

VIAC Arbitration vs. Court Litigation: Comprehensive Insights

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July 2025

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When a commercial dispute cannot be resolved amicably, the parties often turn to either litigation through the courts or arbitration through a competent institution to reach a final resolution. In Vietnam, the preferred institution for arbitration is typically the Vietnam International Arbitration Centre (VIAC). This article aims to provide a clearer understanding of the pros and cons of both VIAC arbitration and litigation through the Vietnamese courts, as well as the practical realities associated with each option.

1. When to choose VIAC Arbitration

The greatest advantage of commencing arbitration through VIAC is the freedom of choice it offers. Both parties can agree on various procedural aspects of the arbitral proceedings, unlike court litigation, which generally follows a strict set of procedural rules. Some notable advantages include, but are not limited to:

1.1 Adjudicator

In arbitration, the parties can select the arbitrators for their case based on specific criteria, such as nationality, language, expertise, and experience. Furthermore, parties may even appoint individuals who are not on VIAC's official list of arbitrators¹. This means that at VIAC, the parties have the freedom to select whomever they consider most suitable to resolve the dispute.

In contrast, for court litigation, the parties do not have such a choice. Judges – who must be Vietnamese citizens – are assigned by the chief justice under procedures prescribed by law². As a result, there is a possibility that the appointed judges may not meet the specific needs or expectations of the parties involved.

1.2 Location of hearing

The parties have complete freedom to decide whether to hold the arbitration hearing within or outside Vietnam, and whether it will be conducted in person, via teleconference, videoconference, or any other appropriate means. This flexibility allows the parties to choose a venue and format that is most convenient for them.

Conversely, the location of court hearings is entirely determined by the judge³. Typically, hearings take place in a courthouse⁴. While it is possible to conduct court hearings online, this is allowed only under limited circumstances – such as when the dispute is simple and supported by clear documents and evidence⁵. Moreover, no law grants the parties the right to compel online hearings; the final decision rests with the judicial authorities.

¹ Article 12 and 13 of the VIAC Rules of Arbitration (“**VIAC Rules**”).

² Article 47.1.b of the Civil Procedure Code 2015 (“**CPC 2015**”); Article 2.1 of the Circular 01/2022/TT-TANDTC; Article 94.1 of the Law on Organization of the People's Court 2024 (“**LOPC 2024**”).

³ Article 48.8 and 222 of the CPC 2015.

⁴ Article 223 of the CPC 2015.

⁵ Article 136.1 of the LOPC 2024; Article 1.1 of Resolution 33/2021/QH15.

1.3 Confidentiality

By default, the entire arbitration process is conducted confidentially, unless the parties agree otherwise⁶. In contrast, court litigation is generally a public process⁷. The court will only hold a closed trial at the legitimate request of the parties and when the court deems it necessary to⁸:

- (a) Protect state secrets;
- (b) Preserve customs and traditions;
- (c) Protect minors; and
- (d) Protect occupational, business, personal, and family secrets.

Public trials essentially allow spectators who are not involved in the dispute to attend and observe the proceedings, including the issuance of the verdict. These spectators can range from curious civilians to journalists seeking news, with high-profile cases often receiving coverage in news outlets and on social media platforms.

1.4 Impartiality

Upon assuming the position of a judge, the individual must solemnly swear allegiance to the Socialist Republic of Vietnam and its Constitution, as well as commit to maintaining strong political loyalty⁹. As a result, if a dispute involves issues in which the state has a vested interest, the court is required to consider national and political interests throughout the litigation process. This may potentially disadvantage one party in the conflict.

Alternatively, arbitrators – who may be exclusively foreigners without such political obligations – are not bound by these commitments. In principle, arbitrators must respect the parties' agreements and act independently, objectively, and impartially, while complying with the law¹⁰. Therefore, parties can reasonably expect their dispute to be resolved without interference from state or political agendas.

1.5 Choice of lawyers

Foreign lawyers, even if licensed to practice in Vietnam, are not permitted to represent a party in court or plead on their behalf¹¹. Consequently, even when the governing law of the dispute is foreign law, parties must still hire Vietnamese lawyers, which can increase costs and complexity.

⁶ Article 4.4 and 55.1 of the LCA 2010; Article 25.3 and 38.2 of the VIAC Rules.

⁷ Article 8.2 of the LOPC 2024; Article 15.2 of the CPC 2015.

⁸ Ibid.

⁹ Article 89.1 and 94.1 of the LOPC 2024; Article 2.1 of the Resolution 87/QĐ-HĐTC on the issuance of the Code of Ethics and Conduct for Judges by the National Judicial Oversight Selection Council dated 4 July 2018.

¹⁰ Article 4.1.(1,2) of the LCA 2010.

¹¹ Article 76 of the Law on Lawyers 2006; Article 1.30 of the Law No. 20/2012/QH13 amending and supplementing several articles of the Law on Lawyers.

By comparison, VIAC arbitration does not impose such restrictions. Parties are free to engage foreign lawyers who are experts in the subject matter of the dispute¹². This allows them to utilize their trusted legal counsel throughout the dispute resolution process.

1.6 Involvement by other authorities

In VIAC arbitration, the parties typically involved include only VIAC, the arbitral tribunal, and the disputing parties, along with their respective witnesses and lawyers¹³. Generally, the only state authorities that become involved are enforcement agencies after the arbitral award has been issued¹⁴.

On the other hand, court litigation often involves additional authorities beyond the judges, such as the procuracy, jurors selected by the People's Council, and potentially the police¹⁵. If these authorities take a strong interest in the case – such as deciding the dispute warrants further investigation – what might have been a simple commercial disagreement could escalate into a serious issue. This could expose the parties to administrative sanctions or even criminal liabilities.

2. When to choose Court litigation

Although arbitration offers many advantages as a form of dispute resolution, court litigation is sometimes preferable – and in some instances, mandatory – due to a variety of reasons, including but not limited to the following:

2.1 Stringent procedures & supervision

As noted earlier, the litigation process involves multiple authorities whose purpose is to supervise and ensure full compliance with the law¹⁶. There are even legal mechanisms that allow for the overruling of unlawful verdicts. For instance, if the procuracy determines that a judgment does not align with the objective facts of the case and causes harm to a party, it may initiate judicial review procedures to overturn that judgment¹⁷.

Moreover, each step of the litigation process is governed by strict legal requirements, with courts and authorities frequently issuing new laws and guidance to address various circumstances.

By comparison, arbitral proceedings tend to be less detailed and more flexible, as they can be tailored based on the parties' agreements. For example, parties may set deadlines for submitting the Statement of Defense, establish procedures for selecting arbitrators, and agree on the allocation of costs for arbitration.

2.2 Authority to resolve a dispute

According to the LCA 2010, the following disputes can be resolved through arbitration:

¹² Article 4.1 of the VIAC Rules.

¹³ Article 25.3 of the VIAC Rules.

¹⁴ Article 8 of the LCA 2010.

¹⁵ Article 46, 103 and 234.1 of the CPC 2015; Article 127.1.a of the LOPC 2024; Article 1.20 of the amended LOPC 2025; Article 3.5 of the Circular 13/2016/TT-BCA; Article 1.1 of the Circular 117/2020/TT-BCA.

¹⁶ Article 21 of the CPC 2015.

¹⁷ Article 325, 326.1.a and 331 of the CPC 2015.

“Article 2. Arbitration’s jurisdiction to resolve disputes

- 1. Disputes between parties arising from commercial activities;*
- 2. Dispute arising between parties in which at least one party is engaged in commercial activities;*
- 3. Other disputes between parties that the law permits to be resolved through arbitration.”*

(a) Disputes between parties arising from commercial activities

Under Article 3.1 of the Law on Commerce 2005, commercial activities are defined as follows:

“Commercial activities mean activities to generate profits, including: sale and purchase of goods, provision of services, investment, commercial promotion, and other activities for the purpose.”

Accordingly, disputes arising from the above commercial activities, such as sales contracts, supply contracts, and distribution contracts, can be resolved through arbitration.

(b) A dispute arising between parties in which at least one party is engaged in commercial activities

This provision essentially allows for disputes where only one party is engaged in commercial activities – such as those between sellers and consumers, or service providers and service receivers – to be resolved through arbitration.

A noteworthy example of this type of dispute is Case Law No. 69/2023/AL published by the People’s Supreme Court on October 1, 2023¹⁸. This case concerned a dispute over a non-disclosure and non-compete agreement (“**NDA**”) between an employee and an employer. The court affirmed that since the employer is a business entity registered for business and engaged in commercial activities under the Law on Commerce, VIAC has the authority to resolve the dispute under Article 2.2 of the LCA 2010¹⁹.

Although this case law specifically addresses disputes regarding NDAs and not general employment contracts, it potentially opens the door for other civil contracts arising from labor relationships to be resolved through commercial arbitration.

¹⁸ <https://anle.toaan.gov.vn/webcenter/portal/anle/chitietanle?dDocName=TAND315866>.

¹⁹ Ibid

Moreover, from this case law, Article 2.2 of the LCA 2010 could be interpreted to mean the following:

- (i) A dispute can be submitted to arbitration as long as one party is engaged in commercial activities, regardless of whether those activities are directed toward the other party to the dispute; and
 - (ii) Non-commercial disputes, such as those involving NDAs, may still fall within the jurisdiction of arbitration, unless otherwise expressly prohibited by law.
- (c) Other disputes between parties that the law permits to be resolved through arbitration.

The law is continuously evolving, and there are varying opinions on whether certain disputes are eligible for arbitration. In addition to the matters discussed above, several other notable types of disputes are currently permitted to be resolved through arbitration, including:

- (i) Land

Before the new Law on Land took effect on August 1, 2024²⁰, all land-related disputes were required to be resolved by either the People's Committee or courts²¹. However, Article 236.5 of the Law on Land 2024 now allows certain disputes regarding land to be resolved through arbitration, which reads as follows:

"Disputes between parties arising from commercial activities related to land will be resolved through Court in accordance with the regulations on civil proceedings or through Vietnamese commercial arbitration in accordance with regulations on commercial arbitration."

This provision, in principle, grants arbitral institutions jurisdiction over disputes arising from commercial activities related to land. That said, there is currently no official guidance or case law on this matter, potentially leaving room for challenges to the legality of arbitral awards in land-related disputes.

- (ii) Intellectual property

Since the advent of the Law on Intellectual Properties in 2005, disputes regarding intellectual property may be brought to arbitration. See Article 198.1.d, which reads as follows:

²⁰ Article 252.1 of the Law on Land 2024; Article 1.2 of the Law No. 53/2024/QH15.

²¹ Article 203 of the Law on Land 2013.

“1. Intellectual property rights holders have the right to apply the following measures to protect their intellectual property rights:

(d) File a lawsuit in court or arbitration to protect their legitimate rights and interests.”

Unlike arbitration, courts do not face such jurisdictional limitations. They have full authority to resolve disputes ranging from commercial and intellectual property matters to family and inheritance issues²². Additionally, courts cannot refuse to hear a case simply because there is no specific law applicable to the matter²³. As a result, it is rare for parties to challenge a Vietnamese court on jurisdictional grounds.

2.3 Appeal

In court litigation, if one party is dissatisfied with the first-instance judgment, they have the right to initiate an appeal, and the case may be brought before an appellate court for review²⁴. Conversely, arbitral awards are generally considered final and binding, with no right of appeal²⁵.

Arbitral awards can only be challenged or set aside on limited grounds, such as lack of jurisdiction, procedural violations, submission of forged evidence, conflicts of interest, or breaches of fundamental principles of Vietnamese law²⁶.

3 Other factors to consider

Beyond the advantages and disadvantages discussed above, parties should also consider the following factors when selecting a dispute resolution method.

3.1 Average length of case adjudication

For cases involving a foreign individual, organization, or other situations where there is a “foreign element,” the law does not specify timelines for resolving disputes in either arbitration or court proceedings. As a result, the duration of the dispute resolution process is generally at the discretion of the court or tribunal.

That said, as discussed in earlier sections, arbitration allows the parties to tailor many procedural aspects, enabling a quicker resolution timeline. Arbitrators are incentivized to resolve disputes as quickly and efficiently as possible because they are compensated upon the conclusion of an arbitration, and the amount of their compensation is not dependent on the length of the arbitration. In addition, while parties must adhere to the authority of a single Vietnamese court, they have the option to choose from several arbitral institutions similar to VIAC. These factors combine to allow VIAC to adjudicate disputes much more quickly than courts in most instances.

²² Article 26 of the CPC 2015.

²³ Article 4.2 of the CPC 2015.

²⁴ Article 271 and 285 of the CPC 2015.

²⁵ Article 4.5 of the LCA 2010.

²⁶ Article 68.2 of the LCA 2010; Article 32.5 of the VIAC Rules.

3.2 Costs and expenses

Currently, the lowest and highest standard court and VIAC arbitration fees are as follows²⁷:

	Court (first-instance)		VIAC arbitration (3 arbitrators)	
	Dispute value	Fees	Dispute value	Fees
Lowest	Up to VND60,000,000 (approx. USD2,300)	VND3,000,000 (approx. USD115)	Up to VND100,000,000 (approx. USD3,800)	VND16,500,000 (approx. USD630)
Highest	Over VND4 billion (approx. USD153,000)	VND112,000,000 (approx. USD4,300) + 0.1% of the dispute value exceeding VND4 billion (approx. USD153,000)	Over VND500 billion (approx. USD19,100,000)	VND3,609,300,000 (approx. USD137,900) + 0.3% of the amount exceeding VND500 billion (approx. USD19,100,000)

Technically, court fees are generally lower than arbitration fees, but the actual costs involved may differ significantly depending on the circumstances.

To illustrate, consider the following hypothetical dispute: A Chinese company (the Claimant) is engaged in a dispute with a Vietnamese company (the Respondent) regarding the acquisition of a factory in Vietnam.

(a) If VIAC arbitration is chosen

The parties agree that the arbitral tribunal will consist of three arbitrators: one Chinese, one Vietnamese, and a presiding arbitrator of a third nationality. Additionally, the parties agree to endeavor to resolve the dispute within three months, with the hearing to be conducted via video conference in English.

Accordingly, the tribunal schedules the hearing within the agreed timeframe, and VIAC arranges the online meeting link. Since Vietnamese lawyers are not required, the Claimant opts to use its in-house legal counsel for representation. Furthermore, because the hearing is conducted online, the Claimant avoids the cost of flying the counsel to Vietnam and paying for accommodations, allowing the counsel to participate comfortably from the Claimant's office.

²⁷ Section II.1.4 List of Court fees of Resolution 326/2016/UBTVQH14; <https://www.viac.vn/en/cost-of-arbitration>

After the hearing, the tribunal issues an award in the Claimant's favor. Since the award is final and the arbitral process fully complies with the law, the Respondent has no grounds to request the court to set aside the award. Consequently, the dispute is conclusively resolved, and the Claimant incurs no further costs related to this matter.

(b) If the court is chosen

Since courts do not permit foreign lawyers to represent parties, the Claimant must hire Vietnamese lawyers with expertise to manage the dispute from start to finish.

Upon receiving the lawsuit, the court assigns judges it considers most suitable for the case. Alongside the court, other authorities, such as the prosecution, jurors, and the police, may become involved in the litigation. After extensive deliberations, evidence gathering, and witness testimonies, the court determines that the case is too complex for an online hearing and issues summonses for all parties to attend an in-person hearing.

Because the factory is located in a remote province in Vietnam, the Claimant must cover the lawyers' travel and accommodation expenses.

The court eventually issues a judgment in favor of the Claimant. However, the Respondent rejects the decision and files an appeal, which requires the Claimant to expend additional resources to handle the appellate proceedings.

Ultimately, the dispute takes far longer than the Claimant anticipated, draining valuable time and resources.

Both court litigation and VIAC arbitration offer their unique benefits and challenges. Parties should have a clear understanding of these and carefully consider all relevant factors to select the most appropriate dispute resolution method.

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