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Arbitral Proceedings At The Vietnam International Arbitration Center (VIAC)

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This article provides an overview of the rules, procedures, and best practices for counsel and arbitrators in VIAC arbitrations governed by Vietnamese law, drawing on our practical experience, published VIAC materials, and relevant law.

1. What are the legal sources for VIAC's procedural rules? What other informal sources guide VIAC arbitrators?

The following legislations mainly govern arbitration proceedings in the Vietnam International Arbitration Centre (VIAC):

- Law on Commercial Arbitration No. 54/2010/QH12 dated June 17, 2010, of the National Assembly of the Socialist Republic of Vietnam (LCA);
- Resolution No. 01/2014/NQ-HDTP dated March 20, 2014, of the Judicial Council of the Supreme People's Court guiding the implementation of several provisions of the Law on Commercial Arbitration (Resolution 01/2014/NQ-HDTP);
- The Rules of Arbitration of the Vietnam International Arbitration Centre are in force as of March 1, 2017 (VIAC Rules);
- Guidance No. 112/QĐ-VIAC, dated June 18, 2024, on selecting arbitrators and related procedures.[1]

In addition, VIAC also issued and disseminated internally among VIAC and Arbitral Tribunals under VIAC the Guidelines on Arbitration Procedural at Vietnam International Arbitration Centre for Arbitrators ("Guide"). VIAC arbitrators use the Guide for detailed procedural steps and best practices for VIAC proceedings. The Guide states that it incorporates best practices in international arbitration and draws from VIAC's experience to ensure compliance with the VIAC Rules and current laws. The Guide also contains sample VIAC arbitration document templates.

2. Qualification of arbitrators

2.1. Qualifications set by the laws

According to Article 20.1 and Article 20.2 of LCA, a person must meet all the following qualifications to be eligible to act as an arbitrator:

- Having full civil legal capacity as prescribed in the Civil Code;
- They must hold university qualifications and have at least five years of work experience in their field of study, except for experts with highly specialized qualifications and considerable practical experience.
- Not being a person who is currently a judge, prosecutor, investigator, enforcement officer, or official of a people's court, of a people's procuracy, of an investigative agency, or a judgment enforcement agency;

[1] https://www.viac.vn/images/Arbitration/Administered-of-Arbitration/Guidance%20on%20Arbitrator%20Appointment/QD.112_Huong%20dan%20chon%20Trong%20tai%20vien.pdf

- Not being a person under a criminal charge or prosecution, serving a criminal sentence, or fully serving a sentence, but whose criminal record has not been expunged.

2.2. Qualifications set by VIAC

Under Article 20.3 of the LCA, an arbitration center can set higher qualifications for admission to its center than those in the LCA. VIAC has higher admission standards for its panel arbitrators.[2] Under the Charter of VIAC, A person applying for admission as an arbitrator of VIAC shall satisfy the conditions as follows:

- *General conditions*
    - Age from 30 to 70.
    - University-graduated and have experience working in this field for at least 8 years, except for experts with high levels of professionalism and experience.
    - Committing to resolving disputes independently, objectively, and fairly; ready to participate in the center's activities; and endeavor to contribute to the center's development.
- *Additional conditions*

    In addition to the conditions provided above, a person applying for admission as an arbitrator shall satisfy one of the conditions as follows:

    - Having acted as an arbitrator in the three previous disputes resolved by arbitration or
    - Admission to an arbitration panel of a worldwide accepted arbitration organization and has resolved at least one dispute in this organization, or
    - Introduced by a nationwide professional society, a university, an academy, or
    - Introduced by at least one member of the Executive Committee.

Applicants who satisfy the minimum qualifications to become a VIAC panel arbitrator do not guarantee admission. The consideration of the admission of a person as arbitrator of the VIAC falls within the authority of the Executive Committee of the VIAC.

Per Article 12.1, Article 12.2, and Article 13 of VIAC Rules and Guidance on the selection of arbitrators and related procedures, parties can select an arbitrator who is not on VIAC's panel of arbitrators, provided that they satisfy the qualifications of the LCA.

[2] https://www.viac.vn/en/faqs/arbitrator

2.3. Impartiality and Independence

Per Article 4.2 of the LCA and Article 16.1 of the VIAC Rules, arbitrators must be independent, objective, and impartial when accepting an appointment to serve. They shall remain so during the arbitration.

Under Article 42.1 of the LCA and Article 16.3 of the VIAC Rules, an arbitrator must refuse to resolve the dispute, and the parties have the right to request a change of the arbitrator in the following cases.

- The arbitrator is a relative or representative of one of the parties.
- The arbitrator has a related interest in the dispute.
- There is clear evidence that the arbitrator is not impartial or objective.
- He or she has been a mediator, representative, or lawyer of any party before bringing the dispute to arbitration unless otherwise agreed in writing.

2.4. Disclosure

Per Article 42.2 of the LCA, after being selected or designated, an arbitrator shall notify the arbitration center, council, and parties in writing of the circumstances that may affect his/her objectivity or impartiality.

For VIAC, prospective arbitrators shall review the available case documents to complete the Arbitrator Statement per the instructions provided in the statement. Prospective arbitrators, especially lawyers or those holding positions in an organization/institution, shall carefully review each circumstance mentioned in "Section 3 - Independence and Impartiality" in the Arbitrator Statement for disclosure (if any). Before accepting to act as an arbitrator and throughout the arbitral proceeding, arbitrators shall make reasonable efforts within his/her capacity to investigate and identify potential conflicts of interest as well as facts and circumstances that may give rise to doubts as to his/her independence, impartiality, and objectivity. In particular, arbitrators must verify whether any past or present relationship (familial, financial, professional, etc.) exists, whether direct or indirect, between them and any of the parties, their related entities, affiliates, lawyers, or other representatives. Arbitrators shall immediately disclose to the VIAC's Secretariat and the tribunal any potential conflict, facts, and circumstances that may give rise to their independence, impartiality, or objectivity.Arbitrators should resolve any doubts about disclosure in favor of disclosure. Any disclosure should be complete and detailed, listing relevant dates (both starting and ending dates), related arrangements, details of individuals and organizations, and all other relevant information.

2.5. Common grounds for objections

VIAC's Arbitrator Statement lists circumstances in which a conflict of interest may exist or cast doubt on arbitrators' independence, impartiality, and objectivity. Notably, common grounds for objections outlined in the Arbitrator Statement, which the VIAC arbitrators must follow, include:

(a) **Non-Waivable Red List:** Where the Arbitrator shall automatically not act as arbitrator in an arbitration:

- The arbitrator is a party's relative, a legal representative, an employee, or otherwise a representative of an entity that is a party to the arbitration.

- The arbitrator is a manager, director, or supervisory board member, or has a similar controlling influence in one of the parties or an entity that has a direct economic interest in the award to be rendered in the arbitration.

- The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

- The arbitrator or their firm regularly advises one party or an affiliate of one party, and the arbitrator or their firm derives a significant financial income.

(b) **Waivable Red List:** Where the Arbitrator shall not act as arbitrator in the arbitration unless the parties expressly agree:

- Relationship of the arbitrator to the dispute:

  - The arbitrator has given legal advice or expert opinion on the dispute to a party or an affiliate of one of the parties.

  - The arbitrator was a mediator, a representative, and a counsel of any of the parties currently being brought to VIAC or who had prior involvement of any other kind in the dispute.

- Arbitrator's direct or indirect interest in the dispute:

  - The arbitrator holds shares directly or indirectly in one of the parties or an affiliate of one of the privately held parties.

  - A close family member of the arbitrator (including spouse, sibling, child, parent, or life partner) has a significant financial interest in the outcome of the dispute.

  - The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

- Arbitrator's relationship with the parties or counsel:

  - The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

  - The arbitrator currently represents or advises the lawyer or law firm acting as counsel for one of the parties.

  - The arbitrator is a lawyer in the same law firm or a colleague in the same organization as the counsel or representative of one of the parties.

- The arbitrator is a manager, director, or supervisory board member, or has a similar controlling influence in an affiliate of one of the parties, provided that the affiliate is directly involved in the matters in dispute in the arbitration.

- The arbitrator's law firm had a previous but terminated involvement in the case, without the arbitrator being involved in the matter.

- The arbitrator's firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

- The arbitrator regularly advises one of the parties or an affiliate of one of the parties, but neither the arbitrator nor the arbitrator's firm derives significant financial income from this relationship.

- The arbitrator has a close family relationship with one of the parties, a manager, director, or supervisory board member, or any person having a similar controlling influence in one of the parties, an affiliate of one of the parties, or a counsel representing a party.

- A close family member of the arbitrator has a significant financial interest in one of the parties or is an affiliate of one of the parties.

- The arbitrator does not meet specific requirements agreed upon by the parties.

(c) **Orange List:** Where the Arbitrator shall make disclosure and may not act as arbitrator if a party objects and a decision on replacement of arbitrator follows

- Previous services for one of the parties or other involvement in the dispute

  - Within the past 3 years, the arbitrator has served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making an appointment in an unrelated matter. Still, the arbitrator and the party, or the party's affiliate, have no ongoing relationship.

  - Within the past 3 years, the arbitrator has served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.

  - Within the past 3 years, the arbitrator has been appointed as arbitrator on three or more occasions (including the case at present) by one of the parties or an affiliate of one of the parties.

  - Within the past 3 years, the arbitrator's firm has acted for or against one of the parties or an affiliate of one of the parties in an unrelated matter without the arbitrator's involvement.

- The arbitrator currently serves or has served within the past three years as an arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

- Current services for one of the parties

  - The arbitrator's firm currently renders services to one of the parties or an affiliate of one of the parties, without creating a significant commercial relationship for the firm or involving the arbitrator in any such relationship.

  - A law firm or other individual/organization that shares revenues or fees with the arbitrator's firm renders services to one of the parties or an affiliate before the Arbitral Tribunal.

  - The arbitrator or the arbitrator's firm regularly represents a party or an affiliate of a party to the arbitration; however, such representation does not pertain to the current dispute.

- Relationship between an arbitrator and another arbitrator or counsel

  - The arbitrator and another arbitrator in the same tribunal or the arbitrator and counsel of one of the parties are lawyers in the same law firm, barristers in the same chamber, or colleagues in the same organization.

  - Within the past 3 years, the arbitrator was a partner of, or otherwise affiliated with, another arbitrator or any of the counsels in the same arbitration.

  - A lawyer or colleague in the arbitrator's firm is an arbitrator, counsel, or representative in another dispute involving the same party or parties or an affiliate of one of the parties.

  - A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

  - A close personal friendship exists between the arbitrator and a counsel or a representative of one party.

  - Within the past 3 years, the arbitrator has received more than three appointments (including this case) from the same counsel and/or firm representing a party.

  - The arbitrator and another arbitrator, or counsel for one of the parties in the arbitration, currently act or have acted together within the past three years as members of an arbitral tribunal or co-counsel.

- Relationship between an arbitrator and a party and others involved in the arbitration

  - The arbitrator's firm is currently acting in a manner that is adverse to one of the parties or an affiliate of one of the parties.

- The arbitrator had been associated with a party or an affiliate of one of the parties in a professional capacity within the past 3 years, such as a former employee or partner.

- A close personal friendship exists between the arbitrator and a manager, director, supervisory board member, or any person having a similar controlling influence in one of the parties, an affiliate of one of the parties, or a witness or expert.

- Enmity exists between the arbitrator and a manager, director, or a member of the supervisory board of a party; an entity that has a direct economic interest in the award; or any person having a controlling influence in one of the parties, or an affiliate of one of the parties, or a witness or expert.

- If the arbitrator is a former Judge, the arbitrator has, within the past 3 years, heard another case involving one of the parties or an affiliate of one of the parties.

- Other circumstances

  - The arbitrator holds shares, either directly or indirectly, which, because of several denominations, constitute a material holding in one of the parties or an affiliate of one publicly listed party.

  - The arbitrator has publicly advocated a specific position regarding the case being arbitrated, whether in a published paper, speech, or otherwise.

  - The arbitrator holds one position with the appointing authority over the dispute.

  - The arbitrator is a manager, director, or member of the supervisory board, or has a similar controlling influence in an affiliate of one of the parties, provided that the affiliate is not directly involved in the matters in dispute in the arbitration.

The list provided is similar to those outlined in the IBA Guidelines on Conflicts of Interest in International Arbitration, approved by the IBA Council on May 25, 2024.[3]

Arbitrators have no duty to disclose situations beyond those outlined in the Arbitrator Statement. The IBA Guidelines on Conflicts of Interest in International Arbitration provide the "Green List," a non-exhaustive list of situations (safe harbor) where no actual conflict of interest can exist under either the subjective or objective standard. It provides additional guidance for arbitrators to assess whether they must disclose the situation or not.

[3] https://www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024

Green List

- Previously expressed legal opinions:
  - The arbitrator has previously expressed a legal opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration (but this opinion is not focused on the case).
- Current services for one of the parties:
  - A firm, in association or alliance with the arbitrator's law firm or employer, but that does not share significant fees or other revenues with the arbitrator's law firm or employer, renders services to one of the parties or an affiliate of one of the parties, in an unrelated matter.
- Contacts with another arbitrator or with counsel for one of the parties:
  - The arbitrator has a relationship with another arbitrator or with the counsel for one of the parties through membership in the same professional association, social or charitable organization, or through a social media network.
  - The arbitrator and counsel for one of the parties have previously served as arbitrators on the same arbitration panel.
  - The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties, or serves as an officer of a professional association or social or charitable organization with another arbitrator or counsel for one of the parties.
  - The arbitrator was a speaker, moderator, or organizer in one or more conferences or participated in seminars or working parties of a professional, social, or charitable organization with another arbitrator or counsel to the parties.
- Contacts between the arbitrator and one of the parties:
  - The arbitrator has had initial contact with a party or an affiliate of a party (or their counsel) before appointment if this contact is limited to the arbitrator's availability and qualifications to serve or to the names of possible candidates for a chairperson and did not address the merits or procedural aspects of the dispute, other than to provide the arbitrator with a basic understanding of the case.
  - The arbitrator holds insignificant shares in one of the parties or an affiliate of one of the parties, which is publicly listed.

- The arbitrator and a manager, director, or member of the supervisory board, or any person having a controlling influence on one of the parties or an affiliate, have worked together as joint experts or in another professional capacity, including as arbitrators in the same case.

- The arbitrator has a relationship with one of the parties or its affiliates through a social media network.

- Contacts between the arbitrator and one of the experts:

  - When acting as an arbitrator in another matter, the arbitrator heard testimony from an expert who appeared in the current proceedings.

3. Roles and responsibilities of the Arbitral Tribunal's members, Presiding Arbitrator, and VIAC Secretariat

3.1. Roles and responsibilities of the members of the arbitral tribunal

Under Article 60 of the LCA and Article 31 of the VIAC's Rules, arbitral awards and decisions of the tribunal are made based on the principle of majority. In other words, tribunal members have an equal vote in all arbitral decisions.

Per Article 21 of the LCA, the Arbitrators shall promptly resolve the dispute with independence, impartiality, and objectivity. To achieve efficiency in arbitration, the tribunal should establish internal guidelines that outline the overall roadmap of the tribunal's workflow, encompassing issues related to the oral hearing and the post-hearing phase. The internal guidelines should define the roles of the arbitrators during the arbitration, particularly concerning the possibility of asking questions (if any) to the parties and/or witnesses during case management meetings and the oral hearing. Additionally, clear deadlines should be established when drafting the award, including the expected submission date for the first draft and the timeframe for exchanging comments and suggested changes on this draft. Furthermore, the guidelines should include the possibility of scheduling internal meetings for the arbitrators whenever necessary, e.g., shortly after the parties' submissions.

Under Article 21 LCA, the Arbitrators shall keep all information related to the disputes they conduct confidential, unless required to disclose such information by a competent governmental authority under the law.

Per Article 16.4 of the VIAC Rules, during the arbitral proceedings, an Arbitrator cannot meet or contact any party privately, and no party shall be allowed to meet or contact an Arbitrator privately concerning any communication relating to the dispute.

3.2. Roles and responsibilities of the presiding arbitrator

In practice, the presiding arbitrator typically takes the lead on all draft decisions, orders, and correspondence of the panel, as well as the overall roadmap for processing the arbitration. Consequently, the presiding arbitrator should have significant experience with the subject matter of the arbitration and its procedural rules and be fluent in the language of the arbitral proceedings.

The presiding arbitrator typically receives more arbitration fees, usually 40% of total fees allotted to tribunal, to compensate for a higher workload.

3.3. Roles and Responsibilities of the VIAC Secretariat

Per Article 23 of the LCA, the Arbitration Center organizes and coordinates dispute resolution activities, providing administrative, office, and other support to Arbitrators during the arbitration proceedings.

Per Article 16.4 of the VIAC Rules, during the arbitral proceedings, an Arbitrator shall not privately meet or contact any party, and no party shall privately meet or contact an Arbitrator concerning any communication relating to the dispute. Thus, all communication between the arbitrators/arbitral tribunals and the parties, including orders, requests, instructions, explanations, decisions, and arbitral awards, must be conducted through the VIAC Secretariat under the procedures and formality prescribed by VIAC.

When appropriate, the VIAC Secretariat may, on its initiative or at the request of the Tribunals, provide the Tribunals with precedents, practices, and recommendations regarding, but not limited to, case management and procedural rules. However, the VIAC Secretariat must ensure that aid is conducted solely for the efficiency, efficacy, and procedural consistency in dispute resolution at VIAC, with great caution to respect the tribunal's independence in deliberation.

4. Can foreign lawyers or firms act as attorneys of parties in arbitration cases?

There are no provisions in Vietnamese laws that prohibit a foreign lawyer from participating in arbitral proceedings; therefore, they can participate. VIAC also confirms the eligibility of a foreign lawyer to participate in proceedings, just like a Vietnamese lawyer, on its website.[4]

5. Who is responsible for service of process, and what constitutes a valid service or process?

Per Article 3.2 of the VIAC Rules, VIAC sends all notices or documents to the parties "at the addresses provided by the parties." They can be sent by delivery against receipt, registered mail, facsimile, email, or any other means of communication that provides a record of the sending. Per Article 3.3 of the VIAC Rules, any notice or document sent by the VIAC to the parties is deemed received on the day the parties received it or would have received it on the day of delivery if the notice or document had been sent per Article 3.2 of the VIAC Rules.

Accordingly, VIAC is responsible for serving process, which relies on the addresses provided by the parties. A document is "deemed delivered" if sent per the rules. However, a respondent can avoid service of process by refusing or avoiding deliveries and using "undelivered notices" as grounds for setting aside arbitral awards. There have been several VIAC cases where a Vietnamese court set aside the arbitration award because the respondent did not receive the documents from VIAC. However, as of the date, no law provisions or VIAC Rules address the case of how to proceed in the event of "undelivered notices."

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4 https://www.viac.vn/en/faqs/viac#:~:text=The%20VIAC's%20Rule%20of%20Arbitration%20does%20not%20have%20provisions%20of,proceedings%20like%20a%20Vietnamese%20one.

One method practitioners have used to combat this issue is to use Vietnamese bailiffs to deliver the documents. In Vietnam, bailiffs, known as "thừa phát lại" in Vietnamese, are legal professionals appointed by the State to serve papers, ensure equalization, and oversee the implementation of court judgments.

6. When and how to use procedural orders (POs).

The tribunal issues procedural orders, which provide detailed instructions on the collection, submission, and presentation of evidence. These orders ensure a clear and orderly process for all parties. Following the first case management meeting with the parties, the tribunal typically issues its "Procedural Order No. 1" (PO1) to establish the external guidelines for the arbitration proceedings, benefiting the parties.

PO1 covers various topics in arbitration, including:

- Methods of communication and exchange of documents between the tribunal and the parties;
- The seat of the arbitration and the venue for the hearings;
- The language of the arbitration (including arrangements for translation if necessary);
- Applicable law for the merits of the dispute;
- Evidence standards, Content, and format of written submissions;
- Content of witness statements and expert reports; and
- Organization issues for the final hearing.

7. The Rules of Evidence in VIAC Arbitrations.

While the court proceedings have detailed evidentiary rules in the Civil Procedure Code (CPC), the CPC does not apply to VIAC arbitrations.Arbitration proceedings are a method of alternative dispute resolution (ADR) and must comply with the provisions of commercial arbitration laws and the arbitration center's procedural rules. There is no rule governing the admissibility of evidence under the LCA and VIAC Rules. Per Article 38.5 of VIAC Rules, in all matters not expressly provided for in these Rules, the VIAC and the tribunal shall act in the spirit of these Rules and make all efforts to resolve the dispute fairly and efficiently. Per Article 14.3 of the LCA, when the Vietnamese law [or] the law chosen by the parties does not contain specific provisions relevant to the matters in dispute, the arbitral tribunal may apply international customs to resolve the dispute if such application or consequences of such application are not contrary to the fundamental principles of Vietnamese law.

InVIAC proceedings, tribunals often rely on the IBA Rules on the Taking of Evidence in International Arbitration, adopted by the International Bar Association ("IBA Rules of Evidence"), a well-recognized set of international customs widely used in international arbitration, as guidelines for determining the admissibility of evidence in the dispute.

Per Article 9 of the IBA Rules of Evidence, the tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence. The tribunal shall, at the request of a party or on its motion, exclude from evidence or production any document, statement, oral testimony, or inspection, in whole or in part, for any of the following reasons:

- lack of sufficient relevance to the case or materiality to its outcome;
- legal impediment or privilege under the legal or ethical rules determined by the tribunal to be applicable;
- unreasonable burden to produce the requested evidence;
- loss or destruction of a document that has been shown with reasonable likelihood to have occurred;
- grounds of commercial or technical confidentiality that the tribunal determines to be compelling;
- grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the tribunal determines to be compelling or
- considerations of procedural economy, proportionality, fairness, or equality of the Parties that the tribunal determines to be compelling.

The tribunal may, at the request of a party or on its motion, exclude evidence obtained illegally.

8. What qualifies as admissible evidence?

In the process of resolving disputes, the tribunal's can decide on the admissibility and weight of evidence. Although in principle, the tribunal has complete discretion on these matters, such decisions should be based on rational criteria, particularly the authenticity and sufficiency of the evidence.

- Authenticity refers to the reliability, clear origin, and integrity of the evidence. Evidence is authentic if it is genuine, not unlawfully altered, and verifiable through credible and independent sources. Notably, suppose both parties acknowledge the evidence and raise no dispute regarding its authenticity. In that case, such recognition provides a strong basis for the tribunal to admit the evidence without requiring further verification.
- Sufficiency relates to the extent to which the evidence can clarify or substantiate a key fact in dispute. Even if the evidence is authentic, it may still carry little weight if it lacks essential information or fails to illuminate the key issues of the case.

The adherence to these principles of authenticity and sufficiency not only ensures fairness and transparency in individual cases but also enhances the credibility and effectiveness of commercial arbitration as a dispute resolution mechanism.

Per Article 1 and Article 2 of the 2015 Civil Procedure Code (the CPC), the CPC applies to civil proceedings (litigations). Article 415 of the CPC provides that "Procedures for resolution of civil matters concerning Vietnamese commercial arbitration activities shall comply with the provisions of the legislation on Vietnamese commercial arbitration." Thus, instead of the CPC, the 2010 Law on Commercial Arbitration (the LCA) governs the rules for the admissibility of evidence in an arbitration case. However, there is no rule governing the admissibility of evidence under the LCA and VIAC Rules. Per Article 38.5 of VIAC Rules: "In all matters not expressly provided for in these Rules, the Centre and the Arbitral Tribunal shall act in the spirit of these Rules and make all efforts to resolve the dispute fairly and efficiently."

Article 14.3 of the LCA states: "When the Vietnamese law [or] the law chosen by the parties does not contain specific provisions relevant to the matters in dispute, the arbitral tribunal may apply international customs to resolve the dispute if such application or consequences of such application are not contrary to the fundamental principles of Vietnamese law". The LCA does not require that an arbitral tribunal's adoption of international customs in resolving the dispute must be subject to the parties' agreement.

The IBA Rules on the Taking of Evidence in International Arbitration, adopted by the International Bar Association ("IBA Rules of Evidence") , are a well-recognized set of international customs widely used in international arbitration. Considering that the IBA Rules of Evidence have laid out resources for arbitrators to provide an efficient, economical, and fair process for the taking of evidence in international arbitration, in some instances, the tribunal will decide to use selected rules for taking of evidence outlined in IBA Rules of Evidence as guidelines in determining the admissibility of evidence for dispute settlement.

Under Article 9 of the IBA Rules of Evidence, the Arbitral Tribunal has complete discretion to determine the admissibility, relevance, materiality, and weight of evidence. It may exclude evidence if it lacks relevance, is protected by privilege, imposes an unreasonable burden, is lost, or raises concerns regarding confidentiality, sensitivity, or fairness.

Illegally obtained evidence may also be excluded. In considering privilege, the tribunal may assess the need to protect legal advice or settlement communications, the parties' expectations, possible waiver, and fairness.

The tribunal may impose confidentiality protections and draw adverse inferences if a party fails to produce ordered or requested evidence unjustifiably. Bad faith in evidence-taking may impact the allocation of costs.

9. The tribunal's power to collect evidence and use expert opinions.

Per Article 46 of the LCA, at the request of one or more parties, the Arbitration Tribunal has the right to request witnesses to provide information and documents related to the dispute settlement.

The tribunal, on its initiative or at the request of one or more parties, has the right to request an appraisal or valuation of the disputed assets as a basis for settlement. The party requesting the assessment or valuation must advance the appraisal or valuation fees.

The tribunal, on its own or at the request of one or more parties, has the right to consult experts. The party requesting the expert consultation must advance the expert fees. Depending on the area, there are several conditions for selecting an expert. For example, in the area of "judicial expertise" (for verification of authenticity of signature, seal, etc.), under Vietnamese laws, the tribunal must look for qualified local "judicial expertise institutions" before using foreign ones. In exceptional cases, the person soliciting expertise may request individuals or specialized organizations with sufficient qualifications that are not on the announced list to conduct the assessment, provided that the reasons for this request are clearly stated.[5]

Once officially appointed, the expert may request any party to provide relevant information, documents, goods, samples, property, machinery, systems, processes, or access to sites for inspection, if related to the dispute. Such access and inspection must ensure equal rights of participation and observation for all parties, thereby upholding the principle of fairness. In case of any dispute regarding the appropriateness or relevance of such requests, the Arbitral Tribunal shall make the final determination. Any non-compliance by a party will be recorded in the expert's report, along with an assessment of the potential impact of such non-compliance on the expert's conclusions.

10. How to structure procedural (e.g., hearing on jurisdiction) and evidentiary hearings.

10.1. Hearing on jurisdiction

Per Article 43.1 of the LCA and Article 28.2 of VIAC Rules, before considering the merits of the dispute, the tribunal shall consider the existence of the arbitration agreement, the validity of the arbitration agreement, whether or not the arbitration agreement is capable of being performed; and its jurisdiction regardless of whether or not any party raises any objection. Where the tribunal finds that the arbitration agreement is valid and capable of being performed, the tribunal shall proceed with the dispute resolution. Where the tribunal finds that the arbitration agreement does not exist, is invalid, or incapable of being performed, the tribunal shall decide to stay the dispute resolution.

To structure a hearing on jurisdiction, the tribunal may invite submissions from the parties on how to resolve the jurisdictional challenge. Per Article 28.3 of the VIAC Rules, the tribunal may make a separate Decision on its jurisdiction or may decide on the jurisdiction in the Arbitral Award.

10.2. Evidentiary hearings

The tribunal shall at all times have complete control over the evidentiary hearings. The tribunal may limit or exclude any question to, answer by, or appearance of a witness if it considers such question, answer, or appearance irrelevant, immaterial, unreasonably burdensome, duplicative, or otherwise covered by a reason for objection.

A typical evidentiary hearing agenda is as follows:

- Tribunal introduction, the introduction of counsels and representatives, housekeeping matters (procedure regarding witnesses, etc.).

[5] Per Article 35.1, and Article 20.2 of Law on Judicial Expertise No. 13/2012/QH13 ("LJE").

- Opening statements, in which the claimant generally goes first;

- Testimony from the claimant's fact witnesses, followed by the respondent's fact witnesses;

- Testimony from the claimant's expert witnesses, followed by the respondent's expert

- Closing arguments, in which the claimant generally goes first.

Arbitration hearings may employ the "chess clock" method, where each party has a specified amount of time, typically a pro-rata share of the total hearing time reserve, to present its case. Instead of the chess clock method, the tribunal may establish a schedule for each opening and closing statement, as well as for each witness's direct and cross-examination (and redirect examination), and require the parties to adhere to that schedule.

11. What foreign documents must be legalized?

According to Article 9.4 of Decree 111/2011/ND-CP, foreign documents are exempt from consular legalization if not required by the receiving agency in Vietnam. In arbitration proceedings, VIAC is considered the receiving agency, and VIAC does not require consular legalization. VIAC tribunals generally do not order the parties to submit consular legalization copies of all foreign documents submitted to the arbitration. The Hanoi court supports this view in Decision No. 16/2023/QD-PQTT dated November 27, 2023.

However, several court judgments set aside arbitration awards because the tribunal accepted foreign documents without consular legalization. Particularly:

- In 2020, the People's Court of Ho Chi Minh City issued Decision No. 1768/QD-PQTT, ruling that the acceptance by an arbitral tribunal of a power of attorney granted by a foreign party to the dispute to its representative in the arbitral proceedings without consular legalization is a breach of fundamental principles of Vietnam's law as stipulated in paragraph 2 article 3 of the 2015 Civil Code. The court did not explain which fundamental principle had been infringed upon.

- In 2023, the People's Court of Hanoi City issued Decision No. 12/2023/QD-PQTT dated July 4, 2023, to set aside another arbitral award. The court ruled that accepting the request for arbitration and the standing of the claimant's authorized representative, when the authorization documents have not been consular legalized, and the respondent objected, must be considered a procedural violation.

Therefore, to avoid a set aside of an arbitration award on the ground of "a breach of fundamental principles of Vietnam's law," parties should legalize foreign documents concerning a party's "standing" to arbitrate.

12. What constitutes allowable damages?

12.1. Compensatory damage

Per Articles 302 to 305 of the Commercial Law 2005, compensation for damages must be actual, resulting directly from the breach, and the aggrieved party must take reasonable steps to mitigate the damage.

12.2. Punitive damage

Punitive damages are generally not recognized under Vietnamese laws. However, Vietnamese laws allow for a "penalty" or "fine" as a punishment for breaching a contractual relationship. For commercial contracts, the parties must agree upon the penalty amount. They cannot exceed 8% of the contract value diminished by the breach (or 12% for construction contracts in certain circumstances).

12.3. Liquidated damage

A liquidated damages clause is a contract provision in which the parties agree to a specific, agreed-upon amount of compensation for a breach of contract. Current Vietnamese laws, including legislation and precedents, do not provide a clear and proper concept of liquidated damages. On the one hand, a party could oppose the idea of liquidated damages, as under Vietnam's law, compensatory damages must be based on actual and direct damage caused by the breaching party to the aggrieved party.[6] Thus, it can only be determined after the breach that gave rise to the damage has occurred.On the other hand, liquidated damages may be permissible under Vietnamese law, as parties are permitted to agree in advance to waive liability for certain types of breaches.[7] According to this view, when parties agree to a liability cap, any damages exceeding that cap are exempt from liability, meaning the breaching party is not required to compensate for the excess amount.

13. When can attorney and arbitration fees and costs be awarded, and how should their allocation be structured?

13.1. Per Article 36.2 of the VIAC Rules, the tribunal shall have the power to decide that one party shall bear all or part of the attorney fees and other reasonable expenses incurred by the other party. As per Article 36.1 of the VIAC Rules, the tribunal may allocate the costs of arbitration (e.g., VIAC arbitration fees) unless the Parties agree otherwise.

13.2. If a contract requires the losing party to pay the winning party's legal fees and costs, then the tribunal can order this to happen. Still, the tribunal can exercise discretion on the details unless the arbitration agreement states otherwise. For example, suppose the parties' arbitration agreement does not detail what constitutes "winning," and the prevailing party won some of its claims but not all. In that case, the tribunal can award the costs in proportion to the percentage of the total claim amount the claimant has won.

13.3. For the reasonableness of legal fees, the tribunal could consider the amount in dispute, the length of the arbitration proceedings, the complexity of the issues, the volume of the evidence, and the number of hearings.

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[6] Article 303 of the Commercial Law.
[7] Article 294 of the Commercial Law.

14. The rules on arbitral awards.

According to Article 60 of the LCA, the Arbitration Tribunal shall render an arbitral award by voting per the majority principle. If the voting does not reach a majority, the arbitral award shall follow the opinion of the Presiding Arbitrator.

Per Article 61 of the LCA and Article 32 of the VIAC Rules, the Arbitration Tribunal shall issue the final award within 30 days from the last hearing. This time limit ensures that the arbitration process is conducted efficiently and that disputes are resolved promptly. The Arbitral Award shall be final and binding on the parties on the date of its signing.

Per Article 61 of the LCA and Article 32 of the VIAC Rules, an Arbitral Award shall be in writing and contain the following main information:

a) Date, month, year, and place of making the Arbitral Award;

b) Names and addresses of the Claimant and the Respondent;

c) Names of the Arbitrators or the name of the Sole Arbitrator;

d) Summary of the Request for Arbitration and matters in dispute; summary of the Counterclaim and matters in dispute, if any;

dd) Reasons for making the Arbitral Award, unless the parties have agreed that no reasons are to be given;

e) Determination of the dispute resolution;

g) Period for implementing the Arbitral Award;

h) Allocation of the costs of arbitration and other relevant expenses;

i) Signatures of the Arbitrators or the signature of the Sole Arbitrator.

15. Post-award issues.

15.1. Corrections to the Award

Per Article 33.1 and 33.2 of the VIAC Rules, the party (s) may require a correction within 30 days from the receipt of the arbitral award (unless otherwise agreed) and have notified the other party or the tribunal, on its initiative, to correct the award within 30 days from the issuance of the award. The correction of the award will be limited to correcting spelling, printing, typing, and other similar errors; figure errors are caused by confusion or miscalculation in the award.

If the tribunal considers the request legitimate and there is proof that the request has been notified to the other party, it shall make a Decision on correction within 30 days from the date of receipt.

15.2. Explanation of the Award

Per Article 33.3 of the VIAC Rules, a party may request the tribunal to interpret the arbitral award within 30 days of receipt of the arbitral award (unless otherwise agreed). It shall immediately notify the other party of the request. Suppose the tribunal considers the request legitimate, and there is proof that the request has been notified to the other party. In that case, it shall decide on the interpretation within 30 days of receiving the request.

15.3. Issuance of a supplemental award

Per Article 33.4 of the VIAC Rules, within 30 days of receipt of the arbitral award (unless otherwise agreed), a party may request the tribunal to make an additional arbitral award concerning the issues presented during the arbitral proceedings but not yet recorded in the award. It shall immediately notify the other party of the request. Suppose the tribunal considers such a request legitimate, and there is proof that the request has been notified to the other party. In that case, it shall make an additional arbitral award within 30 days of receiving the request.

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