

**COUNCIL OF JUDGES
THE PEOPLE'S SUPREME
COURT**

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Số: 01/2014/NQ-HDTP

Hanoi, March 20, 2014

RESOLUTION

GUIDELINES FOR THE LAW ON COMMERCIAL ARBITRATION

COUNCIL OF JUDGES OF THE PEOPLE'S SUPREME COURT

Pursuant to the Law on organization of People's Courts;

For the purpose of adherence to the Law on Commercial arbitration which is passed by the National Assembly on June 17, 2010 and takes effect on January 01, 2011 (hereinafter referred to as LCA);

After obtaining opinions from the Chief Procurator of the Supreme People's Procuracy and the Minister of Justice,

RESOLVES:

Article 1. Scope of regulation

This Resolution provides guidelines for some regulations of LCA on the entitlements and proceedings of Courts applied to arbitration; registration of arbitral awards.

Article 2. Determination of entitlements to resolve cases between arbitral tribunals and courts according to LCA

1. Arbitral tribunals are entitled to resolve the disputes mentioned in Article 2 of LCA if the parties concerned have an arbitration agreement prescribed in Article 5 and Article 16 of LCA, except for the cases mentioned in Clause 3 of this Article.
2. When the court is requested to resolve one of the disputes mentioned in Article 2 of LCA, the court shall request either party to provide information about whether such dispute is under an arbitration agreement. The court shall examine documents enclosed with the petition to determine whether such dispute is one of the cases mentioned in Clause 3 of this Article as follows:
 - a) If the dispute is not under an arbitration agreement, or an effective judgment or decision has been given by a court, or an effective tribunal award determines that the dispute is not under an

arbitration agreement, the court shall consider undertaking and handling the case within its competence.

b) If the dispute is under an arbitration agreement and such arbitration agreement is not any of the cases mentioned in Clause 3 of this Article, the court shall return the petition and documents enclosed therewith to the plaintiff pursuant to Point d Clause 1 Article 168 of the Civil Procedure Code 2014, which is amended in the Law on amendments to the Civil Procedure Code (hereinafter referred to as the Civil Procedure Code).

If the court finds that the dispute is under an arbitration agreement and such arbitration agreement is not any of the cases mentioned in Clause 3 of this Article after the case is undertaken by the court, the court shall issue a decision to terminate the adjudication, return the petition and documents enclosed therewith to the plaintiff pursuant to Point i Clause 1 Article 192 of the Civil Procedure Code.

c) If the court is requested to resolve a dispute that is being handled by an arbitral tribunal, the court shall terminate the adjudication and return the petition to the plaintiff even if the court finds that the dispute is not within the competence of the arbitral tribunal, not under an arbitration agreement, or the arbitration agreement is not any of the cases mentioned in Clause 3 of this Article, unless the court undertakes the case before the arbitral tribunal is requested to handle it. If the plaintiff requests the court to handle the case after a decision or award is issued by the arbitral tribunal as prescribed in Articles 43, 58, 59, and 61 of LCA, the court shall consider undertaking and handling the case under common procedures.

3. In one of the following cases, the dispute shall be handled by the court though it is under an arbitration agreement, unless otherwise agreed by the parties concerned or prescribed by law:

a) The court issues a decision to annul the arbitral award or the decision made by the arbitral tribunal to certify the parties' agreement made;

b) There is a decision to suspend the arbitral tribunal or arbitration center from resolving disputes as prescribed in Clause 1 Article 43, Points a, b, d, and dd Clause 1 Article 59 of LCA;

c) The dispute is one of the cases mentioned in Clauses 1, 2, 3, and 5 Article 4 of this Resolution.

4. In case the parties have an agreement to have the dispute resolved both by an arbitral tribunal and a court, such agreement is not changed and not any of the cases in Clause 3 of this Article, the dispute that arises shall be handled as follows:

a) If the plaintiff requests an arbitral tribunal to resolve the dispute before requesting the court to do so or before the case is undertaken by the court as prescribed in Point b Clause 4 of this Article, the court shall refuse to undertake the case pursuant to Article 6 of LCA. In this case, the court shall return the petition. If the case has been received, the court shall issue a decision to terminate the adjudication because it is beyond the competence of the court, return the petition and documents enclosed therewith to the plaintiff pursuant to Point i Clause 1 Article 192 of the Civil Procedure Code.

b) In case the plaintiff requests the court to resolve the dispute: right after receiving the petition, the court must determine whether an arbitral tribunal is requested by either party to handle the case.

Within 05 working days from the receipt of the petition, if the court finds that the dependant or the plaintiff has requested an arbitral tribunal to resolve the dispute, the court shall return the petition to the plaintiff. If no arbitral tribunal is requested by the dependant or the plaintiff to resolve the case, the court shall undertake the case and handle it under common procedures.

If the court has undertaken the case and then finds that an arbitral tribunal is requested to resolve such case before it is undertaken by the court, the court shall, pursuant to Point i Clause 1 Article 192 of the Civil Procedure Code, issue a decision to terminate the adjudication because it is beyond the competence of the court, return the petition and documents enclosed therewith.

Article 3. Void arbitration agreement prescribed in Article 6 and Article 18 of LCA

An arbitration agreement is void if it is one of the cases mentioned in Article 18 of LCA. After declaring an arbitration agreement void, the cases below should be considered:

1. “The dispute that arises is related to the fields beyond the competence of arbitral tribunals” prescribed in Clause 1 Article 18 LCA means the case in which an arbitration agreement is negotiated to resolve the disputes related to the fields other than those mentioned in Article 2 of LCA.

2. “The arbitration agreement is negotiated by incompetent persons as prescribed by law” in Clause 2 Article 18 means the arbitration agreement is negotiated by persons other than legal representatives or authorized persons, or authorized persons that act beyond his/her authorized entitlements.

If arbitration agreement principles are established by incompetent persons, such arbitration agreement is void. If the arbitration agreement is negotiated by incompetent persons but the persons competent to negotiate arbitration agreements accept it or do not object to it during the negotiation or arbitral proceedings, such arbitration agreement is not void.

3. “*The arbitration agreement is negotiated by persons in capable of civil acts as prescribed by law*” prescribed in Clause 3 Article 18 means the minors or the persons incapable of civil acts. In this case, the court must collect evidence that the person that negotiates the arbitration agreement are not capable of civil acts, including papers bearing his/her date of birth, a conclusion by a competent authority or declaration by a court that such per person is not capable of civil acts.

4. “*Format of the arbitration agreement is not conformable with Article 16 of LCA*” prescribed in Clause 4 Article 18 of LCA means the case in which the arbitration agreement is not negotiated using the methods mentioned in Article 16 of LCA and the guidance in Article 7 of this Resolution.

5. “Either party is cheated, threatened, or forced to reach the arbitration agreement” prescribed in Clause 5 Article 18 of LCA means the case in which either party is cheated, threatened, or forced according to Article 4 and Article 132 of the Civil Code.

6. “The arbitration agreement contravenes the law” prescribed in Clause 6 Article 18 of LCA means any arbitration agreement in the cases prescribed in Article 128 of the Civil Code.

Article 4. The arbitration agreement is not viable as prescribed in Article 6 of LCA

“The arbitration agreement is not viable” as prescribed in Clause 6 Article 18 of LCA means any arbitration agreement in the cases below:

1. The parties concerned have an agreement to resolve their disputes at a specific arbitration center which has now shut down without any arbitration center that inherit its cases, and the parties concerned fail to reach an agreement on another arbitration center to resolve their disputes.

2. Both parties have an agreement on appointment of a specific arbitrator to resolve disputes, but when the dispute arises, because of force majeure events or objective difficulties, such arbitrator cannot resolve the case, or the arbitration center or court cannot find a substitute arbitrator as agreed by the parties concerned, and the parties concerned also fail to reach an agreement to select a substitute arbitrator.

3. Both parties have an agreement on appointment of a specific arbitrator to resolve disputes, but when the dispute arises, such arbitrator refuses the appointment or the arbitration center refuses the arbitrator appointment, and the parties concerned also fail to reach an agreement to select a substitute arbitrator.

4. The parties concerned have an agreement to resolve their disputes at a specific arbitration center but a set of arbitration rules of another arbitration center, which is different from the arbitration rules of the agreed arbitration center, is applied, the charter of the arbitration selected by both party does not allow the application of arbitration rules of other arbitration centers, and the parties concerned fail to reach an agreement on substitute set of arbitration rules.

5. The goods/service seller and consumers have an overall agreement on provision of goods/services that contain arbitration terms drafted by the seller as prescribed in Article 17 of LCA, but the consumers refuse to have the dispute that arises resolved by an arbitral tribunal.

Article 5. Determination of courts having authority over arbitration as prescribed in Article 7 of LCA.

1. The parties concerned may reach an agreement to select one of the provincial courts of Vietnam to handle cases related to arbitration in Vietnam. The agreement on selection of the

court must be made into three copies, specifying the cases to be handled by the court, name of the court selected by the parties concerned.

If the agreement is not conformable with regulations Clause 3 Article 7 of LCA, the authority of the court over arbitration shall be determined in accordance with Clause 2 Article 7 of LCA on entitlements and territory of courts, regulations in Clause 3 Article 7 of LCA on authority of various levels of courts.

Example: The parties concerned have an agreement to select the court of district X to summon witnesses. Such agreement contravenes the regulations in Clause 3 Article 7 of LCA. The court shall refuse this agreement and the authority of the court over arbitration shall be determined in accordance with Clause 2 Article 7 of LCA.

2. The parties may reach an agreement on selection of a court having authority over arbitration before or after a dispute arises. The agreement on selection of a court must ensure that there is only one court that has authority over a specific arbitral activity or all arbitral activities.

3. Determination of courts having authority over appointment of arbitrators to establish an arbitral tribunal.

a) If there are multiple defendants involved in a request for appointment of arbitrators, the plaintiff may send the request to one of the courts of the administrative divisions where the residences or headquarters of such defendants are located¹. If one or some defendants have their residences or headquarters overseas, the plaintiff may select the court of the administrative division where the residence or headquarter of the plaintiff is located.

b) When receiving the written request for appointment of arbitrators, the court must explain to the applicant that there is only one of the courts mentioned in Point a Clause 2 Article 7 of LCA may be selected. The court selected shall request the applicant to make a written commitment in the written request that the request is not submitted to any other court.

c) In case the plaintiff submits the requests to various courts, the first one that undertakes the request shall handle the case. The court that undertakes the request shall:

c) Return the written request, documents, evidence enclosed thereto and fees to the applicant if the case is not undertaken pursuant to Point dd Clause 1 Article 168 and Article 311 of the Civil Procedure Code.

c) Issue a decision to terminate the consideration, remove the case from the book, return the request, documents and evidence enclosed thereto to the applicant if the case has been undertaken pursuant to Point dd Clause 1 Article 168, Point i Clause 1 Article 192, and Article 311 of the Civil Procedure Code. The advanced fee shall be returned to the applicant by the court.

c3) If multiple courts have issued their own decisions on arbitrator appointment, the decision issued by the court that is first selected by the plaintiff shall apply. In this case, pursuant to

Clause 2 Article 39 of the Ordinance on legal costs, the plaintiff shall still incur the fees for request for arbitrator appointments under the decisions on arbitrator appointment of all the courts that received the request from the plaintiff.

4. The courts having authority over arbitrator replacement, settlement of appeals against decisions of arbitral tribunals, annulments of arbitral awards, registration of arbitral awards mentioned in Points b, c and g Clause 2 Article 7 of LCA are identified as follows:

a) “The place where the dispute is settled by the arbitral tribunal” prescribed in Point b Clause 2 Article 7 of LCA shall be determined in accordance with Clause 8 Article 3 of LCA; In case the parties fail to reach an agreement on the place for dispute settlement and the arbitral tribunal fails to indicate or fails to indicate clearly the place for dispute settlement, the applicant shall submit supporting documents and evidence. If the applicant fails to prove it, the court shall instruct the applicant to request the arbitral tribunal to verify. According to the place for dispute settlement determined by arbitral tribunal, the court shall consider undertaking the cases in accordance with law.

b) “The place where the decision is made by the arbitral tribunal” and “the place the arbitral award is given by the arbitral tribunal” prescribed in Point c and Point g Clause 2 Article 7 of LCA shall be determined under the decision or arbitral award of the arbitral tribunal. In case the decision or arbitral award given by the arbitral tribunal fails to indicate or fails to indicate clearly the place for where the arbitral tribunal issues the decision or arbitral awards, the applicant shall submit documents and evidence to prove it. If the applicant fail to prove it, the court shall instruct the applicant to request the arbitral tribunal to determine. According to the result given by the arbitral tribunal, the court shall consider undertaking the case in accordance with law.

c) In case the place where the arbitral tribunal issues the decision or arbitral award prescribed in Point c and Point g Clause 2 Article 7 of LCA is located overseas, the competent court is the local court of the administrative division where the residence or headquarter in Vietnam of the defendant is located. In case the residence or headquarter of the defendant is located overseas, the competent court is the local court of the administrative division where the residence or headquarter of the plaintiff is located.

5. Determination of entitlements of courts to activities of foreign arbitrators in Vietnam.

a) When foreign arbitrators settle disputes and request support from a Vietnamese court, the Vietnamese court shall have authority over operation of foreign arbitrators in accordance with Points a, b, c, d, dd, and e Clause 2 Article 7 of LCA.

b) The Vietnamese court does not have authority over annulment of arbitral awards, registration of arbitral awards given by foreign arbitrators as prescribed in Point g Clause 2 Article 7 of LCA. Arbitral awards given by foreign arbitrators shall be recognized and applied in Vietnam in accordance with regulations of the Civil Procedure Code on procedures for recognition and implementation of decisions of foreign arbitrators in Vietnam.

Article 6. Loss or right to protest prescribed in Article 13 of LCA

1. When a party is found violating regulations of LCA or the arbitration agreement, if arbitral proceedings are still carried on without any protest against such violations submitted to the arbitral tribunal or arbitration center by the deadline imposed in LCA, the right to protest against such violations shall be lost. In the cases where LCA does not specify the deadline, the deadline shall be agreed by the parties or arbitration rules. If the parties do not have an agreement or the arbitration rules do not specify, the objection shall be made by the time the arbitral tribunal gives an arbitral award.

2. When considering a report from either party on violations against regulations of LCA or the arbitration agreement, the court shall examine the docs, evidence, and arbitration rules to determine whether either party loses its right to protest or not.

In case the court determines that the right to protest is lost as prescribed in Article 13 of LCA and Clause 1 of this Article, the party that loses such right may not appeal against the decision from the arbitral tribunal and may not request annulment of the arbitral award with regard to the violations against which the right to protest is lost. The court shall not accept the request of either party according to the violations against which the right to protest of either party is lost.

3. When considering a request for annulment of the arbitral award, the court shall consult to Point dd Clause 2 and Point b Clause 3 Article 68 of LCA. The court is entitled to decide whether to accept the request or not if there is sufficient basis, even when either party has lost its rights to protest.

Article 7. Arbitration agreements prescribed in Article 16 of LCA

1. In case multiple arbitration agreements are reached on the same dispute, the latest lawful agreement shall apply.

2. If the contents of an arbitration agreement are not clear or could be understood in more than one way, regulations of the Civil Code shall apply.

3. When there is a handover of rights and obligations under a transaction or contract which contains a lawful arbitration agreement, such agreement is still applicable to the transferee and the transferor, unless otherwise agreed by the parties concerned.

4. Multiple legal relationships to resolve the same case shall be combined in one of the cases below:

a) The parties agree to combine multiple legal relationships to resolve the same case;

b) The arbitration rules allow for combination of multiple legal relationships to resolve the same case.

Article 8. Establishment of arbitral tribunal prescribed in Article 41 of LCA

1. If the parties concerned do not agree otherwise, the court shall appoint arbitrators on request in the following cases:

a) If the defendant fails to notify the plaintiff of the names of the arbitrators the defendant selects within 30 days from the day on which the defendant receives the petition from the plaintiff, the court shall appoint arbitrators on request of the plaintiff.

b) In case the dispute involves multiple defendants: after the 30-day period from the day on which the last defendant receives the petition from the plaintiff together with documents and evidence enclosed thereto, if the defendants fail to reach a consensus on the arbitrator or at the request of either party, the court shall appoint arbitrators;

c) If the appointed arbitrators fail to elect a chairperson of the arbitral tribunal after 15 days from the day they are selected by the parties or appointed by the court, the court shall appoint a chairperson of the arbitral tribunal at the request of either party;

d) If the parties concerned agree that the dispute shall be resolved by only one arbitrator, but fail to select such sole arbitrator after 30 days from the day on which the last defendant receives the petition from the plaintiff, the court shall appoint the sole arbitrator at the request of either party.

2. Within 07 working days from the receipt of the petition, the executive judge of the provincial court shall assign a judge to appoint arbitrators. The competent court shall notify the parties concerned and arbitrators of the arbitral tribunal of the undertaking of the case and the judge assigned to handle the case.

3. Within 07 working days from the assignment date, the judge shall consider the request for appointment of arbitrators without holding a meeting or summoning the parties concerned.

4. When considering the request, the judge shall consult Article 21 and Article 21 of LCA, the lists of arbitrators of arbitral institutions in Vietnam prescribed in Point c Clause 1 Article 15 of LCA, Clause 4 Article 2 and Article 19 of the Government's Decree No. 63/2011/ND-CP dated July 28, 2011 on guidelines for the Law on Commercial arbitration, and enclosed documents. The court's decision on appointment of arbitrators shall be made using form No. 1 enclosed to this Resolution.

5. Within 03 working days from the decision date, the court shall send the decision to the parties concerned, the arbitral tribunal, and arbitrators.

Article 9. Replacement of arbitrators prescribed in Clause 4 Article 42 of LCA

1. The court shall only consider the replacement of arbitrators in the cases mentioned in Clause 4 Article 42 of LCA. The person that requests replacement of arbitrators shall make a written request, specifying the case and the reasons for making such request.

2. Within 15 working days from the receipt of the written request, the executive judge of the provincial court shall assign a judge to decide the replacement of arbitrators. The competent

court shall notify the arbitral tribunal, arbitrators thereof, and the parties concerned of the undertaking of the case and the judge appointed to handle the case.

3. Within 07 working days from the assignment date, the judge shall consider the request for replacement of arbitrators without holding a meeting or summoning the parties concerned.

4. When considering the request, the judge shall consult Article 20, Article 21, Clause 6 Article 42 of LCA, the lists of arbitrators of arbitral institutions in Vietnam prescribed in Point c Clause 1 Article 15 of LCA, Clause 4 Article 2 and Article 19 of the Government's Decree No. 63/2011/ND-CP dated July 28, 2011 on guidelines for the Law on Commercial arbitration, and enclosed documents to decide whether the decision on appointment of arbitrators can be adjusted.

If the request for replacement of arbitrator is legitimate, the judge shall decide the replacement on a case-by-case basis in accordance with corresponding regulations. If the request for replacement of arbitrators is rejected, the judge shall issue a written decision specifying the reasons for rejection. The decision on replacement of arbitrators shall be made using form No. 2 enclosed to this Resolution.

5. Within 03 working days from the decision date, the court shall send the decision to the parties concerned, the arbitral tribunal, the arbitrators, and the People's Procuracy at the same level.

Article 10. Appeals, settlement of appeals against decision by an arbitral tribunal on absence of arbitration agreement, void arbitration agreement, unviable arbitration agreement, and entitlements of arbitral tribunal prescribed in Article 44 of LCA

1. The party that does not concur with a decision by an arbitral tribunal on absence of arbitration agreement, void arbitration agreement, unviable arbitration agreement, or entitlements of arbitral tribunal shall file an appeal. The appeal shall contain the information prescribed in Clause 2 Article 44 of LCA and enclosed with the documents, evidence mentioned in Clause 3 Article 44 of LCA. In case the arbitral tribunal does not issue a separate decision on the entitlements of the arbitral tribunal, the applicant must provide documents and evidence proving that the arbitral tribunal does not have the authority to resolve such dispute.

2. Within 05 working days from receipt of the appeal, documents and evidence enclosed, the court shall notify the arbitral tribunal of the processing of the appeal.

3. According to the appeal, documents and evidence enclosed thereto, and regulations in Articles 5, 6, and 18 of LCA, the judge shall determine whether the decision on absence of arbitration agreement by arbitral tribunal, void arbitration agreement, unviable arbitration agreement, or entitlements is justifiable or not. If necessary, the judge may request the arbitral tribunal to provide their explanation for the appeal.

4. The judge must settle the appeal by the deadline mentioned in Clause 4 Article 44 of LCA. The decision on appeal settlement shall be issued using the form No. 3 enclosed to this Resolution. Within 05 working days from the day on which the decision on appeal settlement is

issued, the court shall send the decision to the parties concerned, the arbitral tribunal, the arbitrators, and the People's Procuracy at the same level.

5. Pursuant to regulations of law, the judge shall accept or reject the appeal. The court must specify the reasons for the acceptance or rejection of the appeal as follows:

a) In case the court determines that the dispute is beyond the competence of the arbitral tribunal, there is no arbitration agreement, the arbitration agreement is void, or the arbitration agreement is unviable:

a1) If the arbitral tribunal has issued a decision to terminate the adjudication, the parties concerned shall reach an agreement on the method for dispute settlement.

a2) If the case is being handled by the arbitral tribunal, the arbitral tribunal must issue a decision to suspend the adjudication within 15 days from the receipt of the decision on appeal settlement from the court in accordance with Clause 6 Article 44 of LCA.

a3) If the arbitral tribunal has given an arbitral award, either party is entitled to request the court to annul such arbitral award.

b) In case the court determines that the dispute is within the competence of the arbitral tribunal, there is an arbitration agreement, the arbitration agreement is not void, or the arbitration agreement is viable:

b1) If the arbitral tribunal has issued a decision to suspend the adjudication, the arbitral tribunal shall resume the adjudication within 15 days from the receipt of the decision on appeal settlement from the court.

b2) If the arbitral tribunal has given an arbitral award, either party is entitled to request the enforcement of such arbitral award, apply for registration of such arbitral award, or request the court to annul such arbitral award.

b3) If the case is being handled by the arbitral tribunal, the arbitral tribunal shall keep handling it.

Article 11. Request for court's collection of evidence or summons of witness prescribed in Article 46 and Article 47 of LCA

1. The court shall only collect evidence in the cases prescribed in Clause 5 and Clause 6 Article 46 of LCA if the arbitral tribunal, either party fails to collect adequate evidence after taking every necessary measures (meaning all methods and resources have been used to request the entities having evidence to provide such evidence but such entities refuse to do so). The request for court's collection of evidence must contain sufficient information prescribed in Clause 5 Article 46 of LCA, enclosed with the arbitration agreement, petition, relevant documents, documents and evidence proving the unsuccessful attempt to collect evidence.

2. The procedures for collecting, preserving, and transferring evidence by the court shall comply with Clause 5 Article 46 of LCA and regulations of the Civil Procedure Code.
3. The Court shall only summon witnesses when there is evidence that the witnesses have been legitimately summoned by the arbitral tribunal but then fail to attend the meeting without justifiable reasons, and their absence obstruct the dispute settlement. The summons must contain sufficient information prescribed in Clause 2 Article 47 of LCA, enclosed with the arbitration agreement, petition, relevant documents, documents and evidence proving that the witnesses were summoned legitimately but failed to attend the meeting, and that their absence obstruct the dispute settlement.
4. The procedures for issuing decisions, summoning witnesses, and notifying the result shall comply with Clause 3 Article 47 of LCA and regulations of the Civil Procedure Code.
5. Together with the submission of documents and evidence on request, the party that makes the request for collection of evidence or summons of witnesses must pay fees and costs thereof. In case the arbitral tribunal requests the court to collect evidence or summon witnesses, the fees and costs shall be paid by the party that makes the request via the arbitral tribunal.

Article 12. Entitlements of the court to apply, adjust, and cancel temporary emergency measures prescribed in Article 53 of LCA

1. Either party is entitled to send a written request to the competent court for implementation of one or some temporary emergency measures right after submitting the petition to the arbitrators (when the arbitral proceedings have been initiated), whether or not the arbitral tribunal has been established or the dispute has been settled by the arbitral tribunal.
2. Either party is entitled to request the competent court to compel the implementation of one or some temporary emergency measures prescribed in Clause 2 Article 49 of LCA, unless otherwise agreed by the parties concerned.
3. Together with the submission of documents and evidence on request, any party that requests the implementation, adjustment, or cancellation of temporary emergency measures shall pay fees and implement the measures as prescribed.
4. Procedures for implementation, adjustment, cancellation of temporary emergency measures, and supervision of adherence to law during implementation of temporary emergency measures introduced by the court shall comply with Articles 48, 49, 52, 53 of LCA and regulations of the Civil Procedure Code.
5. When either party requests the court to take one or some temporary emergency measures, the court shall request such party to provide information about whether they have requested the arbitral tribunal to implement one or some temporary emergency measures. If they have made such, the court shall request them to make a commitment in the petition that they shall not send such request to any other court or at the arbitral tribunal. The court must also examine the documents enclosed to the petition to determine whether the parties concerned have requested a

court or arbitral tribunal to implement one or some temporary emergency measures for the dispute.

a) If there is evidence that one of the parties concerned has requested the arbitral tribunal or a court to take one or some temporary emergency measures, the court shall return the written request the parties pursuant to Clause 5 Article 53 of LCA, unless the request for implementation of temporary emergency measures made by the parties is beyond the competence of the arbitral tribunal.

b) If the court finds that the parties concerned have requested the arbitral tribunal or a court to implement one or some temporary emergency measures after a decision on implementation of temporary emergency measures is made, the court shall issue a decision to cancel the temporary emergency measures they introduce, return the written request and documents enclosed thereto to the parties.

Article 13. Registration of arbitral awards prescribed in Article 62 of LCA

1. According to Clause 2 Article 62 of LCA, if either party submits the written request to the court for registration of the arbitral award after 01 year from the issuance of such arbitral award, the court shall not consider such request.

In case there is evidence that the cancellation or the arbitral award is being considered at a competent court, when receiving the request for registration of the arbitral award, the court shall delay undertaking the request pending the decision on arbitral award cancellation.

2. The party that applies for registration of the arbitral award shall make and send a written request enclosed the documents mentioned in Clause 2 Article 62 of LCA to a competent court.

3. After considering the request for registration of arbitral award, the judge is not required to hold a meeting to consider the request. If necessary, the judge may convene one or all parties concerned and the arbitral tribunal for them to offer their opinions about the registration of arbitral award. In consideration of LCA and enclosed document, the judge shall verify the authenticity of the enclosed documents to consider and decide the registration.

4. If the arbitral award and documents are deemed authentic, the judge shall carry out the registration. The decision on registration of arbitral award shall be made using form No. 04 enclosed to this Resolution.

5. If the arbitral award is found to be fictitious, the judge shall reject the registration, return the written request and enclosed documents, notify the applicant, and provide explanation. The notification of rejection of arbitral award registration shall be made using form No. 05 enclosed to this Resolution.

Article 14. Bases for annulment of arbitral awards prescribed in Article 68 of LCA

1. Arbitral awards prescribed in Clause 10 Article 3 and Article 68 of LCA include decisions on recognition of agreements among the parties concerned made by arbitral tribunals according to Article 58 of LCA and arbitral awards given by arbitral tribunals according to Article 61 of LCA.

2. The court shall annul the arbitral awards prescribed in Article 58 and Article 61 of LCA in one of the cases below:

a) “There is no arbitration agreement or the arbitration agreement is void”, meaning the arbitration agreement is one of the cases in Article 6 and Article 18 of LCA, or Articles 2, 3, and 4 of this Resolution.

b) “The composition of the arbitral tribunal or the arbitral proceedings are not conformable with agreement of the parties concerned or regulations of LCA”, meaning the case in which the arbitral tribunal fails to comply with the agreement of the parties on composition of the arbitral tribunal or arbitration rules, or the arbitral tribunal fails to adhere to regulations of LCA, and such violation is considered serious by the court if the arbitral tribunal fails to make rectification at the request of the court as prescribed in Clause 7 Article 71 of LCA.

Example 1: A party is not promptly and legitimately notified of the petition as prescribed in Article 32 of LCA. This infringes upon the right to establish an arbitral tribunal and is considered a serious violation against arbitration rules as prescribed in Point b Clause 2 Article 68 of LCA.

Example 2: The parties agree that the dispute shall be resolved by an arbitral tribunal composed of three arbitrators and shall apply Vietnam’s law. However, in fact, the case is handled by an arbitral tribunal composed at only one arbitrator, and the law applied is Singapore’s law. This situation is protested against by a party but such protest is not accepted by the arbitral tribunal. This is a serious violation against arbitration rules prescribed in Point b Clause 2 Article 68 of LCA.

c) “The dispute is beyond the competence of the arbitral tribunal”, meaning the case handled by the arbitral tribunal is related to the fields beyond its competence as prescribed in Article 2 of LCA, or the arbitral tribunal handles the dispute without being requested by the parties concerned, or the arbitral tribunal acts beyond the scope of the agreement on settling the dispute by arbitration.

On principle, the court shall only annul the contents beyond the competence of the arbitral tribunal, not the whole arbitral award. If the decision of the arbitral tribunal on the issues within the competence of the arbitral tribunal can be separated from that beyond the competence of the arbitral tribunal, the decision on the issued requested to be settled by arbitration shall not be annulled.

If the decision of the arbitral tribunal on the issues within the competence of the arbitral tribunal cannot be separated from that beyond the competence of the arbitral tribunal, the court shall annul the whole arbitral award.

d) “Evidence that is provided by the parties and based on by the arbitral tribunal to give the arbitral award is false; arbitrators have received undue pecuniary or other advantage of any kind offered by a party and thus threaten the objectivity and fairness of the arbitral tribunal”

The court shall consider the request for identification of false evidence if such claim can be proven and the evidence must affect the issuance of the arbitral award, the objectivity and fairness of the arbitral tribunal. The court shall consult the regulations of LCA, arbitration rules, agreement among the parties, the rules for considering and assessing evidence applied by the arbitral tribunal when handling the case to identify false evidence.

dd) “The arbitral award contravenes the basic principles of Vietnam’s Law”, meaning the arbitral award violates the effective basic rules for formulation and implementation of Vietnam’s Law.

When considering a request for cancellation of an arbitral award, the court must determine whether the arbitral award violates any basic rule of law, how such rule affect the dispute settlement by arbitration.

The court shall only cancel an arbitral award after proving that it contravenes one or some basic rules of Vietnam’s law, which are not adhered to by arbitral tribunal when issuing the arbitral award, and the arbitral award seriously infringe upon the interest of the State, the lawful rights and interests of either party or some third person.

Example 1: The parties concerned have an agreement on dispute settlement and such agreement does not contravene the law or social ethics, but the arbitral tribunal does not recognize such agreement in the arbitral award. In this case, the arbitral award violates the right to free and voluntary business agreements prescribed in Article 11 of the Law on Commerce and Article 4 of the Civil Code. The court shall consider canceling this arbitral award because it contravenes a basic rule of Vietnam’s law which is prescribed in the Law on Commerce and the Civil Code.

Example 2: A party under the dispute provides evidence that the arbitral award involves coercion, fraud, threats, or bribery. In this case, the arbitral award violates the rule “arbitrators must be independent, objective, and impartial” prescribed in Clause 2 Article 4 of LCA.

Article 15. Court’s consideration of request for annulment of arbitral awards prescribed in Article 71 of LCA

1. The executive judge of the court must not appoint the judge that decides the appointment or replacement of arbitrators or the judge that settle the appeal against the decision of the arbitral tribunal to participate in the Council that considers the request for annulment of an arbitral award (hereinafter referred to as the Council).

2. When considering the request, the Council shall not consider the contents of the dispute and shall only examine the arbitral award to determine whether it is one of the cases mentioned in Clause 2 Article 68 of LCA. If the arbitral award is found to be one of the cases mentioned in Clause 2 Article 68 of LCA and the arbitral tribunal fails to make rectification at the request of the court as prescribed in Clause 7 Article 71 of LCA, the Council shall issue a decision to annul

the arbitral award pursuant to Clause 2 Article 68 of LCA. If the arbitral awards is found to not be one of the cases mentioned in Clause 2 Article 68 of LCA, the Council shall issue a decision not to annul the arbitral award. The decision on annulment of an arbitral award shall be made using form No. 08 enclosed to this Resolution.

3. If necessary, the Council shall consider suspending the consideration of the request for annulment of the arbitral award until a request is made by a party in the case mentioned in Clause 7 Article 71 of LCA. The decision to suspend consideration of the request for annulment of an arbitral award shall be made using form No. 06 enclosed to this Resolution.

4. The Council is entitled to terminate the consideration of the request for annulment of the arbitral award in the cases mentioned in Clause 5 Article 71 of LCA. The decision on termination of consideration of request for annulment of an arbitral award shall be made using form No. 07 enclosed to this Resolution.

Article 16. Court fees related to arbitration prescribed in Article 72 of LCA

The person that requests a court to handle perform the tasks related to arbitration shall pay fees at the court in accordance with the Ordinance on legal costs and guidelines in the Resolution No. 01/2012/NQ-HDTP dated June 13, 2012 of the Council of Judges of the People's Supreme Court on application of law to legal costs. When a request for evidence collection, witness summoning, cancellation of an arbitral award, or registration of an arbitral award is sent to a court, the court shall not request the applicant to pay fees and shall undertake the case under common procedures.

Article 17. Templates of some proceeding documents

Templates of some proceeding documents enclosed to this Resolution include:

1. Decision on appointment of arbitrators (Form No. 01);
2. Decision on replacement of arbitrators (Form No. 02);
3. The decision on appeal settlement (Form No. 03);
4. Decision on registration of arbitral award (Form No. 04);
5. Refusal of registration of arbitral award (Form No. 05);
6. Decision to suspend consideration of request for cancellation of arbitral award (Form No. 06);
7. Decision to terminate consideration of request for cancellation of arbitral award (Form No. 07);
8. Decision on cancellation of arbitral award (Form No. 08).

Article 18. Effect of Clause 3 Article 81 of LCA

From the effective date of LCA, (January 01, 2011, every dispute shall be settled in accordance with LCA whether the dispute arises before or after the effective date of LCA, and whether the arbitration agreement is reached before or after the effective date of the LCA.

In case an arbitration agreement is reached before the effective date of LCA but the dispute arises afterwards, the legitimacy and effect of such arbitration agreement shall be determined according to regulations of law at the time the arbitration agreement is reached.

Example: Company A and company B signed a contract on June 01, 2008, which allows dispute settlement by arbitration. On August 18, 2013, company A submit a petition to arbitration before the parties concerned do not have a new agreement on another dispute-settling agency. In this case, the dispute shall be handled by arbitration in accordance with LCA, and the effect of the arbitration agreement shall be determined according to the Ordinance on Commercial arbitration. The effect of an arbitration agreement is determined according to applicable regulations of law at the time the arbitration agreement is reached. The Ordinance on Commercial arbitration was effective from June 01, 2003 until December 31, 2010.

Article 19. Effect

1. This Resolution is passed by the Council of Judges of the People's Supreme Court on March 20, 2014 and takes effect on July 02, 2014. Instructions provided by the People's Supreme Court before the effective date of this Resolution are annulled from July 02, 2014.
2. Difficulties that arise during the implementation of this Circular should be reported to the People's Supreme Court for timely explanation and instructions.

**ON BEHALF OF THE COUNCIL OF
JUDGES OF THE PEOPLE'S SUPREME
COURT
EXECUTIVE JUDGE**

Truong Hoa Binh

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