

## < Annulment of Arbitration Award by People's Court in Vietnam >

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### 1. Introduction

In commercial contracts signed in Vietnam by foreign or Vietnamese parties, there is an increasing number of cases where a dispute resolution clause is included for Vietnamese arbitration. This is due to several factors, including the high cost of arbitration in Singapore and the challenges associated with enforcing foreign arbitration judgments in Vietnam. Additionally, arbitration offers several advantages such as neutrality, expertise, and efficiency.

However, despite the growing preference for Vietnamese arbitration, there have been instances where arbitration awards have been annulled by domestic courts. This development has raised concerns and curiosity among experts. Therefore, this paper focuses on the current provisions on the annulment of arbitration awards by the People's Court of Vietnam, the possibilities to minimize arbitration awards being annulled by the Courts, and recent developments in arbitration-related practice.

### 2. Annulment of Arbitral Awards in Vietnam

According to the Vietnamese Commercial Arbitration Law, a court may only annul an arbitral award based on a request from a party if the following requirements are met<sup>1</sup>.

- a) Where there is no arbitration agreement or the arbitration agreement is invalid.
- b) If the composition of the arbitral tribunal or the arbitral proceedings violate the agreement of the parties or this Law:
- c) If the dispute is outside the jurisdiction of the arbitral tribunal: the arbitral award shall be revoked if it contains any content that is outside the jurisdiction of the arbitral tribunal.
- d) If the evidence submitted by the parties on which the arbitral tribunal based its arbitral award was forged; if the arbitrator received money, assets or other material benefits from one of the disputing parties, affecting the objectivity and impartiality of the arbitral award.
- đ) If the arbitral award is contrary to the basic principles of Vietnamese law.

If a party requests the annulment of an arbitral award on the grounds that it falls under any of the above items a to d, the party bears the burden of proving that the arbitral tribunal has issued an arbitral award that falls under any of these items.

However, in the case of đ above, that is, when a party requests the annulment of an arbitral award on the grounds that it violates the basic principles of Vietnamese law, the court itself must collect and examine the evidence in order to decide on the annulment of the arbitral award.

In accordance with this provision, there has been an increase in the number of cases in which a party that has received an unfavorable judgment in an arbitral award seeks to have the arbitral award annulled by a Vietnamese court. However, there have not been many cases in which the annulment of an arbitral award has been granted, and out of the 53 petitions for the annulment of arbitral awards, only 9 have actually been granted<sup>2</sup>.

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<sup>1</sup> Article 68 of the Commercial Arbitration Law (No. 54/2010/QH12) promulgated by the National Assembly on June 17, 2010.

<sup>2</sup> The research was conducted based on publicly available cases on the website <https://congboaban.toaan.gov.vn/>, which publishes judgments and decisions of Vietnamese courts. Please note that these figures are based on the OAL's own research and are not official figures. According to a VIAC official, the percentage of cases involving the annulment of arbitral awards in Ho Chi Minh People's Court was 6-10%. This percentage is still superior to the current situation in which 49% of foreign arbitral awards are not recognized and enforced by Vietnamese courts.

Furthermore, there are various opinions when determining the jurisdiction of the court regarding the annulment of arbitration, so there are many cases where different judgments are handed down by different courts, even for disputes of the same nature. For example, Decision No. 393/QD-PQTT of 2017 by the People's Court of Ho Chi Minh City concluded that an arbitration award relating to a commercial dispute (a land and infrastructure lease agreement) was within the scope of arbitration jurisdiction under Article 2 of the Commercial Arbitration Law of 2010 (arbitration dispute resolution authority). On the other hand, the Hanoi People's Court accepted a request to annul an arbitration award in a dispute relating to real estate in Decision No. 03/2018/QD-PQTT dated July 11, 2018. One of the reasons cited by the court for the annulment of the arbitration is that the dispute between the parties does not fall under the jurisdiction of arbitration, but rather falls under the exclusive jurisdiction of the court in accordance with Article 470, Clause 1, Item a of the 2015 Civil Procedure Code (exclusive jurisdiction of Vietnamese courts over domestic real estate)<sup>3</sup>.

### 3. Interview with VIAC on the revocation of arbitral awards

In May 2024, our lawyers visited VIAC to conduct an interview regarding the annulment of arbitral awards. In the course of the interview, we asked whether there were any measures to prevent the annulment of arbitral awards, and the VIAC experts pointed out the following matters.

Firstly, VIAC emphasized the importance of building close relationships with the Vietnamese courts and having direct contact with the Supreme Court. This approach aims to promote understanding and cooperation between arbitration institutions and judicial institutions, ultimately reducing the possibility of annulment of arbitral awards.

Another measure is to utilize case law to ensure consistent application of arbitration-related laws. By establishing a robust case law system, arbitrators and judges can refer to precedents, which increases the predictability of the annulment of arbitral awards and the reliability of arbitral awards.

In addition, in June 2023, VIAC held a working meeting with the Chief Justice of the Supreme People's Court and the Judges' Council to discuss the role of the courts in supporting and supervising arbitration<sup>4</sup>. According to VIAC officials, the Supreme People's Court needs to focus on the following matters; (i) the development of case law derived from cases settled by arbitration, (ii) supplementing the content of the annual report to the National Assembly by the President of the Supreme People's Court regarding the role of the court in arbitration, (iii) holding regular and to promote knowledge sharing and the use of common experience in support of and supervision of arbitration; (iv) to issue resolutions or guidelines to assist judges in considering arbitration-related requests in a unified and effective manner; and (v) to strengthen supervision of court decisions on arbitration-related issues<sup>5</sup>.

Following the VIAC's proposal, the Chief Justice of the Supreme Court agreed with the VIAC's proposal and requested the VIAC to consult with the Supreme People's Court. As a result, there has been recent progress in the regulations regarding arbitral awards.

### 4. Recent Trends in Arbitration-Related Practice

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<sup>3</sup> See "Evaluation and Some Solutions for Revision and Supplement Based on the Implementation of the Commercial Arbitration Law of 2010" by Nguyen Xuan Nam, published in the first edition of the Journal of Democracy and Law, No. 402, April 2024.

<sup>4</sup> See the article "Vietnam International Arbitration Center (VIAC) and Supreme People's Court (SPC) Hold a Practical Conference on the Role of the Courts in Judicial Support and Supervision of Arbitration" published on the VIAC website on July 20, 2023.

<sup>5</sup> See the article in note 4.



On October 1, 2023, the Supreme People's Court issued Decision No. 364/QD-CA, which announced seven precedents approved by the Judicial Council of the Supreme People's Court on August 18, 2023. According to this, there is one case related to arbitration, Case 69/2003/AL, which is a case related to the jurisdiction of commercial arbitration in disputes related to non-disclosure agreements and non-compete agreements.

Case 69/2023/AL is based on Decision No. 755/2018/QD-PQTT dated 12 June 2018 of the People's Court of Ho Chi Minh City on the request for the annulment of the arbitration award issued by VIAC<sup>6</sup>. Furthermore, the new Land Law, which will come into effect on January 1, 2025,<sup>7</sup> allows the Vietnam Arbitration Center to handle land use right disputes, which until now have been the exclusive jurisdiction of the courts.<sup>8</sup> This change allows the Vietnam Arbitration Center to expand the scope of its services, but foreign arbitration centers continue to be excluded from these cases due to government oversight of land use rights.

## 5. Conclusion

As mentioned above, the number of cases filed with Vietnamese courts against arbitral awards is quite high, at 53 cases, when looking at court decisions published between 2017 and 2024. However, the number of cases in which arbitral awards were annulled by the courts was 9, which is around 20% of the total number of cases filed. The reasons for annulment were mostly due to violations of the arbitration procedure and violations of the basic principles of Vietnamese law in the content of the arbitration. The fact that arbitral awards are being annulled by domestic courts is a matter of concern for arbitration organizations such as VIAC, and discussions are being held with the courts, but no solution has yet been found.

From the above, it cannot be said that arbitration awards by VIAC and other organizations are immediately enforceable in Vietnam, and the possibility of them being revoked by Vietnamese courts cannot be ruled out. In light of this, it is recommended that, when introducing arbitration clauses in Vietnam, the risks involved should be recognized, and when arbitration proceedings are initiated, at least one arbitrator with a good knowledge of the reality of arbitration in Vietnam should be included in the selection of arbitrators. Furthermore, if an appeal is filed with the Vietnamese courts regarding the annulment of an arbitral award, it is necessary to choose an experienced lawyer.

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<sup>6</sup> Please see the full text of the case on the website of the High People's Court (Vietnamese only) at <https://anle.toaan.gov.vn/webcenter/portal/anle/chitietanle?dDocName=TAND315866>.

<sup>7</sup> Law No. 31/2024/QH15 promulgated by the National Assembly on January 18, 2024. This law will come into effect on August 1, 2024.

<sup>8</sup> According to an interview with VIAC, VIAC led the introduction of this provision.



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