



Global Legal Group

**QUESTIONS FOR  
THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO**

**Litigation & Dispute Resolution 2010**

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**I. LITIGATION**

**1 Preliminaries**

**1.1 What type of legal system has Vietnam got? Are there any rules that govern civil procedure in Vietnam?**

The legal system of Vietnam is based on the civil law whereby laws are written into a collection, codified and not determined, as in common law, by courts. Vietnamese courts are bound by legal instruments. As a result of the influence by the former Soviet Union legal system, legal instruments in Vietnam are issued and enacted not only by the national assembly in form of codes, laws, ordinances and resolutions, but also by various other administrative authorities like the government, ministries, municipal authorities in forms of by-laws, decisions and circulars, and by supreme court in forms of resolutions and circulars etc.

Civil procedures in Vietnam are primarily governed by the Civil Procedures Code No. 24/2004/QH11 (the “CPC”), promulgated by the National Assembly on 15 June 2004 (which took effect from 1 January 2005), while certain issues and areas are governed by other specialised laws and supreme court’s resolutions and circulars.

The legal profession in Vietnam is not split between solicitors and barristers. A lawyer admitted by a municipal bar in Vietnam can act as a solicitor and/or barrister.

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## **1.2 How is the civil court system in Vietnam structured? What are the various levels of appeal and are there any specialist courts?**

Vietnam has a two-tier court system, comprising of courts of first instance and courts of appeal. Judgments and decisions issued by the court of appeal shall be effective and enforceable. However, in special cases, effective judgments and decisions may be subject to further review by judge councils of the Municipal People's Court or the Supreme People's Court at their respective jurisdiction based on a protest made by the Chief Judge of respective level and discretion or at the request and based on a protest made by the President of the People's Procuracy of the same level. The court system consists of the Supreme People's Court, Municipal People's Courts and District People's Courts. District People's Courts deal with almost all cases in the first instance level, while Municipal People's Courts deal with cases relating to some specific areas, such as: investment, finance, banking, insurance, or cases relating to foreign elements in the first instance level. Municipal People's Courts also deal with those cases which had been judged by District People's Courts but appealed or those cases which fall under the jurisdiction of the District People's Court but the Municipal People's Court deems necessary to be heard and judged by itself. The Supreme People's Court, through its Supreme Appeal Court, deals with cases judged by Municipal People's Courts but then appealed.

There are various specialised courts at the Supreme Court and at the Municipal levels. These include the Criminal Court, Civil Court, Economic Court, Administrative Court and Labour Court.

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## **1.3 What are the main stages in civil proceedings in Vietnam? What is their underlying timeframe?**

The main stages in civil law proceedings before the Vietnamese courts are as follows:

+ Court of First Instance:

- Temporary acceptance for handling: within 5 days from the date of submitting statement of claims to the court.
- Payment of advanced court fee: within 15 days from the date of temporary acceptance of the court.
- Official acceptance: on the date of submission of evidence on payment of advanced court fee.
- Preparation for the first instance court, including lodgement of defendant's opinion, counterclaim and evidences (if any), conciliation; confrontation (until date of decision for trial): from 2 to 4 months from the date of acceptance for handling the case, this time is extendable but not longer than 6 months as the total.
- Trial (no later than 1 month in normal cases and 2 months in special cases from date of decision for trial).

+ Court of Appeal:

- Submission of Appeal: 15 days from the date of issuance of the first instance court judgment/decision.
- Preparation for appeal court (until date of decision for appeal trial): 2 months from the date of acceptance of the appeal, this time is extendable but not longer than 3 months as the total.
- Appeal trial (no later than 1 month in normal cases and 2 months in special cases from date of decision for trial).

It is however noteworthy that legal proceedings in courts at all stages normally take longer than regulatory time limits, especially in the first instance level for complicated cases.

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#### **1.4 What is Vietnam's local judiciary's approach to exclusive jurisdiction clauses?**

Under the provisions of CPC, Vietnamese judiciary shall, in almost all cases, take a favourable approach to exclusive jurisdiction clauses. This means that it will refuse to receive or hear a case or stay proceedings commenced before Vietnamese courts in breach of an exclusive jurisdiction clause prescribing a foreign dispute resolution forum or local arbitration forum.

However, in some cases where jurisdiction clauses prescribing other dispute resolution forums (foreign or local) are unlawfully or not clearly agreed between the parties, Vietnamese courts usually consider to have jurisdiction over such cases.

If a case falls under the exclusive jurisdiction of the Vietnamese courts but is resolved by a foreign court or arbitration, such judgment, or arbitral award as the case may be, would not be recognised by the Vietnamese courts for enforcement in Vietnam.

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#### **1.5 What are the costs of civil court proceedings in Vietnam? Who bears these costs?**

Costs of civil court proceedings in Vietnam primarily include court fees, lawyer fees and actual costs, which depend on complexity, the size of the dispute and the level of lawyer fees (if any).

Though certain exceptions exist, as a general principle of Vietnamese laws, unless it is agreed by all parties in a dispute, the loser shall bear the costs of civil court proceedings, including court fees and lawyer fees and costs (if any).

While court fee schedules are fixed by legal instruments which may be issued from time to time, other fees and costs must be assessed and accepted by the courts. However, a critical practice exists in Vietnam that in almost all cases of court proceedings Vietnam courts do not recognise, to force losers to bear and pay lawyer's fees and costs incurred by prevailing party(ies) for the reason that there exists no regulatory standard fee and cost levels for assessment and determination.

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#### **1.6 Are there any particular rules about funding litigation in Vietnam? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?**

In Vietnam, there is no rule on funding litigation and security for costs. As such, Vietnamese courts would be unlikely to accept any claim for contingency fee funding for litigation in Vietnam.

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## **2 Before Commencing Proceedings**

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### **2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

In general, pre-action or particular formalities are not required to be complied with under the laws of Vietnam before initiating civil court proceedings. However, for a limited type of disputes (see below), claimants shall be required to comply with a particular formality before initiating civil court proceedings:

- Some types of labour disputes: conciliation formality with involvement of labour conciliatory council or labour conciliator.
- Some types of disputes on land use rights: conciliation by local people's committee.

Non-compliance with such particular formalities, as required by the law, shall lead to the refusal by Vietnamese courts for the commencement of a court proceeding.

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## **2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

Under Vietnamese law, limitation is a matter of procedural law even though it is not only provided in the procedural law – the CPC.

Different limitation periods exist depending on the types of claims and/or disputes. For tort claims, the limitation period is one year, counting from the date the cause of action occurred. For contract claims, the limitation period shall be generally two years, counting from the date that the legitimate rights and benefits of concerned parties are breached and infringed or from the date of occurrence of the cause of action. However, there are some exceptions in terms of limitation periods for the following claims:

- The limitation period applicable to claims on insurances is three years from the date of occurrence of the insurance event (the limitation period for claims on maritime insurance is two years).
- The limitation period for claims demanding an heir to fulfil property obligations left by a decedent is three years from the date of opening the inheritance.
- The limitation period applicable to claims on inheritance is 10 years from the date of opening inheritance.

In certain circumstances, limitation periods can be recalculated, for instance: (i) the obligor has acknowledged a part or all of his/her obligations towards the person initiating the lawsuit; (ii) the obligor has fulfilled a part of his/her obligations towards the person initiating the lawsuit; and (iii) the parties reach agreement on a new limitation period.

## **3 Commencing Proceedings**

### **3.1 How are civil proceedings commenced (issued and served) in Vietnam? What various means of service are there? What is the deemed date of service? How is service affected outside Vietnam? Is there a preferred method of service of foreign proceedings in Vietnam?**

In Vietnam, civil proceedings are normally commenced by the action of submitting a statement of claims to the competent court. The statement of claims can be submitted to the court by one of the following methods: (i) submit it directly to the court; or (ii) submit it via registered post to the court. For the purpose of determining satisfaction of limitation period, the date of submission and date of receipt of the post office respectively in case of (i) and (ii) above will be taken into account. However, the date of commencing proceedings shall be calculated as from the date that the court officially receives the statement of claims.

Under the CPC, courts shall be obliged to issue, serve or notify the legal process to concerned parties, other persons participating in the proceedings and related individuals and organisations.

Permissible means of service include:

- Issuance, service or notification carried out directly, by post or via the authorised third person: a person who carries out the issuance, service or notification of a legal process shall deliver the legal process directly to the person who is issued, served or notified with the relevant legal process. The person who is issued, served or notified with the relevant legal process shall sign a record or book of delivery of legal process. The point of time for calculation of the time-limit for proceedings shall be the date on which he or she is issued, served or notified with the legal process.

- Public display: the public display of a legal process shall only be carried out when the whereabouts of the person who is issued, served or notified of a legal process is unidentified or direct issuance, service or notification is unable to be carried out. The court shall directly carry out or authorise the people's committee of a commune where the place of residence or the last place of residence of the person who is issued, served or notified is located to carry out the public display of the legal process. The period of public display of a legal process shall be 15 days from the date of display.
- Notification on mass media: this mean of service shall only be carried out when the law so provides or there are grounds to determine that public display will not ensure that the person who is issued, served or notified of a legal process will receive information on the legal process which is required to be issued, served or notified. Notification on mass media may be carried out if other concerned parties so request. Such concerned parties shall bear charges for notification on the mass media. The notice on mass media shall be published in three consecutive issues of a central daily newspaper and broadcast by the central radio station or television station three times over three consecutive days.

For service outside Vietnam, courts shall pass the service through a third party (i.e. Ministry of Justice or Ministry of Foreign Affairs).

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### **3.2 Are any pre-action interim remedies available in Vietnam? How do you apply for them? What are the main criteria for obtaining these?**

Generally, pre-action interim remedies (preliminary injunctive relief measures) are available under Vietnamese law, which include:

- assigning a minor to an individual or organisation to look after, nurture, take care of and educate such minor;
- compelling the performance in advance of part of the obligation to support;
- compelling the performance in advance of part of the obligation to compensate for damage caused by harm to life or health;
- compelling the employer to pay in advance salaries, wages, compensation or subsidies for labour-related accidents or occupational disease to employees;
- temporarily suspending the implementation of a decision on the dismissal of an employee;
- attaching property in dispute;
- prohibiting any transfer of property rights with respect to the property in dispute;
- prohibiting any change in the *status quo* of the property in dispute;
- permitting the harvest and sale of subsidiary food crops or of other products or commodities;
- freezing accounts at banks, other credit institutions and the State Treasury; freezing property at places of bailment;
- freezing property of the obligor;
- prohibiting a concerned party from conducting, or compelling a concerned party to conduct certain acts; and
- other preliminary injunctive relief measures as stipulated by law.

During the settlement of a case, any concerned party or its legal representative or a body or organisation initiating a legal proceeding to protect the lawful rights and interests of other persons shall have the right to request the competent court to apply one or more preliminary injunctive relief measures as stipulated to provisionally resolve the urgent petition of the concerned party to protect

evidence, to preserve the existing status in order to avoid irrecoverable damage or to secure legal enforcement. In the emergency cases where it is necessary to immediately protect evidence or to prevent potential serious consequences, any individual, body or organisation shall have the right to make an application to request the competent court to issue a decision to apply preliminary injunctive relief measures at the same time of filing the statement of claims to such court for the initiation of civil proceedings. Also, under the CPC, the courts are themselves empowered to grant a decision on applying preliminary injunctive relief measures in some cases.

In order to obtain these measures, the request for applying preliminary injunctive relief measures must be filed together with evidence or supporting documents. At the same time, in some cases, the applicant must deposit a sum of money, precious metals, gemstones or valuable papers which are fixed by the court, but such deposit must be equivalent to the property obligation to be performed by the obligor, aimed at protecting the interests of the person who is subject to the preliminary injunction and preventing any abuse of the right to request for the application of preliminary injunctive relief measures by the applicant.

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### **3.3 What are the main elements of the claimant's pleadings?**

Under CPC, claimant's pleadings (statement of claims) shall contain the following main elements:

- the date of the statement of claims;
- the name of the court receiving the statement of claim;
- the name and address of the claimant;
- the name and address of any person with rights and interests to be protected, if any;
- the name and address of the defendant;
- the name and address of any person with rights and obligations to be related, if any;
- specific matters which the court is requested to settle in respect of the defendant or persons with related rights and obligations;
- the full name and address of a witness, if any; and
- documents or evidences substantiating that the filing of the statement of claims is well grounded and lawful;

The claimant being an individual shall sign or fingerprint; in the case of a body or organisation initiating civil proceedings, the legal representative of such body or organisation shall sign and affix its seal at the end of the statement of claims.

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### **3.4 Can the pleadings be amended? If so, are there any restrictions?**

In general, rights of claimant to amend his/her pleadings (statement of claims) is recognised and permitted by law. Accordingly, during the court proceedings and, in some cases, until the trial, the statement of claims can be amended by the claimant itself or, in some cases, by request of competent court.

## **4 Defending a Claim**

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### **4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?**

Under the CPC, the defendant has rights to lodge its opinion and supporting documents and information opposing the claimant's statement of claims to the court. However, there is no provision of laws providing in details the main elements of a statement of defence.

The defendant has the right to lodge the counterclaims against the claimant and such counterclaims shall be accepted in one of the following cases:

- the counterclaims for the obligation which is to offset against the claims of the claimant;
- the acceptance of the counterclaims will result in the exclusion of all or part of the claims of the claimant; and
- there is a connection between the counterclaims and the claims of the claimant for purpose of being heard in the same case, otherwise, the court will consider that it is a separate claim and refuse to hear it in the same case.

It is noteworthy that, except for the defence of set-off, the defendant would be asked to make an advanced payment of court fees as a result of their bringing of counterclaims.

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#### **4.2 What is the time-limit within which the statement of defence has to be served?**

The laws of Vietnam do not provide the time limit within which the statement of defence has to be served. Vietnamese courts normally set out a time limit for the submission of a statement of defence by the defendant, which is generally respected and complied with by defendants in practice.

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#### **4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?**

As one of the principals provided in the Civil Code 2005 of Vietnam (“Civil Code”), currently being in force, the parties to a civil relation shall strictly perform their own civil obligations and shall themselves be liable for the non-performance or the incorrect performance of obligations. If a party does not voluntarily perform, it shall be forced to perform its obligations in accordance with the provisions of law.

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#### **4.4 What happens if the defendant does not defend the claim?**

If the defendant fails to defend the claim, the court shall judge the case based on claims with information and evidences lodged by the claimant and collected and investigated by the court itself. Normally, in such a case, the judgment may be entered against the defendant.

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#### **4.5 Can the defendant dispute the court’s jurisdiction?**

After being served the notification on acceptance for handling a case from the court, a defendant can dispute (complain or appeal) the court’s jurisdiction by lodging a complaint or appeal with supporting information and evidences (if any) to the court. For example, within the limitation period of three working days from the date of receipt of the notification on court acceptance for handling the case, the defendant is entitled to lodge an appeal to challenge the jurisdiction of the court.

The right of parties to a dispute, including the defendant, may continue to challenge the jurisdiction of a court by submitting an appeal to the appeal court at the appeal stage.

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## **5 Joinder & Consolidation**

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### **5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?**

Under the CPC, there are some cases in which a third party can be jointed into ongoing proceedings as jointed claimants, defendants, persons with related rights and obligations under their own claims or the claims of other concerned parties. If the resolution of a civil case relates to the rights and obligations of a person but nobody proposes the participation of such person in the proceeding as a

person with related rights and obligations, the court must include him or her in the persons participating in the proceedings as a person with related rights and obligations.

Where a person with related rights and obligations (third party) does not participate in proceedings together with the plaintiff or defendant, he or she shall have the right to make an independent claim upon satisfying the following conditions:

- the resolution of the case is related to his or her rights and obligations;
- his or her independent claim is related to the case under resolution; and
- where his or her independent claim is resolved in the same case, the resolution of the case will be more accurate and quicker.

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### **5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?**

Under the CPC, the court may consolidate two or more civil cases which have been accepted separately to form one case for resolution, if the consolidation and resolution in that case is in compliance with the provisions of laws. However, the laws provide no more details on the same.

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### **5.3 Do you have split trials/bifurcation of proceedings?**

The court may also split one case with different claims into two or more cases if the splitting and resolution of such multiple cases is in compliance with the law. And the laws also provide no more details on the same.

## **6 Duties & Powers of the Courts**

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### **6.1 Is there any particular case allocation system before the civil courts in Vietnam? How are cases allocated?**

Currently, there is no particular case allocation system before the civil courts. Case allocation is stipulated under the provisions of the CPC. Based on provisions under the CPC, District People's Courts or Municipal People's Courts as the case may be shall determine themselves whether a dispute is under their jurisdiction or not.

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### **6.2 Do the courts in Vietnam have any particular case management powers? What interim applications can the parties make? What are the cost consequences?**

Under the CPC, the courts have some powers to manage civil proceeding cases by themselves, including the following:

- to decide on filing a request for the application, change or cancellation of preliminary injunctive relief measures;
- to summon the parties to participate in conciliation meetings;
- to request parties, individuals, bodies and organisations to provide evidence;
- to take necessary measure to preserve evidence;
- to collect evidence by itself;
- to take testimonies of concerned parties and witnesses;
- to take cross-examination; and
- other particular case management powers.



In general, these powers are available to the benefits of the concerned parties. However, the concerned parties can make their own request or appeal against the applications of these powers, including:

- to request the court to apply preliminary injunctive relief measures; and
- to amend the statement of claims.

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### **6.3 What sanctions are the courts in Vietnam empowered to impose on a party that disobeys the court's orders or directions?**

Under the CPC, the courts in Vietnam are empowered to impose a party that disobeys the court's orders or directions. The sanctions are different on each case. For example:

- if the claimant who has been properly summoned has failed to appear twice before the court, the court has the power to suspend the proceedings; and
- any witness who has been properly summoned by the court but intentionally refuses to appear before the court or intentionally is absent from the trial without any proper reason, and if his or her absence will obstruct the collection or verification of any evidence or hearing of the case, the court shall have the right to issue a decision escorting or warning or fining such witness.

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### **6.4 Do the courts in Vietnam have the power to strike out part of a statement of case? If so, in what circumstances?**

Under the CPC, the courts in Vietnam have the right to strike out part of a statement of case upon request by one of the concerned parties.

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### **6.5 Can the civil courts in Vietnam enter summary judgment?**

There is no provision on or definition of summary judgment in Vietnam.

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### **6.6 Do the courts in Vietnam have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

The courts in Vietnam have the power to discontinue or stay the proceedings of a dispute in the following circumstances:

- the applicant or the respondent is a deceased individual with no beneficiary to his or her rights and obligations;
- a body or organisation which is dissolved or declared bankrupt with no individuals, bodies or organisations to take over its rights and obligations in proceedings;
- the applicant withdraws his or her application for initiation of a legal action and the court so accepts or the applicant does not have the right to initiate a legal action;
- the body or organisation withdraws its application for initiation of a legal action in the case where there is no claimant or the claimant requests not to continue the resolution of the case;
- the litigants compromise with each other and do not request the court to continue the resolution of the case;
- the claimant who has been properly summoned fails to appear twice; and
- the court has issued a decision to conduct a hearing for a bankruptcy petition against an enterprise or co-operative which is party to the case, while the resolution of the case is related to the obligations or property of such enterprise or cooperative.

## **7 Disclosure**

### **7.1 What are the basic rules of disclosure in civil proceedings in Vietnam? Are there any classes of documents that do not require disclosure?**

Under the CPC, the rules of disclosure in civil proceedings are provided as follows:

- A concerned party which claims to the court to protect its lawful rights and interests must provide evidence to substantiate that there are grounds for its claims and that the claims are lawful.
- A concerned party which protests against the claim made by another person against such party must substantiate that there are grounds for its protest and provide evidence to substantiate these grounds.
- An individual, body or organisation which initiates civil proceedings to protect public interests or interests of the state or request the court to protect the lawful rights and interests of another person must provide evidence to substantiate that there are grounds for its legal action and that it is lawful.
- A concerned party which is obliged to provide evidence for substantiation but fails to provide evidence, or provides insufficient evidence, shall bear any effect of the failure to provide evidence or of the provision of insufficient evidence.

The following facts and events shall not be required to be proven and disclosed:

- Obvious facts and events which are known by everybody and admitted by the court.
- Facts and events which have been specified in legally enforceable judgments or decisions of the court or legally enforceable decisions of authorised state bodies.
- Facts and events which have been stated in lawfully notarised or certified documents.

Under the laws of Vietnam, concerned parties are not obliged to give advance notice to each other of any information and documents that are in their control. As an obligation, they are required to disclose such information and documents to the competent court only and to provide to the other party only if ordered by the court.

### **7.2 What are the rules on privilege in civil proceedings in Vietnam?**

In Vietnam, privilege is a provision applicable in the event that foreign organisations, bodies and individuals are entitled to diplomatic immunities and privileges or consular immunities and privileges, in accordance with law or international treaties which the Socialist Republic of Vietnam has signed or acceded to. In such a case, civil proceedings relating to such organisations, bodies and individuals shall be settled via diplomatic channels.

### **7.3 What are the rules in Vietnam with respect to disclosure by third parties?**

As provided by Vietnamese laws, the court shall have the power to request for the disclosure by third parties who are likely to hold the documents and evidence which are relevant to the dispute. In principal, third parties are entitled and obliged to disclose all documents and evidence which relate to the resolution of the case and shall bear legal responsibility as provided by laws.

For example, the witness is entitled and obliged:

- To provide all information, documents and objects they have which relate to the resolution of the case.
- To disclose truthfully all their knowledge about facts relating to the resolution of the case.

- To refuse disclosing if their disclosure relates to state secrets, occupational secrets or trade secrets, or the privacy or such disclosure affects badly or adversely a litigant who is their relative.
- To take leave of absence during the duration they are summoned by the court or give testimony to the court if they work for a body or organisation.
- To reimbursement of travel expenses and other benefits in accordance with the law.
- To petition the court which has summoned them or a competent state body to protect their lives, health, honour, dignity, assets and other lawful rights and interests upon their participation in the proceedings; and to lodge a complaint against the litigatory act of any person conducting the proceedings.
- To pay compensation for any damage and to be responsible before the law for their untruthful testimony causing damage to a litigant or another person.
- To be present at the trial upon being summoned by the court if the witness must give publicly his or her testimony at the trial; where the witness fails to be present at the trial without any proper reason and his or her absence hinders the hearing, the council of adjudicators may decide to escort the witness to the trial.
- To take an oath to perform their rights and obligations before the court, unless the witness is a minor. Any witness who gives false testimony or provides untruthful documents or refuses to disclose or is absent from the court upon being summonsed by the court without any proper reason shall be responsible in accordance with the law.

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#### **7.4 What is the court's role in disclosure in civil proceedings in Vietnam?**

Under the CPC, concerned parties are entitled and obliged to provide documents and information for the resolution of the dispute. As such, in this regard, the main role of the courts is to request and support the concerned parties to make disclosure. In some cases, as provided by laws, the courts may collect by themselves necessary documents and information.

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#### **7.5 Are there any restrictions on the use of documents obtained by disclosure in Vietnam?**

Under the CPC, every items of evidence can be publicly and equally disclosed and used, except for some cases where the court shall not disclose evidence relating to state secrets, national fine customs, professional secrets, trade secrets or private secrets of individuals at the legitimate request of the concerned parties. Persons conducting proceedings and persons participating in proceedings must keep confidentiality in accordance with the law in respect of evidence which is not allowed to be disclosed publicly as specified.

## **8 Evidence**

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### **8.1 What are the basic rules of evidence in Vietnam?**

Evidence in civil affairs must be real things which are disclosed by concerned parties and other individuals, bodies and organisations to the court or collected by the court in accordance with the laws and which are used by the court as the basis for the purpose of determining whether or not there are grounds for the claim or protest of a concerned party and whether it is lawful and other facts necessary for proper resolution of the civil proceedings.

Where a concerned party which has taken necessary measures to gather evidence still fails to gather the evidence by itself, it may request the court to adduce evidence in order to ensure the proper

resolution of the civil proceedings. The court may request directly or in writing individuals, bodies or organisations which are controlling or holding the evidence to provide such evidence.

Every item of evidence shall be publicly and equally disclosed and used, except in the case that these items are related to state secrets, national fine customs, professional secrets, trade secrets or private secrets of individuals at the legitimate request of the concerned parties.

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## **8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?**

Types of admissible evidence:

- readable, audible or visible materials;
- physical evidence;
- testimony of concerned parties;
- testimony of witnesses;
- results of examination by experts;
- record of the results of assessment on the spot;
- customs [customary practice];
- results of valuation of assets; and
- other types as stipulated by law.

Evidence of experts, including examination and opinion, shall be regarded as evidence if such evidence is carried out or adduced in accordance with the procedures stipulated by law.

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## **8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?**

The court, at the request of one or more of the concerned parties, or where necessary, shall take a statement of evidence of a witness at or outside the head office of the court. The witness giving the statement of evidence shall himself or herself read, or listen to the reading of, the record of his or her testimony and sign or make a fingerprint on it. The witness shall be entitled to request any amendments or additions to be included in the record of the testimony and sign or make a fingerprint on the amended record for confirmation. The record must be signed by the person taking the testimony and the person taking the record and affixed with the seal of the court; where the record is made in separate sheets, each page shall be signed and affixed with the integrity seal. Where the record of the testimony of a witness is made outside the head office of the court, a witness or certification by the people's committee or police office of the commune or township or by the body or organisation in which the record was made shall be required.

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## **8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Vietnam?**

Under the CPC, concerned parties are entitled and obliged to provide evidence for the resolution of the dispute. As such, in this regard, the Vietnamese court normally requests and supports the concerned parties to provide evidence.

In some cases, as provided by laws, the court may itself collect the evidence. Any individual, body or organisation which fails to obey a decision of the court on the provision of evidence controlled or held by such individual, body or organisation, it may be warned, fined or enforced as determined by the court.

## **9 Judgments & Orders**

### **9.1 What different types of judgments and orders are the civil courts in Vietnam empowered to issue and in what circumstances?**

The civil courts in Vietnam have the power to make different types of judgment, including:

- judgments of first instance courts;
- judgments of appeal courts; and
- judgments of court of review.

The civil courts in Vietnam also have the power to make a wide variety of orders (decisions), including:

- decisions on application of preliminary injunctive relief measures;
- decisions on acknowledgment of the conciliation of the concerned parties;
- decisions on suspension of settlement of the cases; and
- other types of decisions.

### **9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?**

The courts have the power to decide whether a claim for damages, including economic damages, and the compensation for such damages is acceptable or not. A court award on compensation for damages can be made based on justifiable evidence provided by the claiming party or an evaluation conducted by appointed independent valuation firms or experts.

The courts have the power to award interests on both damage and costs awarded. Unless it is otherwise stated in a contract and within a permitted level, the applicable interest rate used shall be 150% of the basic interest rate which is announced by the State Bank of Vietnam from time to time.

The Vietnamese courts also have the power to decide costs of litigation. In principle, the loser shall bear all the cost of litigation (see question 1.5 above).

### **9.3 How can a domestic/foreign judgment be enforced?**

Under Vietnamese law, an effective domestic judgment is normally enforced by an initial amicable and voluntary arrangement between the winner and loser. In the failure of reaching an amicable and voluntary arrangement for execution, the judgment can be brought by the winner to the Civil Judgment Enforcement Agency (separate from the court system) for enforcement. Formalities and all issues relating to enforcement of a civil judgement by the Civil Judgment Enforcement Agency are laid down in the Law on Civil Judgment Enforcement and its guiding regulations.

With regard to the foreign judgments, the courts of Vietnam shall consider recognition and enforcement in the following cases:

- civil judgments and decisions of courts of a country which is a party to a relevant international treaty of which Vietnam is a participant or a signatory;
- civil judgments and decisions of foreign courts which are recognised and permitted to be enforced in accordance with the laws of Vietnam; or
- the courts of Vietnam may also consider the recognition and enforcement in Vietnam of civil judgments of foreign courts on a reciprocal basis without the condition that Vietnam and the relevant country are a signatory or participant of a relevant international treaty.

The enforcement in Vietnam of any civil judgment or decision of a foreign court shall be subject to recognition and enforcement by the courts of Vietnam.

With regard to foreign judgments, as required by laws, persons seeking enforcement, or their legal representatives, shall be entitled to apply to a court of Vietnam (through the Ministry of Justice as the contact point) for recognition and enforcement in Vietnam.

A civil judgment of a foreign court once recognised for enforcement in Vietnam by a court of Vietnam shall be of the same effect as any other civil judgments of the courts of Vietnam, and formalities for enforcement shall be the same as those applicable to a domestic civil judgment.

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#### **9.4 What are the rules of appeal against a judgment of a civil court of Vietnam?**

Under Vietnamese law, appeal can be made against not only civil court judgments but also civil court decisions.

An appeal against a judgment or decision shall be accepted by the court of Vietnam if:

- the appellant has the right to lodge the appeal (i.e. an appeal lodged by an unrelated person would not be accepted);
- the appeal is made covering, among others, basic contents as stipulated by law;
- the appeal is lodged within the time limit (i.e. the time limit for lodging an appeal against a judgment of the court of first instance is 15 days as from the date of the judgment, while the time limit for appeal against a decision is seven days); and
- there are reasonable grounds for the appeal.

## **II. DISPUTE RESOLUTION**

### **1 Preliminaries**

#### **1.1 What methods of dispute resolution are available and frequently used in Vietnam? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)**

Methods of dispute resolution which are available and popular in Vietnam are arbitration and mediation.

Arbitration has become a widely accepted alternative mechanism for dispute resolution in Vietnam but applicable to commercial disputes only. Arbitral award made by a Vietnamese arbitration tribunal is binding and enforceable, i.e. the winner can submit application to the Civil Judgment Enforcement Agency for enforcement, if such arbitral award is not appealed to the court. It is noteworthy that the court is only empowered to review and make judgment against an arbitral award on the matter of jurisdiction, compliance with procedures etc. but not on the merit of the award.

The New York Convention was acceded by Vietnam, which allows the enforcement of Vietnamese arbitration award across all the Convention countries.

Vietnamese courts respect and recognise the choice of arbitration by parties to contract as forum for the settlement of contractual dispute.

At the time being, there are a number of licensed arbitration centres in Vietnam. However, the preferred and most qualified centre is the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry.

Vietnam is not a litigious society. A large number of disputes are resolved outside of the court and arbitration. Vietnamese law strongly encourages and dignifies resolution of dispute through amicable manners, which is understood to include mediation. Mediation however is a mandatory requirement in a limited number of litigation procedures, such as some types of labour and land dispute.

A successful mediation would result in the conclusion of a settlement agreement which is normally considered as a contract. However, if the settlement agreement is concluded in respect of a pending court litigation case, such agreement can be enforceable once recognised by the court under a decision.

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## **1.2 What are the laws or rules governing the different methods of dispute resolution?**

There is no specific law stipulating and indicating all different methods of dispute resolution. Different methods of dispute resolution are dealt with in different sets of law and legal instruments such as the Ordinance on Commercial Arbitration in 2003 on arbitration, the CPC partially on arbitration and mediation and Law on Land on mediation with regard to land disputes.

Although Vietnamese law generally encourages and dignifies the amicable settlement of dispute through negotiation and conciliation by parties, mechanism of mediation has not been comprehensively stated as one of principles for dispute resolution in prevailing laws.

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## **1.3 Are there any areas of law in Vietnam that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?**

Ordinance on Commercial Arbitration in 2003 provides an arbitration method to resolve disputes arising out of commercial activities only. As set forth therein, commercial activities are interpreted to be one or more acts of merchants including goods sale and purchase, service supply, distribution, representative, commercial agent, deposit, hire, rent, lease-purchase, construction, consultancy, engineering, license, investment, finance, banking, insurance, exploration, exploitation, transportation and other commercial acts provided by laws. This means that Vietnamese arbitration centres shall refuse to settle a dispute arising out of other activities beyond those described above.

Mediation is primarily not specified as a formal and mandate mechanism for dispute resolution. However, there are no likely limitations with regard to the areas of law suitable for the application of mediation for dispute resolution.

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## **2 Dispute Resolution Institutions**

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### **2.1 What are the major dispute resolution institutions in Vietnam?**

In Vietnam, there have been seven dispute resolution institutions, of which the following are the major ones:

- the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (“VIAC”);
- the Ho Chi Minh Centre of Commercial Arbitration; and
- the Can Tho Centre of Commercial Arbitration.

It is our judgment that the VIAC is likely to be the preferred institution and the only one efficiently operating in Vietnam.

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### **2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?**

Arbitral awards are binding and enforceable under the law of Vietnam (see question 1.1 above).

A settlement agreement concluded as a result of mediation has legal validity and is binding as a contract (see question 1.1 above).

### **3 Trends & Developments**

#### **3.1 Are there any trends in the use of the different dispute resolution methods?**

Traditionally, court proceedings are the most popular mechanism for businesses to choose as a forum for the settlement of disputes in Vietnam. At present, the majority of dispute cases are still settled through this traditional mechanism.

However, by the enactment of the Ordinance on Commercial Arbitration in 2003 which, in the first time, set out the mechanisms and recognised validity for the enforcement of arbitral awards in Vietnam, and by the integration of Vietnam into the world economy especially the entry of Vietnam into WTO, arbitration has gradually become more popular and the preferable choice as a forum for the resolution of disputes by businesses. Arbitration is specifically preferred in those transactions with international or foreign elements.

#### **3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Vietnam?**

The most critical and popular issues that affect the use of arbitration as a dispute resolution mechanism is the imperfectness of dispute resolution clauses in contracts. The imperfectness in dispute resolution clauses may fall within either or all of the following main circumstances: (i) a wrong indication of the full name and address of the arbitration institution; (ii) a wrong choice of arbitral rules for settlement by an arbitration institution which does not accept to use rules of other arbitration institutions; (iii) nomination of a third party/person who has the power to choose an arbitration institution for the settlement of a dispute (normally in construction contracts); or (iv) choice of two arbitration institutions and/or court who have respective jurisdiction by different steps in resolving the dispute.

Such types of imperfectness in the dispute resolution clause normally lead to different interpretations on the validity of such clause and, as a result, the jurisdiction of arbitration in general and of a specific arbitration institution in particular and the court. In some cases, a dispute has been resolved in parallel by one Vietnamese arbitration institution or court and a foreign arbitration institution.

For the said reason, the dispute resolution clause in a contract should make it clear on the choice of either a court or a single arbitration institution as the forum for dispute resolution. Also, if an arbitration institution is chosen, sufficient and correct details and information about such institution should be indicated in the dispute resolution clause.

Apart of the above-mentioned critical issues, inconsistency between legal instruments is also one factor affecting to different interpretation and use of those dispute resolution methods. For instance, in 2008, a dispute on the jurisdiction of an arbitration institution and economic court occurred, due to the inconsistency between the Ordinance on Commercial Arbitration in 2003 (“Ordinance”) and its guiding legal instrument - the Resolution No. 05/2003/NQ-HDTP, dated 1 January 2003, of the Judgment Council of Supreme People’s Court, guiding the implementation of a number articles of the Ordinance (“Resolution No.05”). Concretely, the Ordinance provides that the court must refuse to resolve a petition when parties have agreed on the use of arbitration. Meanwhile, the Resolution No.05 provides a new circumstance that permits parties to use the court instead of arbitration if the claimant notifies the defendant about his intention to take proceedings before the court and the defendant fails to reply this notice within seven days. Dispute arose on the validity and application of legal documents among the Ordinance and Resolution No. 05 and the debate on this matter is still pending and result is still in question.