

Arbitrator Selection and Qualification at VIAC: What to look for

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Selecting qualified arbitrators is crucial for fair and efficient arbitral proceedings. Therefore, parties should take a strategic and informed approach to their selection. This article guides how to choose the most suitable arbitrators for proceedings administered by the Vietnam International Arbitration Centre (VIAC).

1. Arbitrator selection options at VIAC

Per VIAC's Rules on Arbitration ("**VIAC Rules**"), a dispute can be resolved by a tribunal composed of either a sole arbitrator or a three-member arbitral tribunal, depending on the choice of the parties, typically expressed in the arbitration clause in the dispute contracts. In the absence of an agreement on the composition of the arbitration panel, the default mechanism is the three-member tribunal.

The standard procedures to select the arbitrators per the VIAC Rules are as follows:

1.1 Three-member arbitral tribunal¹

When the Claimant submits the Request for Arbitration ("**RFA**") to commence arbitration at VIAC, the RFA must include the name of the arbitrator nominated by the Claimant. Within 10 days of receiving the RFA, VIAC will issue a notice of commencement of arbitration to the Respondent. The Respondent is required to submit a Statement of Defence ("**SOD**") within 30 days of receiving the notice. The SOD must include the name of the arbitrator nominated by the Respondent. If the Respondent fails to nominate an arbitrator within this timeframe, VIAC will appoint one on the Respondent's behalf. Once the Respondent's nominated (or appointed) arbitrator receives the notification of their nomination or appointment from VIAC, both arbitrators must jointly select the Presiding Arbitrator of the Arbitral Tribunal within 15 days.

Both parties also have the option to delegate the selection of arbitrators to VIAC. If a party makes the request, VIAC will appoint the arbitrator(s) within 7 days of receiving the request. In cases where there are multiple Claimants or multiple Respondents, the parties on each side must jointly agree on the nomination of one arbitrator.

1.2 Sole arbitrator²

Within 30 days of receiving the notice of commencement of arbitration, the parties must jointly agree on the appointment of a sole arbitrator to resolve the dispute. Alternatively, the parties may agree to delegate the appointment to VIAC, which will then proceed with the selection.

At present, the VIAC Rules do not prescribe a specific procedure for the joint selection of a sole arbitrator by the parties. As such, the method of choice may vary and can include, but is not limited to: (i) naming the arbitrator directly in the arbitration clause of the contract; (ii) the Claimant proposing an arbitrator in the Request for Arbitration (RFA), with the Respondent confirming agreement in the Statement of Defence (SOD); or (iii) both parties jointly submitting a written agreement – such as a signed letter – nominating the same individual to act as the sole arbitrator.

¹ Article 7.2.e, 9.1.d, 12 of the VIAC Rules.

² Article 13 of the VIAC Rules.

The most essential requirement is that the parties demonstrate a clear, unequivocal, and mutual agreement on the appointment of the sole arbitrator.

Suppose the parties do not wish to follow the standard selection procedures outlined in Sections 1.1 and 1.2 above. In that case, they may agree to adopt customized procedures for the appointment of arbitrators, provided such procedures are clearly set out in their mutual agreements and do not conflict with the mandatory provisions of the VIAC Rules or applicable law.

2. Qualifications of an arbitrator

An individual cannot serve as an arbitrator at VIAC solely by virtue of being nominated by the parties. In addition to party selection, the nominee must also satisfy the legal and VIAC requirements applicable to arbitrators. These include, but are not limited to, the criteria set forth under the Law on Commercial Arbitration (“**LCA**”), the VIAC Rules, and the requirements outlined in the Arbitrator Statement. Nominated arbitrators who fail to meet the qualification requirements are disqualified from acting in the proceedings, and a substitute arbitrator will need to be appointed in accordance with the applicable rules.

For a more detailed overview of arbitrator qualifications, please refer to Dilinh Legal’s companion article: [Conducting VIAC Proceedings](#).

3. Practical considerations when selecting an arbitrator

Before finalizing the appointment of an arbitrator, each party is advised to compile a shortlist of potential candidates and conduct thorough due diligence on each individual to determine the most suitable person to adjudicate the dispute. In addition to verifying that the candidate meets the formal qualifications outlined in Section 2 above, parties should also take into account several practical considerations, including the following:

3.1 Expertise, experience, and past opinion on the subject matter

Arbitrators with expertise in the subject matter of a dispute are better equipped to analyze its complexities, fully understand the parties’ concerns and objectives, correctly apply the relevant laws and principles, and provide well-reasoned, logical arbitral awards. To identify the most appropriate expertise and experience for a case, parties must first carefully consider the nature of the dispute, its subject matter and key issues, the governing law, and any specific qualifications mutually agreed upon by the parties for the arbitrator. Given that disputes submitted to VIAC are inherently legal in nature, candidates with a legal background and substantial practical experience – such as lawyers and former judges – are generally preferred.

In emerging or niche areas such as cryptocurrency or artificial intelligence, where Vietnamese law may be underdeveloped or subject to rapid changes and conflicting interpretations, arbitrators often face unique challenges. With limited local legislation, case law, or precedents available, arbitrators must rely on alternative sources such as international law, foreign precedents, expert guidance, and foundational principles of Vietnamese law and public policy. Awards in these areas, particularly if made public, may become landmark decisions subject to heightened scrutiny. Accordingly, in these instances, parties must select arbitrators who not only possess strong legal proficiency but also demonstrate substantial knowledge and understanding of the specialized subject matter.

Parties should conduct comprehensive research into potential candidates, examining factors such as academic credentials, professional accolades, work history, involvement in notable cases, and published opinions or articles. These indicators provide valuable insight into the candidate's expertise, experience, and likely approach to resolving the dispute.

3.2 Experience with VIAC arbitration

Candidates should possess substantive experience in conducting arbitrations under VIAC's framework. This experience extends beyond mere familiarity with the procedural rules set out in the VIAC Rules, as arbitration proceedings often involve complex situations that these rules do not explicitly address.

Accordingly, an effective arbitrator must demonstrate decisiveness in navigating complex issues. They should communicate clearly and openly, show an understanding of the parties' concerns, proactively identify and resolve potential problems, and prevent any party from abusing the process. Additionally, effective arbitrators must coordinate smoothly with co-arbitrators and VIAC's administrative staff, ensuring the arbitration proceeds efficiently and in compliance with applicable laws.

Candidates who have previously served as the presiding arbitrator in VIAC cases often hold a distinct advantage. As the presiding arbitrator bears primary responsibility for managing the proceedings, signing official documents, and guiding the tribunal's decision-making, their judgments on procedural matters typically carry significant weight and influence the direction of the arbitration.

3.3 Case management skills and availability

Effective arbitrators possess strong case management skills, enabling them to efficiently schedule proceedings and prioritize key issues, ensuring the timely adjudication of the dispute. Such arbitrators lay a solid foundation early in the process by addressing fundamental matters – such as establishing clear timelines for procedural stages, ruling on the admissibility of pleadings, and ensuring the tribunal's impartiality – well in advance of any hearing.

Parties should therefore select candidates with a manageable caseload, as this allows the arbitrator to devote sufficient time and personal attention to the case. If the preferred candidate is managing multiple matters simultaneously, parties should consider whether they have access to a competent support team that can assist with case preparation and administration. Typically, arbitrators affiliated with reputable law firms have access to such qualified support staff, including lawyers with relevant arbitration experience and subject matter expertise.

Location is another important consideration. Certain cases may require the arbitrator's physical presence, particularly if the parties opt for in-person hearings. Accordingly, parties should confirm the candidate's availability and willingness to travel as necessary to accommodate such procedural requirements.

3.4 Personal values

Arbitrators, being human, inevitably bring their personal values, experiences, and perspectives to bear, which may subtly influence their interpretation and assessment of a dispute. While they must comply with legal requirements on impartiality and avoid conflicts of interest, it is impossible to eliminate all inherent biases.

Recognizing that individuals who share similar backgrounds or affiliations – whether national, political, religious, familial, professional, or otherwise – often have standard value systems, ways of thinking, and are more inclined to help each other, parties should carefully consider these affiliations when selecting arbitrators. This due diligence helps to mitigate the risk of unconscious bias or conduct that could disadvantage a party during the dispute resolution process.

A common safeguard adopted in arbitration agreements is to specify that each arbitrator should have a different nationality, with the presiding arbitrator's nationality distinct from that of the other arbitrators and the parties involved. This approach promotes neutrality and balance within the tribunal.

Vietnamese law and the VIAC Rules do not prohibit parties from contacting or interviewing potential arbitrator candidates as part of the selection process. However, parties must avoid asking questions that could compromise the candidate's impartiality – such as requesting their opinion on the merits of the dispute – since such inquiries may constitute a breach of the arbitrator's duty of neutrality and result in disqualification. Accordingly, interview topics should be carefully limited to appropriate areas, such as the candidate's expertise, experience with VIAC arbitration, and availability to serve.

Given that selecting the right arbitrator is one of the most critical factors in effectively resolving a dispute, litigants in arbitration should devote significant time and careful consideration to it.

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