

Client Alert

August 2010

New Law on Commercial Arbitration

On 17 June 2010, the National Assembly passed the Law on Commercial Arbitration¹ (“**LCA**”) which will come into force on 1 January next year, replacing the current 2003 Ordinance on Commercial Arbitration (“**2003 Ordinance**”).

Key Features of the LCA

During its almost eight years of being in effect, some critical issues have been identified in the 2003 Ordinance that discourage or hinder parties from availing of arbitration proceedings in Vietnam. The newly introduced law is expected to foster more faith in the Vietnamese arbitration system and encourage dispute settlements via local arbitration through the following key changes.

- Broader scope of arbitrable disputes
One of the most significant changes in the LCA is the expansion of the scope of arbitrable disputes.
Under the LCA, arbitration has been given the competence to resolve not only disputes between parties arising from commercial activities but also:
 - a) Disputes arising between parties at least one of whom is engaged in commercial activities; and
 - b) Other disputes between parties which the law stipulates shall be resolved by arbitration.

This means that a dispute where only one party has some commercial activities can still be resolved by arbitration. This provision remedied a gap in the 2003 Ordinance where arbitration is only permitted for settling disputes among traders, including organizations and individuals doing business. Thus, the LCA has a specific provision clarifying that a consumer has the right to bring his/her claim against a seller or service provider to arbitration if the standard terms of the contract has an arbitration clause and the consumer chooses arbitration as the dispute resolution method. The LCA also allows further expansion of the scope of arbitration through future legislation.

The above changes when the LCA comes into force is expected to increase referral of disputes to arbitration.

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1. Law No. 54/2010/QH12 on Commercial Arbitration

- **Foreigners as arbitrators and defining the concept of “foreign arbitration”**

A big step forward under the new law is the removal of the requirement of Vietnamese citizenship from the qualifications of an arbitrator. This means that under the LCA, foreigners can be appointed as arbitrators in Vietnam if they meet all requirements applicable to an arbitrator in terms of expertise, trustworthiness and being selected by the parties to a dispute or appointed by an arbitration centre or court. This provision is expected to respond to the demand of foreign investors in dispute settlement by local arbitration consistent with Vietnam’s enhanced economic integration into the international community.

In addition, the LCA defines “foreign arbitration” as one that is established under foreign arbitration laws, selected by the parties to carry out the dispute settlement outside or within Vietnam. Notably, the element of arbitration venue is not considered in determining whether an arbitration is local or foreign.

The relevant authorities have not yet issued the implementing regulations for the new law. However, the significant implication of the above changes seems to be that purely local dispute can be resolved by a foreigner appointed as an arbitrator under Vietnamese law and the arbitral award issued by such arbitrator would be considered as a local arbitral award. We have yet to see whether such legal implications would be reflected in the implementing guidelines of the authorities.

- **Establishment by foreign arbitration centers of branches and representative offices in Vietnam**

For the first time, the LCA allows foreign arbitration centers to establish their branches and/or representative offices in Vietnam. Note, however, that arbitral awards issued by foreign arbitration centers in Vietnam are still considered as foreign arbitral awards and have to go through the process of recognition by competent Vietnamese courts if the parties would like to enforce such awards in Vietnam.

- **Power of arbitration tribunals to grant interim reliefs**

Significantly different from the existing Ordinance, the new LCA gives arbitration tribunals the power to apply certain interim reliefs

based on the request of concerned parties. The interim relief will be enforced by the civil enforcement agency in the province or city where the relief needs to be applied.

Previously, concerned parties to arbitration proceedings only have the right to seek interim reliefs through a competent court. Thus, with the above regulations, arbitration proceedings will be able to operate more effectively to protect the rights and legitimate interests of parties in arbitration.

- **Validity of unclear arbitration agreements**

Under the existing law, where an arbitration agreement is not clear enough to identify the competent arbitration center or the form of arbitration, such agreement would be declared invalid and the dispute must be settled by a competent court. The LCA now provides that in case such scenario arises, concerned parties must re-agree on the form of arbitration or the arbitration center having competence to settle the dispute. If the parties cannot reach an agreement on the arbitration center or the form of arbitration, the plaintiff will then have the right to make decisions on such matters.

- **Waiver of right to question validity of arbitration agreement or breach of arbitration laws**

The LCA sets out an important principle that if, during the course of arbitral proceedings, a party becomes aware of a breach of arbitration laws or arbitration agreement, but does not protest within the time-limits provided by the LCA, such party will be deemed to waive the right to protest in arbitration or court. This provision is for the purpose of effectively preventing intentional delays that prolong dispute settlements which has been observed under the operation of the current Ordinance.

- **Support and supervision role of the Court regarding arbitration**

The LCA provides a number of new regulations mandating that the court give timely assistance to arbitrators/arbitration tribunals on certain processes such as: collecting evidence, summoning witnesses and registering arbitral awards of ad-hoc arbitration for enforcement. These regulations aim to guarantee the smooth conduct of arbitration proceedings and speedy enforcement of arbitral awards.

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Conclusion

The LCA is generally expected to set a more liberal legal framework for the development of arbitration in Vietnam. By integrating international arbitration standards and practices and taking into account actual conditions in Vietnam, the LCA is hoped to lay a solid foundation for boosting the competitiveness of Vietnamese arbitration as an avenue for dispute settlement.

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