

STANDING COMMITTEE  
NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness

No: 08-2003-PL-UBTVQH11

**ORDINANCE  
ON  
COMMERCIAL ARBITRATION**

In order to contribute to the resolution of disputes arising from commercial activities, ensuring the right to freely conduct business, protecting the lawful

3. *Commercial activities* means the performance of one or more commercial acts by a business organization or individual including the purchase or sale of goods or the provision of services; commercial distribution, representation or agency; bailment; leasing out or leasing; hire-purchase; construction; consultancy; technical activities; licensing; investment; finance and

An award shall be final and the parties must carry it out, except in cases where a court annuls an award in accordance with the provisions of this Ordinance.

**Article 7**      *Principle of which [substantive] law is applicable to dispute resolution*

1. With respect to a dispute between Vietnamese parties, the arbitration tribunal shall apply the law of Vietnam in order to resolve the dispute.
2. With respect to a dispute with a foreign element, the arbitration tribunal shall apply the law chosen by the parties. The choice of a foreign law and its application shall not be inconsistent with the fundamental principles of the law of Vietnam.

**Article 8**      *Applicability of international treaties*

In the case of any inconsistency between an international treaty signed or acceded to by the Socialist Republic of Vietnam and the provisions of this Ordinance, the provisions of the international treaty shall apply.

Chapter II

**Arbitration Agreements**

**Article 9**      *Form of arbitration agreements*

1. An arbitration agreement must be made in writing. An arbitration agreement may be passed<sup>2</sup> via a letter, telegram, telex, facsimile, electronic mail or any other written form which clearly shows the parties' intention to resolve disputes by arbitration which shall be deemed to be a written arbitration agreement.
2. An arbitration agreement may be an arbitration clause in a contract or it may be a separate agreement.

**Article 10**      *Invalid arbitration agreements*

An arbitration agreement shall be invalid in the following circumstances:

1. The dispute which arises does not belong to commercial activities as defined in article 2.3 of this Ordinance.
2. A signatory to the arbitration agreement lacks authority to enter into it pursuant to law.
3. One party to the arbitration agreement lacks full civil legal capacity.
4. The arbitration agreement fails to specify or clearly specify the subjects of the dispute, [or] the arbitration organization is authorized to resolve disputes but the parties have failed to enter any supplementary agreement.

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<sup>2</sup> Alternative translations "accepted/approved".

5. The arbitration agreement was not made in accordance with the provisions of article 9 of this Ordinance.
6. A party to the arbitration agreement was deceived or threatened, and requests that the arbitration agreement be declared invalid; the limitation period for requesting that an arbitration agreement be declared invalid shall be six (6) months as from the date of entering into it, but must be prior to the date on which the arbitration tribunal or sole arbitrator opens the initial resolution hearing stipulated in article 30 of this Ordinance.

**Article 11**     *Relationship between arbitration clause and the contract*

An arbitration clause shall exist independently from the contract. Any contract modification, extension, rescission or invalidity shall not effect the validity of the arbitration clause.

Chapter III  
**Arbitrators**

**Article 12**     *Arbitrators*

1. Any Vietnamese citizen who satisfies all the following conditions may act as an arbitrator:
  - (a) Having full civil legal capacity;
  - (b) Having good ethics and being honest, impartial and objective;
  - (c) Having a university degree and at least five years' work experience in the branch of his/her studies.
2. Any person under administrative arrest, currently being prosecuted for a criminal offence or subject to an unexpired jail sentence shall be barred from acting as an arbitrator.
3. Judges, prosecutors, investigators, enforcement officers, and officials currently working in the people's courts, the people's procuracy, investigative bodies or enforcement agencies shall be barred from acting as arbitrators.

**Article 13**     *Rights and obligations of arbitrators*

1. Arbitrators shall have the following rights:
  - (a) To accept or refuse dispute resolution;
  - (b) To remain independent during dispute resolution;
  - (c) To refuse to provide information concerning a dispute;
  - (d) To receive remuneration.
2. Arbitrators shall have the following obligations:
  - (a) To comply with the provisions of this Ordinance;
  - (b) To be impartial and objective during dispute resolution;



**Article 15** *Publication of an announcement of the establishment of an arbitration centre*

1. Within a time-limit of thirty (30) days from the date an establishment licence is issued, an arbitration centre must advertise in three consecutive issues of a central daily newspaper or daily newspaper in the locality where it registers its operation, the following main items:
  - (a) Title and address of the arbitration centre;
  - (b) Sector of operation of the arbitration centre;
  - (c) Number of certificate of registration of operation, the issuing authority and date of issuance;
  - (d) Commencement date of operations of the arbitration centre.
2. An arbitration centre shall display at its office a notice of the items stipulated in clause 1 of this article and a list of arbitrators at the arbitration center.

**Article 16** *Legal status and organizational structure of an arbitration center*

1. An arbitration centre shall be a non-governmental organization with legal entity status, its own seal and bank account.
2. An arbitration centre may establish branches and representative offices.
3. An arbitration centre shall have an executive board and arbitrators.

The executive board of an arbitration centre shall include a chairman and one or more deputy chairmen. The chairman of an arbitration centre may appoint a permanent secretary.

Any individual invited by an arbitration centre to act as an arbitrator must satisfy all the conditions stipulated in article 12 of this Ordinance.

**Article 17** *Duties and powers of an arbitration center*

Arbitration centres shall have the following duties and powers:

1. To draw the charter and procedural rules of the arbitration center which shall not be inconsistent with the provisions of this Ordinance.
2. To invite individuals who satisfy all the conditions stipulated in article 12 of this Ordinance to act as arbitrator

7. To report periodically on the operations of the arbitration center to the Ministry of Justice, the Vietnam Lawyers Association, and the Department of Justice in the locality where the arbitration center registers its operation.
8. To remove an arbitrator's name from the list of arbitrators of an arbitration centre when an arbitrator seriously violates the provisions of this Ordinance and the charter of the arbitration center.
9. To archive files, and to provide copies of awards at the

- (e) Arbitrator at the arbitration center which the claimant selects.
2. In order for a dispute to be resolved by an arbitration tribunal established by the parties, the claimant shall draw a statement of claim and forward it to the respondent. The particulars of the statement of claim shall be as stipulated in clause 1 of this article.
  3. The claimant shall annex to the statement of claim the original or copy arbitration agreement, and originals or copies of documents and evidence. Copies must be validly certified.
  4. Arbitration proceedings shall commence when an arbitration centre receives a statement of claim from a claimant, or in the case of dispute resolution by an arbitration tribunal established by the parties when a respondent receives a statement of claim from a claimant.
  5. Within a time-limit of five (5) working days from the date of receipt of a statement of claim, an arbitration centre shall forward a copy of it, together with the annexures referred to in clause 3 of this article, to the respondent.

**Article 21** *Limitation period for initiating proceedings for dispute resolution by arbitration*

1. With respect to a dispute for which the [substantive] law stipulates a limitation period for initiating proceedings, such limitation period shall apply.
2. With respect to a dispute for which the [substantive] law does not stipulate a limitation period for initiating proceedings, the limitation period for initiating proceedings for dispute resolution by arbitration shall be two (2) years from the date of occurrence of the dispute, except in cases of force majeure. The period from the date of occurrence of an event of force majeure up until the date it no longer exists shall be excluded when calculating the limitation period.

**Article 22** *Arbitration fees*

1. A claimant shall pay arbitration fees in advance unless the parties have some other agreement .
2. In the case of dispute resolution by an arbitration center, the ex



1. Where the parties have chosen dispute resolution by an arbitration center and unless the parties otherwise agree, the respondent shall file a statement of defence with the arbitration centre within a time-limit of thirty (30) days from the date of receipt of the claimant's statement of claim and annexed documents from the arbitration center.

With respect to dispute resolution by an arbitration tribunal established by the parties and unless the parties otherwise agree, the respondent shall forward to the claimant a statement of





6. In necessary cases and after consulting the parties, a newly established arbitration tribunal may reconsider the issues already considered in previous hearings of the dispute resolution.

**Article 28** *Amendment and addition to, or withdrawal of statement of claim*

A claimant may amend, add to or withdraw the statement of claim before the arbitration tribunal issues an award.

**Article 29** *Counter-claim*

1. A respondent shall have the right to file a counter-claim against the claimant on issues relevant to the claimant's statement of claim.
2. A counter-claim shall be filed with the arbitration tribunal and concurrently forwarded to the claimant before the arbitration tribunal holds a hearing to resolve the claimant's statement of claim.

The claimant shall forward the respondent and the arbitration tribunal a defence to counter-claim within thirty (30) days from the date of receipt of the counter-claim.

3. Counter-claim procedures shall be implemented the same as the procedures for resolving the claimant's statement of claim and as concurrently decided by the arbitration tribunal.

**Article 30** *Consideration of the arbitration agreement, jurisdiction of the arbitration tribunal for dispute resolution*

1. If prior to consideration of the contents of a dispute one of the parties lodges a complaint that the arbitration tribunal lacks jurisdiction to resolve the dispute or that there is no arbitration agreement or that the arbitration agreement is invalid, the arbitration tribunal must consider and decide these issues in the presence of the parties unless the parties otherwise agree. If a complainant has validly convened a meeting but then is absent without a legitimate excuse, the complaint will be deemed to have been withdrawn and the arbitration tribunal may proceed with the dispute resolution.
2. If the parties disagree with the ruling of the arbitration tribunal on the matters set out in clause 1 of this article, then within a time-limit of five (5) working days from the date the parties receive the ruling, they shall have the right to request the provincial court where the arbitration tribunal issued its ruling to reconsider the ruling. The party making such a request must also notify the arbitration tribunal about it.

A request shall contain the following basic particulars:

- (a) Date on which the request is drawn;
- (b) Name and address of the applicant;
- (c) Particulars of the request.

Validly notarized copies of the statement of claim, the arbitration agreement and the ruling of the arbitration tribunal shall be enclosed with the request.





An applicant for interim emergency measures may also apply for their alteration or rescission when such measures are no longer appropriate or necessary.

Within a time-limit of five (5) working days from the date of receipt of an application for alteration or rescission of interim measures, the presiding judge of the provincial court which made the initial

**Article 40**    *Absence of parties*

1.    If a claimant has been summonsed to attend a hearing for dispute resolution but fails to attend without a legitimate reason, or leaves the hearing without th





2. Where dispute resolution is held by an arbitration tribunal established by the parties, within a time-limit of fifteen (15) days from the date of announcement of the award or minutes of settlement, the arbitration tribunal shall forward the award or minutes of settlement together with the dispute resolution file to the provincial court in the area where the arbitration tribunal issued the award or prepared the minutes of settlement, for archiving.

**Article 49**     *Resolution of disputes with a foreign element by arbitration*

1. A dispute with a foreign element as agreed between the parties may be resolved by an arbitration tribunal held by an arbitration center or by an arbitration tribunal established by the parties in accordance with the provisions of this Ordinance.
2. An arbitration tribunal held by an arbitration center or an arbitration tribunal established by the parties may apply other procedural rules if the parties agree.
3. An arbitrator selected by the parties or appointed by a court may be an arbitrator either listed or not listed in the lists of arbitrators of the arbitration centres in Vietnam or may be a foreign arbitrator in accordance with the laws on arbitration of that country.
4. In a case where one party or the parties request a foreign court to appoint an arbitrator, *a court competent to appoint an arbitrator* means a court which has been authorized in accordance

- (a) Date on which the application is drawn;
  - (b) Name and address of the party applying for cancellation of the award;
  - (c) Reasons for the application for cancellation of the award.
2. The following documents shall be enclosed with the application:
    - (a) Original or validly notarized copy of the award;
    - (b) Original or validly notarized copy of the arbitration agreement.
  3. Enclosures in a foreign language must be translated into Vietnamese and the translations must be validly notarized.

**Article 52** *Jurisdiction over the application*

1. On receipt of the documents stipulated in article 51 of this Ordinance, the court shall immediately notify the applicant to pay the fees.  
The court shall have jurisdiction as from the date the applicant pays the fees.
2. The court shall have the right to require the applicant to explain any unclear particulars in the application for cancellation of the award.

**Article 53** *Consideration by a court of an application for cancellation of an award*

1. After a court has accepted jurisdiction over an application for cancellation of an award, the court shall notify the arbitration center or the arbitration tribunal established by the parties, the parties to the dispute, and the procuracy at the same level. In the case of dispute resolution held by an arbitration center, the arbit0.00013stab sf the file to the court within a time-limit of thirty (30) working days from the date of receipt of the court's notice.
2. Within a time-limit of thira]TJ12.695 0 TD0.000lt Tc0.0007 Tw[(t)7.9(y)-9.9( (30) da)8.9(y)-9.9(s)4.3( from

5. After the trial council has considered the application and enclosures, heard the evidence (if any) and the opinions of the people summonsed and of the prosecutor<sup>4</sup>, the trial council shall debate the application and issue a majority decision.

A trial council shall have the right to issue a decision canceling or not canceling the award; and to stay consideration of the application if the applicant withdraws the application or fails to attend without a legitimate reason after having been summonsed to attend or leaves the hearing without the consent of the trial council.

Within a time-limit of fifteen (15) days from the date the trial council issues a decision, it shall forward a copy of the decision to the parties, to the arbitration center or to the arbitration tribunal established by the parties, and to the procuracy at the same level.

6. If the trial council cancels an award, the parties shall have the right to bring such dispute before a court for resolution, unless the parties have some other agreement.
7. If the trial council does not cancel the award, the award shall be enforceable in accordance with the provisions in article 57 of this Ordinance.

**Article 54**     *Grounds for cancellation of an award*

A court may issue a decision canceling an award if the applicant proves that the arbitration tribunal

forwarded to the court which issued the decision. After the court receives the appeal, the court shall immediately notify the appellant to pay fees for the appeal.

2. If any party was not present at the hearing of the court of first instance, the time for lodging an appeal stipulated in clause 1 of this article shall be calculated as from the date a copy of the decision is delivered to such party; if an appeal is lodged out of time due to an event of



Chapter VIII  
**Implementing Provisions**

**Article 61**     *Application of this Ordinance to arbitration organizations established prior to the date of validity of this Ordinance*

1. Arbitration centers which were established prior to the date of promulgation of this Ordinance shall not have to apply for re-establishment. Within a period of twelve (12) months from the date this Ordinance takes effect, these centers must amend and supplement their charters and their arbitration procedural rules for consistency with the provisions of this Ordinance, and if they fail to do so at the expiry of that period, they must terminate their operation.
2. Arbitration agreements which were signed prior to the date of validity of this Ordinance shall be implemented in accordance with provisions of the law which was in effect at the date such arbitration agreements were signed.
3. If any of the following awards have not yet been enforced, they shall be enforceable pursuant to articles 6 and 57 of this Ordinance, namely: Awards of arbitration centers established and operating pursuant to Decree No. 116-CP of the Government dated 5 September 1994; awards of the Vietnam International Arbitration Center established and operating pursuant to Decisions of the Prime Minister of the Government No. 204-TTg dated 28 April 1993 and No. 114-TTg dated 16 February 1996.

**Article 62**     *Effectiveness*

1. This Ordinance shall be of full force and effect as from 1 July 2for 1993 ao1Decisions of93 yTw[(ve nr949(

NGUYEN VAN AN  
[Signed]