

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

No. 01/2014/NQ-HDTP

THE SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

Hanoi, March 20, 2014

RESOLUTION

Guiding the implementation of a number of articles of the Law on Commercial Arbitration

THE JUDICIAL COUNCIL OF THE SUPREME PEOPLE'S COURT

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

In order to apply correctly and uniformly the Law on Commercial Arbitration which is passed by the National Assembly on June 17, 2010 and takes effect on January 01, 2011;

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

RESOLVES:

Article 1. Scope of regulation

This Resolution guides the implementation of a number of articles of the Law on Commercial Arbitration regarding jurisdiction, order and procedures of court proceedings applicable to arbitration activities; registration of ad hoc arbitration's awards.

Article 2. Determination of jurisdiction to settle disputes between arbitration and court under the Law on Commercial Arbitration

1. Arbitrators are competent to settle the disputes specified in Article 2 of the Law on Commercial Arbitration if the parties have an arbitration agreement

specified in Article 5 and Article 16 of the Law on Commercial Arbitration, except for the cases provided in Clause 3 of this Article.

2. When the court is requested to settle disputes arising in the fields specified in Article 2 of the Law on Commercial Arbitration, the court shall request one or both parties to provide information about whether disputing parties have reached an arbitration agreement. The court must inspect and examine documents enclosed with the petition to determine whether such dispute is in any of the cases specified in Clause 3 of this Article. Depending on specific cases, the court shall settle as follows:

a) In case the disputing parties have reached an arbitration agreement, or a legally effective court's judgment or ruling or arbitral decision or award determines that the dispute is not under an arbitration agreement, the court shall consider accepting and settling the case within its jurisdiction.

b) In case the disputing parties have reached an arbitration agreement which is not specified in Clause 3 of this Article, the court shall, based on Point dd, Clause 2, Article 168 of the 2004 Civil Procedure Code, amended and supplemented by the 2011 Law Amending and Supplementing a Number of Articles of the Civil Procedure Code (hereinafter referred to as the Civil Procedure Code), return the petition and enclosed documents and evidences to the suer.

In case the court finds that the disputing parties have reached an arbitration agreement which is not specified in Clause 3 of this Article, the court shall, based on Point i, Clause 1, Article 192 of the Civil Procedure Code, issue a decision on termination of the settlement of a case, return the petition and enclosed documents to the suer.

c) If the court is requested to settle a dispute that is requested for settlement and undergoing the settlement by an arbitration council, the court shall return the petition to the suer even if the court finds that the dispute is not within the jurisdiction of the arbitration, not under an arbitration agreement, or the arbitration agreement is not any of the cases specified in Clause 3 of this Article, if the court has accepted the petition, it shall issue a decision on termination of the dispute settlement, unless the court undertakes the case before the arbitration is requested for settlement. If the suer requests the court to settle the dispute after a decision or award is issued by the arbitration council as specified in Articles 43,

58, 59, and 61 of the Law on Commercial Arbitration, the court shall consider accepting and settling the case under general procedures.

3. In one of the following cases, the dispute shall be under the jurisdiction of the court even the disputing parties have reached an arbitration agreement, unless otherwise agreed by the parties or specified by law:

a) The court issues a decision to cancel an arbitral award or the arbitration council's decision on recognition of the parties' agreement;

b) There is a decision to suspend the dispute settlement issued by an arbitration council or arbitration center specified in Clause 1, Article 43, and Points a, b, d, and dd, Clause 1, Article 59 of the Law on Commercial Arbitration;

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

4. In case the parties have reached an agreement on settlement of the dispute both by an arbitration and court, and there is no replacing agreement or new agreement on the agency jurisdiction to settle dispute, which is not specified in Clause 3 of this Article, the arising dispute shall be settled as follows:

a) If the suer requests an arbitration to settle the dispute before requesting the court to do so or requests the arbitration to settle the dispute before the case is accepted by the court as specified at Point b, Clause 4 of this Article, the court shall, based on Article 6 of the Law on Commercial Arbitration, refuse to undertake the case. In this case, the court shall return the petition. If the case has been received, the court shall, based on Point i Clause 1 Article 192 of the Civil Procedure Code, issue a decision to suspend the dispute settlement because it is beyond the jurisdiction of the court, return the petition and enclosed documents.

b) In case the suer requests the court to settle the dispute, right after receiving the petition, the court must determine whether arbitration is requested by either party to settle the case.

Within 05 working days from the receipt of the petition, if the court finds that the sued person or the suer has requested an arbitration to settle the dispute, the court shall return the petition to the suer. In case the sued person or suer has not yet requested the arbitration to settle the dispute, the court shall consider accepting and settling according to general procedures.

If the court has undertaken the case and then finds that an arbitration is requested to settle such case before it is undertaken by the court, the court shall, based on Point i. Clause 1 Article 192 of the Civil Procedure Code, issue a decision to suspend the dispute settlement because it is beyond the jurisdiction of the court, return the petition and enclosed documents.

Article 3. Invalid arbitration agreements specified in Article 6 and Article 18 of the Law on Commercial Arbitration

An arbitration agreement specified in Article 18 of the Law on Commercial Arbitration shall be considered invalid. After declaring an arbitration agreement invalid, the cases below should be considered:

1. *“Disputes arise in the domains falling beyond the arbitration's jurisdiction”* specified in Clause 1, Article 18 of the Law on Commercial Arbitration means the case in which an arbitration agreement is negotiated to settle the disputes related to the fields other than those mentioned in Article 2 of the Law on Commercial Arbitration.

2. *“The arbitration agreement maker has no competence defined by law”* in Clause 2, Article 18 of the Law on Commercial Arbitration 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.

In principle, arbitration agreement made by a person who has no competence shall be considered invalid. If the arbitration agreement made by a person who has no competence but the person competent to negotiate arbitration agreement accept it or do not object to it during the negotiation or arbitral proceedings, such arbitration agreement shall not be considered invalid.

3. *“The arbitration agreement maker has no civil act capacity”* specified in Clause 3 Article 18 of the Law on Commercial Arbitration means the minors or the person who loses his/her civil act capacity or a person who has a limited civil act capacity. In this case, the court must collect evidence proving that the arbitration agreement maker loses his/her civil act capacity, including papers bearing his/her date of birth, a conclusion by a competent agency or a court's decision determining and declaring that such person loses his/her civil act capacity or has a limited civil act capacity.

4. *“The form of the arbitration agreement is incompliant with Article 16 of the Law on Commercial Arbitration”* specified in Clause 4, Article 18 of the Law on Commercial Arbitration means the case in which the arbitration agreement is not made by one of the methods mentioned in Article 16 of the Law on Commercial Arbitration and Article 7 of this Resolution.

5. *“A party is deceived, intimidated or compelled in the course of making the arbitration agreement”* specified in Clause 5, Article 18 of the Law on Commercial Arbitration means the case in which either party is deceived, intimidated or compelled according to Article 4 and Article 132 of the Civil Code.

6. *“The arbitration agreement breaches prohibitions specified by law”* specified in Clause 6 Article 18 of the Law on Commercial Arbitration means an arbitration agreement specified in Article 128 of the Civil Code.

Article 4. Unrealizable arbitration agreement as specified in Article 6 of the Law on Commercial Arbitration

“Unrealizable arbitration agreement” as specified in Clause 6, Article 18 of the Law on Commercial Arbitration means an arbitration agreement in the cases below:

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

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

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

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

5. The goods or service provider and consumers have an overall agreement on provision of goods or services that contain arbitration terms drafted by the providers as specified in Article 17 of the Law on Commercial Arbitration, but the consumers refuse to have the dispute settled by arbitration.

Article 5. Identification of courts which have competence over arbitral activities as specified in Article 7 of the Law on Commercial Arbitration

1. The parties may reach an agreement to select one of the provincial courts of Vietnam to settle cases related to arbitral activities in Vietnam. The agreement on selection of the competent court must be made into writing, specifying the cases to be settled by the court, name of the court selected by the parties.

In case the agreement is not conformable with Clause 3, Article 7 of the Law on Commercial Arbitration, the competence of the court over arbitral activities shall be identified in accordance with Clause 2, Article 7 of the Law on Commercial Arbitration on competence by territory of courts, and Clause 3, Article 7 of the Law on Commercial Arbitration on competence by levels of courts.

For example: If the parties have reach an agreement to select the court of district X to summon witnesses, then such agreement contravenes the regulations in Clause 3, Article 7 of the Law on Commercial Arbitration. The court shall refuse this agreement and the competence of the court over arbitral activities shall be identified in accordance with Point e, Clause 2 and Clause 3, Article 7 of the Law on Commercial Arbitration.

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

3. Identification of a court which has competence over request for appointment of arbitrators to establish an ad hoc arbitration council.

a) In case there are multiple defendants involved in a request for appointment of arbitrators to establish an ad hoc arbitration council, the plaintiff may send the request to one of the courts in the place in which one of these defendants resides or has its head office. If one or some defendants resides or have their head offices in foreign countries, the plaintiff may select the court in the place in which the plaintiff resides or has its head office.

b) When receiving the written request for appointment of arbitrators to establish an ad hoc arbitration council, the court must explain to the applicant that there is only one of the courts specified at Point a Clause 2, Article 7 of the Law on Commercial Arbitration may be selected. The selected court must request the applicant to make a commitment in the written request that the request is not submitted to another court.

c) In case the plaintiff submits the requests to various courts and they all receive the requests, the first one that accepts the request shall have competence to settle the case. Other courts shall handle the request as follows:

c1) Return the written request, documents, evidence and advance fees to the applicant if the case is not accepted according to Point dd, Clause 1, Article 168 and Article 311 of the Civil Procedure Code.

c2) Issue a decision to suspend the consideration, remove the case from the acceptance register, return the written request, enclosed documents and evidence to the applicant if the case has been accepted according 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 refunded to the applicant by the court.

c3) If multiple courts have issue decisions on arbitrator appointment, the decision issued by the court selected by the plaintiff that is first notified to the defendant shall apply. In this case, based on Clause 2 Article 39 of the Ordinance on Court Costs and Fees, the plaintiff shall have to pay 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 competence over arbitrator replacement, settlement of complaints against decisions of arbitration council, cancellation of arbitral awards, registration of arbitral awards mentioned at Points b, c and g, Clause 2, Article 7 of the Law on Commercial Arbitration are identified as follows:

a) *“The place in which the arbitration council settles the dispute”* specified at Point b, Clause 2, Article 7 of the Law on Commercial Arbitration shall be identified in accordance with Clause 8, Article 3 of the Law on Commercial Arbitration; In case the parties fail to reach an agreement on the place for dispute settlement and the arbitration council fails to indicate or fails to indicate clearly the place for dispute settlement, the requester shall submit supporting documents and evidence. If the requester fails to prove it, the court shall instruct him/her to request the arbitration council for identification. Based on the result of identifying the place in which the arbitration council settles the dispute, the court shall consider accepting the cases in accordance with law.

b) *“The place in which the arbitration council issued such decision”* and *“the place in which the arbitration council pronounced such arbitral award”* specified at Point c and Point g Clause 2, Article 7 of the Law on Commercial Arbitration shall be determined under the decision or arbitral award of the arbitration council. In case the decision or arbitral award given by the arbitration council fails to indicate or fails to indicate clearly the place in which the arbitration council issued such decision and the place in which the arbitration council pronounced such arbitral award, the requester shall submit documents and evidence to prove it. If the requester fails to prove it, the court shall instruct him/her to request the arbitration council for identification. Based on the result given by the arbitration council, the court shall consider accepting the case in accordance with law.

c) In case the place in which the arbitration council issued such decision and the place in which the arbitration council pronounced such arbitral award specified at Point c and Point g, Clause 2, Article 7 of the Law on Commercial Arbitration is located in a foreign country, the competent court is the court in the place in which the defendant resides or has its head office in Vietnam. In case the place of residence or head office of the defendant is located in a foreign country, the competent court is the court in the place in which the plaintiff resides or has its head office.

5. Determination of competence 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 competence over operation of foreign arbitrators according to Points a, b, c, d, dd, and e, Clause 2, Article 7 of the Law on Commercial Arbitration.

b) The Vietnamese court does not have competence over cancellation of arbitral awards, registration of arbitral awards given by foreign arbitrators as specified at Point g, Clause 2, Article 7 of the Law on Commercial Arbitration. Arbitral awards given by foreign arbitrators shall be recognized and applied in Vietnam in accordance with the Civil Procedure Code on procedures for recognition and implementation of decisions of foreign arbitrators in Vietnam.

Article 6. Loss of the right to protest specified in Article 13 of the Law on Commercial Arbitration

1. A party that detects to have a violation of the Law on Commercial Arbitration or the arbitration agreement but continues to conduct arbitral proceedings and does not protest the violation with the arbitration council or arbitration center within the time limit set by the Law on Commercial Arbitration will lose its right to protest such violations at the arbitration or court. In the cases the Law on Commercial Arbitration does not specify the time limit, it shall be agreed by the parties or rules of arbitral proceedings. If the parties fail to reach an agreement or the rules of arbitral proceedings do not specify, the protest shall be made before the time the arbitration council gives an arbitral award.

2. When considering a request from one or both parties on violations against regulations of the Law on Commercial Arbitration or the arbitration agreement, the court shall examine the documents, evidence, and rules of arbitral proceedings 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 specified in Article 13 of the Law on Commercial Arbitration and Clause 1 of this Article, the party that loses such right may not appeal against the decision from the arbitration council and may not request cancellation of the arbitral award with regard to the violations against which the right to protest is lost. The court shall not decide on

accepting 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 cancellation of the arbitral award, the court shall consult to Point dd, Clause 2 and Point b, Clause 3, Article 68 of the Law on Commercial Arbitration. The court may 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 specified in Article 16 of the Law on Commercial Arbitration

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

4. The combination of many disputing legal relations for settlement in the same lawsuit shall be carried in one of the following cases:

a) The parties agree to combine many disputing legal relations for settlement in the same lawsuit;

b) The rules of arbitral proceedings allow for combination of many disputing legal relations for settlement in the same lawsuit.

Article 8. Formation of ad hoc arbitration councils specified in Article 41 of the Law on Commercial Arbitration

1. If the parties do not agree otherwise, the court shall appoint arbitrators upon 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 after receiving the petition from the plaintiff, the court shall appoint arbitrators for defendant as requested by 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

and enclosed documents and evidence, if the defendants fail to reach a consensus on the arbitrator appointment or one of the parties sends request, the court shall appoint arbitrators for defendants;

c) If the appointed arbitrators fail to elect a chairperson of the arbitration council 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 arbitration council at the request of either party;

d) If the parties agree that the dispute shall be settled 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 chief justice of the provincial court shall assign a judge to appoint arbitrators. The competent court shall notify the disputing parties and arbitrators of the selected ad hoc arbitration council of the acceptance 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 disputing parties.

4. When considering the request, the judge shall consult Article 21 and Article 21 of the Law on Commercial Arbitration, the lists of arbitrators of arbitration organizations in Vietnam specified at Point c, Clause 1, Article 15 of the Law on Commercial Arbitration, Clause 4, Article 2 and Article 19 of the Government's Decree No. 63/2011/ND-CP dated July 28, 2011, detailing and guiding a number of Articles of the Law on Commercial Arbitration, and enclosed documents. The court's decision on appointment of arbitrators shall be made according to the Form No. 1 to this Resolution.

5. Within 03 working days from the date on which the decision is issued, the court shall send the decision to the parties, the arbitration council, and ad hoc arbitrators.

Article 9. Change of ad hoc arbitrators specified in Clause 4 Article 42 of the Law on Commercial Arbitration

1. The court shall only accept and settle the change of ad hoc arbitrators in the cases specified in Clause 4 Article 42 of the Law on Commercial Arbitration. The person that requests for change 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 chief justice of the provincial court shall assign a judge to decide the change of arbitrators. The competent court shall notify the arbitration council, arbitrators of the ad hoc arbitration council, and the disputing parties of the acceptance of the written request and the judge appointed to handle the case.

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

4. When considering the request, the judge shall consult Article 20, Article 21 and Clause 6, Article 42 of the Law on Commercial Arbitration, the lists of arbitrators of arbitrator organizations operating in Vietnam as specified at Point c, Clause 1, Article 15 of the Law on Commercial Arbitration, Clause 4 Article 2 and Article 19 of the Government's Decree No. 63/2011/ND-CP dated July 28, 2011 detailing and guiding a number of Articles of the Law on Commercial Arbitration, and enclosed documents to consider and decide whether the decision on appointment of arbitrators can be adjusted.

In case the request for change of arbitrator is legitimate, the judge shall decide the change of arbitrator on a case-by-case basis in accordance with corresponding regulations. If the request for change of arbitrators is refused, the judge shall issue a written decision specifying the reasons for refusal. The decision on change of arbitrators shall be made according to the Form No. 2 to this Resolution.

5. Within 03 working days from the date on which the decision is made, the court shall send the decision to the parties, the arbitration council, arbitrators, and the People's Procuracy at the same level.

Article 10. Complaints and settlement of complaints about an arbitration council's decision on the non-existence, invalidation or unreliableness of an arbitration agreement, and jurisdiction of the arbitration council specified in Article 44 of the Law on Commercial Arbitration

1. The complainant that does not concur with a decision by an arbitration council's decision on the non-existence, invalidation or unreliableness of an arbitration agreement, and jurisdiction of the arbitration council shall file a written complaint. The written complaint shall contain the information specified in Clause 2 Article 44 of the Law on Commercial Arbitration and enclosed with the documents, evidence specified in Clause 3, Article 44 of the Law on Commercial Arbitration. In case the arbitration council does not issue a separate decision on the jurisdiction of the arbitration council, the requester must provide documents and evidence proving that the arbitration council does not have the jurisdiction to settle such dispute.

2. Within 05 working days from receipt of the written complaint, enclosed documents and evidence, the court shall notify the arbitration council of the acceptance and processing of the written complaint.

3. Based on the written complaint, enclosed documents and evidence, and regulations in Articles 5, 6, and 18 of the Law on Commercial Arbitration, the judge shall determine whether the complaint about an arbitration council's decision on the non-existence, invalidation or unreliableness of an arbitration agreement, and jurisdiction of the arbitration council is justifiable or not. In case of necessity, the judge may request the arbitration council to provide their opinions for the complaint.

4. Within the specified period specified in Clause 4 Article 44 of the Law on Commercial Arbitration, the judge must consider and issue the decision on settling the complaint. The decision on settling the complaint shall be issued according the Form No. 3 to this Resolution. Within 05 working days from the day on which the decision on settling the complaint is issued, the court shall send the decision to the parties, the arbitration council, the arbitrators, and the People's Procuracy at the same level.

5. Pursuant to regulations of law, the judge shall accept or reject the complaint about an arbitration council's decision on the non-existence, invalidation or unreliableness of an arbitration agreement, and jurisdiction of the arbitration council. The court must specify the reasons for the acceptance or rejection of the complaint as follows:

a) In case the court determines that the dispute is beyond the jurisdiction of the arbitration council, the arbitration agreement is unavailable, invalid, or unrealizable:

a1) In case the arbitration council has issued a decision to suspend the case settlement, the parties may reach an agreement and select the method for dispute settlement.

a2) If the case is being handled by the arbitration council, within 15 days after receiving the decision on complaint settlement by the court, it must issue a decision to suspend the dispute settlement in accordance with Clause 6, Article 44 of the Law on Commercial Arbitration.

a3) In case the arbitration council has given an arbitral award, either party may request the court to cancel such arbitral award according to the general procedures.

b) In case the court determines that the dispute is within the jurisdiction of the arbitration council, the arbitration agreement is available, valid, or realizable:

b1) In case the arbitration council has issued a decision to suspend the case settlement, the arbitration council shall resume the dispute settlement within 15 days from the receipt of the decision on complaint settlement from the court.

b2) In case the arbitration council has given an arbitral award, either party may request the enforcement of such arbitral award, register such arbitral award, or request the court to cancel such arbitral award according to general procedures.

b3) If the case is being handled by the arbitration council, it shall keep handling it according to the general procedures.

Article 11. Proposal for court's collection of evidence or summons of witnesses specified in Article 46 and Article 47 of the Law on Commercial Arbitration

1. The court shall only collect evidence in the cases specified in Clause 5 and Clause 6, Article 46 of the Law on Commercial Arbitration if the arbitration council, either party fails to collect adequate evidence after taking necessary measures (meaning all methods and resources have been used to request the individuals, agencies and organizations managing and keeping evidence to provide such

evidence but such they refuse to do so). The written request for court's collection of evidence must contain sufficient information specified in Clause 5, Article 46 of the Law on Commercial Arbitration, enclosed with the arbitration agreement, petition, other relevant documents, and evidence proving the unsuccessful attempt to collect evidence.

2. Order and procedures for collecting, preserving, and transferring evidence by the court shall comply with Clause 5, Article 46 of the Law on Commercial Arbitration and the Civil Procedure Code.

3. The Court shall only summon witnesses when there is evidence that the witnesses have been legitimately summoned by the arbitration council but then fail to attend the meeting without justifiable reasons, and their absence obstruct the settlement of disputes. The written request to summon the witnesses must contain sufficient information specified in Clause 2, Article 47 of the Law on Commercial Arbitration, enclosed with the arbitration agreement, petition, relevant documents, and evidence proving that the witnesses were summoned legitimately but failed to attend the meeting, and that their absence obstruct the settlement of disputes.

4. Order and procedures for issuing decisions, summoning witnesses, and notifying the result shall comply with Clause 3, Article 47 of the Law on Commercial Arbitration and the Civil Procedure Code.

5. Together with the submission of documents and evidence as requested, the party requesting for collection of evidence or summon of witnesses must pay fees and costs thereof according to regulations. In case the arbitration council requests the court to collect evidence or summon witnesses, the fees and costs shall be paid by the requester via the arbitration council.

Article 12. Jurisdiction, order and procedures for applying, adjusting, and canceling interim urgent measures by the court as specified in Article 53 of the Law on Commercial Arbitration

1. Either party may send a written request to the competent court for application of one or some interim urgent measures right after submitting the petition to the arbitrators (when the arbitral proceedings have been initiated), whether or not the arbitration council has been formed or the dispute has been settled by the arbitration council.

2. Either party may request the competent court to apply one or some interim urgent measures specified in Clause 2, Article 49 of the Law on Commercial Arbitration, unless otherwise agreed by the parties.

3. Together with the submission of documents and evidence as requested, any party requesting for application, adjustment, or cancellation of interim urgent measures shall pay fees and take the security measures as prescribed.

4. Order and procedures for implementation, adjustment, cancellation of interim urgent measures, and supervision of adherence to law during the application of interim urgent measures provided by the court shall comply with Articles 48, 49, 52, 53 of the Law on Commercial Arbitration and the Civil Procedure Code.

5. When either party requests the court to take one or some interim urgent measures, the court shall request such party to provide information about whether they have requested the arbitration council to implement one or some interim urgent measures. If they have not made such, the court shall request them to make a commitment in the written request that they shall not send such request to another court or arbitration council. The court must also examine the documents enclosed to the written request to determine whether the parties have requested another court or arbitration council to take one or some interim urgent measures for the dispute.

a) If there is evidence that one of the parties has requested the arbitration council or a court to take one or some interim urgent measures, the court shall return the written request the parties according to Clause 5, Article 53 of the Law on Commercial Arbitration, unless the request for application of interim urgent measures made by the parties is beyond the jurisdiction of the arbitration council.

b) If the court finds that the parties have requested the arbitration council or a court to take one or some interim urgent measures after a decision on application of interim urgent measures is made, the court shall issue a decision to cancel the interim urgent measures they promulgated, return the written request and enclosed documents to the parties.

Article 13. Registration of ad hoc arbitration's awards specified in Article 62 of the Law on Commercial Arbitration

1. According to Clause 2, Article 62 of the Law on Commercial Arbitration, if either party submits the written request to the court for registration of the ad hoc arbitration's award after 01 year from the issuance of such arbitral award, the court shall not consider and settle such request.

In case there is evidence that the ad hoc arbitration's award is being considered and settled under the procedures for cancellation of arbitral award at a competent court, when receiving the written request for registration of the arbitral award, the court shall delay undertaking the request pending the result of settling request for arbitral award cancellation.

2. The party that applies for registration of the arbitral award shall make and send a written request enclosed the documents specified in Clause 2, Article 62 of the Law on Commercial Arbitration 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. In case of necessity, the judge may convene one or all disputing parties and the arbitration council to offer their opinions about the request for registration of arbitral award. The judge shall, based on the Law on Commercial Arbitration and enclosed documents, verify the authenticity of the enclosed documents to consider and decide the registration.

4. If the ad hoc arbitration's award and enclosed documents are deemed authentic, the judge shall carry out the registration. The decision on registration of arbitral award shall be according to the Form No. 04 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, immediately notify the requester, and specify reasons for such rejection. The notice of rejection of arbitral award registration shall be made according to the Form No. 05 to this Resolution.

Article 14. Grounds for cancellation of arbitral awards specified in Article 68 of the Law on Commercial Arbitration

1. Arbitral awards specified in Clause 10, Article 3 and Article 68 of the Law on Commercial Arbitration include decisions on recognition of agreements among the parties made by arbitration councils according to Article 58 of the Law on

Commercial Arbitration and arbitral awards given by arbitration councils under Article 61 of the Law on Commercial Arbitration.

2. The court shall cancel the arbitral awards specified in Article 58 and Article 61 of the Law on Commercial Arbitration in one of the cases below:

a) *“There is no arbitration agreement or the arbitration agreement is invalid”*, meaning the arbitration agreement is one of the cases specified in Article 6 and Article 18 of the Law on Commercial Arbitration, or Articles 2, 3, and 4 of this Resolution.

b) *“The arbitration council's composition or procedures of arbitral proceedings is/are incompliant with the parties' agreement or the Law on Commercial Arbitration”*, means the case in which the arbitration council fails to comply with the agreement of the parties on composition of the arbitration council or rules of arbitral proceedings, or the arbitration council fails to adhere to regulations of the Law on Commercial Arbitration, and such violation is considered serious by the court if the arbitration council fails to make rectification at the request of the court as specified in Clause 7, Article 71 of the Law on Commercial Arbitration.

Example 1: A party is not promptly and legitimately notified of the petition as specified in Article 32 of the Law on Commercial Arbitration and rules of arbitral proceedings. This infringes upon the right to form an arbitration council and is considered a serious violation against procedures for arbitral proceedings as specified at Point b, Clause 2, Article 68 of the Law on Commercial Arbitration.

Example 2: The parties agree that the dispute shall be settled by an arbitration council composed of three arbitrators and shall apply Vietnam's law. However, in fact, the case is settled by an arbitration council composed of 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 arbitration council. This is a serious violation against procedures for arbitral proceedings specified at Point b, Clause 2, Article 68 of the Law on Commercial Arbitration.

c) *“The dispute falls beyond the arbitration council's jurisdiction”*, means the case settled by the arbitration council is related to the fields beyond its jurisdiction as specified in Article 2 of the Law on Commercial Arbitration, or the arbitration council settles the dispute without being requested by the parties, or the

arbitration council acts beyond the scope of the agreement on settling the dispute by arbitration.

On principle, the court shall only cancel the contents beyond the jurisdiction of the arbitration council, not the whole arbitral award. In case the decision of the arbitration council on the issues within the jurisdiction of the arbitration council can be separated from that beyond the jurisdiction of the arbitration council, the decision on the issued requested to be settled by arbitration shall not be canceled.

In case the decision of the arbitration council on the issues within the jurisdiction of the arbitration council cannot be separated from that beyond the jurisdiction of the arbitration council, the court shall cancel the whole arbitral award.

d) *“The evidence provided by the parties on which the arbitration council bases to issue the award is counterfeit; an arbitrator receives money, assets or other material benefits from one disputing party, thus affecting the objectivity and impartiality of the award”*

The court shall only consider identifying whether the evidence is counterfeit if such claim can be proven and the evidence must affect the issuance of the arbitral award, the objectivity and fairness of the arbitration council. The court shall, based on the Law on Commercial Arbitration, rules of arbitral proceedings, agreement among the parties, the rules for considering and assessing evidence applied by the arbitration council when handling the case to identify counterfeit evidence.

dd) *“The award contravenes the fundamental principles of Vietnamese law”*, means that the arbitral award violates the effective fundamental principles for formulation and implementation of Vietnamese law.

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

The court shall only cancel an arbitral award after proving that it contravenes one or some fundamental principles of Vietnamese law, which are not adhered to by arbitration council 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 third persons.

Example 1: The parties have an agreement on dispute settlement and such agreement does not contravene the law or social ethics, but the arbitration council does not recognize such agreement in the arbitral award. In this case, the arbitral award violates the right to free and voluntary business agreements specified 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 fundamental principle of Vietnamese law which is specified in the Law on Commerce and the Civil Code.

Example 2: A disputing party provides evidence that the arbitral award involves coercion, fraud, threats, or bribery. In this case, the arbitral award violates the principle that “arbitrators must be independent, objective and impartial” specified in Clause 2, Article 4 of the Law on Commercial Arbitration.

Article 15. Examination by courts of written requests for cancellation of arbitral awards specified in Article 71 of the Law on Commercial Arbitration

1. The chief justice of the court must not appoint the judge that decides the appointment or change of arbitrators or the judge that settles the complaint against the decision of the arbitration council to participate in the Council for examination of written requests for cancellation of arbitral awards.

2. When considering the written request, the Council for examination of written requests for cancellation of arbitral awards 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 the Law on Commercial Arbitration. If the arbitral award is found to be one of the cases mentioned in Clause 2, Article 68 of the Law on Commercial Arbitration and the arbitration council fails to make rectification at the request of the court as specified in Clause 7, Article 71 of the Law on Commercial Arbitration, the Council for examination of written requests shall issue a decision to cancel the arbitral award according to Clause 2, Article 68 of the Law on Commercial Arbitration. If the arbitral award is found to not be one of the cases mentioned in Clause 2, Article 68 of the Law on Commercial Arbitration, the Council for examination of written requests shall issue a decision not to cancel the arbitral award. The decision on cancellation of an arbitral award shall be made according to the Form No. 08 to this Resolution.

3. In case of necessity, the Council for examination of written requests shall consider temporarily suspending the consideration of the request for cancellation of the arbitral award until a request is made by a party in the case mentioned in Clause 7, Article 71 of the Law on Commercial Arbitration. The decision to temporarily suspend consideration of the request for cancellation of an arbitral award shall be made according to the Form No. 06 to this Resolution.

4. The Council for examination of written requests may suspend the consideration of the request for cancellation of the arbitral award in the cases mentioned in Clause 5, Article 71 of the Law on Commercial Arbitration. The decision on suspension of consideration of request for cancellation of an arbitral award shall be made according to the Form No. 07 to this Resolution.

Article 16. Court fees related to arbitration specified in Article 72 of the Law on Commercial Arbitration

The person that requests a court to settle issues related to arbitration shall pay the court fees in accordance with the Ordinance on Court costs and fees and the Resolution No. 01/2012/NQ-HDTP dated June 13, 2012 of the Judicial Council of the Supreme People's Court, on application of laws on court costs and fees. When a written 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 accept the case under general procedures.

Article 17. Forms of proceeding documents

The following forms of proceeding documents are promulgated together with this Resolution:

1. Decision on appointment of arbitrators (Form No. 01);
2. Decision on change of arbitrators (Form No. 02);
3. The decision on complaint settlement (Form No. 03);
4. Decision on registration of arbitral award (Form No. 04);
5. Notice of refusal of arbitral award registration (Form No. 05);
6. Decision on temporarily suspending consideration of request for cancellation of arbitral award (Form No. 06);

7. Decision on suspending consideration of request for cancellation of arbitral award (Form No. 07);

8. Decision on cancellation of arbitral award (Form No. 08).

Article 18. Validity specified in Clause 3, Article 81 of the Law on Commercial Arbitration

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

In case an arbitration agreement is reached before the effective date of the Law on Commercial Arbitration but the dispute arises afterwards, and parties do not reach another arbitration agreement, the legitimacy and validity of such arbitration agreement shall be determined according to regulations of law at the time the arbitration agreement is reached.

For 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 initiates a lawsuit to arbitration because the parties do not have a new agreement on agency competent to settle the dispute. In this case, the dispute shall be accepted and settled by arbitration in accordance with the Law on Commercial Arbitration, and the validity of the arbitration agreement shall be determined according to the Ordinance on Commercial Arbitration. The validity of an arbitration agreement is determined according to applicable laws at the time the arbitration agreement is reached. The Ordinance on Commercial Arbitration was effective from June 01, 2003 to the end of December 31, 2010.

Article 19. Effect

1. This Resolution is passed by the Judicial Council of the Supreme People's Court on March 20, 2014 and takes effect on July 02, 2014. Instructions provided before the effective date of this Resolution by the People's Supreme Court cease to be effective from July 02, 2014.

2. Any difficulties arising in the course of implementation of this Circular should be reported to the People's Supreme Court for timely explanation and instructions.

**ON BEHALF OF THE JUDICIAL COUNCIL OF
THE SUPREME PEOPLE'S COURT
THE CHIEF JUSTICE**

Truong Hoa Binh

** All Appendices are not translated herein.*