

Vietnam Law on Commercial Arbitration Current State and Suggestions for Improvement

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Abstract: As international economic relations become increasingly tightly woven on a multi-dimensional and multi-sectoral level, conflict has become inevitable. Besides court litigation, resolution through commercial arbitration has proven its important role through its superior flexibility, speed, confidentiality, and time and cost efficiency. The creation of the Law on Commercial Arbitration (LCA) in 2010 has created a vital legal foundation to bolster commercial arbitration in Vietnam, in line with international practices. By examining the clauses of the LCA in relations with other laws and synthesizing the results of previous research, this article has highlighted the current inadequacies in its implementation, such as: difficulty in acknowledging and enforcing arbitration awards; lack of effective support mechanisms from the Court; legal gaps in obstructing arbitration; the capabilities and reputation of some arbitration centers are not up to par. Lastly, the author provided several solutions to improve the state of arbitration in Vietnam, namely through expanding the jurisdiction of arbitrators, stipulating clauses for annulling arbitration awards, and improving enforcement of these awards.

Keywords: Commercial arbitration, Law on Commercial Arbitration, inadequacies, suggestions.

INTRODUCTION

Commercial arbitration is a method for resolving business disputes outside of a court of law, based on negotiations between involved parties. The history of commercial arbitration extends well into the ancient times of the Greeks and Romans, though it would not be until the 19th century that commercial arbitration received more formal regulations. The UNCITRAL Model Law of 1985 and New York Convention of 1958 provided the foundations upon which modern commercial arbitration laws were formed, as pointed out by Meskic (2024). Currently, along with negotiation, conciliation, and trial at the Court, commercial arbitration is gradually establishing its role in the dispute resolution system in Vietnam, especially in commerce and business (Benneh, 2025).

In Vietnam, commercial arbitration is recognized in Vietnamese law through the 2010 Law on Commercial Arbitration. In line with the rest of the world, this method is commonly used due to its superior flexibility, speed, confidentiality, and cost efficiency in handling disputes in trades compared to traditional litigation. It has also been seen as being able to give parties more freedom in choosing applicable laws and tribunal and location, as stated by Sami (2020). International validity and neutrality are also stated as major advantages that arbitration has over traditional litigation, which is particularly important in the context of current international integration (Mazen, 2020).

However, there are still many issues in practice, such as: difficulty in acknowledging and enforcing arbitration awards; inconsistencies in the

organization and operation of arbitration centers. Facing needs for judicial reforms in the period of new development and comprehensive restructuring of governmental agencies, improving commercial arbitration law is not only just an improvement of legal techniques, but a strategic solution to diversify methods for resolving dispute, reducing workload for the Court, while ensuring a transparent, effective, and law-abiding business environment. This article will focus on analyzing several issues in the implementation of the 2010 Law on Commercial Arbitration, then propose several specific solutions to improve this law and enhance the effectiveness of dispute resolution through arbitration in the context of judicial system restructuring and deep international integration today (Doan, 2020; Hoang, 2024).

Tran (2024) stated that although commercial arbitration has made major improvements in recent years, the awareness and faith of the business community in this method is still superficial and unstable. In specific fields such as banking and finance, commercial arbitration remains limited and inconsistent with the Court, leading to difficulty in investigation, verification, and collecting evidence.

In the context of deep international integration and comprehensive digital transformation, there is a need to modernize and diversify mechanisms for resolving commercial disputes in line with international practices. In addition, from July 1st, 2025, the local administrative government and Vietnamese judicial agencies will be reorganized

towards merging district and ward-level administrative units. This will in turn lead to fundamental changes in the organization and operations of the Court, Procuracy, and judicial agency system, mandating a review of the positions, roles, and operations of methods for resolving disputes outside of traditional litigation, one of which is commercial arbitration (Suthari & Manam, 2025).

OVERVIEW OF DISPUTE RESOLUTION THROUGH ARBITRATION AND CURRENT PRACTICES

Vietnamese Law on Commercial Arbitration

Arbitration is a method for resolving disputes outside of court, based on negotiations between involved parties, with many advantages such as speed, flexibility, effectiveness, and finality of decision. In the context of deep globalization and international economic integration, this method has become increasingly suitable and is the method of choice for interested businesses.

In Vietnam, arbitration has been known from the 1960s and began to flourish from the 1990s. The creation of the Commercial Arbitration Ordinance in 2003 and later the Law on Commercial Arbitration in 2010 was an important milestone in perfecting the legal corridor to be in line with the UNCITRAL legal model, promoting it as an effective tool in resolving business and commercial disputes.

However, in reality, the arbitration process is becoming increasingly complex, sometimes involving a third party or foreign elements within the dispute. This means that businesses are still hesitant in choosing arbitration to resolve disputes. After 15 years of implementation, some parts of the 2010 Law on Commercial Arbitration have revealed their shortcomings, making them unsuitable for the current legal context and requirements for development.

Current practices

Since the Law on Commercial Arbitration came into effect, the arbitration system in Vietnam has gradually become more complete. According to the Global Arbitration Review, by August 2024, there are 48 arbitration centers in Vietnam and 700 arbiters, including foreign ones, which is a progressive innovation within the 2010 Law on Commercial Arbitration. The number of disputes resolved via arbitration has gradually increased throughout the years, for example, VIAC – a

leading arbitration center, has resolved 427 cases in 2023, a sharp increase compared to the previous year.

However, the ratio of disputes handled through arbitration is still very low, only around 1% compared to cases solved through court litigation, showing a limited degree of popularity. The ineffectiveness of arbitration centers except VIAC stems from a lack of reputation and practical experience. In addition, the current legal framework is still inconsistent, causing difficulties in enforcing arbitration awards as effective support from the Court remains absent.

This current reality shows that in order for commercial arbitration to become an effective and appropriate method for resolving disputes in the context of judicial reforms after July 1st 2025, the laws on commercial arbitration need to be comprehensively evaluated, revised, and polished, ensuring alignment with other relevant legal regulations and the requirements for integration in the new era.

In the current study, the author will analyze the current clauses of the Law on Commercial Arbitration in comparison with other relevant laws and the 2015 Civil Code, in addition to synthesizing and analyzing the result of previous literature on the topic of arbitration law in Vietnam to draw out new issues. Lastly, the author will propose solutions to improve the implementation of the 2010 Law on Commercial Arbitration. This is even more important in the context of significant changes to the judicial system after July 1st, 2025, necessitating a reassessment of the effectiveness of its implementation, leading to vital adjustments and supplementations.

CURRENT ISSUES IN IMPLEMENTING THE LAW ON COMMERCIAL ARBITRATION AND SOLUTIONS FOR IMPROVEMENT

Issues in implementing the law on commercial arbitration

The 2010 Law on Commercial Arbitration has helped promote commercial arbitration in Vietnam, however, there are still many issues in practice, which are inconsistent supportive mechanisms from the court, causing difficulties in acknowledging and enforcing arbitration awards; lack of clear regulations for dealing with obstruction of arbitration, affecting the independence and effectiveness of this method; some arbitration centers lack reputation and

experience, causing businesses to lose trust in commercial arbitration.

Furthermore, regulations on the jurisdiction and role of the court in supporting arbitration will be directly affected by the reorganization of judicial agencies after July 1st, 2025, requiring arbitration laws to be adjusted to fit the new context.

The implementation of the 2010 Law on Commercial Arbitration has seen many problems, especially in determining authority in resolving disputes. One of the most noticeable shortcomings

is Article 2 of the 2010 Law on Commercial Arbitration on the scope of disputes under the jurisdiction of an Arbitrator. Despite expansions on Ordinance 2003, the definition of “commercial activity” is still inconsistent and often based on the narrow definition included in the 2005 Law on Commerce, leading to limitations on the scope of arbitration, especially for disputes involving labor. Below is a table of comparison between the definition of “commercial activity” in the Vietnam 2005 Law on Commerce and the laws of other countries

Vietnam – 2005 Law on Commerce	United States of America – US. Code, Title 16	Canada
<p>Commercial activities mean activities for the purpose of generating profits – sales, purchase, provision of goods, or investment, promotion, and other activities for generating profit</p>	<p>All activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling</p>	<p>Commercial activity refers to any particular transaction, conduct or of conduct that is of a commercial character, whether or not profit is expected</p>

Compared to the US Code’s definition of commercial activity in Title 16, which stipulates that any activity of industry and trade would fall under the term “commercial activity”, the Vietnamese version is severely limited. Whereas both definitions list examples of commercial activity, the United States version allows for activities that help facilitate buying and selling as well, while stating at the start that all such activities are included, rather than adding “other activities” at the end like in the Vietnamese definition. The Canadian definition of commercial activity refers to any act of a commercial character, regardless of profit. This provides the largest scope for commercial arbitration and would allow for arbitration over acts that would not generate profit but facilitate transactions regardless such as labor, meetings, and communications.

Clause 2, Article 2 of the Law on Commercial Arbitration stipulates that arbitrators can resolve a dispute if “at least one party conducts commercial activities”. However, in reality, there is much controversy around whether or not an arbitrator has the authority to resolve disputes stemming from specialized fields, such as labor relations. A prime example of this is in Precedent 69/2023/AL on dispute over a non-disclosure agreement between the employees and the company. Although VIAC has received the case and delivered a decision, many still see this as a labor and not a commercial dispute, leading to controversy over the legality and jurisdiction of dispute via arbitration. This shows a lack of

consistency between the Law on Commercial Arbitration and other laws such as the Labor Code, the Civil Procedure Code, the Commercial Law, etc....

In particular, from July 1st, 2025, due to the reorganization of the Court and Procuracy system according to urban and economic administrative units (mergers at district and county levels, etc.), there will be an increase in the need to use commercial arbitration as a mechanism for resolving disputes quickly, flexibly and independently will increase. However, if the current legal shortcomings are not resolved, the effectiveness of arbitration operations will be limited.

Suggestions for improvement of the implementation of the Law on Commercial Arbitration

The development of the socialist-oriented market economy and deep international integration requires constant improvements to the Law on Commercial Arbitration (LCA). The practical implementation of the 2010 LCA showed that there are still many barriers, especially in terms of the authority of arbitration, basis for annulling arbitration awards and the enforcement of arbitration awards. In the context of the region-based organizational reform of the Court system from July 1st 2025 following Resolution No. 35/2023/QH15, improvements to the Law on Commercial Arbitration need to be synchronously and comprehensively reviewed.

General directions for comprehensive improvement may include clarifying the supportive and supervision mechanisms of the Court; supplementing regulations on handling acts of obstruction during arbitration; improving the professional competence of arbitration centers; ensuring consistency with new laws coming into effect from July 1st, 2025 to achieve consistency, effectiveness and feasibility in implementation

Currently, Article 2 of the 2010 Law on Commercial Arbitration is largely self-contained, only listing disputes within the jurisdiction of arbitration, mostly in trade and commerce. This approach is no longer appropriate for the increasingly complex social-economic context, with many disputes stemming from beyond the scope of traditional commerce. Therefore, it is necessary to make amendments with focus on stipulating what conflicts are *not under the jurisdiction of arbitration*, similar to the approach of other countries such as France and Switzerland. More specifically, Article 2 should be redesigned towards exclusivity, for example: “Arbitrators are not allowed to resolve the following disputes: Marital and familial disputes according to Article 28 of the 2015 Civil Procedure Code; Disputes related to non-transferrable personal rights; Administrative disputes; Disputes belonging to the jurisdiction of the Court according to specialized laws.”

This approach is in line with Clause 1 Article 14 of the 2015 Civil Procedure Code, which stipulates that individuals and legal entities can opt for arbitration to resolve civil disputes, as long as it does not violate the law. This will also help give arbitrators more legal space to operate effectively, in accordance with international practice.

However, to accommodate for this expansion of responsibility, it is necessary to improve the professional competencies of arbitrators and judges. Arbitrators need to improve their competencies not just in terms of professional legal skills, but also professional ethics and the ability to operate the arbitration process, preventing procedural mistakes that could lead to annulment of arbitration awards by the Court. Judges need to be provided with in-depth training in arbitration and commercial laws. This will help ensure impartiality, practical understanding, and adherence to international practices.

Secondly, it is necessary to amend and supplement the Law on Commercial Arbitration towards the

clarification expansion of the definition of “commercial activities” to fit current commercial practices and establishment of a clear boundary between the jurisdiction of arbitrators and the Court, as will be expanded in later sections.

Lastly, to ensure effective application and implementation, amendments to the Law on Commercial Arbitration need to be connected with amendments to other relevant laws such as the 2015 Civil Procedure Code – supplementing a mechanism for the annulment of arbitration awards; **Law on Enforcement of Civil Judgments – supplementing specific procedures regarding the enforcement of arbitration awards**; Law on Administrative Procedures and other specialized laws – eliminate disputes under the jurisdiction of the Court to prevent conflicts in authority.

ISSUES IN ANNULMENT OF ARBITRATION AWARDS AND SUGGESTIONS FOR IMPROVEMENTS

Issues in annulment of arbitration awards

One of the greatest issues in the practice of applying the law on commercial arbitration today is that more and more arbitration awards are being annulled by the Court, severely damaging the reputation and enforcement ability of this method of dispute resolution. Although supervision from the Court is necessary, the annulment of arbitration awards is often inconsistent, lacking clear basis, causing apprehension among the business community.

In reality, many arbitration awards are annulled due to violations of procedures, especially those specified in Clause 2 Article 68 in the 2010 Law on Commercial Arbitration, such as: “arbitration council's composition or procedures of arbitral proceedings is incompliant...” or “contravenes the fundamental principles of Vietnamese law”. However, concepts such as “incompliant” or “fundamental principles” lack clear definitions, leading to arbitrary understanding and application between different courts. Consequently, many arbitration awards are annulled without clearly specifying violations, reducing confidence in arbitration.

Data shows that during the 2011-2020 period, there was a sharp increase in the rate of annulled arbitration awards, especially in major cities like Ha Noi, indicating a worrying trend. Disputes with annulled arbitration awards usually fall into cases

yet to be clearly regulated within the law on commercial arbitration, such as the involvement of a third party, minor procedural violations, or mistakes in applying civil procedure law in arbitration procedures.

Notably, after July 1st, 2025, with the reorganization of the Court system according to the new administrative and economic units (mergers of the district, county, and provincial level), the greatly increased workload at the Court means that arbitration must become an effective alternative. However, if arbitration awards continue to be wantonly annulled, this method will be unable to meet the requirements set by judicial reforms and in turn, share the burden with the Court.

Suggestions for improving the state of annulment of arbitration awards

Although the 2010 Law on Commercial Arbitration was meant to limit court interference in arbitration awards, in reality, the rate of annulled arbitration awards remains high and inconsistent among different localities. The main reason for this is due to provisions in Point d, Clause 2, Article 68 (“The award contravenes the fundamental principles of Vietnamese law”) being too abstract and broad, leading to arbitrary interpretations with different perspectives and understandings. For example, this phrasing could allow parties to interpret clauses and articles that would be favorable to them as “fundamental” and those unfavorable as “non-fundamental”.

Therefore, it is necessary to clarify the meaning of “*fundamental principles*” by referring to Article 4 of the 2010 Law on Commercial Arbitration, meaning only when arbitration awards violate the principles of fairness, equality, consent, confidentiality, ethics, or national security would they be annulled.

Another issue is that parties may try to find courts that will treat their case favorably, a practice often called “forum shopping”. In the case between BNSF Railway and their two former employees in March 2011, BNSF attempted to push jurisdiction to the Montana court to be tried under Montana laws since there was precedent for state courts jurisdiction to hear FELA cases solely due to the railroad doing business in the forum state. This was blocked by the court since the injuries in the case were not in Montana and the company itself was incorporated in Delaware. While it could be argued that this case of window shopping was due

to different states having different laws and that in Vietnam, where there is only one set of laws, this would not happen, given the increasing pace of globalization in the country, it is entirely possible for multinational/international corporations to move the case to another country where trials might be more favorable or where they may have “home advantage”. Therefore, a potential solution could be to directly stipulate in the law that commercial arbitration must take place where transaction of goods is done. For example, if the deal involves goods from Vietnam, any commercial arbitration must be done in Vietnam.

Clermont (1995) has suggested that actively transferring a case to the appropriate court is a potential solution to forum shopping that most lawmakers overlook, often equating it to forum shopping. In Vietnam, with the context of ongoing national reforms, it may be unwise to create new courts with exclusive jurisdiction over types of commercial disputes. However, it is entirely possible to encourage arbitration centers to specialize in certain types of cases so that cases can be delegated to them as soon as they arise. This would also help solve the ongoing issue of inconsistent quality across arbitration centers and reduce the workload for both the court system and VIAC, creating more grounds for future development of commerce in Vietnam.

Another potential solution is to minimize reviewing disputes at the Court under the excuse of “reviewing procedures”. This can be done by supplementing a quantifying mechanism for the concept of “incompliant” according to Resolution No. 01/2014/NQ-HĐTP to prevent arbitrary and inconsistent application between judges, especially during the restructuring period of the Court system by region. Furthermore, compensations must be required if the request for the annulment of the arbitration award is groundless to protect the legal finality of the arbitration award and prevent delaying enforcement.

As mentioned above, while there is only 1 set of laws in Vietnam, the articles between different laws still create conflicts or overlaps. Therefore, it is necessary to synchronize the Law on Commercial Arbitration with the Civil Procedure Code, Resolution No. 01/2014/NQ-HĐTP and other guiding documents;

Provide professional training for judges in the law on commercial arbitration after the reorganization of the Court system, avoiding confusion between

arbitration and traditional litigation. Improving legal regulations on annulling arbitration awards is a prerequisite to assert the role of commercial arbitration in the context of comprehensive judicial reforms today.

ISSUES IN ENFORCING ARBITRATION AWARDS AND SUGGESTIONS FOR IMPROVEMENT

Issues in enforcing arbitration awards

Arbitration awards specified in Article 61 of the 2010 Law on Commercial Arbitration (LCA) are legally binding between the involved parties, equal to a valid judgment from the Court, but current practices in enforcing arbitration awards in Vietnam presents many limitations. In contrast to the Court system, arbitration does not have its own enforcement mechanisms, so the enforcement ability of arbitration largely depends on the goodwill of the enforced party and support from the civil judgment enforcement agency (CJEA).

According to Article 66 of the LCA, if the party to comply with the award does not carry out the terms of the arbitration awards, the party in favor of the arbitration award can issue a request for enforcement by the provincial CJEA. However, in reality, the enforcement of arbitration awards still faces many challenges:

There are no separate procedures for enforcing arbitration awards: the Law on Commercial Arbitration does not specify any procedures for enforcing arbitration awards but rather references the Law on Enforcement of Civil Judgments. However, the Law on Enforcement of Civil Judgments (2008, amended in 2014) also has no specific regulations uniquely applied to arbitration awards, causing difficulties for the CJEA in consistently applying this law.

Problems in identifying the legal status of arbitration awards: the fact that the party to comply with the award has to obtain a confirmation from the Court that there has not been a request to annul the arbitration award is inappropriate. This is not stated in any legal document, leading to a situation in which each local Court has a different way of applying it, affecting the enforcement of the award (Ratnayake, 2025).

The rate of enforcement of arbitration awards is still low: According to Report No. 74/BC-BTP dated 08/4/2016 from the Ministry of Justice, only about 60% of arbitration awards are successfully enforced. The main reasons are: The assets of the

party subject to enforcement cannot be verified; Some arbitration awards lack clarity and specificity; The losing party can take advantage of the provisions of Article 68 of the LCA to request annulment of arbitration awards to delay, prolong enforcement or disperse assets.

Lack of cooperating mechanism between the Court and the CJEA: currently, when a civil judgment enforcement agency requests confirmation of whether an arbitration award has been annulled, the issuance of the confirmation document depends entirely on the Court, but the 2015 Civil Procedure Code also does not prescribe any procedures for doing this. This leads to inconsistencies, causing difficulties for both state agencies and the parties involved (Kejriwal, 2024).

Merging of the Court system and judicial agencies after July 1st, 2025: According to Resolution No. 34/2024/QH15 from the National Assembly on the reorganization of the Court, Procuracy, and CJEA system following the regional model, these agencies will no longer be organized by provincial administrative units as before. This poses an urgent need to amend the provisions of Article 66 of the LCA, which currently stipulates that the provincial CJEA where the arbitration council issue the award has jurisdiction over enforcement, to better suit the new organizational model. Without amendments, this regulation will become outdated and unfeasible in practice (Puthiya, 2025).

Suggestions for improvement of the enforcement of arbitration awards

The enforcement ability of arbitration awards is the “backbone” of dispute resolution via arbitration. If arbitration awards are not enforced in practice, arbitration will lose its competitive role versus the Court. Even though according to Article 66 of the LCA, arbitration awards are enforced similarly to a Court order, in reality, there are still many barriers such as verifying the validity of arbitration awards, the time limit for resolving the request to annul arbitration awards, or conflicts between enforcement regulations. To resolve the aforementioned issues and improve the effectiveness of enforcing arbitration awards in the context of judicial reforms, it is necessary to supplement procedures for enforcing arbitration awards within the Law on Commercial Arbitration or Law on Enforcement of Civil Judgments (Gollapudi, 2025).

To ensure proper implementation, there needs to be a cooperative mechanism between the Court –

Arbitrators – Enforcement to confirm the legal validity of arbitration awards in a timely and consistent manner. There needs to be a connecting mechanism between the Court and CJEA for confirming the status of arbitration awards to avoid “buck-passing” of responsibility. For example, Furthermore, these three agencies need to clearly stipulate the entity responsible for providing proof of the status of arbitration awards (whether or not there is a request for annulment).

To empower enforcement agencies and give them the impetus to perform their responsibilities, the CJEA need to be given the role of confirming the legal status of arbitration awards, instead of asking litigants to do it themselves. Furthermore, enforcement agencies need to proactively request the Court to confirm the status of arbitration awards to avoid causing delays to the parties involved. This will allow for proactive actions from enforcement agencies and drastically reduce the amount of waiting time and possible intentional delays by disputing parties.

Lastly, amendments could be made to Article 66 of the LCA on jurisdiction over enforcement of arbitration awards to be aligned with the regional judicial organization model after July 1st, 2025. The Supreme People's Court and the Ministry of Justice have a duty to strengthen guidelines on unified implementation of all laws, avoiding the case where each locality has its own way of interpreting and implementing certain laws (Diaz Munoz, 2025).

CONCLUSION

In the context of deep judicial reforms, especially from July 1st, 2025 with the reorganization of the Court system by region, improving the law on commercial arbitration has become a matter of grave urgency, not only to reduce the burden on the traditional judicial system, but to improve the level of national institutional competitiveness. The above suggestions need to be placed in the context of the strategy of comprehensive judicial reforms and the development of the Socialist Rule-of-law State of Vietnam to help turn Arbitration into a more effective, flexible, and reliable method of resolving disputes in the modern market economy.

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