties;
- (iv) exploit assets of the judgment debtor;
- (v) force the transfer of objects, property rights and valuable papers; and
- (vi) force the judgment debtor to perform or not to perform certain work.

To date and in practice, judgment enforcement has been problematic in Vietnam.

## 12 Does the court have power to order costs? Are foreign claimants required to provide security for costs?

The court has the power to order costs. However, lawyers’ costs will normally be borne by the parties themselves, unless the parties in dispute have agreed otherwise. In addition, an Intellectual property right holder has the right to request the court to compel an infringing organisation or individual to pay reasonable lawyer’s costs of the infringed party.

Foreign claimants are not required to provide security for costs.

## 13 On what ground can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Any appeal against a judgment or order of the District People's Court must be made to the Provincial People's Court.

An appeal against a judgment or order of the Provincial People's Court must be made to the Supreme People's Court, whose decision is final.

Parties have an automatic right to appeal a first instance judgment. The time limit for lodging an appeal is 15 days, and time runs from the date of the judgment. However, if the appellant was absent from the hearing, time runs from the date the appellant receives a copy of the judgment or the date when the judgment was posted on the notice board of the People's Committee of the ward in which the appellant's head office or residence is located.

An appeal generally operates as an automatic stay of execution of enforcement of the first instance judgment.

An appeal can also be investigated to reconsider or review a judgment which has already come into effect in the following circumstances:

- (i) if the conclusion in the judgment does not accord with the facts of the case;
- (ii) in the event of serious procedural errors; and/or
- (iii) in the event of serious errors in the application of laws.

An appeal, within one year of its issuance, can be further reheard by the court only if the party proves one of the following circumstances:

- (i) if an important circumstance of the case is discovered in respect of which the person concerned was unaware during the hearing;
- (ii) if there are grounds for believing the conclusion of an inspector or the translation of a translator is incorrect, or evidence has been falsified;
- (iii) if the Judge, People's Juror, or Procurator intentionally falsified the files of the case or intentionally reached a conclusion which does not properly comply with the law; or
- (iv) if a judgment or decision of a court or a state body, which has in fact been repealed, is relied upon by the lower court.

## 14 To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

Vietnamese law is silent as to whether a domestic state entity can claim immunity from civil proceedings. There is no known case where such a claim has been made.

Diplomatic and consular agencies and international organisations in Vietnam may claim immunity. However, there are restrictions in the following circumstances: (i) diplomatic officials cannot claim immunity on disputes that are subject to immovable property located in Vietnam, inheritance matters or personal commercial activities; and (ii) consular officials cannot claim immunity in serious criminal cases and any liability in relation to road accidents or personal contracts.

Vietnamese law also states that sovereign immunity relates to acts which are governmental, rather than commercial in nature. For this reason, foreign state entities involved in commercial transactions are unlikely to be able to claim immunity from civil proceedings in Vietnam.

## 15 What procedures exist for recognition and enforcement of foreign judgments?

The CPC incorporates the provisions of the Ordinance on Recognition and Enforcement of Foreign Civil Judgments dated 17 April 1993 and the Ordinance on Recognition and Enforcement of Foreign Arbitral Awards dated 14 September 1995 without substantial change.

The CPC provides that a civil judgment or order from a court in a foreign country will be recognised in Vietnam only if such country has signed an agreement with Vietnam regarding enforcement of foreign judgments, or is a co-signatory with Vietnam to an international treaty on the recognition and enforcement of foreign judgments.

Agreements with former Soviet bloc countries on the enforcement of foreign judgments still exist although it is doubtful that a Vietnamese court would enforce judgments from these countries as a matter of practice.

At this time, no other agreements exist, and Vietnam is not yet a signatory to an international treaty on the recognition and enforcement of foreign judgments. Therefore, a party wishing to enforce a foreign civil judgment in Vietnam cannot do so, unless it submits an application to the Ministry of Justice for a review of the judgment by the relevant Vietnamese court and such application is accepted. There is no procedure for seeking expedited judgment in any court action in Vietnam which involves consideration of a foreign judgment.

## 16 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

There is no provision under Vietnamese law which specifically authorises conditional fee arrangements between lawyers and clients. It remains unclear whether such arrangements are permitted under Vietnamese law, although in practice the authorities would be unlikely to object to such arrangements.

As for contingency fees, the Law on Lawyers No. 65-2006-QH11 (National Assembly, 29 June, 2006), which governs lawyer/client remuneration arrangements, provides that all levels of remuneration must be agreed in the legal services contract between clients and lawyers. Whilst the meaning is unclear, it is widely considered that this permits contingency fee arrangements in Vietnam.

There are no other provisions under Vietnamese law which provide for other forms of fee arrangements based on the result of litigation.

# Arbitration

## 17 Is the arbitration law based on the UNCITRAL Model Law?

Arbitration law in Vietnam is not based on the UNCITRAL Model Law.

## 18 What are the main national arbitration institutions?

The Ordinance on Commercial Arbitration came into effect on 1 July 2003 (the 2003 Arbitration Ordinance), and replaced previous legislation governing the operation of arbitration institutions in Vietnam. Arbitration in Vietnam must now be conducted by “Arbitration Councils” organised either by officially licensed local “Arbitration Centres”, or by the parties themselves.

In April 1993, the Vietnam International Arbitration Centre (VIAC), a non-governmental arbitral institution annexed to the Vietnamese Chamber of Commerce and Industry (VCCI), was established. In addition to the VIAC (located in both Hanoi and Ho Chi Minh City), other arbitration centres have been established in Hanoi, Ho Chi Minh City, and Can Tho City, amongst which the most well regarded institution is Pacific International Arbitration Centre located in Ho Chi Minh City (PIAC).

Arbitration at PIAC is designed to provide practical and flexible settlements of commercial disputes. Unlike other institutional arbitration centres in Vietnam, PIAC facilitates both institutional and ad hoc arbitration. Its secretariat provides full institutional support to international arbitration centres (such as ICC, SIAC or AAA) and administers ad hoc and other arbitral proceedings in Vietnam.

## 19 Are there any restrictions on who may represent the parties to an arbitration?

No. The parties, whether Vietnamese or foreign, may represent themselves in an arbitration or be represented by an authorised person, whether or not legally qualified. Parties may also invite witnesses.

## 20 What are the formal requirements for an enforceable arbitration agreement?

The parties to the dispute must have agreed in “writing” prior to the dispute, or after it arises, that such dispute would be settled by recourse to arbitration. In “writing” includes mail, telegrams, telex, fax, electronic e-mail or other written forms which clearly express the will of the parties to settle their disputes through arbitration.

The arbitration agreement, whether an arbitration clause in a contract or a separate agreement, must clearly state the institution competent to settle the dispute, be signed by authorised signatories of the parties, and be entered into without intimidation or cheating. The dispute must also arise from commercial activities, defined as “one or many commercial acts by business people or organisations” (including the sale and purchase of goods, distribution, agency, leasing, financing, insurance, etc.).

Other requirements for the validity of an arbitration agreement include the following:

- (i) both parties must have full civil legal capacity including the legal authority to sign the agreement; and that
- (ii) both parties must be in a good state of mind while signing (this includes not being deceived or threatened to sign such an agreement).

## 21 Can the court refuse to stay litigation if there is a valid arbitration clause?

No. Where both parties have agreed on arbitration, the court must stay litigation unless the arbitration agreement is invalid.

## 22 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

Where the parties have agreed to settle the dispute by a panel of arbitrators set up through an arbitration centre but have failed to agree on the number of arbitrators, three arbitrators will be appointed. The claimant appoints one arbitrator and the respondent appoints one arbitrator. If the claimant fails to do so, the President of the arbitration centre will appoint one arbitrator on the claimant’s behalf. The two appointed arbitrators will jointly appoint a third arbitrator to act as chairman. If the appointed arbitrators fail to do so, the President of the arbitration centre will appoint a third arbitrator as chairman.

Where the parties have agreed that the dispute be settled by a panel of arbitrators set up on an ad hoc basis, but have failed to agree on the number of arbitrators, three arbitrators will be appointed. The claimant appoints one arbitrator, and the respondent appoints one arbitrator. If the respondent fails to do so, the claimant may request the local provincial court where the respondent is headquartered or resides to appoint an arbitrator on the respondent’s behalf. The two appointed arbitrators will then jointly appoint a third arbitrator to act as chairman. If they fail to do so, then either party may request the same local court to appoint a third arbitrator as chairman.

## 23 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Arbitrators may be challenged if they are a relative or representative of either party, have an interest in the dispute, or where there are explicit grounds why the arbitrators would not be impartial and objective while performing their duties as arbitrators.

## 24 Does the domestic law contain substantive requirements for the procedure to be followed?

No, save that arbitrators must resolve the dispute independently, objectively and impartially. Where one party to the dispute is foreign, the parties may determine rules of procedure, the language of the proceedings and the governing law, provided that any foreign governing law does not contravene the fundamental principles of Vietnamese law.

## 25 On what ground can the court intervene during an arbitration?

There is no legal provision that allows the court to intervene in order to support the arbitration process in Vietnam. However, “interim measures” may be requested from a local court during arbitration proceedings (i) to provide protection for evidence in the event that such evidence is in danger of being destroyed; (ii) to inventory disputed property; (iii) to prevent the transfer of disputed property; (iv) to prevent any change in the condition of disputed property; (v) to inventory and seal up property at its place of storage; and (vi) to freeze bank accounts. The laws are not clear whether interim measures can be applied for if they fall outside of these cases.

## 26 Do arbitrators have powers to grant interim or conservatory relief?

No. Only the courts have such power in Vietnam, although the new Law on Commercial Arbitration that will be effective from 1 January 2011 (see below) will permit an arbitration council to provide certain interim orders.

## 27 When and in what form must the award be delivered?

An arbitral award must be announced within 60 days of the final day of the arbitral hearings, and is effective from the announcement date. Full texts of the award must be delivered to the parties immediately after the announcement of the award. The arbitral award is made on the basis of a simple majority of votes of the arbitrators (if more than one).

The written award must contain the date and place of issuance of the arbitral award, the name of the arbitration centre (if applicable), the name(s) and address(es) of the claimant(s) and respondent(s), the full name of the arbitrator(s), a summary of the claim and disputed issues, the basis for the arbitral award, the arbitral award, the decision on arbitration charges and other costs, the time limit for implementation of the award, and the signature(s) of the arbitrator(s). The parties may request certain information relating to the disputed issues and the basis for the award to be excluded from the award decision.

## 28 On what ground can an award be appealed to the court?

An arbitration award can be appealed to a court, within 30 days after such award is granted, if (i) there is no arbitration agreement; (ii) the arbitration agreement is invalid; (iii) the Arbitration Council’s composition or proceedings fail to comply with what the parties had agreed; (iv) the dispute is outside the jurisdiction of the Arbitration Council; (v) an arbitrator has breached its obligations of impartiality, confidentiality or honesty; or (vi) if the award is counter to the interests of the Socialist Republic of Vietnam.

## 29 What procedures exist for the enforcement of foreign and domestic awards?

For domestic awards, if the arbitration award has not been executed by one or more of the parties within 30 days after the time limit of its execution expires (as provided in the award for its implementation), the party wishing to enforce the award may make a written request to the local provincial Department of Judgment Enforcement for its enforcement.

As for foreign awards, the procedures of enforcement are more complicated. A foreign award is only enforceable in Vietnam if such award is granted in a country which is a party to a relevant international treaty of which Vietnam is a participant or a signatory (ie, New York Convention), or on the reciprocity basis.

The party wishing to enforce the award must submit a formal written submission with translated documents (into Vietnamese) to the Ministry of Justice which then will refer the submission to the relevant People’s Court. The limitation on such procedure is that the party must have its principal office, reside or work in Vietnam. The court will respond within two months on whether to order a hearing.

## 30 Can a successful party recover its costs?

The Arbitration Ordinance provides that the losing party is responsible for arbitration charges. In the absence of agreement on the issue of other costs in the arbitration contract, the recovery of such costs is uncertain.

# Alternative dispute resolution

## 31 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

As a matter of practice and as referred to previously, the courts will require the parties to a dispute to attend at least two conciliation meetings prior to a court hearing in order to encourage the parties to reach a settlement.

With regard to domestic arbitration, there is no requirement under the 2003 Arbitration Ordinance that the parties hold conciliation meetings or submit to any other alternative dispute resolution proceedings.

Vietnamese law encourages mediation as an alternative dispute resolution mechanism. Mediation is the most cost-efficient approach to settle differences and continue business partnership. It involves minimal risk for the parties and generates significant benefits. Mediation is both informal and flexible.

Pacific Mediation Commission (PMC) under PIAC was established to develop mediation services in Vietnam. A successful mediation results in an enforceable agreement between the parties, mutually satisfactory to both parties.

Mediation has its advantages even when a settlement is not achieved, as it causes the parties to define the facts and issues of the dispute, and therefore prepares the ground for subsequent arbitration or court proceedings, if any.

## Reforms

## 32 Are there likely to be any significant procedural reforms in the near future?

The National Assembly of Vietnam has passed a new Law on Commercial Arbitration, which will be effective from 1 January 2011. The new law allows international arbitration centres to operate in Vietnam in the form of a branch or representative office of foreign arbitration institutions.

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