

ABOUT COMMERCIAL ARBITRATION

COMMERCIAL ARBITRATION: ANOTHER CHOICE FOR DISPUTING PARTIES

Typically, when a disagreement arises during contract performance, the parties will conduct negotiations to solve it based on the spirit of goodwill, cooperation, and mutual benefits. However, when disagreement cannot be solved through negotiation, conflicts will begin to appear. When these conflicts cannot be reconciled, the parties will then step into the dispute.

The state, as the entity of public power and whose operations is materially guaranteed by tax contributed by the people, is responsible for establishing a court system that has the function of settling the civil cases, including contractual disputes in business and commerce. As only the court system executes this function, the parties have to bring their disputes to the court to settle.

Nevertheless, in a society where freedom in business is constituted and ensured, market economy is established, maintained and completed, economic relations become varied and diversified, the volume of established business and commercial contracts becomes enormous. Although the majority of contracts are strictly implemented by the parties for their own benefit in order to build up reputation in the market and maintain long-term cooperative business relation, and the disputes occupy only a small percentage of the total number of contracts in business and commerce, the number of petitions requesting courts to settle disputes every year still causes regular court system to be overloaded.

Therefore, the laws of those countries with market economy have established arbitration, giving the disputing parties an additional method of dispute settlement. The method of settling disputes by arbitration does not contrast with the method of settling disputes by the Court, but helps to reduce the workloads for the Court system. The court also has a certain supporting role in the arbitration proceedings.

Under such conditions, instead of suing at court, the parties can sue their counterparts to the Arbitrator to request settlement for their contract dispute.

ARBITRATION'S JURISDICTION: CONSTITUTED THROUGH ARBITRATION AGREEMENT

The jurisdiction of arbitration is established only by an arbitration agreement which is legally enforceable and feasible between the disputed parties.

In terms of time, the parties may agree on arbitration at the time of contract establishment, during the performance of the contract, or even when the dispute has occurred.

In terms of form, the arbitration agreement may be a term/clause/provision in the main contract document or in the appendix of the contract or as an agreement in an independent document but has reference to the relevant contract.

In terms of content, the parties may agree that all kind of dispute arising from or relating to a contract, or any specific kind of dispute arising from or relating to a contract, shall be settled by the arbitration.

The parties must also agree on a specific Arbitrator with jurisdiction to settle the dispute. The parties may agree to settle disputes by ad-hoc arbitration or institutional arbitration. If the parties

choose to settle disputes by ad-hoc arbitration, the parties must agree on the selection of arbitrators, proceeding rules and all other related matters, whereas choosing to settle disputes by institutional arbitration only requires minimum agreement, as the rules of proceeding with institutional arbitration have provisions applicable to cases in which the parties do not have specific agreement on a certain issue.

In Vietnam, institutional arbitration is organized in the form of Arbitration Center, licensed by the Ministry of Justice and registered to operate at the Department of Justice where the Arbitration Center has its headquarter, branches, and offices located. Arbitration Center has the function of organizing the settlement of commercial disputes by arbitration (and mediation) in accordance with the law. The arbitration agreement must ensure the determination of a certain Arbitration Center with jurisdiction to settle disputes.

REASON TO SETTLE DISPUTES BY ARBITRATION

Compared to settling disputes by Court, settling by arbitration have many outstanding advantages:

Firstly, when settling disputes by arbitration, the parties have more active rights. The parties can agree on resolving disputes by arbitral tribunal including only one Arbitrator or three Arbitrators. The parties may also actively select Arbitrators or request the Center's President to appoint Arbitrators to set up the Arbitral Tribunal. The parties may also agree on arbitration locations, arbitration languages and time limits of arbitration proceedings. The parties have the right to request the Arbitral Tribunal to reconcile or not, etc.

Secondly, arbitration proceedings are not public. Therefore, unless the parties agree otherwise, the parties, arbitrators, representatives and legal aid of the parties, all management personnel, as well as staff of the Arbitration Center have the obligation to keep all information related to the dispute confidential. With the non-public nature of the arbitration proceedings, the parties retain the secret of the dispute, confidential information in business and reputation on the market.

Thirdly, the arbitral award is the final judgment. Arbitration proceedings are conducted at one level only, hence, the arbitral award is final and enforceable with the same level of validity as a court judgment. The parties have the right to request the court for cancellation of arbitral awards in some very limited circumstances. Thanks to the progressive speciality and professionalism of Arbitrators, the Court increases the respect for the Arbitral Award, and thus reduces the cancellation of arbitral awards ratio. In the arbitration proceedings, if the parties reconcile successfully, the arbitral tribunal will issue a decision to recognize the parties' reconciliation. This decision is valid as an arbitral award.

Fourthly, the Arbitration Center provides dispute resolution services at a reasonable and highly competitive fee compared to the legal proceeding cost at court. Arbitration fee schedule is always published at the office and on the website of the Center. The parties have the right to negotiate with the Center about the fees applied in some certain cases.

PREFER TO THE ARBITRATION FEE SCHEDULE OF HTA COMMERCIAL ARBITRATION CENTER AT: [HTTPS://EN.HTA-ARBITRATION.VN](https://en.hta-arbitration.vn)