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The Alternative Dispute Resolution in Vietnam

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PREFACE

The evolution of the market-oriented economy and the increase in cross-border transactions have brought an urgent need for research and comparisons of judicial systems and the role of law in the development of Asian countries. Last year, in FY 2000, the Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) conducted legal researches in Asian countries with two main themes. The first theme was to figure out the role of law in social and economic development and the second was to survey the judicial systems and the ongoing reform process thereof. We organized joint research projects with research institutions in Asia and had a roundtable meeting entitled “Law, Development and Socio-Economic Change in Asia” in Manila. The outcomes of the joint researches and the meeting were published in March 2001 as *IDE Asian Law Series No. 1-10*.

This year, in FY 2001, based on the last year’s achievement, we established two research committees: the Committee on “Law and Political Development in Asia” and the Committee on “Dispute Resolution Process in Asia”. The former committee focused on legal and institutional reforms following democratic movements in several Asian countries. Since late 1980s many Asian countries have experienced drastic political changes by the democratic movements with mass action, which have resulted in the reforms of political and administrative system for ensuring the transparency and accountability of the political and administrative process, human rights protection, and the participation of the people to those process. Such reforms are essential to create the stability of the democratic polity while law and legal institutions need to function effectively as designed for democracy. The latter committee conducted a comparative study on availability of the court system and out-of-court systems (namely Alternative Dispute Resolutions), with the purpose of determining underlying problems in the courts. As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies. For dispute resolution, litigation in the court is not the only option. Mediation and arbitration proceedings outside the courts are important facilities as well. In order to capture the entire picture of dispute resolution systems, a comprehensive analysis of both the in- and out-of-court dispute resolution processes is essential.

In order to facilitate the committees' activities, IDE organized joint research projects with research institutions in seven Asian countries. This publication, titled *IDE Asian Law Series*, is the outcome of research conducted by the respective counterparts. This series is composed of papers corresponding to the research themes of the abovementioned committees, i.e. studies on law and political development in Indonesia, the Philippines and Thailand, and studies on the dispute resolution process in China, India, Malaysia, the Philippines, Thailand and Vietnam. The former papers include constitutional issues that relate to the recent democratization process in Asia. Studies conducted by member researchers investigated the role of law under those conditions while taking up such subjects as rule of law, impeachment, Ombudsman activities, human rights commissions, and so on. The latter papers include an overview of dispute resolution mechanisms for comparative study, such as court systems and various ADRs, as well as case studies on the dispute resolution process in consumer, labor and environmental disputes.

We believe that this work is unprecedented in its scope, and we hope that this publication will make a contribution as research material and for the further understanding of the legal issues we share.

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TABLE OF CONTENTS

Preface	
Contributors	
Table of Contents	

PART ONE

OVERVIEW OF THE DISPUTE RESOLUTION MECHANISM IN VIETNAM

I. COURT SYSTEM IN VIETNAM

1. Organization of the Court System	1
2. Judges: Mechanism for training and appointing	3
3. The fact of judicial activities of the court system over the last years	7

II. ALTERNATIVE DISPUTE RESOLUTION IN VIETNAM: TYPES AND FUNCTIONS

1. Overview	21
2. Forms of business dispute resolution	23
3. A brief history of the development of business dispute resolution laws and practices in Vietnam	31

III. CURRENT PRACTICES OF ARBITRAL RESOLUTION OF BUSINESS DISPUTES IN VIETNAM

1. Resolution of business disputes through the Vietnam International Arbitration Centre (VIAC)	35
2. Resolution of business disputes through economic centres established under Decree No. 116/CP dated 5 September 1994 of the Government.	38

IV. RESOLUTION OF BUSINESS DISPUTES THROUGH THE COURT SYSTEM

1. Jurisdiction of the people's courts over economic disputes	42
2. Underlying principles of economic proceedings	45
3. Procedures for settlement of economic cases	47

V. PROCEDURES FOR RECOGNISING AND ENFORCING FOREIGN ARBITRAL AWARDS IN VIETNAM	
1. 1958 New York Convention and Vietnam’s accession	55
2. Procedures for recognising and enforcing foreign arbitral awards	57
<i>PART TWO</i>	
<i>STUDY ON DISPUTE RESOLUTION PROCESS IN SPECIFIC CASE</i>	
I. DISPUTE RESOLUTION IN CONSUMER PROTECTION	
1. Concept of Consumer	61
2. Rights of Consumer	62
3. Mechanism in Consumer Protection	71
II. PROCEDURES FOR SETTLEMENT OF LABOUR DISPUTES	
1. Types of labour disputes	85
2. Causes of labour disputes	86
3. Labour dispute settlement organisations	87
4. Choice of dispute settlement channels by the parties concerned	94
5. Case studies	96
III. RESOLUTION OF ENVIRONMENT DISPUTES IN VIETNAM	
1. General Overview of Environment Disputes in Vietnam	101
2. Mechanism for Resolution of Environment Disputes	105
3. Overview on the Practice of Resolution of Environment Disputes in Vietnam	115
4. Resolution of a Number of Specific Disputes	118

PART ONE

**OVERVIEW OF THE DISPUTE RESOLUTION MECHANISMS
IN VIETNAM**

I. Court System in Vietnam

1. Organization of the Court System

According to the 1992 Law on Organization of People's court (as amended and supplemented in 1993, 1995), the court system consists of Supreme People's court; People's courts of provinces and cities under central authority; People's courts of districts, towns, cities under provincial authority; Military courts; and other courts stipulated by laws. Under special circumstances The National Assembly may decide to set up Special Courts (Article 2).

In terms of structure, apart from courts established under laws promulgated before 1992, the Supreme People's court and People's courts of provinces consist of Economic Courts, Labor Courts, Administrative Courts and other specialized courts, which might be established by National Assembly Standing Committee in necessary circumstances.

According to Article 16 of the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995): "The management of provincial People's courts in terms of organization is in charge of Minister of Ministry of Justice in coordination with President of Supreme People's court".

According to the 1992 Constitution and detailed by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) the President, Vice-President, Judges of provincial People's courts and Military courts are appointed, released from duty, dismissed by the President of State, not elected and revoked the mandate by People's Council at the same level as previously provided for by law.

Article 127 of the 1992 Constitution stipulates that: "Supreme People's court, Provincial People's courts, Military courts and other courts established by laws are judicial organs of the Socialist Republic of Vietnam". This means people's courts are organs exclusively exercising adjudicative function. No other agencies but courts can perform this function.

The functions of the people's courts are detailed by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) whereby people's courts are competent organs to try criminal, civil, family, economic, labor, administrative cases and to deal with other matters as stipulated by law.

According to Law on Business Bankruptcy dated 31 December 1993, people's courts of provinces and cities under central authority and Supreme Court have also the function of dealing with the requirements to declare bankruptcy.

Regarding Supreme People's court, besides to the functions of trying and dealing with the requirements of enterprises to declare bankruptcy, the 1992 Constitution provided that "Supreme People's court review decisions of provincial people's courts and military courts". This provision is to ensure that courts over the country function correctly and uniformly.

According to the scope of functions and duties provided for by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) and the 1994 Ordinance on Organization of Military courts, Supreme People's court provides lower courts with guidance on uniform application of laws; to summarize trying experiences, and prepares drafts of law to be submitted to the National Assembly, drafts of ordinance to be submitted to the National Assembly Standing Committee. Provincial People's courts, Central Military tribunal and military courts of military zones and equivalent have the function of reviewing decisions made by lower courts, which have come into effect under litigation law.

Within scope of their function, people's courts are responsible to "preserve the socialist legality, people's mastery; safeguard the lives, property, freedom, honor, and dignity of citizens" (Article 26, the 1992 Constitution). This can be seen as a key duty of courts in exercising its judicial function. Being one of litigation agencies, courts should ensure that the litigation activities be in conformity with litigation law. When trying cases courts should apply suitable and legal measures to find out the truth of the cases in an objective, comprehensive and adequate way so that to work out lawful decisions.

By exercising adjudicative function, people's courts participate in educating citizens to "live and work in accordance with the Constitution and law", to respect social rules, to fight against crimes; introducing measures to prevent crimes; propagating and disseminating laws. Furthermore, people's courts give advice on drafts of law, ordinance and other legal documents prepared by other agencies.

Speaking generally on present organization, functions and duties of people's courts, it can be said that a number of things have been done at initial steps of renovation process:

- Specialized courts namely criminal courts, economic courts, labor courts, administrative courts have been established in Supreme People's court and People's courts of provinces, cities under central authority;
- Mechanism for appointing judges in 5-year term has been implemented in replace of mechanism for electing judges, which was applied from 1960 to 1992;
- Detailed provisions on standards for judges have been worked out (in order to ensure the correctness and quality of the appointments approvals of selecting committees are required conditions for every case before they are submitted to the President of State for appointment).

- Execution of civil sentences has been conveyed from courts to justice agencies and by doing so courts have been provided with favorable conditions to focus on their main duties which are to try cases and settle other matters in accordance with provisions of laws.
- Along with economic, politic and social renovations, court's scope of functions has been supplemented so as to meet the requirements of those renovations.

However, in order to build up a State of law, it is necessary to renovate the organization as well as expand the jurisdiction of people's courts at every level; to strengthen jurisdiction of courts in trying labor, administrative cases, not limited on some kinds of cases... This, in turn, places on the court system increasingly harder responsibilities. Given its present organization and management structure, to fulfill the function of trying all the cases stipulated by laws seems to be hard mission for courts. Therefore, further renovations in organization, operation and management of court system seems necessary.

2. Judges: Mechanism for training and appointing

As regards structure and quality of trying activities of the court system, it is necessary to give attention to judge-team, as well as mechanism for training and appointing judges, because judge-team is a main component in organization and personnel structure of court system. Methods of training and selecting (by appointing or electing) judges might affect the quality of trial operation by court system.

2.1. Development of training judges

In Vietnam, due to difficulties of different kinds, not until 1979 has the training of legal officials at university level initiated in large scope by the establishment of Hanoi Law University.

Since 1993 after the Ordinance on Judges and People's Jury came into effect, thanks to the diversification of training forms, a large number of people doing judicial work in courts at all levels, who had not acquired yet graduate degree in law, have been trained and equipped with degrees satisfying the standards applied to appointing judges in accordance with the Ordinance. Moreover, since the School of Training Justice Officials has been established, more and more people are qualified for judge post. Particularly, in the first tenure of office of 1994-1999, people having regular graduate degree in law and post-graduate degree in law accounted for merely 9% in total number of judges at district level, and 10% at provincial level. In second tenure of office (1999-2004), a large number of judges at district level have been trained in in-service and special training courses hence lower quality of training compared to regular training. In the second tenure of office, number of judges at district level holding graduate and post-graduate degree increased by merely 7% compared to that of previous tenure, while number of those who acquiring degrees from in-service and special training courses accounted for up to 67%, 5% increase compared to last tenure. As regards judges at provincial level in the second tenure, the situation seems to be brighter. However judges at provincial level acquiring degrees from in-service and special training courses still

account for 50%, 7% rise compared to last tenure. Those having regular graduate degrees and post-graduate degrees in law account for 36%, 26% increase compared to that of last tenure.

At present, compared to number of regular judges which has been approved by the National Assembly, it is still short of 23 judges for the Supreme Court, 135 for provincial courts, 522 for district courts and 23 for military courts.

According to the statistic provided by the Supreme Court, problems facing courts at every level are not only the lack of judges but also unequal quality of judge team, especially in courts at district level, where there are many judges have not yet acquired law degrees. Eventhough some have gained the degrees, most of those degrees are from in-service or special training courses. This is one of the very reasons making the trying process stagnated and a great number of sentences be overturned or corrected.

To raise the quality of judges depends at first on training activities. At the moment, Vietnam has not established yet a Judges Training School. However, initial preparations have been carried out for this specialized training. In 1995, the Justice Officials Training School was established on the basis of a department split from Hanoi Law University. Only 3 annual experimental courses have been conducted so far, mainly for judges, lawyers, and etc.

In the near future, a certificate of participation in a training course for judges is likely to become compulsory for those who would be appointed as judge. And as a standard, this course might be designed not for those who have degrees from in-service or special training courses. Judge post should be offered only to those who acquired regular graduate degrees in law from Law University of Hanoi, Law University of Ho Chi Minh City, and Law department of Hanoi National University.

The second way to raise the quality of judges relates to state regulations. This means the Ordinance on Judges and People's Jury need to be amended, in particular judge standards should be raised. The standards under present regulations seem very low, unsystematic, hence might fail to single out talented people. The principle of **CAO TI** and **HOI TI** should also be applied thoroughly.

Judges are ones who show legal civilization of a nation. Therefore, judges should represent the people's talents and wills, and live up to the declaration of "in the name of people".

2.2. Mechanism for appointing judges

The table below shows 3 levels of judges according to effective provisions of Vietnam law:

At supreme level	Supreme Court Judges and Judges of Central Military Tribunal
At provincial level	Provincial People' Court Judges and Judges of Central Military Tribunal
At district level	Judges of Courts district, towns, cities under provincial authority and Judges of Military courts of military areas.

a. Standards for Judges of every levels:

For the first time, Vietnam law has introduced a definition of judges. Article 1 of the 1993 Ordinance on Judges and People's Jury provided that: "Judges are those who are appointed in accordance with provisions of law to try cases within court's jurisdiction, including criminal, civil, family, labor, economic, administrative cases and other matters as provided for by law".

Standards for being selected and appointed as judge are divided into 2 categories:

General standards include:

- Vietnamese citizen loyal to the country
- To have good quality and moral; honest and earnest;
- To have legal knowledge, strictly observe the laws, and have a sense of determinedly preserving socialist legality;
- To have a good health enough to fulfill his/her duties.

Detailed standards applied to each level of judges are as follows:

For Supreme Court Judges:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 8-year experience working in legal jobs;

For Judges at provincial courts:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 6-year experience working in legal jobs;

For Judges at district courts:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 4-year experience working in legal jobs;

To sum up, judges at various levels are different from each other only in the length of time doing legal works. Other standards are the same.

b. The selection and appointment of judges at every level:

The procedures for selecting and appointing judges at every level are applied through Judge Selecting Committees, which are divided in to three independent levels sharing two common responsibilities namely:

- To select qualified persons to be judges to submit to the State President for appointment;
- To consider cases where a judge violates the disciplines, becomes unqualified for the position to submit to the State President for dismissal.

According to present regulations, to select judges at every level, there are three committees including:

1) Committee for selecting judges at Supreme Court:

This committee is chaired by the President of Supreme Court working with 4 other members who are representatives of Ministry of Justice, Central Committee of Vietnam Fatherland Front, and Central Standing Committee of Vietnam Lawyer Association.

Up to now (2000), the selecting committee has submitted to the State President for appointment and reappointment of 97 judges at Supreme Court and 17 judges at Central Military courts. According to the official number of judges which has been approved by the National Assembly Standing Committee, it is still short of 23 judges at Supreme court.

2) Committee for selecting judges at provincial courts:

This committee is chaired by the Minister of Ministry of Justice working with 4 other members who are representatives of the Supreme Court, Central Committee of Vietnam Fatherland Front, and Central Standing Committee of Vietnam Lawyer Association. As a result, the Committee for selecting judges at provincial courts also consist of 5 members, of them 4 members are decided by the National Assembly Standing Committee based on the recommendation made by the Chairman of the Committee.

3) *Committee for selecting judges at district courts:*

This committee is chaired by the Director of Justice Department of People's Committee, working with 4 other members who are representatives of the People's Council - the local representative organ, Provincial Court, Committee of Vietnam Fatherland Front, and Standing Committee of Vietnam Lawyer Association. The list of the committee's members is decided by the Minister of Ministry of Justice based on the recommendation made by the Chairman of the Committee and the consensus endorsed by the President of Court of provinces and cities under central authority.

The number of judges at district level, which has been approved by the National Assembly Standing Committee is 3,515 judges, of them 64% have been submitted by the Committee to the State President for appointment.

3. The fact of judicial activities of the court system over the last years:

Market mechanism has affected considerably to all the faces of social life. Its adverse sides seem to be the very reasons causing and wiping out crimes. Economic, civil, family, labor, administrative disputes have been increasingly risen and more and more complicated. On the other hand, our state management has shown a number of shortages, especially in managing, placing and arranging staff in some important state bodies. A number of court staff have been found degenerated, depraved, corrupted, taken bribery, contracted with each others and with dishonest trader carrying out extremely serious cases which bring about very adverse effects to politics, economy and social life, undermine people's belief in Courts and State.

Some kind of serious crimes such as rob, murder, child rape, drug-crimes, prostitution- related crimes, etc. have been in growing tendency with numerous serious cases. Crimes in economic fields such as bribery, corruption, cross-border smuggling, damaging forest and sea resources, commercial deceit have occurred numerous with a great number of serious cases. The number of cases of producing and trading false goods, prohibited goods to earn profit is also in rise.

Civil, family, economic, labor, administrative disputes, as effected also by the market mechanism, have taken place in more complicated and fiercer way. Those problems exert a direct effect to the socio-economy, the production and business of all economic sectors and people's lives.

Against the difficult and complex context, thanks to its efforts, courts have obtained encouraging outputs in their judicial activities over the last past years. The output of their judicial activities from 1995-2000 are shown in the following statistics:

Year	Received	Tried	Proportion (Received/Tried)	Note
1995	113,843	97,183	85.36%	
1996	148,549	132,908	89.5%	
1997	151,690	126,033	83.1%	
1998	189,705	165,233	87.1%	
1999	215,193	167,130	77.6%	48,063 cases remained. The number of cases to be tried has increased by 22,463 cases compared to that of 1998.
2000	191,783	165,048	86.05%	26,735 cases remained. The number of cases to be tried has increased by 2,082 cases compared to that of 1999.

Consequently, in average, in each year from 1995-2000, 202,152.6 cases were in need of courts' settlement, of which 170,707 tried (making up 84,44%) and 31,445.6 remained unsettled.

In particular, from 1995 to 2000, number of criminal, civil, family, economic, labor, administrative cases tried by courts at every level is as follow:

3.1. Criminal trial:

In 1995 courts at all levels received to try in first instance 33,143 cases with 55,391 indicters.

As regards reception for appellate trial: provincial courts received 6,930 cases with 10,244 indicters; military courts received 104 cases with 171 indicters.

Supreme Courts of Appeals received and handled 5,060 cases with 8,987 indicters.

In respect of judgment by reviewing:

Provincial courts received and handled 137 cases; the central military court received and handled 19 cases with 33 indicters.

Criminal courts, Committees of Judges and Full courts received and handled by reviewing 308 cases with 478 indicters. The results are as follows:

1. Trial judgment

Trial courts rendered judgments on 31,270 cases with 51,757 indicters, accounting for 94.34 % of cases handled and accordingly 93.43 % of all indicters.

2. Appellate judgment

Provincial courts rendered judgments on 5,951 cases with 8,733 indicters, accounting for 85.8 %.

Military courts of appeals gave judgments on 85 cases with 137 indicters, accounting for 81.73%.

The Supreme courts of appeals passed judgments on 4,324 cases with 7,391 indicters, accounting for 85.45 %.

3. Judgment by reviewing

Provincial courts rendered judgments on 131 cases, counting for 95.6 % of cases subject to certiorari. Regional military courts and the central military court passed judgments on 13 cases with 33 indicters, making up 100 % of cases subject to certiorari.

In Criminal court, Committees of Judges and Council of Judges of People's Supreme Court has judged 276 cases with 339 indicters, accounting for 89.6% of all cases and 79% indicters.

In 1996, courts throughout the country received and handled for trial judgment 43,503 cases with 66,956 indicters.

1. Judgment at the trial level

Courts of all levels rendered judgments on 40,168 cases, making up 92.33 % [of all cases handled].

2. Status of handling and judging cases at the appellate level

a. Provincial courts received and handled 72,294 cases with 10,047 indicters; and rendered judgments on 6,242 cases with 9,728 indicters, accounting for 85.57 % in terms of the number of cases and 93.43 % in terms of the number of indicters. Of which, the number of cases that were handled at the appellate courts and on which the trial judgments were kept in tact accounted for 66.05 %.

b. Regional military courts received and handled 142 cases with 168 indicters, and passed judgments on 115 cases with 130 indicters, accounting for 88.46 % in terms of the number of cases and 84.52 % in terms of the number of indicters.

c. Three Supreme courts of appeals received and handled 6,078 cases with 10,006 indicters, and made judgments on 5,092 cases with 8,661 indicters, making up 83.78 % of cases and 86.6 % of indicters.

The number of cases on which trial judgments were kept in tact by the Supreme courts of appeals accounted for nearly 80%.

In 1997, courts through out the country received and handled for trial judgment 48,664 cases of all kinds with 76,495 indicters. The courts passed judgments on 42,058 cases with 65,339 indicters, accounting for 86.42 % of cases and 89.44 % of indicters.

The Supreme courts of appeals passed judgments on 5,138 cases with 9,145 indicters, making up 83.62 % of cases. Of which the number of cases on which trial judgments were kept in tact accounted for 73.41 %.

In respect of judgment by reviewing, provincial courts judged 260 cases with 385 indicters, accounting for 86.66 %; the Central military court heard 19 cases with 32 indicters, making up 88.8 %; and the Supreme Court heard 288 cases with 467 indicters, accounting for 52.29 %.

In 1998, courts through out the country made trial judgments on 48,291 cases with 74,428 indicters, out of 50,509 cases handled with 78,634 indicters, accounting for 95.61 % of cases and 94.71 % of indicters, an increase of 1845 cases (or 3.8 %) and 2,143 indicters (or 2.8 %) comparing with 1997.

Provincial courts rendered judgments on 7,004 cases with 10,324 indicters, accounting for 93.08 % in terms of the number of cases received and handled and 95.05 % in terms of the number of indicters. Of which, the number of cases that were handled at the appellate courts and on which the trial judgments were kept in tact accounted for 63.26 %, compared to 69.9 % in 1997.

The Supreme courts of appeals passed judgments on 6,719 cases with 11,351 indicters, out of 8,845 cases to be judged with 15,583 indicters, or a making-up of 76 % (compared with 83,26 % in 1998). Of which the number of cases on which trial judgments were kept in tact accounted for 72.5 %.

In respect of judgment by reviewing, provincial courts judged 279/290 cases, accounting for 96.43 %.

During 1999, courts through out the country has handed first-instance of 50,461 cases with 77,461 indicters, out of 54,159 cases handled with 83,069 indicters, accounting for 93.17 % of cases and 93.46 % of indicters. Of which, Provincial People' courts and military courts heard 18,562 cases with 30,682 indicters; County People' courts and regional military courts heard 31,899 cases with 47,009 indicters, an increase of 1,791 cases (or 3.6 %) and 2,361 indicters (or 3,1 %) in comparison to 1998.

Provincial courts rendered judgment by reviewing on 7,153 cases with 10,779 indicters, out of 7,725 cases handled with 11,706 indicters, accounting for 92.3 % of cases and 92 % of indicters. The number of cases on which the trial judgments were kept in tact were 592 cases with 927 indicters, accounting for 64.09 %, compared to 63.26 % in 1998.

The Supreme courts of appeals passed judgments on 5,222 cases with 8,466 indicters, out of 7,784 cases to be judged with 12,249 indicters, or a making-up of 67.08 % in terms of cases (compared with 83,26 % in 1998), and 69.1 % in terms of the number of indicters. Of which the number of cases on which trial judgments were kept in tact accounted for 80.3 %, compared with 72.5 % in 1998. There were 2,562 cases left over with 3,783 indicters.

In respect of judgment by reviewing, provincial courts judged 217 cases, accounting for 94.37 %; the central military court rendered judgments on all 9 cases it

handled with 12 indicters; the Supreme Court gave judgments on 198 cases with 255 indicters, out of 206 cases with 271 indicters, or a making up of 96.1 %.

During 2000, first instance trial at all levels had to handle 49,192 cases with 72,904 indicters. Of which, 45,497 were new cases with 67,476 indicters and 3,698 were leftover cases with 5,428 indicters. Courts of trial had made decision on 46,946 cases with 69,133 indicters. Of which, the number of cases on which judgments were given was 41,942 cases with 60,072 indicters, accounting for 94.4 %; 4,229 cases with 7,856 indicters were returned to the Organ of Prosecution.

Compared to 1999, the number of new cases handled by courts reduced by 10,510 cases with 2,776 indicters.

Provincial courts of appeals rendered judgments on 5,921 cases with 8,420 indicters, out of 6,939 cases handled with 9,787 indicters, accounting for 93.33 % of cases and 93.39 % of indicters. The number of cases on which the trial judgments were kept in tact accounted for 63 %, compared to 64.09 % in 1998.

The Supreme courts of appeals passed judgments on 6,520 cases with 11,496 indicters, out of 8,357 cases with 15,345 indicters, or a making-up of 83.13 % in terms of cases, and 78.61 % in terms of the number of indicters. There were 1,409 cases left over with 3,281 indicters.

The central military court gave judgments on 101 cases with 144 indicters, out of 106 cases with 155 indicters or a making up of 95.28 % of cases and 92.90 % of indicters.

In respect of judgment by reviewing, provincial people's courts had rendered judgments on 248 indicters, accounting for 94.9 %; the central military court rendered judgments on 11 cases with 15 indicters, accounting for 91.6 %; the Supreme Court had judged 164 cases with 206 indicters under reviewing level, out of 212 cases with 236 indicters that the court handled, or a making up of 77.35 %.

On balance, over the last few years, courts at all levels had made efforts to meet and go beyond the judgment goals in general, and criminal judgment goals in particular set at the beginning of every year. This remark is supported by the statistics provided by the Supreme Court over last years.

Year (whole country)	Number of cases to be judged	Number of cases judged	Ratio (%)	Remarks
	(1)	(2)	(1)/(2)	
1998	67,407	62,664	92.96	An increase of 1,845 in comparison with 1997, or 3.8 %
1999	80,104	63,230	78.93	An increase of 1,791 in comparison with 1998, or 3.6 %
2000	65,012	59,839	92.04	

3.2. In respect of civil, family and marriage cases

In 1995, local People's courts of trial had rendered judgments on 26,921 civil cases, out of 38,065 cases they handled, or a making up of 70.72 %. Compared to 1994, the number of cases to be judged increased by 7,532 cases, and the number of cases judged increased by 2,597 cases. Cases brought to courts fell into several types of disputes, as follows: real estate disputes, loan contract disputes, group credit disputes. As regard to family and marriage disputes, courts gave judgments on 28,185 cases, out of 36,974 cases handled, or a making up of 76.22 %, and an increase of 2598 cases handled compared to 1994.

Provincial courts of appeals rendered judgments on 5,057 cases, out of 7,336 cases (or 68.93 %). Of which, the number of cases on which trial judgments were kept in tact accounted for 46.21 %; the number of cases on which trial judgments were revoked accounted for 10.40 %; the number of cases on which trial judgments were revised accounted for 40 %.

The courts had also judged 2,472 family and marriage cases, accounting for 74.55 % of all cases handled. Of which, the number of cases on which trial judgments were kept in tact accounted for 38.19 %; the number of cases on which trial judgments were revoked accounted for 10.40 %; the number of cases on which trial judgments were revised accounted for 47.14 %.

Three Supreme Courts of Appeals judged on 488 cases, out of 691 cases handled, or a making up of 70.62 %. Of which, the number of cases on which trial judgments were kept in tact accounted for 49.68 %.

In respect of judgment by reviewing, provincial courts had judged 121 civil cases of all types, out of 135 cases, accounting for 89.63 %. Of which, the courts denied to judge by reviewing 5 cases, revoked judgment and returned for further investigation 5 cases, and revoked judgments returned to trial courts 70 cases. The Supreme Court had resolved 598/691 civil, family and marriage cases (accounting for 86.54 %).

In 1996, people's courts at all level gave judgments on 80,708 cases, out of 104,643 cases handled, accounting for 77.12 %. The number of cases handled by trial courts increased by 18,815 cases, and by courts of appeals increased by 87 cases, compared to 1995. Conciliation had successfully applied for 47 % of civil cases, 7.19 % of family-marriage and contractual cases.

At the appellate level, the number of cases on which trial judgments were kept in tact by provincial courts accounted for 42.55 %, on which trial judgments were revoked accounted for 10.73 %, and on which trial judgments were revised were 45 %. The Supreme Court kept in tact 38.49 %, revoked 12.7 % and revised 22.5 % of trial judgments.

In 1997, people's courts at all levels gave judgments on 70,832 cases, out of 87,652 cases handled, accounting for 80.13 %. Conciliation had successfully applied for 17,606 cases (44.05%). The number of cases on which trial judgments were kept in tact accounted for 50 to 60 %.

In 1998, people's courts at all levels rendered judgments on 93,226 cases, out of 111,562 civil and family-marriage cases to be judged. Of which, the number of cases that had been successfully conciliated accounted for 93,266 cases (accounting for 83.73%). The number of cases on which trial judgments were kept in tact by provincial courts accounted for 47.2 %. The Supreme Court kept in tact 61 %, revoked 9.10 % and revised 80 % of trial judgments.

In 1999, people's courts at all levels passed judgments on 101,919 cases, out of 142,064 cases handled, or a judgment ratio of 71.4 per cent. Of which, the number of cases that had been successfully conciliated accounted for 27,519 cases (3,295 divorce cases were successfully conciliated, concerned parties withdrew from the cases). Provincial courts kept in tact trial judgments of 35.3 % civil cases, 35 % of family-marriage cases; revised trial judgments of 37 % civil cases, 42 % of family-marriage cases; revoked partly or completely 8.75 % of civil cases and 11.3 % of family-marriage cases.

Supreme courts of appeals kept in tact trial judgments rendered by provincial courts of 64 % civil cases, 54 % of family-marriage cases; revised trial judgments of 15.4 % civil cases, 34 % of family-marriage cases; revoked partly or completely 17 % of civil cases and 4 % of family-marriage cases.

In 2000, people's courts at all levels judged 102,847 cases, out of 123,923 cases handled, or a judgment ratio of 82.99 per cent. Of which, the number of cases that had been successfully conciliated accounted for 24,047 divorce cases. Of which, 3408 divorce cases were successfully conciliated to reunite; concerned parties withdrew from the cases.

Provincial courts of appeals kept in tact trial judgments of 45.47 % civil cases, 39.78 % of family-marriage cases; revised trial judgments of 11.62 % civil cases, 45.57 % of family-marriage cases; revoked partly or completely 11.7 % of family-marriage cases.

Supreme courts of appeals kept in tact trial judgments rendered by provincial courts of 47.82 % civil cases, 46.25 % of family-marriage cases; revised trial judgments of 30.62 % civil cases, 26.25 % of family-marriage cases; revoked partly or completely 12.28 % of civil cases and 10 % of family-marriage cases.

In terms of judgment by reviewing, provincial courts denied to handle 3.23 %, and revoked trial judgment of 68.6 %; the Supreme civil court denied to handle 4.92 % of civil cases, revoked trial judgments and appellate judgments and returned to court of appeals 24.64 % of cases, revoked appellate judgments to restore trial judgments 5.48 % of cases, revoked appellate judgments and halted the proceedings of 17.9 % of cases, and revised appellate judgments of 12 % cases.

In respect of family-marriage cases, the Supreme court denied to handle 1 case, revoked trial judgments and appellate judgments to return to trial court 40 % of cases, revoked appellate judgments to return to appellate courts 44.4 % of cases, revoked appellate judgments to restore trial judgments 6.6 % of cases, and revised appellate judgments of 6.6 % cases.

3.3. In respect of economic cases

In 1995, people's courts at all levels rendered judgments on 441 cases, out of 539 economic cases to be judged, or a judgment ratio of 81.8 %. Of which, the number of cases that had been successfully conciliated accounted for 165 cases, accounting for 44.66% of all resolved cases. The number of cases on which trial judgments were appealed accounted for 13 % of resolved cases.

In 1996, people's courts at all levels resolved 575 cases, out of 633 economic cases handled, or a judgment ratio of 90.83 %. Of which, the number of cases that had been successfully conciliated accounted for 38.3 % of all resolved cases. The number of cases on which trial judgments were appealed accounted for 12.09 % of resolved cases. Economic courts also resolved 11/12 requests to declare businesses bankrupt.

In 1997, people's courts at all levels resolved 572 cases, out of 701 economic cases handled, or a judgment ratio of 81.59 %. Of which, the number of cases on which trial judgments were appealed accounted for 14.9 % of resolved cases. Economic courts also resolved 11/12 requests to declare businesses bankrupt. Supreme courts of appeals canceled 8 cases, revised lower courts' judgments of 16 cases, and denied appeals on 50 cases.

In 1998, people's courts at all levels resolved 1,081 cases, out of 1,289 economic cases handled, or a judgment ratio of 83.86 %. Of which, the number of cases that had been successfully conciliated accounted for 543 cases, or 43 % of all resolved cases.

In 1999, people's courts at all levels resolved 1,143 cases, out of 1,495 economic cases handled, or a judgment ratio of 76.45 %. Of which, the number of cases that had been successfully conciliated accounted for 552 cases, or 54.6 % of all resolved cases. The number of cases on which trial judgments were appealed accounted for 23.16 % of resolved cases. The Supreme courts of appeals, the Supreme economic court, Supreme Court's Judge Committee kept in tact lower courts' judgments on 39 cases (accounting for 34.8%), revised trial judgments on 36 cases (32.1%), revoked lower courts' judgments on 36 cases (34.8%), and halted the proceedings of 9 cases.

In 2000, people's courts at all levels resolved 990 cases, out of 1,177 economic cases handled, or a judgment ratio of 84.11 %. The Supreme courts of appeals, the Supreme economic court, Supreme Court's Judge Committee kept in tact lower courts' judgments on 67 cases, accounting for 34.8% of all cases they resolved, revised trial judgments on 11 cases (17.7%), revoked lower courts' judgments on 24 cases (19.3%).

3.4 In respect of labour cases

Over last few years, labour disputes brought to courts principally concentrated in big cities.

Many provincial and district courts did not receive and handle labour disputes, despite of the fact that labour disputes were quite prevalent in localities. Some courts

had received and handled labour cases, but such cases did not represent the real picture of labour disputes in reality.

Among all labour cases received and handled by courts, there were generally two main types of disputes, namely unilateral termination of labour contracts (there were 163 cases of this type in 2000, accounting for 28.8 %), dismissal of workers (there were 31 cases of this type in 2000, accounting for 5.9 %), and claims on compensation, wage disputes, social security disputes. That is, disputes were mostly individual disputes (there were 110 cases in 2000), and few collective disputes (there was only 1 case in 2000).

In 1997, there were only 20 provincial courts and 9 district courts heard 391/406 labour cases, a judgment ratio of 96.23 %.

Most of labour disputes were brought to courts by workers. Of which, 50 cases were related to dismissal of labour as a disciplinary measure, 272 cases were related to unilateral termination of labour contracts, 56 cases were concerned with compensation for employers, and 12 labour disputes of other types.

In 1998, people's courts at all levels resolved 432 cases, out of 495 cases handled, or a judgment ratio of 87.27 %. Of which, the number of cases that had been successfully conciliated totaled 202 cases, or 46.75 % of all resolved cases. Labour disputes brought to and handled by courts mainly concentrated on two types of disputes, namely unilateral termination of labour contracts (accounting for 52 %) and dismissal of labour as a disciplinary measure (accounting for 18.38 %). Courts had collaborated with concerned bodies, and hence enhanced the conciliation ratio.

In 1999, local courts resolved 358 cases, out of 422 cases handled, or a judgment ratio of 84.83 %. Of which, the number of cases that had been successfully conciliated totaled 110 cases, or 31 % of all resolved cases. Courts halted the proceedings in 103 cases due to the withdrawal of claims by claimants, (accounting for 28 %), and gave judgments on 145 cases, accounting for 41 %.

Labour disputes brought to and handled by courts mainly concentrated on two types of disputes, namely unilateral termination of labour contracts (accounting for 239 cases, or 56 %) and dismissal of labour as a disciplinary measure (accounting for 69 cases, or 16.3 %). The rest were disputes regarding compensation, wages, and social security. Courts had collaborated with concerned bodies, and hence enhanced the conciliation ratio.

In 2000, local courts handled 472 new cases, and 75 leftover cases, or a total of 547 cases. The courts resolved 475 cases, or a judgment ratio of 86.2 %. Compared to 1999, new labour cases handled increased by 132 cases. Of resolved cases, 212 cases (or 44.9 %) had been successfully conciliated. Courts temporarily halted the proceedings in 24 cases (5 %), halted proceedings in 141 cases (or 29.8 %) due to the withdrawal of claims by claimants, and gave judgments on 95 cases, accounting for 20.2 %.

Provincial courts of appeals resolved 42/45 cases, accounting for 93.3 %. The courts kept in tact trial judgments on 17 cases (or 40.4 %), halted the proceedings in 3

cases (or 7.1 %), revised trial judgments on 19 cases (or 45.2 %), and revoked trial judgments on 3 cases (or 7.1 %).

The Supreme courts of appeals resolved 96/134 cases, accounting for 71.6 %. The courts kept in tact trial judgments on 53 cases (or 55.2 %), revised trial judgments on 11 cases (or 11.4 %), halted the proceedings in 31 cases (or 32.2 %), and temporarily halted the proceedings in 1 case (or 1 %).

3.5 In respect of administrative cases

The Ordinance on the resolution of administrative cases took effect as from July 01, 1996. Over 6 months as from the effective date of the Ordinance, courts had received more than 500 administrative claims. Yet, the courts had to returned most of the claims under the provisions of Article 31 of the Ordinance.

Local courts received and handled 36 cases and resolved 17 cases, decided to halt the proceedings in 9 cases, and temporarily halt the proceedings in 1 case.

In 1997, local courts resolved 97 cases, out of 117 cases handled, or 82.9 %. The fact that should be concerned was that despite of small number of administrative cases brought to and handled by courts, the courts had to return claims to the claimants or temporarily halt the proceedings as required by the provisions of the Ordinance.

In 1998, trial courts at all levels resolved 201/327 cases, or 61.46 %. Among them, the most common claim was related to administrative decisions on land administration and decisions on administrative penalties.

In 1999, courts at all levels resolved 319 cases, out of 408 cases handled, or a ratio of 78.1 %.

After the resolution of such cases, the Supreme Court received 63 appeals requesting the cases to be handled again by reviewing. Considering the claims, the Supreme Court decided that only 12 appeals out of 63 were grounded.

In 2000, local courts received and handled 539 case, resolved 419 cases, or a ratio of 77.7 %. Among them, 37 cases were temporarily halted, 214 were heard at the courts, and the proceedings of 168 cases were halted.

Provincial courts of appeals received and handled and resolved 123/147 cases, a ratio of 83.6 %. The courts kept in tact trial judgments on 73 cases (or 59.3 %), revised trial judgments on 25 cases (or 20.3 %), revoked trial judgments on 16 cases (or 13 %) and halted trial judgments (7.3 %).

The Supreme courts of appeals received and handled and resolved 76/121 cases, or a ratio of 62.8 %. The courts kept in tact trial judgments on 44 cases (or 57.8 %), revised trial judgments on 13 cases (or 17.1 %), revoked trial judgments on 15 cases (or 9.7 %). The courts also resolved 25/26 cases by reviewing, of which they revised lower courts' judgments on 15 cases, revoked lower courts' judgments on 9 cases, and denied handling 1 case.

3.6 Brief remarks on judgment activities of the court system over last few years

The credibility and the effectiveness of the court system can be measured by the perception and attitude of people in general and of concerned parties towards the court system. That is, whether or not concerned parties can choose courts as a way to solve problems they face?

Through analysis of organizational structure and operations of the court system, we can have some brief remarks as follows:

The court system of our country has been increasingly developed and effective, well deserving the central position in the judicial system, being an effective tool to protect the regime, the State, to maintain justice, and protect rights and legitimate interests of citizens.

The court system had achieved noteworthy results from its judgment operations, particularly:

The court system has become an effective tool to protect the socialist regime, maintain the socialist rule of law, protect rights and legitimate interests of citizens.

In reality, People's courts at all levels had been able to resolve most cases correctly under provisions of laws and regulations, fairly, justly and judiciously. The number of cases subject to appeals had increasingly reduced.

Reputation, professionalism and capability of judges have improved, and hence attracted more people come to courts as a way to solve their disputes.

Nonetheless, organization and practical operations of the court system still had certain shortcomings and impediments as follows:

Organization of the court system has yet to be convenient to people and concerned parties.

The delineation of judgment jurisdiction, especially that of district courts, is still inappropriate. Provincial courts, special courts of the People's Supreme court, the Supreme Courts of Appeals, and the Supreme Court as a whole had taken a huge number of cases, but paid a little attention to the more important mission – that is, to administer the judgment operation, to provide judgment guidelines for lower courts. Hence, the number of cases left over increased, and the handling of cases at the appellate level often was lengthened. That the Supreme Court had failed to provide judgment guidelines promptly caused the lack of unification in the judgment operation of lower courts, or even illegal judgment, decisions of lower courts.

To date, regulations on judicial operations are still far from comprehensive, with many contradictions and overlaps. Judicial procedures, especially economic, labour and administrative judicial procedures are complicated and prolix, impeding the judgment operation of the court system as well as causing troublesome to concerned parties to litigation. Many judges, courts' officers have weak professionalism and capability,

resulting in many mistakes. More seriously, many judges, court's officers, due to various reasons, have become degenerate, taking advantage of shortcomings, contradictions, overlaps of certain regulations to further complicate the cases, and even to ask for bribes or other illegal benefits.

The credibility and the effectiveness of the court system can be measured by the perception and attitude of people in general and of concerned parties towards the court system. That is, whether or not concerned parties to disputes wish to choose courts as a way to solve their problems?

Currently, people can have several ways to solve their disputes. That could be mediation, conciliation, and resolution of disputes by local conciliation groups, arbitration, and courts. Even when a dispute is brought to arbitration or court, the concerned parties can still solve it by mediation. So, the court system is just a way among several ways that people can choose to solve their disputes. The selection of the court system really depends on two things: One, credibility, and capability to solve disputes of the court system; Two, legal consciousness, habits and customs of the people.

Studying practices showed that people in our country seem to have two contradict tendencies in terms of perception and selection of the court system.

The first tendency is the fact that many people, especially parties to disputes, have increasingly had confidence in the court system. These people often opt courts as a way to solve their disputes, especially criminal, civil and land disputes. The tendency is evidenced by the increasing number of claims received by courts. Courts' statistics showed that each year courts at all levels received and handled about 200,000 cases, and correspondingly about 400,000 complains/grievance regarding these cases.

In 2000, the Supreme Court alone received 11,648 complains/grievances of all types. Most of these complains/grievances submitted by citizens are related to particular cases to which they are concerned parties or relatives thereof. In many instances, citizens came to Courts to request explanation on legal issues in which they are interested. Quite a few came to state queries or suspicion or to denounce judges and/or courts' officers of unfair, unjust activities in judgment.

The second tendency, many people and concerned parties were still reluctant and unwilling to have their disputes resolved by courts. To them, dispute resolution by courts was difficult, complex and hardly satisfactory because judicial procedures were complicated, prolix and time-consuming. Furthermore, the bearing of fees officially set the State and unofficial fees paid to lawyers, courts' officers, judges and other officials also significantly affected the option of courts as a way to solve disputes. People's confidence in the court system and those working for the system was more or less affected by officiousness, red-tape, dishonesty, harassment and bribery of quite a few judges, court's officers. With such a perception of the court system, many did not want to have their disputes resolved by courts. Rather, they tried to resolve disputes by themselves (which is very good), by "the law of the jungle", by mediation, or through the administrative way. As shown by surveys, we found that most of people to economic, labour, and real estate disputes selected the administrative way as to solve the disputes. For that purpose, they may lodge complaints or denouncement letters to

the administrative agencies. Annually, there are about 50,000 to 60,000 complaints and/or denouncement letters regarding administrative, labour, real estate disputes lodged to administrative agencies to request for resolution. In the mean time, administrative courts, labour courts at all levels received and handled only about 1,000 administrative and labour cases. A survey on options of dispute resolution among 300 businesses, including State-owned enterprises and private ones, showed that upon the occurrence of an economic dispute, 72 % of surveyed businesses selected economic arbitration, and only 33.3 % opted lodging a litigation at courts as a way to solve the dispute.

On balance, the credibility of the court system is not up to the expectation in terms of being a judicial organ specialized in solving disputes among people.

3.7 Orientation and solutions to reform organization and operation of the court system in out country

Some people argued that the reform of the people's court system should be carried out only at provincial level; district courts, they argued, should be grouped into regional courts based on the number of cases handled. This view could not explain the leading role of the Party, the administrative jurisdiction of district authorities, the supervision by people over "regional" courts' operation. Another shortcoming of this view is that, in sparsely-populated yet large areas with small number of cases, and difficult transportation conditions, it is very hard for people to rely on courts whenever they want to; and on the contrary, courts also face many difficulties in investigation, mediation of civil, family-marriage litigation.

Based on the nature, functions and duties of the State, and by observing practical operation of the court system over years, we realize that the organization structure of the People's court system as of this time is appropriate, ensuring the leading role of the Party, the supervision of people over operations of the court system, and the collaboration among state agencies in general and among judicial agencies in particular, promoting the discretion rights of people, providing convenience for people to participate into judgment operation of the court system. Nonetheless, at each level of the system, it is needed to reorganize to suit the function, duties and to ensure judgment operations done promptly and legally. For instance, if district courts are given more judgment jurisdiction, then more capable people are needed for these courts to establish special courts, such as criminal, civil, economic, labour, administrative courts. At the provincial level, consideration should be taken into of establishment of trial courts and appellate courts. And as for the Supreme court, its duties should be limited to provision of judgment guidelines as to ensure unified application of laws and regulations by courts; it should not handled cases by reviewing; judgment by reviewing of cases that had been judged by the courts within the Supreme court shall be done by a special Committee (as explained more later).

In respect of criminal cases, some suggested that district courts should be given jurisdiction to handle cases to which the maximum applicable sentence is of 10 years. Some suggested that district courts should be given jurisdiction to handle non-serious cases and certain serious ones to which the maximum applicable sentence is of

10 years. Some others argued that it is needed to list criminals provided for in the Penal Code and assign them to district courts, etc.

All above ideas have their reasons. However, in our opinion, district courts should be assigned judgment jurisdiction to handle non-serious, serious and extremely serious cases, except for crimes prejudicial to national security and crimes committed by foreigners within Vietnamese territory.

As for civil cases, most people agreed that district courts should be given jurisdiction to handle all civil, family-marriage disputes of all types, except for intellectual property, marine and aviation disputes. We regard this view as appropriate, but want to add that if necessary, provincial courts may take the case to handle.

In regard to economic cases, district court should be given authority to handle in the first instance economic disputes with value up to 500 million dong in stead of 50 million dong as currently provided by laws.

As for administrative and labour cases, we agree with current provisions on judgment jurisdiction.

The extension of judgment jurisdiction of district courts as suggested above will be fundamental changes in organization and operations of the court system, significantly reducing the number of cases handled by the Supreme courts of appeals, so as enable “The Supreme Court to focus on reviewing judgment operations, providing guidelines for lower courts so as to have unified application of laws and regulation, and well executing the function of administering judgment operations”, as prescribed by the third Central Party Plenum Resolution.

II. ALTERNATIVE DISPUTE RESOLUTION IN VIETNAM: TYPES AND FUNCTIONS

1. Overview

The transition of Vietnam's economy into a market-driven economy characterised by the emergence of various economic sectors with different types of ownership have diversified and complicated economic relations. Under the impacts of market rules, profit is not only the underlying motive, a measurement of business performance but also serves as the ultimate objective and a means of survival for business entities.

The formation of a market-driven economy in Vietnam since late 1990s took place in a special context where economic relations developed strongly at an unprecedented pace as seen from both horizontal and vertical aspects. As a result, Vietnam's economy has gradually become an indispensable part of the world's economy. As a corollary of such a process, economic disputes in general and business disputes in particular, also became more diversified in types and sharper and more complex in features and scales. At the same time, it is a natural demand to introduce appropriate forms and modes of dispute resolution in better protecting legitimate rights and interests of economic entities, securing a strict compliance with the rule of law and by that ways helping to establish a sound legal environment for a socio-economic development process.

Academically, economic disputes and business disputes are concepts with different degrees of (narrow or wide) comprehension/connotation although they may be commonly defined as a difference in views, contradiction or conflict of interests, rights or obligations between parties to economic processes.

Despite the presence of different views, a majority of scientists agree that economic disputes should be defined as a difference in views and opinions, a contradiction or conflict of interests, rights or obligations between parties to economic relations which are varied in degrees. Basically, economic disputes may take the following forms:

- Business disputes, i.e. those disputes that arise from business entities and relate to investment, production, distribution of products or provision of services in the market for profit-making purposes.
- Disputes between foreign investors and investment hosting countries. Such a type of dispute often arise from the implementation of BTO, BT, or BOT contracts or bilateral or multilateral agreements on encouragement and protection of investments.
- Disputes between nations in enforcing bilateral or multilateral trade agreements.

- Disputes between nations and international economic institutions in the implementation of multilateral trade agreements e.g. US-EU disputes over banana import that is settled within the WTO framework.

Of the various types of international disputes as mentioned above, business disputes are seen as most popular. Therefore, under certain circumstances, the terms “business disputes” and “economic disputes” are used interchangeably.

From another approach, a business dispute may be defined as a disagreement on a legal matter that arises from economic life between participants to business transactions and are normally linked to property element and material interests. Thus, characteristics of business disputes may be summarised as follows:

- + Business disputes are in most cases associated with business activities carried out by business entities.
- + Parties to business disputes mainly include enterprises, or businesses.
- + Business disputes are treated as an external exposure and a manifestation of conflicts of economic interests between parties concerned¹.

It is noteworthy that the existence of business disputes is by itself reflecting typical features of economic relations in *naturally-oriented* economic mechanisms².

In a centrally planning economy, business disputes mainly took the form of disputes over economic contracts that indicate the monotony of interests that required protection in such an economic model. By the contrary, in a market-oriented economy, the involvement of various economic sectors results to a multiplicity of participants and interests to be protected; and the emergence of new business methods, markets and non-traditional production factors also trigger new types of disputes, namely disputes between company’s members and the company; disputes between members of the companies during the establishment, operations and dissolution of the company; disputes over the acquisition and sales shares and bonds; disputes between joint venture partners or participants to a business association; disputes relating to advertising, insurance, auditing, consulting, inspection etc.; disputes over drafts and cheques; or disputes relating to the protection of commercial secrets... Thus in response to the country’s economic transition as a whole and the changing substance and forms of business disputes in particular, methods of business dispute resolution are urgently needed to be adjusted subject to fundamental principles of a market-driven economy that is run under the State management.

¹ Tran Dinh Hao – Conciliation and negotiation in resolution of disputes over economic contracts, State and Law Journal, Vol. 1, 2000, p.28.

² “Economic Law of Vietnam”, text book of the Faculty of Law, College of Social Sciences and Humanities, Hanoi National University, 1997, p.468.

2. Forms of business dispute resolution

Disputes are seen as an avoidable corollary of the conduct of business transactions. As a result, the dispute resolution is a natural demand of economic relations. In a common sense, resolution of business disputes may be defined as a selection of proper ways and measures to remove or eliminate contradiction, discontents or conflict of interests between the relevant parties with a view to restoring a balance of interests that is acceptable to all the disputing parties.

In the context of a market-driven economy, resolution of a business dispute is expected to meet the following requirements:

- + Promptness, convenience and having no hindrance or obstruction to a normal conduct of business transactions.
- + Restoring and maintaining co-operation and mutual confidence between business partners.
- + Securing commercial secrets and reputation of the parties concerned in business activities.
- + Cost-effectiveness.

In addition, it is interesting to observe that differences in customs, living habits, traditions and levels of socio-economic development have resulted to the fact that business dispute settlement mechanisms are greatly varied from country to country. However, based on the demands for a legal governance in a market-driven economy that requires a differentiation between business activities, up to now, major forms of dispute resolution that are widely introduced through the world include: negotiation, conciliation, (non-governmental) arbitration and courts of justice.

2.1. Negotiation

Negotiation is, as a form of business dispute resolution without a third party, basically characterised by a mutual expression of views and opinions, open discussions, seeking suitable ways-out and reaching an amicable solutions to the disputes by the disputing parties. Thanks to these salient features, negotiation is widely recognised as an appropriate form of business dispute resolution. Negotiation has long been preferred by merchants due to its simplicity, non-binding to cumbersome legal procedures, cost-effectiveness, less detriment to the inherent co-operation between business partners and confidentiality. Negotiation firstly requires a good will, honesty, co-operation and adequate understanding of professional and legal aspects by the negotiating parties. In complicated cases, each party may appoint specialists or professional organisation to represent their interests during the negotiation process. In securing a successful resolution of a business dispute through negotiation, a mixture of economic, technical, and legal experts are normally involved. As the time goes by, negotiation becomes a process where different views and opinions are exchanged or presented by the parties concerned with a view to reaching a final and amicable solution to the disputed issue. Thus in legal terminology, during the negotiation process, the disputing parties discuss, exchange views and reach an agreement through “transactions”. Therefore, more attention should be given to certain legal requirements as regard to representation,

authorisation (or delegation of powers), civil transactions, natural (or behavioural) capacity and so on. At the end of a negotiation process, parties concerned may make commitments or reach an agreement on specific solutions to overcome the dead-lock (or impasse), or discontents that are not anticipated by the negotiating parties.

The laws in developed market-driven economies often prescribe negotiation results to be recorded in a legal form of a memorandum or minutes which should include, among other things the following major details and particulars.

- Relevant legal events.
- Views/opinions of each disputing parties (or substance of the dispute).
- Proposed solutions.
- Agreements reached or commitments made.

Once a minutes of negotiation has been properly and duly prepared, agreements recorded in the minutes will be valid as contractual commitments and have binding effects to both parties. In case, one of the parties concerned fails to observe the negotiation results due to his/her lack of good will, the minutes will be used as an importance evidence to be submitted to economic dispute resolution bodies to request these institutions to recognise and enforce the agreement reached during negotiation.

Thanks to its advantages, negotiation as an effective means of dispute resolution is particularly preferred by major business groups or multinationals, especially those that engage in banking, insurance or securities businesses to safeguard their commercial secrets.

However, in the context of an economy in transition like Vietnam where SOEs still account for a large proportion of the entire economic structure, negotiation also has a number of disadvantages. In particular:

First, such a closed resolution of business disputes offers a fertile soil for negative phenomena between SOEs to mushroom through arbitrary rescheduling, writing off debts or reducing debt burden and so on that go contrary to the State financial regulations.

Secondly, negotiation process in transitional economies including Vietnam is entirely spontaneous and natural without a proper legal governance. Therefore, the legal validity of negotiation results are often poorly determined and abused by the parties to delay or postpone the performance of their obligations. In other words, since the materialisation of negotiation results is entirely at the sole discretion of the parties concerned, these negotiation results are in many cases unfeasible.

2.2. Conciliation

Conciliation is another form of alternative dispute resolution whereby the negotiation process is undertaken with the participation of an independent third party who is unanimously accepted or appointed to act as a mediator to facilitate the disputing parties to find appropriate solutions to their dispute in efforts to end the dispute or disagreement.

As a voluntary solution, conciliation is taken at the choice of disputing parties. Most importantly, the third party should be completely impartial and independent to the dispute in performing its intermediary functions. This requirement means that the third party should have no conflict of interests with both the disputing parties or its interest should not be closely associated with that of any disputing party.

The third party mediator during a conciliation process should not be seen as a representative of any party and should have no right to determine or deliberate as an ad-hoc arbitrator. On the other hand, the third party is expected to be individual or organisation having high levels of professional expertise and experience in handling cases that are relevant to the subject-matter of the dispute. A mediator often fulfils the following duties:

- Reviewing, considering, analysing and presenting his opinions and comments on technical and professional aspects and relevant issues for the parties concerned to consult. (In this regard, inspectors-surveyors, assessor, consultants and legal advisors are most suitable to act as mediators).
- Suggesting solutions or making feasible recommendations for the parties concerned to consult and make choice of.

To date, two well-known forms of conciliation include non-procedural conciliation and procedural conciliation.

Non-procedural conciliation may be defined as a conciliation through mediation which is undertaken by the disputing parties before their reference of the dispute to any dispute resolution bodies. Once specific forms of dispute resolution is agreed upon, the parties concerned should realise the agreed solution in a voluntary manners. As non-procedural conciliation is viewed as internal problem to be privately dealt with by the parties concerned, it is not directly or specifically governed by the laws in many countries. However, some legal issues also arise in relation to the introduction of such as an alternative dispute resolution. In particular:

Firstly, the choice of a perspective mediator (such as an inspector/surveyor or a council of inspectors etc) may be contractually pre-determined in principle and once a dispute arises, the parties concerned will appoint a specific mediator. In the absence of such a clause, the relevant parties will have to reach an agreement on appointing a mediator after the occurrence of their dispute.

Secondly, the parties concerned may determine a conciliation process to be followed. In case where such a determination is not available, it is implied that the parties have delegated the perspective mediator to have sole discretion in opting a flexible conciliation process.

Thirdly, opinions, views, defence and proposals of the mediator are of recommendatory and suggestive nature only. Once, agreed and accepted by the disputants, these suggestions will become binding and conclusive to the parties.

Fourthly, the recognition of the validity of these recommendations that are made by the mediator and accepted by the disputing parties must be institutionalised and secured for enforcement by laws and regulations. However, such a possibility is still open in Vietnam.

Fifthly, a service contract relating to the mediation and conciliation must be concluded between the disputing parties and the mediator to cover such matters as payment of mediation fees, criteria of mediation and conciliation, rights and obligations of the parties concerned.

By its virtue, conciliation and mediation seem to be more suitable to the resolution of disputes which requires not only the good wills of the disputing parties but also professional expertise that are unlikely to be obtained by the parties in such an accurate and objective manners. In many countries, conciliation is considered as an important way of resolving business disputes. Therefore the establishment and increasing popularity of conciliation centres (such as the Beijing Conciliation Centre with competence to resolve international trade and maritime disputes) and adoption of model conciliation procedures (such as Folloberg-Taylor conciliation procedures, the London-based ICC non-obligatory conciliation procedures, and 1980 UNCITRAL model conciliation procedures).

It may be said that dispute resolution through conciliation is not popular in Vietnam due partly to the absence of specific and concrete statutes and guidance and other reasons originating from professional unfeasibility and business culture. At present, conciliation through mediator is an ideal solution for dispute solution in Vietnam.

Procedural conciliation is a type of conciliation which is undertaken before the court of justice or an arbitration body at the request of the parties concerned. In these cases, the court or arbitration (in particular the presiding judge or responsible arbitrator) will act as a mediator.

Thus, procedural conciliation may be seen as a step and a phase of the whole process of dispute resolution through the court or arbitration. Such a step can only be taken when and only when a petition is lodged to the court or an arbitration body for its settlement of the dispute and the petition is accepted for registration.

Since any conciliation is based on self-determination of the parties concerned, during that process, the judge or arbitrator should not compel but respect the freedom of determination of the parties nor disclose the road map along which the case will be handled. As soon as the disputing parties reach a mutual agreement on the dispute resolution, the competent court or arbitration will prepare a minutes of successful conciliation and issue a decision to recognise the parties' agreement. Once made, the decision will be valid and enforceable as a court judgement or an arbitral award. This is also a major difference between non-procedural and procedural conciliation.

In developed market-driven economies, procedural conciliation in general and conciliation in court proceedings in particular should follow very strict processes. In the principle of respecting the parties' right to self-determination, conciliation may be conducted before and during the hearing or even after a court judgement or an arbitral

award has been rendered. This is because of a fact that the objective of a dispute resolution will be best achieved through mutual agreement of the parties concerned.

In Vietnam, the laws governing business dispute resolution and the existing arbitral procedures may be construed to require that procedural conciliation may only be undertaken before a court judgement or an arbitral award is rendered. Subject to fundamental principles of the Civil Code relating to freedom and volition in undertaking or reaching agreements (Article 7) and principle of conciliation (Article 11), we are of the view that all agreements reached by the parties concerned in compliance with the applicable laws before, during and after a proceeding should be recognised and enforced by the State and the laws.

2.3. Arbitration

Arbitral resolution of business disputes is a form of dispute resolution through the activities of arbitrators who act as an independent third party with a view to putting an end to the dispute by rendering an award that is binding to the parties concerned.

From a survey of experience in the organisation and operations of commercial arbitration in developed countries, we have identified major characteristics of this form of dispute resolution as follows:

Firstly, commercial arbitration is a type of non-governmental organisations which is established and in existence subject to the laws and arbitration statute. In most developed market-driven economies, the State supports for arbitration are limited to securing the enforcement of arbitral awards only. In many Asian countries including South Korea, Malaysia, Thailand and the Philippines, however, arbitration is strongly supported by the State, especially in term of financial assistance. In Thailand, for example, an arbitration institute as an affiliate of the Ministry of Justice is provided by the Ministry with office space, administration costs to cover office expenses incurred by the arbitrators and salaries of their staff although individual arbitrators are themselves independent from the Ministry of Justice³.

Secondly, dispute resolution through arbitration is a combination of two elements, namely agreement and jurisdiction. In particular, the agreement serves as a pre-requisite for the render of an arbitral award and no award may be rendered without due regard to the agreed issues. In principle, therefore, arbitral jurisdiction is not limited by the laws. At any point of time [during the settlement of their dispute], the parties concerned may choose any ad-hoc arbitrator or any arbitration organisation in the world to handle the dispute. However, in protecting the public interests, the laws in a majority of countries only recognise jurisdiction of arbitrators in cases that fall under the governance of private laws.

³ Selected papers prepared within the framework of the VIE/94/003, Vol. 4, Part II, Chapter 3, p 83. and Economic Laws of Vietnam, text book, Social Sciences and Humanities College, p. 472.

Thirdly, arbitral resolution of disputes helps to secure a better freedom to self-determination by the disputing parties in comparison with that in court handling of these disputes. In particular, parties concerned are entitled to choose arbitrators, place of dispute resolution, procedures to be followed in resolving the disputes and the governing laws.

Fourthly, arbitral awards are final and conclusive and can not be challenged before any agencies or organisations. In principle, arbitration is held in close doors. Apart from the plaintiff and the defendant, arbitrators will only summon other parties if necessary.

Fifthly, though arbitration procedures are greatly differed from country to country, selection of individual arbitrators and proceedings of most arbitration centres in the world are based on the UNCITRAL Model Arbitration Statute.

Sixthly, in principle, the laws in many countries require supports from the courts in securing a proper enforcement of arbitral awards. Through its recognition and permission for an award to be enforced, the courts help to ensure the enforceability of arbitral awards if one of the parties concerned fails to implement:

- arbitral decisions to take emergency measures including restricting or allowing a number of certain actions, compiling an inventory of assets and so on to secure a practical effect of arbitral awards;
- arbitral awards relating to the dispute resolution.

Seventhly, commercial arbitration in many countries is organised in two major forms, namely, ad-hoc arbitration and permanent (or statutory) arbitration.

The former is characterised by the lack of a fixed office and supporting staff and independence from any proceeding rules. In principle, parties concerned may, when referring their dispute to an ad-hoc arbitration choose proceeding rules and formalities whereby the dispute resolution will be undertaken. Thanks to its simplicity in term of organisation and flexibility in operations, ad-hoc arbitration seems to be suitable to less complicated cases that require a swift handling, and where the disputing parties have legal knowledge and proceedings experience. However, the number of disputes that are resolved through ad-hoc arbitration is fairly modest.

In the meantime, permanent arbitration has its own office and a list of individual arbitrators and operates subject to its own charter. Most of the leading and reputable arbitration organisations in the world are set up and in existence in such a form though their names may be differed such as arbitration centres, arbitration committees, arbitration institutes or national or international arbitration councils.

- In normal term, a permanent arbitration is structured into two sections namely,
- + A permanent section (including the board of management and a secretariat)
 - + Councils of arbitrators (that are formed where a case is referred to the arbitration for settlement)
 - + Supporting staff.

The most outstanding feature of a permanent arbitration is its separate proceeding statute which is comprehensively provided. Basically, disputing parties have no right to choose hearing procedures. In early 1980s, many international arbitration institutions allowed the parties concerned to use UNCITRAL model rules to handle their disputes. In practice, each arbitration organisation has its own charter that is regularly amended, supplemented and improved to better respond to changing conditions and demands. On the other hand, apart from lowering arbitration fees, world's arbitration organisations are making efforts to shorten the time length of dispute resolution and include in the list of arbitrators those who have high reputation, knowledgeability, professional expertise and experience in different areas of the economic life. These efforts are seen as helping to enhance the performance quality of these arbitration organisations. This also further explains why in developed market economies, arbitral resolution of dispute is favoured and preferred by the business circle to court dispute settlement.

2.4. Dispute settlement through the court system

Resolution of business disputes through the courts is a form of dispute settlement using the State judiciary system that exercises the sovereign powers to issue judgements compelling the relevant parties to comply with by all means including forcible measures.

As a result, courts are often referred to by the disputing parties as a last resort in effectively protecting their legitimate rights and interests after their unsuccessful negotiations or conciliation. More importantly, in this case, disputing parties have no intention to choose arbitral resolution of their dispute.

Findings from paper studies and field trips to industrialised nations with developed legal system such as France, Germany, Japan, UK and the US indicate that court settlement of business disputes in these countries has the following salient features:

Principle of organising the court systems

In these countries, the court systems are organised subject to levels of jurisdiction namely courts of first instance, courts of appeal and court of cassation. The number of courts is not determined by administrative boundaries but demands of adjudication. It is normal that capital cities and trade centres will have more courts of appeal in comparison with that in other localities.

Principle of determining jurisdiction on a case-by-case basis

In principle, under the civil and commercial procedural laws in the countries in question, a case-by-case based jurisdiction is prescribed to

determine jurisdiction between components of a court system, that is court's jurisdiction is not limited to cases arising from civil transactions in general and trade practices in particular. Since courts are often referred to by the disputing parties as a last resort in effectively protecting their legitimate rights and interests, the civil and commercial procedural laws in many countries recognise a principle whereby "a judge should not deny to adjudicate adducing the absence of applicable laws". Furthermore, such a denial may constitute a criminal offence and will be severely dealt with under the penal code. This approach has highlighted a significant role of the case law as a crucial source of law that is created by the court to enable its hearing activities.

Courts in the countries in question normally have jurisdiction over the following disputes:

- + Disputes between business persons from commercial transactions.
- + Disputes relating to the issuance, custody, guarantee and trading of stocks.
- + Disputes between a company and its members or between members of a company relating to the establishment, organisation, operation and dissolution of the company.
- + Disputes over commercial notes.
- + Disputes over acquisition, lease out or contracting out of a business.
- + Disputes over industrial property (such as patents, utility solutions, industrial designs, trade marks and origin of goods).
- + Disputes relating to unfair competition and monopoly control.
- + Disputes over international trade and maritime.

Proceedings

Procedures that are applicable to business dispute resolution, though based mainly on civil procedures also have some modifications to be more suitable to business practices, e.g. provisions on council of trial, time limits of procedural steps etc. Therefore in the countries under consideration, instead of enacting a separate procedural law to govern business disputes only, civil procedural law is introduced and referred to during the settlement of business disputes.

Organisational structure of the courts

Depending on the levels of socio-economic development, cultural conditions, customs and legal tradition, court systems in the countries in questions are organised in different ways. In general, business disputes are handled by one of the following courts:

- + Specialised courts (often termed economic courts or commercial courts) that are organisationally independent from the ordinary courts are created to resolve business disputes. This type of courts is often seen in European countries which are featured by a continental law system, e.g. France or Germany.

Noticeably, commercial judges are appointed or selected subject to a separate statute that is not applicable to other judges. In France, for

example, commercial judge is an honourable title whose holder is not paid. For jurors (or assessors) working in economic (or commercial) courts should be reputed or experienced merchants or economists, their appointments are often made at the request of the chamber of commerce and industry.

- + Jurisdiction over business disputes is delegated to civil courts. In countries adopting such a model of dispute settlement, there is no clear-cut distinction between civil disputes and business disputes since business disputes are, in nature, treated as a variant of civil disputes. Therefore, there is no need to differentiate the governance of procedural laws so that a separate procedural law must be enacted for the business dispute settlement only. This model of court organisation is popular in common law countries including the UK, US, and some transitional countries such as China or Czech Republic.

In comparison with arbitral resolution of disputes, the dispute resolution through the court system enjoys overwhelming advantages in terms of proceeding and enforceability of the judgements. However, this method of dispute settlement is normally lengthier and more costly given the arbitral dispute resolution. Furthermore, the principle of open hearing that is pursued by the courts also raises concern among business circle as it may not secure their business secrets and reputation.

In sum, each method of business dispute resolution has its own characteristics and limits. Only the parties concerned and their lawyers know which method is most suitable to the settlement of their disputes. Practices from business dispute resolution in many countries show that in developed market economies, negotiations, conciliation and arbitration are prevailing among methods of dispute settlement while in transitional economies, the courts continue to be the most important form of dispute settlement.

3. A brief history of the development of business dispute resolution laws and practices in Vietnam

The history of laws governing business dispute resolution in Vietnam has experienced the following significant milestones:

1945-1956:

There was no distinction between business disputes and other types of property disputes. In this context, business dispute resolution was not created as an independent specialised mechanism of dispute resolution.

1956-1960:

Business disputes started to be distinguished from other types of property disputes after the Temporary Regulation No. 735-TTg on business contracts was promulgated on 10 April 1956 by the then Prime Minister. In accordance with Article 1 of the Regulation, a business contract was defined as “*a written document determining the relation between two or more business entities who voluntarily undertake to fulfil a number of certain tasks with a view to*

promoting industrial production and trade and contributing to the implementation of the State plans”.

Subject to Article 20 of the Regulation, a dispute resolution is provided as follows:

- Disputes between private enterprises or between a private enterprise and a SOE or a co-operative will be referred to a registration or certification body for its settlement. In case where a public prosecution is needed, the registration body will initiate a law suit before the local court.
- Disputes between co-operatives or between SOEs will be referred to higher authorities or to an inter-branch meeting of higher authorities for their settlement.

The registration and certification of business contracts is prescribed in Article 8 as follows:

“Within 5 days from the date of their conclusion, all contracts entered into between private enterprises or between a private enterprise and a SOE or co-operative shall be registered with the industry-commerce board of the province or the authorised district administrative committee where these contracts are concluded.

Contracts entered into between SOEs or co-operatives, or between a SOE and a co-operative shall not be registered subject to procedures stipulated in Article 9 but shall be copied to the competent industry-commerce board for its observation.

Contracts of small values that are entered into between SOEs or co-operatives and farmer collectives (such as collective production teams or mutual aid groups) must be certified by the local commune’s administrative committee.

Thus, the first bodies having jurisdiction over business disputes in Vietnam were provincial industry and commerce boards, administrative committees at district and commune levels, higher authorities of co-operatives, SOEs or people’s courts⁴.

1960-1994:

The building of a centrally planning mechanism in this period offered premises for the establishment of the State economic arbitration - a new dispute resolution body affiliated to the executive branch. The economic and legal foundations for the emergence of the State arbitration system are demonstrated as follows:

Firstly, it is the special legal status of the SOEs that requires a direct management of the State in all areas of activities. Although enjoying a relative independence in terms of their organisation and business and production activities, SOEs were, by their virtue a component of the entire economy where the State was the sole owner of all means of production. SOEs operating in a

⁴ Selected documents prepared within the framework of the VIE/94/003 project, Vol. IV, Part II, Chapter I, p.50.

branch, industry or a certain area were placed under a uniform administration of a line ministry. However, due to their relative independence, SOEs could still maintain a mutual exchange and co-operation within the boundary of a branch or between different branches or areas. Under these circumstances, the State management is not directly undertaken by the line ministries but through the State Economic Arbitration.

Secondly, a centrally-planning mechanism requires SOEs to concentrate their business and production activities on the achievement of statutory targets set by the State. To ensure a successful fulfillment of such a task, the State economic arbitration was founded to supervise and monitor the operations of SOEs on the one hand and act as a co-ordinator of operations between various branches and economic management agencies during their implementation of the State plan on the other hand.

Thirdly, the existence of economic contracts as a special legal form of an equal exchange and co-operation between SOEs required a specialised State body to administer the conclusion and performance of these contracts, as well as resolve disputes once they arise⁵.

After the promulgation of a series of legislation including Decree No. 20-TTg dated 14 January 1960, Decree No. 94/CP dated 10 June 1965, Decree No.75/CP dated 14 April 1975, Decree No. 24/HDBT dated 10 August 1984 and particularly the Ordinance on Economic Contracts dated 10 January 1990, the State Economic Arbitration has become a nation-wide system affiliated to the executive branch. This system was organised at three tiers, namely the central, provincial and district. The main function of the State economic arbitration system was to monitor and administer the conclusion, performance and termination of economic contracts with emphasis on:

- Maintaining discipline in complying with economic contract regulations and dealing with illegal economic contracts.
- Resolving disputes from economic contracts.
- Jointly or independently drafting regulations to govern economic contracts.
- Disseminating, educating or providing guidance on the implementation of regulations concerning economic contracts and economic arbitration.

Together with the State economic arbitration, economic activities in Vietnam during early 1960s required to set up non-governmental arbitration organisation to resolve disputes from international economic relations including not only the economic relations between Vietnam, the former Soviet Union and the eastern block but also the economic relations between Vietnam and developed market economies. In response to such a demand, the Foreign Trade Arbitration Council and Maritime Arbitration Council were established under Decree No. 59/CP dated 30 April 1963 and Decree No. 153/CP dated 5 October 1964 of the Council of Government respectively. These arbitration bodies had jurisdiction over disputes from foreign trade contracts, international payments, international transport, international maritime and insurance... After 30 years in existence, under Decision No. 204-TTg dated 28 April 1993 of the

⁵ First draft of the “Economic Law of Vietnam” – text book, Faculty of Law, Hanoi National University, p.313.

Prime Minister, these arbitration bodies were merged into the Vietnam International Arbitration Centre.

Despite their 30-year history, the number of cases handled by these arbitration councils was insignificant especially during 1963-1986 when disputes were not so serious and often resolved through mutual negotiation for SOEs were then not treated as a full legal person.

Since 1986, as Vietnamese businesses have been transformed to operate on a cost-accounting basis, disputes increased in number and became complicated in substance. Consequently, more disputes were referred to the Foreign Trade Arbitration Council. Between 1988-1993, the arbitration organisation registered about 20 cases each year, a half of which were resolved through court hearings, while the remaining cases ended after successful negotiations between the parties concerned⁶.

From 1994 until now

The transition of Vietnam's economy into a market-driven economy has witnessed a diversity of economic activities and participation of various economic sectors having different types of ownership. This also results to considerable changes in the form and substance of business disputes that require a fundamental renovation of the ways in which economic disputes are resolved. For that reason, in its fourth session the Tenth National Assembly adopted the Law on Amendments of and Additions to a Number of the Law on the Organisation of the People's Courts on 28 December 1993. Under the amended Law, from 1 July 1994, an economic court as a specialised chamber in the system of the people's courts was created to adjudicate economic cases. This event also marked the end of the State economic arbitration in the economic life of the country.

In response to natural demands for diversifying modes of business dispute resolution to fit to the operation of market rules, and at the same time to bolster regional and international economic integration, the Government issued Decree No. 116/CP dated 05 September 1994 on the organisation and operations of economic arbitration centres at provincial level.

Thus, together with the economic courts as the only State dispute settlement body, there are currently two non-governmental dispute resolution bodies in parallel existence, namely the Vietnam International Arbitration Centre affiliated to the Vietnam Chamber of Commerce and Industry and provincial economic arbitration centres. These institutions are regulated by different legislation that makes it a special characteristic during the evolution of economic laws in Vietnam over the past years.

⁶ Selected documents prepared within the framework of the VIE/94/003 project, Vol. IV, Part II, Chapter I, p.52.

III. CURRENT PRACTICES OF ARBITRAL RESOLUTION OF BUSINESS DISPUTES IN VIETNAM

1. Resolution of business disputes through the Vietnam International Arbitration Centre (VIAC)

The VIAC was established under Decision No. 204-TTg dated 28 April 1993 of the Prime Minister on the basis of a merger between the Foreign Trade Arbitration Council and the Maritime Arbitration Council that were in existence as an affiliate to the Vietnam Chamber of Commerce and Industry (VCCI) for 30 years. Subject to Decision No. 204-TTg, the Board of Management of the VCCI has issued Procedural Rules of the VIAC and a table of arbitration fees.

On 16 February 1996, the Prime Minister promulgated Decision No. 114-TTg on expanding the jurisdiction of the VIAC based on which the Board of Management has issued a Domestic Arbitration Proceeding Statute, a table of arbitration fees and costs payable by domestic disputing parties.

1.1. Jurisdiction of the VIAC

The jurisdiction of the VIAC is stipulated in Article 2 of the VIAC Charter issued in conjunction with Decision No. 204/TTg dated 28 April 1993 of the Prime Minister whereby, “the VIAC shall have jurisdiction over economic disputes arising from international economic relations, such as foreign trade contracts, and contracts relating to investment, tourism, international transport and insurance, licensing, international credit and payment”.

Pursuant to this provision, the VIAC has jurisdiction over disputes in cases where the two following conditions are met:

- *First*, at least one of the parties concerned is a foreign individual or a foreign legal person.
- *Second*, before and after the occurrence of a dispute, the parties concerned agree to refer their disputes to the VIAC or an international treaty requires such a dispute to be referred to the VIAC.

It is noteworthy that from 16 February 1996, under Decision No.114/TTg of the Prime Minister, the VIAC’s jurisdiction has been expanded to cover the settlement of economic disputes arising from domestic economic relations, if it is agreed upon by the parties concerned (Article 1). From that point of time, the VIAC is no longer known as a specialised arbitration organisation whose jurisdiction is limited to international economic disputes only. The problem is, however, whether the VIAC is also subject to Decree No.116/CP dated 5 September 1994 that generally governs economic arbitration in Vietnam. Practices over the past years indicate that the VIAC still continue its

existence and operations within a separate legal framework that is independent from a more general economic arbitration legislation. Obviously, the current laws have created two different legal frameworks for the organisation and operations of arbitration centres, especially as regard the arbitral jurisdiction. This is viewed as the most serious weakness and shortcoming of arbitration law in Vietnam at present.

1.2. Selection of arbitrator(s)

According to Article 4 of the VIAC Charter, arbitrators of the VIAC will be individuals with a profound knowledge and experience in various areas of law, foreign trade, investment, finance, banking, transport and insurance etc. who are selected by the standing secretariat of the VCCI for a 4-year term. Foreign experts may also be invited to act as individual arbitrators of the VIAC.

In consultation with the UNCITRAL Arbitral Rules (adopted by the UNCITRAL on 28 April 1976 and by the UN General Assembly on 15 December 1976), the procedures for selecting arbitrators by the parties concerned after their submission of the disputes to the VIAC are provided as follows:

- Each of the parties concerned is entitled to choose or request the President of the VIAC choose its own arbitrators from the pre-determined list of VIAC arbitrators.
- The two arbitrators so chosen will jointly select a third arbitrator from the list of VIAC arbitrators. The three arbitrators so chosen will constitute an arbitration committee to handle the dispute. The third arbitrator will act as the chairperson of the arbitration committee.
- In case where the two arbitrators fail to reach an agreement on a third arbitrator, the president of the VIAC will appoint a third arbitrator from the pre-determined list of VIAC arbitrators.

1.3. Procedures for dispute settlement

Procedures at the VIAC are to be initiated by a claim [or petition] lodged with the Centre by the plaintiff. In accordance with the procedural rules of the VIAC, such a claim should be made in Vietnamese or another foreign language that is popular in international transactions such as English, French or Russian and must specify the following details and particulars:

- Full names and addresses of the plaintiff and the defendant;
- Requests of the plaintiff, explanation of facts and supporting evidence;
- Legal grounds based on which the plaintiff brings such an action.
- Value of the case;
- Full name of the arbitrator who is chosen by the plaintiff from the list of the VIAC arbitrators or plaintiff's proposal for the President of the VIAC to appoint an arbitrator to represent his interests.

Immediately after his/her registration of the claim, the secretary of the Centre will notify the defendant of the claim enclosed by a copy of the claim and relevant documents and the list of arbitrators of the Centre. During that time, the parties concerned should choose or request the Centre to choose on their behalf arbitrators in conformity with the Centre procedural rules. Noticeably, a plaintiff may face with a counter-claim before the hearing of the arbitration committee. The counter-claim will be considered at the same time with the original claim.

After their appointment or selection, arbitrators are expected to work on the files and conduct investigations by all appropriate means to understand the facts and nature of the case.

After the completion of preparatory works, the arbitration committee or the sole arbitrator will hold hearing sessions in Hanoi or another location they deem to be necessary or at the request of the parties concerned.

During the hearing sessions, arbitrators must base their findings and rulings on the governing laws that are applicable to the dispute, relevant international treaties, trade and international practices. On the other hand, arbitrators are supposed to give objective and honest assessment of facts. The arbitration committee will make all decisions by a majority vote. The minority's opinions will be recorded in a minutes.

At all stages of the settlement procedures, arbitrators are obliged to adhere to the Code of Conducts of the VIAC arbitrators issued in conjunction with Decision No. 252-PTM/TT dated 1 August 1996 of the Chairman of the VCCI. These ethical requirements include:

- Impartiality and integrity
- Independence
- Confidentiality
- Due diligence
- Transparency

1.4. Arbitral awards

The process of dispute settlement may result to an arbitral award or a conciliation agreement which is valid as an award. An arbitral award must contain the following detail and particulars:

- Name of the VIAC;
- Date on which and place where the award is rendered;
- Full names of the arbitrators (or the single owner) who resolved the dispute;
- Names of the disputing parties and relevant individuals;
- Subject matter of the dispute and a brief summary of facts;
- Decision on the case, arbitration fees and other costs;
- Bases on which arbitral decisions are made; and
- Signatures of arbitrators (or the single arbitrator) and the secretary of the session.

The award rendered by an arbitration committee may be made public immediately after the end of the final hearing session or at a later time. Arbitral awards

are final and conclusive that can not be appealed before any courts or institutions. Once rendered, the parties concerned are obliged to implement the award within the time limit prescribed therein.

Such a provision is entirely suitable to the international practices whereby an agreement to choose arbitral resolution of dispute should be interpreted as a commitment to enforce the arbitral award unconditionally and a waiver of challenging the arbitral award by all means.

2. Resolution of business disputes through economic centres established under Decree No. 116/CP dated 5 September 1994 of the Government.

2.1. Jurisdiction

In accordance with Article 1 of Decree No. 116/CP dated 5 September 1994 and Circular No. 02-PLDSKT dated 3 January 1995 of the Ministry of Justice, economic arbitration centres have jurisdiction over the following types of disputes:

- Disputes over economic contracts between legal persons, between legal persons and private enterprises; between private enterprises; and between private enterprises and individual businesspersons;
- Disputes between a company and its members; disputes between members of the companies over the establishment, operation and dissolution of the company such as withdrawing capital, distribution of loss and profit, merger, separation and dissolution of a company; disputes over rights and obligations of the company members.
- Disputes over sales and purchases of shares and bonds.

Each economic arbitration centre may determine its own scope of activities depending on the professional capacity of its arbitrators. Such a scope of activities should be stated in the centre's charter.

The above-described provisions suggest that the jurisdiction of economic arbitration centres are not determined on a territorial basis but on a case-by-case basis that allows parties concerned to choose any economic arbitration centre to handle their disputes. On the other hand, it is such a factor that requires these centres to enhance their competitiveness through lowering arbitration fees, shortening resolution process and improving hearing quality.

As regard the competence of economic arbitration centres as prescribed in Decree No.116/CP, there are two points that need to take into consideration, namely:

- The concept of economic contracts as interpreted by economic arbitration centres is broader than that recognised by the courts.

- The jurisdiction of economic arbitration centres is much narrower than that of the VIAC that evidently results to an unfair competition between these arbitration institutions. This helps to explain why the adoption of Decree No.116/CP is not well received and strongly supported by the business community.

2.2. Selection of arbitrators

As a permanent arbitration, each economic arbitration centre has its own charter and a list of arbitrators. In general, the procedures for selection of arbitrators of the economic arbitration centres are also similar to that of the VIAC. In particular:

- In case where the dispute is to be handled by an arbitration committee, each party concerned will choose its own arbitrator. The two arbitrators so chosen will select a third arbitrator who will serve as a chairperson of the arbitration committee.

Within 10 days from the date on which the second arbitrator is chosen, if the two arbitrators fail to reach an agreement on the third arbitrator, the President of the economic arbitration centre in question will appoint the third arbitrator to chair the committee.

- In case where a dispute is to be handled by a single arbitrator as mutually agreed by the disputing parties but the parties concerned fail to jointly select that arbitrator, within 7 days from the date on which he is informed by the parties concerned of their failure to choose an arbitrator, the President of the economic arbitration centre will appoint an arbitrator to resolve the dispute.

2.3. Procedures

Procedures at economic arbitration centres are started with the submission of a written claim (or petition) by the plaintiff. Such a claim will not be accepted nor registered by an economic arbitration centre unless the plaintiff has filed a complete set of the following documents:

- A written claim containing the following detail and particulars:
 - + Date, month and year when the claim is made;
 - + Names and addresses of the relevant parties;
 - + Name of the economic arbitration centre which is requested to resolve the dispute;
 - + A brief summary of the dispute and the request for resolution;
- Any measures of negotiation or conciliation which have been take unsuccessfully;
- Full name(s) of the arbitrator(s) selected by the claimant from the list of arbitrators available in the economic arbitration centre.

- A written agreement of the parties whereby the disputes will be referred to that economic arbitration centre for resolution.
- All necessary documents and evidence that support his/her claim.
- Receipt of advanced payment of the arbitration fees.

Within 7 days from the date of receipt of the claim, the secretary of the economic arbitration centre in question will forward a copy of the claim lodged by the plaintiff and the list of arbitrators of the centre to the defendant. Within the time limit fixed by the economic arbitration centre, the defendant must respond in writing to the center and the plaintiff enclosed with supporting documents.

After their being duly chosen or appointed, arbitrators will review the file and take necessary steps to resolve the dispute including listening opinions and views of the parties concerned, and summoning witnesses in the presence of the parties after having them notified of this step, requesting the parties concerned to provide additional evidence and relevant documents, calling for an independent examination...

Place and timing of the hearing session will be agreed by the disputing parties. In case such an agreement is absent, the chairperson of the arbitration committee or the sole arbitrator will fix a place or time for the hearing provided that a subpoena should be serviced to the parties concerned at least 15 days before the opening of the hearing session (Article 21 of Decree No.116/CP dated 5 September 1994).

Unlike the economic arbitration legislation in other countries, Article 25 of Decree No.116/CP provides that during the settlement of a dispute, an economic arbitration centre will only base its findings on clauses of the disputed contract and the existing laws and regulations. In other words, the applicable laws in Vietnam do not recognise the choice of governing law by the parties concerned.

In practice, the disputing parties may themselves or through their legal attorneys participate in the dispute settlement process. In addition, the parties may also seek defence of their legitimate interests from lawyers.

It is noteworthy that any unjustified absence of at least one party may result to an adjournment or suspension of the dispute settlement (Article 23 of Decree No. 116/CP).

During the resolution of a dispute, if the parties reach an agreement by means of negotiation, the arbitration tribunal shall terminate the proceedings. The parties may request the President of the economic arbitration centre to confirm such an agreement in writing. Such a document shall be of equal validity to an arbitral award.

2.4. Arbitral decision

The resolution of a business dispute through arbitration will be ended by one or more arbitral awards. According to Article 28 of Decree No. 116/CP, the arbitration tribunal or the sole arbitrator may make a decision on a partial settlement of the dispute as it deems appropriate.

An arbitral award must contain the following detail and particulars:

- Name of the arbitration centre;
- Date on which and place where the award is rendered;
- Full names of the arbitrators who resolved the dispute;
- Names and addresses of the parties concerned;
- A summary of the dispute;
- Bases and terms of the awards; and
- Amount of arbitration fees to be borne by the parties.

An arbitral award must be signed by all arbitrators and immediately notified to the parties concerned after the end of the hearing session or at a later time but within 5 days from the end of the hearing session. Copies of the arbitral award must be delivered to the parties within 3 days from the date on which the award is rendered.

After an arbitral award is made public, the arbitral tribunal or the sole arbitrator should not correct or revise except where there are obvious miscalculations or grammar mistakes. In such events, any correction or revision of the award must be notified to the parties concerned.

In principle, the losing party will bear the arbitration fees unless otherwise agreed upon. The tariff of arbitration fees will be fixed by each economic arbitration centre subject to the tariff jointly prescribed by the Ministry of Justice and Ministry of Finance.

IV. RESOLUTION OF BUSINESS DISPUTES THROUGH THE COURT SYSTEM

1. Jurisdiction of the people's courts over economic disputes

In accordance with Article 1 of the Amended Law on the Organisation of the People's Courts adopted by the National Assembly on 28 December 1993, the People's Supreme Court, people's local courts, military tribunals and other courts shall be the only body in the Socialist Republic of Vietnam which has jurisdiction to hear criminal, civil, marriage, labour and economic cases and handling other matters as may be prescribed by the law.

Thus in comparison with its competence as stipulated in Article 1 of the Law on the Organisation of the People's Courts adopted by the National Assembly on 6 October 1992, since the end of 1993, the court's jurisdiction has been broadened to cover economic cases under the Ordinance on the Procedures for Settlement of Economic Cases dated 10 March 1994.

By the substance of cases, pursuant to Article 12 of the Ordinance on the Procedures for Settlement of Economic Cases, economic courts have competence to judge the following cases:

- Disputes over economic contracts between legal persons, and between legal persons and individuals with business registration. In accordance with Inter-branch Circular No. 04/TT-LN of the People's Supreme Court and People's Supreme Procuracy Office providing guidance on the implementation of Article 12 of the Ordinance, individuals with business registration include not only private enterprises but also other individual who are issued with a certificate of business registration as prescribed by the law.
- Disputes between a company and its members; disputes between members of the companies over the establishment, operation and dissolution of the company. Official Correspondence No.442-KHXX of the People's Supreme Court dated 18 July 1994 gives detailed guidelines on this matter as follows:
 - + Disputes between a company and its members may be defined as disputes over: capital contributions of each member to the limited liability companies which may take the form of cash, or in kind or industrial property right; face value of shares and the number of shares to be issued by a joint stock company; ownership to part of a company's asset in equivalence to its capital contribution; right to dividends or obligation to bear losses in proportion to a member's capital contribution to the company; claim to company's asset or liability or payment of company's debts; liquidation of assets and the contracts that are entered by the company; other issues relating to the incorporation, operation and dissolution of the company.

- + Disputes between members of a company include disputes between company members over the valuation of capital contributions by company's members; transfer of capital contributions to the company between members of a limited liability company or transfer of capital contributions from a company's member to an outsider; transfer of shares, the number of shares to be issued and corporate bonds of a joint stock company; ownership to assets corresponding to the number of shares held by a member; right to dividends or obligation to bear losses, payment of company's debts; liquidation of assets and distribution of liabilities between company members in case of its dissolution; other problems arising between company members in relation to the incorporation, operation and dissolution of the company.
- Disputes over sales and purchases of shares and bonds that have been issued, or will be issued by joint stock companies.
- Other economic disputes as may be prescribed by the law include those disputes which may, in the future be classified by a legislation as economic disputes and hence fall under the jurisdiction of the people's courts.

By levels of adjudication, the economic courts' jurisdiction over economic cases may be determined as follows:

- District courts have jurisdiction over first-instance trial of economic disputes that meet all three conditions as described bellows:
 - + Disputes over economic contracts;
 - + Disputed value fall below VND 50 millions;
 - + There is no foreign element
- Provincial courts have competence to judge economic cases under first instance procedures in respect of all economic disputes as stipulated in Article 12 of the Ordinance. In case of necessity, the provincial courts may choose to handle cases which fall under the jurisdiction of the district courts (such as complicated cases, or cases relating to many parties who are located in different and remote districts, or cases where the district courts have no qualified judges to handle or which require to replace judges but such a substitute is not available...).
- The Economic Chamber that is affiliated to a provincial people's court has jurisdiction over appellate hearing of economic cases whose first-instance judgement rendered by a district court has not become effective yet but has been appealed or challenged.
- Committee of Judges of the provincial people's courts has competence to review or re-try economic cases whose first-instance judgement rendered by a district court has become effective but has been appealed or challenged.

- People's Supreme Court
 - + The Court of Appeal affiliated to the People's Supreme Court has jurisdiction over appellate hearing of economic cases whose first-instance judgement rendered by a provincial court has been appealed or challenged.
 - + The Economic Court affiliated to the People's Supreme Court has competence to review or re-try economic cases whose judgement has become effective but has been appealed or challenged by competent persons as stipulated by the laws.

Unlike the Civil Court or the Criminal Court affiliated to the People's Supreme Court, the Economic Court has no jurisdiction over first-instance-cum-final trials.

- + Committee of Judges of the People's Supreme Court has competence to review or re-try economic cases whose judgement rendered by either the Court of Appeal or the Economic Court has become effective but appealed or challenged by competent persons as stipulated by the laws.
- + Council of Judges of the People's Supreme Court has competence to review or re-try economic cases whose judgement rendered by the Committee of Judges has become effective but appealed or challenged by competent persons as stipulated by the laws.

By territorial jurisdiction, the courts' competence is determined as follows:

- The court of the locality where the defendant's head office is located or where the defendant resides (in respect of individuals with business registration) will have the competence to adjudicate cases under first-instance procedures.
- If the case in question is related to a real property only, the court of the locality where the property is situated will have jurisdiction to settle.

By choice of the plaintiff, the court's jurisdiction is provided as follows:

- If the location of the head office or place of residence of the defendant is unknown, the plaintiff may request the court of the locality where the property, the head office or the last place of residence of the plaintiff is located to handle the case.
- The plaintiff may also request the court of the locality where the branch office of the defendant is located to handle the case if the economic dispute arises from that branch's operations.
- If a dispute arises from the breach of an economic contract, the plaintiff may request the court of the locality where the economic contract is performed to handle the case.

- In case where there are many defendants whose head offices or places of residence are located in different areas, the plaintiff may request the court of the locality where one of the defendants has its head office or place of residence to handle the case.
- If the case is not only related to a real property, the plaintiff may request the court of the locality where the property is situated or where the defendant is headquartered or resides to handle the case.
- If the case is related to real properties situated in different localities, the plaintiff may request the court of the locality where one of these property is situated to settle the case.

2. Underlying principles of economic proceedings

Apart from principles that are applied to all types of court, due to characteristics of economic relations and economic disputes, the court settlement of these disputes must adhere to the following principles:

2.1. Self-determination and conciliation by parties concerned

This is one of the fundamental principles of economic proceedings which is originated from a fact that in a market economy, where freedom to do business under the laws is respected and secured by the State. Therefore, administrative actions that arbitrarily interfere in the normal business activities will not be justified. As a subject of public powers, the State should not by itself bring an economic dispute to the court for settlement. On its the part, the court can not interfere in the settlement of economic disputes without a request duly submitted by the parties concerned neither. Thus a referral of an economic dispute to the court becomes a precondition for the initiation of a law suit.

The right to self-determination by the involving parties during economic proceedings may be exercised via different means such as conciliation led by a third party who is chosen by the disputing parties or operation of non-governmental arbitration or the courts. In nature, the parties concerned may at their sole discretion choose an appropriate form of dispute settlement that is fit to the disputed economic relation or authorise a lawyer or another person to represent their interest during the proceedings.

The right to withdraw an action, change the substance of a lawsuit, or the right to conciliation may be exercised at any point of time during the dispute settlement process. Particularly, the right to conciliation during the settlement of economic disputes is more widely exercised in comparison with civil proceedings. For example, in lawsuits that are brought against illegal marriage or relations deriving from illegal civil transactions will not be subject to conciliation.

As mentioned above, the courts will only handle disputes at the request of the parties concerned if and when the following conditions are satisfied:

- There is no prior agreement to refer the case to an arbitration.
- Parties concerned fail to conciliate or negotiate on a mutual basis.

2.2. Equality before the law

In a multi-sectoral commodity economy, the equality between different economic sectors is widely seen as a crucial and indispensable factor without which there will be no good business environment, no economic growth or even it may hinder the development of the whole economy. During the settlement of an economic dispute, it is required to ensure an equal footing between all types of enterprises or business persons regardless of their ownership or economic strength. Parties concerned will have the right and obligations to comply with procedural law. In this spirit, there should not be any discrimination between all economic sectors when participating in the court settlement of disputes.

2.3. Court rulings are not based on investigations but on a verification and gathering of evidence

Article 3 of the Ordinance on the Settlement of Economic Cases provides: “Parties concerned shall have obligation to provide evidence and a burden of proof to protect their own interests”. During the settlement of economic disputes, the courts will base mainly on evidence submitted by the disputing parties to render a well-reasoned and legally-justified judgement. In so doing, the courts will gather and verify evidence and listen to the defence of each party relating to the subject matter of the dispute. On their part, the parties concerned are entitled and obliged to present to the court those facts and arguments that they deem to be necessary. In case where there is a need to clarify any issue in order to ensure a proper handling of the case, the court may take appropriate measures to verify but not to conduct investigation as they do in civil proceedings.

2.4. Prompt and swift resolution of the case

Capital and time are viewed as elements of vital importance to the success or failure of business persons or enterprises. Therefore, any resolution of economic disputes should not only be legally justified but also prompt and complete to secure peace in mind of the business persons and remove any barrier to the full utilisation of their capital. Any delaying or lengthening of the case may cost unnecessary time and energy of the parties concerned.

This principle is apparently demonstrated in the Ordinance on the Settlement of Economic Cases in efforts to shorten the time limits for bringing an action or completing a stage during the whole process of dispute resolution including first instance, appellate, reviewing and retrying procedures. In addition, the time period for lodging a protest or an appeal is also reduced.

Apart from the underlying principles as prescribed above, economic proceedings also require a strict compliance with other principles such as open hearing or the use of certain languages as may be applied to civil procedures.

3. Procedures for settlement of economic cases

3.1. Time limit for taking actions

Paragraph 1 of Article 31 of the Ordinance on the Settlement of Economic Cases states: “The initiator [suer] must file a petition for the court settlement of an economic case within 6 months from the date on which the dispute arises, except otherwise provided by the law”.

Thus under the Ordinance, the right to bring an economic law suit is ranked as the first procedural right of the plaintiff. Under the current economic mechanism, the State and other relevant agencies are restricted from directly interfering in economic relations and economic disputes between business entities and individuals. Instead, the parties concerned may at their sole discretion determine an appropriate way to handle their dispute provided that any referral of a potential dispute to a court must be later backed by a written petition.

Also under the Ordinance, the time limit for initiating an economic case is fixed at “6 months from the date on which the dispute arises” with a view to resolving the dispute in a prompt and complete way by the parties concerned to stabilise their production and business activities. However, practices from settlement of economic dispute indicate that the aforesaid provision on time limit of action is inappropriate as it fails to promote the co-operation, negotiation and self-conciliation of the disputing parties. Since the statutory time limit of action is too short, the legitimate rights and interests of the parties concerned are not effectively safeguarded.

On the other hand, in the absence of specific and clear guidance, there is a perceptual inconsistency in the time limit of action between judges of courts at all levels, especially as regard the starting point of the time limit (or the time at which the dispute is deemed to arise).

3.2. Procedures for first instance settlement of an economic case

3.2.1. Initiation and registration of a lawsuit

Article 1 of the Ordinance recognises the right to file a lawsuit by relevant parties whereby “individuals and legal persons may, under the procedures provided by the law, initiate an economic lawsuit to request the court’s protection of their legitimate rights and interests”.

Initiating an economic lawsuit is thus the first procedural right of a plaintiff in an economic case which is not available to any State body including the procuracy office although such a body is assigned to supervise law obedience and hence help to uncover offences committed during business transactions.

In initiating an economic lawsuit, the potential plaintiff must lodge a petition with a competent court seeking its resolution of the economic dispute.

In accordance with clause 2 of Article 31 of the Ordinance, such a written petition should contain the following details and particulars:

- Date, month and year when the petition is made;
- Name of the specific court that is requested to handle the case;
- Names of the plaintiff and defendant;
- Addresses of the plaintiff and defendant;
- A brief summary of the facts, substance and pecuniary value of the dispute;
- Negotiation process that has been undertaken by the parties concerned;
- Specific requests to be considered by the court.

Accompanying his petition, the plaintiff must also present relevant documents or evidence to support his claim such as the economic contract in question, receipts, invoices, correspondence, minutes or other materials etc.

Registration of a case is understood as the acceptance by a competent court of a petition which is lodged by the plaintiff. Such a registration is officiated by a notice to be given to the plaintiff asking this party to pay the court fee in advance. Since the economic procedural law does not provided on exemption or reduction of court fee payments, any advanced payment will be determined on the basis of the petition (in respect of unquoted cases) or the disputed value (in respect of quoted cases) subject to Decree No. 70/CP of the Government dated 12 June 1997 on court fees and charges. Upon the plaintiff's presentation of the receipt of advanced payment of court fee, the competent court will record the case in a registry book.

The court will, however only register the case when the following conditions are met:

- The suer has the right to file a lawsuit;
- The case in question falls within the jurisdiction of the court;
- The time limit of action has not yet expired;
- The case has not yet been determined by an effective judgement or decision rendered by the court or another competent authority; and
- The disputing parties has no prior agreement whereby the dispute with be referred to an arbitration body.

3.2.2. Preparation for trial

Under the Ordinance, the time limit for preparing a trial of an economic case will be 40 days from the date on which the case is registered. In respect of complicated cases, the above mentioned time limit may be extended to 60 days. In reality, the trial preparation should be considered as a major stage including many important works that

are needed to be carried out during the settlement of the case. In particular, the court is expected to complete the following preparatory works:

- Notifying the defendant and relevant parties whose rights and obligations are related to the case of the contents of the petition within 10 days from the date of registration. Also within 10 days from the date of their receipt of the notice, the aforesaid parties are obliged to submit to the court their opinions and arguments in writing as regard the petition which is accompanied by supporting documents and evidence.
- Obtaining testimony of relevant parties. Although, during economic proceedings, the burden of proof is placed on the parties concerned, the court should also verify and gather evidence to ensure objective and accurate findings and rulings.
- The verification and gathering of evidence by the court may be undertaken by a variety of means such as requesting the relevant parties to present and provide evidence or request the witnesses to give justification on related issues; request the relevant state bodies and organisations to provide materials, documents and other evidence needed for the settlement of the case. Additionally, inspection/examination bodies and asset evaluation councils may also be called for to provide professional opinions to facilitate the case settlement. There are also cases where after registration of a case, the competent court may authorise another court in another locality to obtain testimony and gather evidence relating to the case on its behalf.
- Conducting a conciliation between relevant parties. During the settlement of a dispute, in order to assist the judges in verifying files, taking appropriate hearing approaches and help the relevant parties to better understand the causes of their dispute and hence to enable the conciliatory process, the relevant parties are arranged to directly meet to determine the nature of their dispute and problems arising from the conclusion and performance of an economic contract. Cross examination of relevant parties will be held before the conciliation.

On its part, conciliation represents an obligatory process provided by the economic procedural law. In conducting the conciliation of a case, the court must summon all relevant parties to the court. The judge should provide an analysis and explanation of legal issues to ensure a full and accurate understanding of the State policies and laws by the relevant parties and a voluntary settlement of the case. During the conciliation process, the court should act as an impartial mediator to avoid possible imposition of opinions on the parties concerned or any bias.

- + If the parties concerned could reach a mutual agreement on the settlement of the case, the court will prepare a minutes of successful conciliation and issue a decision to “recognise the agreement of the parties”.
- + If the parties concerned could not reach a mutual agreement on the settlement of the case, the court will prepare a minutes of unsuccessful conciliation and issue a decision to “bring the case to trial”.

During this stage of hearing preparation, the court may also have the right to make the following decisions:

- + Taking temporary emergency measures, alter or cancel the introduction of the temporary emergency measures (as provided for in Articles 41, 42, 43 and 44 of the Ordinance).
- + Temporarily suspending the case settlement (as provided for in Article 39 of the Ordinance).

The above-described provisions reveal an irrationality that the right to initiate a law suit is vested to the parties concerned but the court may exercise sole discretion in registering the case. In other words, the disputing parties have no influence on the court decision to register or deny the petition.

Furthermore, in the absence of specific and clear guidance from competent bodies, there may be inconsistent understanding and interpreting of the time limits or jurisdiction by registrar and the presiding judge. Consequently, in some cases, a decision to suspend the case settlement has been made without any legal grounds.

3.2.3. First instance court session

Clause 3 of Article 32 of the Ordinance states: “Within 10 days from the date of issuance of a decision to bring the case to a trial, the court should open a court session. In case of force majeure or legitimate reason, such a time limit may be extended to no more than 30 days”.

Before the opening of a first instance hearing session, the court must summon all parties concerned who are indicated as proceeding participants and give a notice thereof to the procuracy. Other persons such as the witnesses, interpreters, examiners or professionals may be summoned on a case by case basis...

Adjournment of the court session or trying in absentia of certain involving parties are stipulated in Article 39 of the Ordinance.

A first instance hearing session of an economic case may be conducted with a three-member tribunal including 2 judges (including a presiding judge) and one juror. All decisions at the court session will be made by the tribunal subject to principles of equality and majority voting.

Similar to other first instance trials of criminal, civil and labour cases, the first instance hearing session of an economic case undergoes 4 stages. However, there are also some points of interest. In particular:

Opening of the hearing session

This stage is undertaken by the presiding judge and includes the following steps:

- Reading out the decision to bring the case into trial on behalf of the tribunal.

- Examining the identity and legitimacy of the proceeding participants. In case of a legal person, its transaction name, location of head office, name and title of its representative must be verified. Legitimacy of the attorney and authenticity of the power of attorney are also required to be examined. In particular, a letter of introduction should not be admitted as a power of attorney.
- Introducing the proceeding conductors (including members of the tribunal, prosecutor, secretary etc.; notifying and explaining rights and obligations of proceeding participants (such as plaintiff, defendant, and parties whose rights and obligations are related to the case); summoning other individuals to the hearing session (e.g. witnesses, translator or examiner and so on).
- Requesting the parties concerned to provide additional evidence, if any; asking the parties concerned as to whether more witnesses are needed to be summoned. (Lawyers or prosecutor may also make the same request). However, it is the hearing tribunal that has a sole discretion in deciding to accept or rebut such a request.

Cross-examination

The presiding judge and other members of the hearing panel will conduct the cross-examination so that the plaintiff may give the first presentation, and next are the defendant and other proceeding participants. After the end of the cross-examination by the hearing panel, the prosecutor may participate in the process to clarify the facts. Lawyers may also raise questions subject to approval of the hearing panel.

More importantly, the hearing panel and parties involved in the cross-examination are expected to make objective questions that focus on the substance of the case to clarify key points.

Debating during the hearing session

Parties concerned may submit detail, evidence and views to protect their legitimate rights and interests. At the same time, they may also give suggestions on the settlement of the case. If a party is represented by a lawyer to defend its legitimate rights and interests, the lawyer will represent the party concerned to make presentation which may be added or supplemented by the relevant parties. Under the chairmanship of the hearing panel, parties concerned may engage and open debates for at least two times (if they are requested to involve in such debates).

At the end of the debate by the parties concerned, the procuracy's representative will put forward his view on the settlement of the case.

During the course of the hearing session, the plaintiff may be entitled to withdraw the entire or part of his/her petition, or supplement or alter the petition.

Parties concerned also have the right to conciliate at the court session and the hearing panel will make relevant decision on a case-by case basis such as suspending or recognising the agreement between the disputing parties...

If, during the court session, the hearing panel finds out grounds for a temporary suspension or [permanent] suspension of the case, a decision thereon will be issued. Such a decision may be subject to protest or appeal.

Deliberation and declaration of a judgement

Procedures for deliberation and declaration of a judgement will be carried out in accordance with Articles 51, 52 and 53 of the Ordinance.

Since a judgement represents a “legal document” demonstrating both the State powers and views of the hearing panel relating to the settlement of the disputes between relevant parties, the judgment must be adequate, short, accurate and well reasoned. Otherwise, it will not ensure the persuasiveness and educational effects on businessmen in particular and the public in general.

3.3. Appellate procedures

The first-instance judgement of an economic case and a number of decisions issued by the first-instance court (including decisions to suspend or temporarily suspend the case) which are appealed or protested against may be retried under appellate procedures by a next higher court.

The rights to appeal or protest, the contents, duration and procedures for appeals or protests are provided for in Articles 59, 60, 61 and 63 of the Ordinance.

The duration for an appellate trial as stipulated in Article 66 of the Ordinance is one month from the date of full receipt of relevant documents submitted to the appellate court by the first-instance court. In fact, this provision is proven unsuitable to the specific conditions of courts at all levels, particularly as regards the first instance trials of economic cases which fall within the competence of provincial courts. There are many reasons that result to the poor enforceability of this provision. For example:

- The case in question is too complicated;
- Parties concerned provide additional evidence to the court of appeal which may take time for the court to verify the authenticity of the evidence. In fact, the time limit for such a verification of evidence is not provided for in the Ordinance.
- The appellate hearing is delayed by one of the parties concerned (particularly the appellant who claims that the first instance judgement fails to meet his/her expectation).
- Other objective reasons such as a lengthy consideration of the case file by the procuracy, or uneasy travel by the parties concerned etc.

The appellate court session is conducted by 3 judges including a presiding judge and follows the same procedures as applicable to the first instance court sessions. The only difference lies in the fact that before the cross-examination, the presiding judge

will represent the hearing panel to summarise the contents of the case and decisions issued in the first-instance court session.

The appellate consideration of first instance court decisions that are protested or appealed does not require a hearing session to be opened or parties concerned to be summoned unless there is a need to listen to their opinions before the issuance of an appellate decision.

The court of appeal jurisdiction in reviewing the first instance court decisions or judgement that are protested or appealed is stipulated in Article 70 of the Ordinance.

3.4. Reviewing procedures

Article 75 of the Ordinance states: “Court judgements and/or decisions that took effect may be challenged under reviewing procedures upon the occurrence of one of the following events:

- There is a serious violation of the proceeding rules;
- Findings and/or rulings given in the court judgement and/or decision are proven inappropriate to the established facts of the case;
- There is a serious mistake in applying the laws”.

Thus, there are three triggers for a protest to be lodged under reviewing procedures. However, the borderline between a “serious violation” and a “less serious violation” of procedural rules is ill defined and heavily dependent on the subjective perception of each individual. Therefore, more efforts should be made to improve the consistency of this provision.

Right to lodge a protest, competence to handle such a protest, hearing session at reviewing level, and mandate of the hearing panel are specified in Articles 74, 78 and 79 of the Ordinance.

In accordance with clause 1 of Article 77, the time limit for lodging a protest is “*9 months from the date on which the court judgement or decision in question takes effect*”.

In reality, such a time limit is proven too short and impractical as:

- It is the responsibility of the Economic Court of the People’s Supreme Court to identify those judgements or decisions that are qualified to be reviewed, but in fact such a responsibility is rarely fulfilled due to its limited resource.
- Since “decisions that are issued to recognise the agreement between parties concerned” take immediate effect without protest or appeal, after the end the case, case files are often closed and shelved off.

- In some cases where a protest may be lodged under reviewing procedures but the time limit for such a submission of protest has expired, the legitimate rights or relevant parties may be adversely affected.

3.5. Retrying procedures

Grounds for making a protest under retrying procedures are prescribed in Article 82 of the Ordinance as follows:

- Important facts of which the parties concerned can not be expected to know during the settlement of the case have been uncovered;
- It is proven that conclusion of the examiner or translated text are untrue or evidence were falsified.
- Judges, jurors, prosecutors or secretary of the court intentionally distort/deviate the case file.
- The court judgements or decisions, or decisions that are issued by a State body and based on which the case was determined has been repealed.

All court judgements or decisions which took effect but later fall under one of the four circumstances as mentioned above may be protested under reviewing procedures.

Right to protest, time limit for opening a hearing session, competence and mandate of the hearing panel are specified in Articles 81, 84 and 86 of the Ordinance.

The time limit within which a protest may be made is one year. In general, such a time limit is said to be short and cause time restraints for lodging a protest under these procedures.

V. PROCEDURES FOR RECOGNISING AND ENFORCING FOREIGN ARBITRAL AWARDS IN VIETNAM

1. 1958 New York Convention and Vietnam's accession

One of the fundamental principles of dispute resolution through arbitration is a respect to self-determination of the parties concerned as regard the choice of arbitration and governing laws. It is such a special feature that determine the finality and conclusiveness of an arbitral award.

However, in fact, arbitral awards are not always enforced by all parties. Normally, when an arbitral award is not strictly observed by the obligor, the obligee may request a local court to render a decision to recognise and enforce the award. In respect of foreign arbitral awards, a competent court of the host country is not obliged to recognise these awards, if that country has not been a participant or a signatory of a multilateral or bilateral international treaty on this matter. Before 1958, it was not uncommon for foreign arbitral awards not to be recognised and enforced in other countries. Such a non-recognition and poor enforceability of foreign arbitral awards have hampered the internationalisation of civil and commercial transactions and provided golden opportunities to obligors to avoid their implementation of foreign arbitral awards.

In remedying the problems and rectifying shortcomings of the 1923 Geneva Agreement on Arbitral Clauses and 1927 Geneva Convention on the enforcement of foreign arbitral awards, the United Nations adopted 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards as a multilateral international treaty that set out provisions on conditions and procedures for recognising and enforcing foreign arbitral awards subject to the principle of reciprocity.

The 1958 New York Convention also laid out an underlying principle of non-discrimination between domestic and foreign arbitral awards as regard conditions for recognition and related fees (Article 3).

Under the Convention, a foreign arbitral award will be recognised and enforced if:

- it is based on a written agreement between the parties concerned and signatories to such an agreement should have a legal capacity as determined under the governing law.
- the party requesting for the recognition and enforcement of the award must comply with legal procedures as provided for by the procedural law of the territory where such an award is to be enforced.

Article V of the Convention also indicates a number of circumstances under which a foreign arbitral award may not be recognised nor enforced, namely:

- The arbitration agreement is concluded by parties having no legal capacity to enter into as determined under the governing law or such an agreement is null and void under the referred law.
- The party that is obliged to implement an arbitral award is not properly notified of the appointment of arbitrator(s) or his performance or can not present the case due to a certain reason.
- The award is rendered in respect of a dispute that is not anticipated in the terms of reference of an arbitration or go beyond these terms; or the award covers those matters that are outside the terms of reference of the arbitration. However, if it is possible to separate parts of the ruling that fall within the terms of reference from those that fall outside the terms of reference, these parts may be recognised and enforced.
- Arbitrators or arbitration procedures are not suitable to the parties' arbitration agreement or in the absence of such an agreement, the law of the country where the arbitration is held.
- The award has not yet become effective or has been suspended by a competent body in the country or subject to the laws of the country where the award is rendered.

Furthermore, a recognition and enforcement of a foreign arbitral award may be denied if in the view of a competent body in the country where such a recognition or enforcement are requested:

- the subject matter of the dispute can not be handled through arbitration under the laws of that country; and
- the recognition and enforcement of the award is contrary to the public order and the law of that country.

Since 1987, after the adoption of the Law on Foreign Investment in Vietnam, it became possible for Vietnamese and foreign investors to choose a domestic or foreign non-governmental arbitration to settle their disputes in an effort to attract more foreign investment. Subsequently, a series of legislation have been enacted including the Maritime Code, Law on Civil Aviation, Law on Petroleum, BOT regulation, EPZ regulations etc of which recognise such a choice of dispute settlement body. On the other hand, bilateral agreements concluded between Vietnam and other countries to govern investment, trade, maritime and so on also consist of the same arbitration clause. However, the problem is pursuant to international practices, in the absence of national commitments on mutual recognition and enforcement of arbitral decisions in each country, the arbitration rulings are in many cases useless. From the experience of the Vietnam International Arbitration Centre, some 4 decisions which were made by the

Centre but were not recognised nor enforced in foreign countries that adversely affect the legitimate interests of the winning party.

In response to the growing demands of the economic expansion, in the context of international integration which requires to protect the legitimate rights and interests of both domestic and overseas businesses and in improving the legal framework in Vietnam, on 28 July 1995, the President of the Socialist Republic of Vietnam issued Decision No. 453/QĐ-CTN on Vietnam's accession to the 1958 New York Convention on recognition and enforcement of foreign arbitral awards.⁷

In conformity with clause 3 of Article I of the Convention, in acceding to the Convention, the State of Vietnam has made three reservations. In particular:

- This Convention is only applied to the recognition and enforcement in Vietnam of foreign arbitral awards that are rendered in the countries being members of the Convention. In respect of foreign arbitral awards rendered in countries which are not a signatory or participant of the Convention, the convention may be applied on a reciprocity basis.
- This Convention will only be applied to disputes arising from trade relations.
- All matters relating to the interpretation of the Convention should comply with the laws of Vietnam.

With its accession to the 1958 New York Convention, Vietnam has reaffirmed great efforts in integrating into the regional and global economies. However, the second reservation also raises concerns among foreign investors and relevant countries as the concept of “trade” is still understood in its narrow meaning under the legal system of Vietnam (see clause 2 of Article 5 of the Commercial Law). Furthermore, arbitration jurisdiction in Vietnam, especially the jurisdiction of the Vietnam International Arbitration Centre covers economic relations that have a broader parameter than the trade relations as determined under the Commercial Law. Therefore, if the scope of trade relations in the context of foreign arbitral awards is narrower than that in the context of domestic arbitration, there may be a misunderstanding of discrimination against foreign arbitral awards. Consequently, it may produce negative impacts on the relation between Vietnam and other countries in judiciary area.⁸

2. Procedures for recognising and enforcing foreign arbitral awards

2.1. Foreign arbitral awards

The following foreign arbitral decisions may be considered by the courts of Vietnam for recognition and enforcement:

⁷ Ha Hung Cuong, Economic dispute settlement and the accession to the 1958 New York Convention, seminar paper, Ministry of Justice, 1996, p 12-13.

⁸ Collected documents prepared within the framework of the VIE/94/003 project, Vol. IV, Part II, Chapter II, p.73.

- Arbitral decisions rendered outside Vietnam by an arbitration body that is mutually chosen by the parties concerned to resolve their disputes from trade relations.
- Arbitral decisions that are rendered in Vietnam but not by a Vietnamese arbitration body.

In principle, a foreign arbitral decision may only be enforced in Vietnam after it is recognised and accepted for enforcement by the court of Vietnam. The enforcement of such a decision should be in compliance with the Ordinance on Recognition and Enforcement of Foreign Arbitral Decisions and other regulations concerning the enforcement of civil judgements.

2.2. Procedures for recognition and enforcement

2.2.1. Acceptance and registration of the application

The applicant should file a petition to the Ministry of Justice of Vietnam accompanying with other necessary documents as prescribed under international treaties to which Vietnam is a signatory or a participant or documents stipulated in the Ordinance on Recognition and Enforcement of Foreign Arbitral Decisions.

Within 7 days from the date of full receipt of the required documents, the Ministry of Justice will forward these documents to the provincial court of the locality where the obligor is headquartered or where his/her place of residence or work is located, or where the property subject to the enforcement is situated.

Within 2 months from the date of its registration, the competent court is expected to issue one of the following decisions:

- Temporarily suspending its consideration of the application upon its receipt of a notice from the Ministry of Justice whereby the arbitral award in question is being considered for abolition or suspension of enforcement by a competent body in a foreign country.
- Suspending its consideration of the application if the obligee withdraws his/her application or the obligor has voluntarily implemented the award.
- Suspending its consideration of the application upon its receipt of a notice from the Ministry of Justice whereby the arbitral award in question has been abolished or suspended from enforcement by a competent body in a foreign country.
- Suspending its consideration of the application or returning the application and accompanied documents to the Ministry of Justice if the obligor has no head office or place of residence in Vietnam or it becomes impossible to determine the place where the related property is situated.
- Opening a court session to adjudicate the application.

2.2.2. Adjudication of the application

Such a hearing session will be conducted by a panel of 3 judges including a presiding judge. Additionally, a prosecutor from the procuracy office of the same level, the obligor (losing party) or his/her legal representative will also attend the session.

The hearing session may also be held if the obligor, institutional or individual or his/her legal representative insists that the hearing be held in their absentia or the obligor is still in absence unreasonably after two subpoenas have been serviced.

In principle, during its consideration of the application, the hearing panel will not retry the dispute which has been resolved by a foreign arbitration but only examine and verify the arbitral award and the supporting documents against the laws of Vietnam or international treaties to which Vietnam is a signatory or a participant.

The hearing panel will make its decision on whether to recognise and enforce the foreign arbitral award in Vietnam by a majority voting.

All court decisions relating to the recognition and enforcement of foreign arbitral awards in Vietnam may be appealed by the parties concerned or their legal representatives or protested by the people's procuracy office.

Within one month from the date of its receipt of the protest, the People's Supreme Court will consider and resolve the protest. The hearing panel that has jurisdiction over the appeal and/or protest against a relevant decision of the people's provincial court may preserve, modify part or the whole decision; or temporarily suspend, or suspend its consideration of the appeal or protest if the party concerned withdraws its appeal or the people's procuracy office withdraws its protest.

2.2.3. Enforcement of foreign arbitral awards

Within 15 days from the date when the decision to recognise and enforce foreign arbitral awards in Vietnam takes effect, the competent court will forward a duplicate copy of that decision and a copy of the foreign arbitral award to the judgement enforcement agency re prescribed by the laws of Vietnam.

Foreign arbitral awards will be enforced subject to the laws of Vietnam governing the enforcement of civil judgements.

Upon its receipt of a notice from the Ministry of Justice whereby an arbitral award that has been recognised for enforcement in Vietnam is being considered for abolition or suspension of enforcement by a competent body in a foreign country, the head of the civil judgement enforcement agency will issue a decision to temporarily suspend the enforcement of such an award and forward a copy of such a decision to the competent court which has made a decision to recognise and enforce the foreign arbitral award in Vietnam.

Immediately after its receipt of a notice from the Ministry of Justice whereby an arbitral award that has been recognised for enforcement in Vietnam has been abolished

or suspended from enforcement by a competent body in a foreign country, the Vietnamese court which has made a decision to recognise and enforce the foreign arbitral award in Vietnam should make a decision to cancel its previous decision and send a copy to the civil judgement enforcement body based on which the head of this body will issue a decision to suspend the enforcement of the foreign arbitral award.

2.2.4. Non-recognition of foreign arbitral awards in Vietnam

In line with a general principle laid out in the 1958 New York Convention and in accordance with Article 16 of the Ordinance, a foreign arbitral award will not be recognised and enforced in Vietnam if it is well established by the obligor that:

- Under the applicable law, parties to the arbitration agreement are of insufficient capacity or the arbitration agreement is found null and void;
- The obligor is not duly and promptly notified of the appointment of arbitrators, dispute settlement procedures or other legitimate reasons that made him/her unable to exercise his/her procedural rights.
- The foreign arbitral award exceeds the arbitration jurisdiction or relates to a dispute that is not requested by the parties concerned for settlement.
- Composition of arbitrators and the arbitration procedures are not in compliance with the arbitration agreement or the laws of the country where the arbitral award is rendered.
- The arbitral award has been yet to take effect or have a binding effect on the parties concerned.
- The foreign arbitral award is abolished or suspended by a competent body in the respective foreign country.

In addition, a foreign arbitral award may not also be recognised or enforced in Vietnam if under the laws of Vietnam, such a dispute should not be resolved through arbitration or the recognition of enforcement of which is contrary to fundamental principles of Vietnamese laws.

Finally, in light of the principle of reciprocity, the courts of Vietnam may take relevant actions to restrict their consideration of application for recognition and enforcement of foreign arbitral awards in Vietnam if the applications submitted by Vietnamese organisations or individuals for recognition and enforcement of Vietnamese arbitral awards in a respectively country is not properly considered by a competent body of that country due to discrimination.

PART TWO

STUDY ON DISPUTE RESOLUTION PROCESS IN SPECIFIC CASE

I. DISPUTE RESOLUTION IN CONSUMER PROTECTION

1. Concept of Consumer

Prior to examining rights of consumer as well as properly determining rights of consumer, I would like to present the concept of consumer.

In our daily life, person may more or less buy goods or services for themselves, their family or group of people. For example, electric fan, television, refrigerator, etc. as basic needs for our daily life.

In addition, person may have other needs such as tourism, movement, goods transportation, etc.

However, depending on the utility of goods/services and needs of specific person, family or group of people, goods and services may be used for different purposes. A large number of goods/services are used for our daily life. However, goods/services are also acquired to be used in production line, for example, a farmer buys fertilizer, pesticide and acquires plough, irrigation services for farming. Therefore, in broad meaning, consumer is defined as buyer/user of goods and services.

Depending on the level of domestic economic development, concept of consumer differs from country to country. For example, Consumer Protection Act in the United States was ratified in order to protect buyer-debtor from credit at exorbitant rates of interest (lending money at interest rate higher than that allowed by the law), disadvantageous position against the debtor and misleading price information in transactions of goods and services. However, the concept of consumer in most countries such as South Korea, Japan, etc. and in Vietnam's proposed Consumer Protection Ordinance is defined in narrow meaning as buyer who purchase goods and services for daily consumption of person, family or group of people.

Other point of view determines consumer as buyer or user of goods and services for business purpose. The reasons are:

- The trader as a buyer is still protected by the law with respect to his or her legitimate interest.
- In many cases, there is no clear distinct at the first stage between "buying to resell" and "buying to consume".

To me and in this paper, I would like to approach the narrow meaning of consumer. With respect to “trader” with profit making, the law also protects his or her legitimate interests. However, the “trader” is not consumer because that the “trader” does not use goods and services directly, hence does not be affected by any defect or unqualified goods and services.

2 Rights of Consumer

Proper determination of consumer rights as the basis for defining consumer protection measures of the State as well as responsibilities of business organizations and persons to the consumer considers. Moreover, in our specific condition of understanding, the determination of consumer rights also does strengthen the consumer’s position and role in transactions of goods and services, and enable the consumer himself to protect his legitimate interests.

Consumer rights which were approved by the United Nations and recommended to implement by countries, are including:

1. Right to safety
2. Right to selection
3. Right to training in consumption
4. Right to information
5. Right to representation
6. Right to compensation
7. Right to satisfaction of basic needs
8. Right to fresh environment.

Consumer Protection Acts in those countries such as Japan, South Korea, due to good understanding of the law, do not clearly determine consumer rights. Eight consumer rights were mentioned and clarified in Vietnam’s proposed Consumer Protection Ordinance.

Other point of view considered that some rights, which have been recognized in other legal documents, are not necessary to mention in Vietnam’s proposed Consumer Protection Ordinance. For example, rights No. 2 and No. 8 may be structured in one article. Article 25 of Ordinance on Quality of Goods has stated shortly and clearly consumer rights in the field of quality of goods, therefore it is sufficient to refer to this Article 25 in Vietnam’s proposed Consumer Protection Ordinance.

Vietnam’s proposed Consumer Protection Ordinance regulates six consumer rights, where right No. 1 and No.2 are structured in one article, and right No. 3 and No.4 are structured in another article.

The combination of consumer rights in one legal document on systematic basis shall enable consumer to understand his/her rights, and also does strengthen the consumer’s position and role in transactions of goods and services. Moreover, clear and proper determination of consumer rights is considered as the basis for defining rights,

responsibilities and consumer protection measures by the relevant State agencies, as well as responsibilities of business organizations and persons.

In term of number of consumer rights, I think that they are the basic and most necessary rights of the consumer in one developing country. However, in our current specific socio-economic circumstance, rights No. 7 and No. 8 are hardly implemented in practice. But in the near future, it is necessary to determine those rights in a developing country.

I would like to examine in the next sections the consumer rights recognized by Vietnam's proposed Consumer Protection Ordinance. For the purpose of clear examination, Articles 8 and 9 are divided into 4 consumer rights.

1. Consumer is ensured to safety in consumption of goods and services.

Safety is understood as the security in health, body in consumption of goods and services. For example, foods and drinking are produced to satisfy the healthy standards of the people. In the other words, there is no chemicals or toxic waste or germ.

This is an important right of the consumer, but this right is always in violation especially in those developing market economies like Vietnam. In order to maximize their profits, some manufacturers may supply out-of-date or low quality products. Those products did cause damage to consumers such as counterfeit mineral water, fruit. In Hochiminh City, one company had imported a dozen thousand Taiwanese bottles of beer, and continued to sell to the market even those bottles were out-of-date, etc. There are a number of legal documents regulating product quality, registration and control:

- Ordinance on quality of products dated 27 December 1990
- Decision 24/TDC on registration of product quality
- Decree 140 HDBT dated 25 April 1991 on examining and dealing with production and trade of counterfeit products.

However, those legal documents are still inconsistent and scattered, and the examining activities undertaken by competent authorities and inspectors are overlapping and not on frequent basis. In circumstance of purchasing counterfeit or low quality products, less legally understanding consumers did not know how to deal with and where to claim.

Production and trade of toxic, combustible and explosive substances such as firecrackers, petrol, etc. also may lead to unsafety of consumers. However, some substances are necessary for daily activities. Therefore, it is important to stipulate standards and conditions for production and trade of those substances, not to restrict production and trade.

The trade of medicine also causes some damages to health and life of consumers. There are a number of prevailing legal documents such as:

- Law on People's health care
- Ordinance on private pharmaceutical and health care practice

- Regulations on the State inspection in health care issued in conjunction with Decree 23 HDBT dated 24 January 1991.

However, those legal documents are still not properly implemented on the basis of frequent examination and inspection. For example, Article 38 of Law on People's health care stipulated that "The person who has professional degree and is permitted by the Ministry or Department of Health, is allowed to conduct pharmaceutical practice".

However, many traders of medicine did not have professional degree or hired business registration of other person. Even in Hanoi, a blind individual did sell medicine. This situation had led to serious damages of property, life and health of consumers.

There are also a numbers of breaches of laws in the fields of services, tourism, and transportation. For example, unsafe van (overloading, damaged doors, etc.) was still in operation and led to serious traffic accidents.

With respect to tourism, the tourist authority did not fulfill its liability, such as lack of signals, first aid, etc.

In conclusion, the right to safety in consumption of goods and services is an important and necessary right of consumers. There are a number of legal documents regulating this right, but in scattered manner and unclear and overlapping decentralization. Low effectiveness of those legal documents leads to low feasibility. To me, in order to strengthen the administration of the State authorities and ensure effectively safety of consumers, it is necessary to assign the Ministers the power to decide or change, within their duties and functions, standards of goods and services:

- Firstly, content of goods such as ingredients, quantity, and composition.
- Secondly, guidelines and recommendations on how to use
- Thirdly, important notice to prevent risk and danger.

No trader is able to produce and sell any kind of goods or provide any service unsatisfactory to those standards. The competent ministries must examine, inspect and review all goods and services within the framework of their duties and functions, in order to determine the safety.

2. Consumer has the right to selection of qualified goods and services pursuant to the needs and at reasonable prices.

In the centrally planed economy, consumers are not entitled to select goods and services. They only could purchase products, which were distributed by the State. On the other hand, consumers were not able to select because of no various kinds of goods. In the market economy with various kinds of products, consumers have chance to select goods and services appropriate to their needs and at reasonable prices.

In order to ensure the right to selection of qualified goods and services pursuant to the needs and at reasonable prices, the State has issued a number of legal documents on price control:

- Decision 137 HDBT dated 27 April 1992 on price control
- Circular 04 VGNN/KHCS of the State Committee for Pricing making guidelines on registration, negotiation and quotation of prices.

The above-mentioned legal documents have regulated some important goods relating to people's daily life. However, some other less crucial goods are out of control, and no regulation on price quotation, hence harmful to consumers. For example, clothes, prices quoted by traders are higher than real value, that are harmful to consumers.

However, in our daily life, the right of consumers has been appreciated in transactions of goods and services. In addition, in the pressure of competition, sellers (business organizations and individuals) may offer many after sale services, which are favorable to consumers – the kings.

Consumers make use of their right to select and consult reasonable prices, even ordinary goods such as soap, match, bakeries, etc. With respect to luxury goods such as televisions, refrigerators, motorbikes, etc., the guarantee is faced with difficulties: some shops do not voluntarily implement terms of guarantee or do blame on manufacturers.

In order to ensure good fulfillment of the right to selection of qualified goods and services pursuant to the needs and at reasonable prices, the State should issue regulations on price quotation and guarantee, and to require business organizations and individuals to guide and properly implement those regulations with a view to improving consumer's confidence and avoiding any dispute.

3. Consumer is equipped with adequate information for selection, consumption of goods and services, protected from untrue advertisement, trademarks, trading counterfeit goods, fraud in trading goods and services.

This right closely relates to the above-mentioned two rights. Consumers are able to select goods and services appropriate to their needs and at reasonable prices, and to avoid counterfeit goods when they have true information and clear understanding about needed goods and services.

The most important purpose of traders in the market economy is profit. We can not ignore genuine traders, who fairly compete, improve their technology and techniques, and effectively administer their business to reduce prices, improve quality of goods. However, there are some other traders, who adhere to profit, make use of mass media in order to advertise and label untrue, even fraudulent information in business, and to trade counterfeit products.

Information and advertisement of goods and services have contributed to the development of the multi-sector and goods economy in our country. However, there are some weaknesses in advertisement of goods and services, and trade marks (including administration of printing and using labels and trademarks): contents of advertisement are lack of legal and scientific basis, even wrong in quality of products. This situation may lead consumers to information disruption of product quality, and create unequal

competition among traders. There are many cases of trading printed packs and boxes, labels and trademarks, which lead to counterfeit production.

The State has issued Law on Press, Ordinance on Product Quality, Decree on Examination and Dealing with counterfeit products. The Ministry of Culture, Information and Tourism had directed advertisement activities. The State Committee for Science and the Ministry of Culture, Information and Tourism had issued a circular on control of labeling and advertisement of products. In general the application of those legal documents has led to proper advertisement, labeling of goods and services in conformity with the principles:

- Advertisement is to speed up the socio-economic development in accordance with the State and Party's reform policies.
- Advertisement conforms to laws and socio-economic policies of the State and Party.

However, in order to effectively control advertisement and labeling activities, the State should issue an uniform and highly effective legal document, which stipulates power and duties of organizations, individuals who are permitted to order advertisement, and advertisers, as well as power in examination and inspection of state authorities.

4. Consumer has the right to claim, and is compensated adequately for unqualified goods and unsatisfactory services.

The right to claim of consumers in specific and of citizens in general has been recognized by the Constitution in Article 73, and the Ordinance on Citizens' Claims, in Article 1:

“Citizens are entitled to complain State authorities in any illegal decision or work by the State authorities or public servants, which violates their legitimate rights and interests, within the administrative framework”.

There is no specialized body in charge of dealing with claims of consumers. Some organizations, which are assigned to resolve consumer's claims, do not fulfill their work.

In order to ensure the right to claim, the State should establish a system of quality requirements and other important factors of products and services. Based on that system, consumers are able to fulfill their right.

The State should also establish a system of State bodies in charge of resolution of consumer's claims and dispute in order to enable consumers to exercise their right.

Traders are responsible to implementing all necessary measures related to their goods and services in order to prevent danger, ensure exact measuring activities and provide correct guidelines, and to cooperating with the State in implementation of consumer protection policies.

There is no separate legal document regulating compensation for any damage suffered by consumers from unqualified products, unsatisfactory services. However, the Ordinance on Civil Contracts stated that:

Article 47: Liability for contract implementation unsatisfactory to quality as agreed.

1. In case where one party violates quality standards, which have been agreed or legally stated, the other party is entitled to not accept products, or require price reduction or correction, and claim compensation for damage.
2. If there is any disqualification during guarantee period, the guaranteed is entitled to ask for repair free of charge or price reduction, to change for other goods, or return the goods and get the money back and ask for compensation.

The right to claim and proper compensation is to assist consumers in protection of their interests. To effectively fulfill this right, in on hand, consumers have to disclose, claim, and sue any action, which violates quality of goods and services.

On the other hand, the State should establish a system of unanimous standards in registration, examination of quality, product trademarks, terms of guarantee, etc.

With respect to traders, it is necessary to establish and operate an appropriate organization to examine consumers' claims and opinions related to goods and services, and to deal with compensation.

5. Consumer is equipped with necessary knowledge in consumption, quality of goods and services, and other matters related to consumer protection.

In order to be able to buy appropriately qualified products and needed services at reasonable prices, and to avoid any disputes which may arise in transactions, consumers are entitled to be equipped with necessary knowledge in consumption, quality of products and services, and other legal knowledge relating to consumer protection.

Consumers have to make their efforts to get necessary knowledge to improve safety and interests, and to play important roles in improving and rationalizing their consumption by the way of providing independent and reasonable thinks in consumption.

In addition to getting legal knowledge in consumer protection, such as: terms of guarantee, insurance of goods and services, complaint procedures, etc., consumers have to raise all necessary issues which are appropriate to their own selection at the time of purchasing products.

In Vietnam, due to less legally understanding, consumers are less understanding about goods and services. This situation may lead to mistake or fraud in transactions, purchase of less qualified products or at high prices that are harmful to consumers.

The State currently does not provide any effective measure to ensure this right. There is only the monthly issued Consumer Review. However, this Review is not well known. Local Consumer Associations are less effectively and profoundly working.

To me, in one hand, the State should require manufacturers and traders to make consumers knowledgeable in some fundamental issues such as contents, standards, manufacturer, etc.

On the other hand, the State should provide programs in information dissemination on mass media appropriate to consumers and in conformity with development level of science and technology.

The State may coordinate with manufacturers to present, disseminate information of their products and goods on mass media, as well as clearly state characteristics, usage of those products.

Organizations for consumer protection are liable for equipping knowledge to their members through prints, books, reviews, and providing specialists in scientific and technological research, and answering consumers' requests.

In addition, the State should issue consumption policies in order to encourage mighty consumption appropriate to socio-economic development.

6. Consumer has the right to raise his/her point of view and contribute to making and implementing consumption policies as well as research process.

Article 23 of the Constitution 1992 stated that:

“Citizens are entitled to participate in the State and social administration, to discuss general issues of the whole country and specific locality, and to recommend to the State authorities”.

In the field of consumer protection, consumers are entitled to raise their opinions and contribute to making and implementing consumption policies. This will enable the State to issue appropriate consumption policies, and encourage consumers to equip knowledge in consumer protection.

The State should make and implement consumption policies, work out strategies in product and service development in conformity with the country's socio-economic conditions, tradition and fine custom.

Consumers may, directly or through their representatives, recommend to the State, local authorities and manufacturers, traders, any applicable measures in order to ensure the balance between the national economic development and protection of consumer's basic interests, to supply services to, guide and train consumers.

In order to ensure true opinions of consumers, the State should establish a system, which reflects any opinion of consumers to the public authorities in contributing and implementing appropriate policies of consumer protection.

The State also regulates the mass media in reflecting points of view, opinions and needs of consumers.

In addition, the State and manufacturers should encourage consumers to participate into research of goods and services. This will, in one hand, enable manufacturers to produce goods appropriate to consumers, and train consumers in selection of proper goods and services on the other hand.

7. Consumer has the right to benefit basic needs on goods and services relating to feeding, wearing, residence, movement, study, and health care.

This is the right of consumers in specific and of the citizens in general, which has been recognized by the Constitution 1992 in Articles 59, 60, 61, 62 and 68. This right also is made in details in the Law on People's Health Care dated 30 June 1989, the Ordinance on Housing, etc.

Article 23 of the Law on People's Health Care stated that:

“All people who are sick, diseased, injured, are entitled to be examined and cured at hospitals, where they reside, work or study”.

Patients also are entitled to select doctors, physicians as well as hospitals abroad in conformity with regulations of the Government.

The Ordinance on Housing stated that:

“Citizens are entitled to have houses”.

It may be said that the right to benefit fundamental needs in goods and services relating to feeding, wearing, dwelling is the necessary and basic right of all people.

However, the protection of this right is dependent on specific socio-economic condition of the country. The State shall create favorable conditions to consumers with a view to ensuring those fundamental needs in the circumstances of consumers. For example, in the circumstances of the country's difficulties and high population, the State may work out appropriate policies on capital mobilization in order to build houses and resell to consumers at reasonable prices.

In order to create favorable and safe conditions for transportation, especially in crowded routes, the State may have subsidy policies for transportation fares.

There are also a number of regulations on health care. However, it is recommended that there may have special treatment or health care policies for difficult persons in order to ensure good health care.

In Vietnam, there are a lot of foods and clothe. Therefore, it is recommended that the State should encourage processing production and services in order to meet demands of all consumers.

In conclusion, the State should work out and implement all necessary policies and measures in order to ensure basic life of consumers, and rationalize their consumption.

8. Consumer has the right to live in fresh environment and recommend any applicable measure to improvement of environment.

The right to live in fresh environment is the right of not only consumers but all people around the world as well, which has been recognized by the UN Treaty on Environmental Protection.

There is an opinion that environmental issue should not be discussed within the framework of consumer protection. The reason is that our country is less developed, and in transitional period to the market economy. Therefore it is acceptable where consumers are entitled to use qualified products and in good value. The environmental issue is applicable to developed countries, where consumers are at highly qualified demands. However, this argument is not completely true because, in the newly developing market economy like Vietnam, many manufacturers produce and import environmentally polluted products.

There are a number of legal documents relating to the right of consumers to live in the fresh environment.

Law on People's Health Care dated 30 June 1989

Article 7 said that:

“Sanitary conditions of food, drinking products and alcohol

1. All State organizations, collectives, individuals must satisfy sanitary requirements when producing and processing packs and boxes, reserving and transporting food, drinking products and alcohol.

2. All food, drinking products and alcohol, which are not satisfactory to sanitary requirements, are prohibited from production, transportation, and import.

3. Diseased individuals are not allowed to work in any stage which is directly relating to food, drinking products and alcohol”.

Article 8 said that:

“Sanitary conditions of water supply in people's daily life”.

Article 9 said that:

“Sanitary condition in production, reservation and utilization of chemicals”.

Article 11 said that:

“Sanitary conditions in husbandry”.

With a view to protection and quarantine of plants, strengthening State administrative effectiveness, improving effective protection from harmful creatures, protecting and developing production, protecting public health and ecological

environment, the State has approved the Ordinance on protection and quarantine of plants, and the Ordinance on Veterinary Activities.

The Government also issues a number of regulations for the implementation of those laws and ordinances:

- Regulations on sanitary conditions issued in conjunction with Decree 23 HDBT dated 24 January 1991
- Regulations on administrative penalties in health care issued in conjunction with Decree 341 HDBT dated 22 September 1992.

In general, with respect to protecting the right to live in the fresh environment, and to recommending any applicable measure on protection and improvement of the environment, the State has promulgated a number of legal documents. However, due to many different reasons, the application of those legal documents is not highly effective and efficient.

The above-mentioned 8 rights of consumers have been recognized by the Decision of UN Economic and Social Council (ECOSOC) dated 24 July 1990 in Geneva. Each right plays a distinguished role in consumer protection, and relates and complements to other rights. Therefore, the protection of the overall interests of consumers is based on the fulfillment of the above-mentioned 8 rights.

3. Mechanism in Consumer Protection

This section will discuss in detail responsibilities of the State, business organizations and individuals, as well as measures to protect consumer. The responsibilities and measures undertaken by the State are the most significant ones affecting responsibilities and measures of the other bodies in consumer protection.

I will analyze responsibilities and measures of each body.

3.1 Responsibilities and measures undertaken by the State

a) Issuance and implementation of laws, policies on consumer protection

Article 12 of the 1992 Constitution stated that “The State rules the society by laws and continuously strengthen the socialist legality”. To effectively, unanimously and comprehensively protect consumers, the State has to issue regulations and policies on consumer protection in conformity with the level of the socio-economic development. The State does make and shall make sound consumption policies applicable to daily life of consumers.

Based on those sound policies and guidelines, the State shall issue and direct the implementation of laws and regulations.

Currently, the National Assembly has approved a number of laws, such as:

- Law on People's Health Care
- Law on Press
- Ordinance on Civil Contracts
- Ordinance on Claims of Citizens
- Ordinance on Quality of Products

Within the framework of power, functions, responsibilities stated by the Constitution, the Government – as the highest body in administration and execution - unambiguously administers consumer protection in the following areas:

1) Issuance of regulations on consumer protection: in accordance with laws and ordinances approved by the National Assembly, the Government issues decrees, directives to make effective and unanimous implementation in details. Regulations issued by the Government are also based on the stage of the socio-economic development.

Ministries and equivalent agencies, agencies under the Government, depending on their relationship, power and duties, shall issue circulars, directives in conformity with the governmental decrees.

Local authorities, depending on their power and duties, are responsible for preparing measures, making plans and issuing regulations in conformity with the stage of the local socio-economic development. The Government has issued a number of regulations on consumer protection to make in detail and implement laws and ordinances.

- Decree 115 HDBT dated 13 April 1991 of the Council of Ministers on implementation of the Ordinance on Measuring Activities
- Decree 327 HDBT dated 19 October 1991 of the Council of Ministers on examination and dealing with trade and production of counterfeit products.

However, the above-mentioned legal documents lead to overlaps and unclear provisions in determining power and duties of different agencies with respect to consumer protection. This situation has resulted in less effective implementation. Therefore, it is our responsibility to review all those legal documents and to assign a single agency (Department, Ministry, and Committee) specialized in consumer protection.

2) Approving State programs on consumer protection based on the socio-economic development plan, supervising and ensuring budget to implement those programs.

To implement laws, policies on consumer protection, the Government assigns Ministries, Departments, Committees to prepare State programs on consumer protection based on the socio-economic development plan. Those programs must be compiled with feasibility studies, appraisal reports, and other necessary documents upon the submission to the Government.

3) The Government directs organizations responsible for consumer protection.

The Government assigns a single specialized agency to protect consumers with clear functions, duties and structure.

This specialized agency shall implement the duties of consumer protection, and report frequently to the Government.

Based on recommendations by this consumer protection agency, the Government shall direct various authorities to coordinate and complete legal documents on consumer protection.

4) The Government directs various authorities to undertake international cooperation with respect to consumer protection. Various branches and localities, within their power and duties, shall be liable for implementation the prevailing legal documents on consumer protection. The government shall supervise and examine the implementation and unanimous application of legal documents issued by the Government.

The Government assigns a single specialized agency to chair the international cooperation activities in consumer protection.

This specialized agency shall be responsible for giving comments on international agreements on consumer protection, international forum of consumers, as well as for cooperating with other countries in consumer protection in the effective manner, for propagating documents, newspapers to increase consumers' knowledge.

Vietnamese Government has made efforts in international cooperation activities in consumer protection. Vietnamese Government and other 14 Governments from 5 continents have sponsored, in Geneva, a resolution raised by Australia on consumer protection, which latter has been approved by the UN Socio-economic Council. Vietnamese Government and other 7 Governments from Pacific Asia have sponsored, in April 1992, a resolution also raised by Australia, which latter has been approved by the ESCAP on application of regional consumer protection program.

5) Supervising, inspecting, and dealing with claims of consumer, violations of consumer protection regulations which seriously affect consumers' health.

The Government not only issues regulations to make effective implementation of laws and ordinances, but also supervises, inspects thereof implementation by Ministries, local authorities. The Government issues guidelines for implementation, corrects any mistake, stipulates the power of supervision and inspection among branches, localities.

In cases of serious breaches of laws, which materially affect health, life of consumers, the Government shall take effective measures to minimize any damage to the consumers.

For example, implementing on time any measure to confiscate unqualified products, which materially affect health, life of consumers.

- b) The State is responsible for issuing and implementing standards on safety and quality; examining and inspecting goods and services; inspecting and correcting measuring tools and equipment in order to ensure proper measuring activities.**

In order to prevent products or services, which cause damages and danger to life, bodies of consumers, the Government has to issue necessary standards with a view to limit the danger, and to take all measures to ensure proper application of those standards.

The State must provide applicable measures ensuring proper measuring products and services in order to protect consumers' interests in transactions with manufacturers/traders.

The State recently publicized the Ordinance on Measuring Activities and other relevant legal documents. This Ordinance is to protect legitimate rights and interests of consumers:

1) All measuring tool and equipment, which involve in measuring quantity of goods in transactions, delivery, labor security, health care and environment protection, must be periodically examined.

In cases of satisfaction of required standards, those measuring tools and equipment are certified (or labeled or stamped) to take in operation. After a period of time in operation, those measuring tools and equipment must be re-examined.

The General Department for Standards – Measuring – Quality has stipulated a detailed list of measuring tools and equipment, which must be examined periodically.

Along with this examination, the Ordinance also prohibited the operation of measuring tools and equipment in cases of:

- No examined stamp or certificate.
- Invalid examined stamp or certificate.
- Unsatisfactory to measuring requirements.

2) The Ordinance also provided measuring methods:

Article 26 of the Ordinance required that “All organizations, individuals, who use measuring tools and equipment, must strictly follow regulations on operation and maintenance of measuring tools and equipment in order to ensure measuring consistency and properness”.

Especially the Ordinance also stipulated duties of organizations and individuals who produce, trade quantitatively packed goods as follows:

- Clear statement of quantity
- Difference between real and stated quantity must not exceed the permitted limit in Vietnamese Standards or regulations by The General Department for Standards – Measuring – Quality

3) The Ordinance also emphasized inspection activities and penalties:

According to stipulations of the Ordinance, the State measuring bodies at all levels are responsible for inspection activities through Inspection Teams and State inspectors in measuring activities. Conclusions resulted from those inspection activities shall be legal basis for penalties on any violation of measuring regulations. The “breaches” of measuring regulations as well as penalties in the form of money and administrative measures have been stipulated in details in Articles 35 and 36 of Decree 115/HDBT. This is one important landmark in the State measuring administration.

The “breaches” are as follows:

- Use of measuring tools and equipment in cases of prohibitions
- Trade of quantitatively packed goods not satisfactory to the stated requirements
- Selling wrongful or mistaken measuring tools and equipment

The combination of the State inspection activities, and economic and administrative penalties shall prohibit effectively any violations of measuring regulations.

This Ordinance in general has expressed the State commitment in protection of legitimate rights and interests of consumers in the market economy.

In order to ensure macro-administration in measuring activities, the Ordinance has stipulated power and duties of the Government, including:

- a) Preparing plans, master plans on measuring activities, stipulating measuring regulations.
- b) Organizing competent bodies responsible for measuring activities, and stipulating thereof duties and power.
- c) Stipulating measuring units, providing and administering the system of measuring standards, tools and equipment, and samples.
- d) Examining measuring standards and units, tools and equipment.
- e) Approving samples, allowing to produce and import measuring tools and equipment.
- f) State inspecting in measuring activities and penalties.

In the field of labeling administration, the Government has issued regulations on labels of goods.

The regulations stipulated procedures of labeling registration, competent bodies, labeling activities, etc.

There are a number of legal documents:

- decree on Quality of Products
- Decree 327 HDBT dated 19 October 1991 making detailed implementation of the Ordinance on Quality of Products
- Decree 115 HDBT making detailed implementation of the Ordinance on Measuring Activities.

In general, the State has issued sufficient legal documents on measuring and controlling quality of products. However, the above-mentioned legal documents are not effectively implemented and supervised. Traders do not fulfill their liabilities, and consumers do not be aware of protecting their interests in accordance with laws.

The Government should have effective measures to review all above-mentioned legal documents and assess thereof application.

c) Ensuring correct advertisement on goods and services

In the market economy, advertisement is crucial to manufacturers and traders, as well as consumers. However, advertising activities must adhere to the following principles:

(a) Advertisement is to improve socio-economic development in conformity with the Party and State’s reform policies.

(b) Advertisement must be in accordance with laws, socio-economic development policies of the Party and State.

Advertisement must be true, properly reflecting works, quality of products. In case of wrong information, both person who orders advertisement and advertiser are joint and several liable.

Form of advertisement must be country-oriented, transparent. Place and level of advertisement must be limited in specific area.

(c) Advertisers must be permitted.

Legal documents are:

- Law on Press
- Decree 133 HDBT dated 20 April 1992 making detailed implementation of the Law on Press
- Joint Circular 1191 –TT/LB dated 29 June 1991 of the State Scientific Committee and Ministry of Culture, Information and Tourism on label and advertisement of products, goods.

Specifically:

- i) Advertisement of products, goods is activities of equipping consumers with information on products, trade, services, quality, methods of maintenance, terms of guarantee, etc. through posters, mass media, prints.
- ii) Products, goods must satisfy the following conditions for advertisement:
 - Permits issued by the competent authorities

- Products and goods, which are required to register quality, must be certified by the Agencies for Measuring and Quality Standards.
 - The General Department must certify products and goods, which are required to satisfy Vietnamese standards, for Standards – Measuring – Quality.
 - Products and goods or medicine must be permitted by the Authorities of Health Care
 - Competent authorities must permit sample of label.
- iii) Competent authorities must permit printing houses, which are printing labels, advertising products and goods.
- iv) Contents of advertisements must comply with laws, truth and accuracy according to registered contents or permits issued by competent authorities.
Printing houses must comply with samples, permitted quantity, and approved plans.
- v) The following agencies, in accordance with their powers and duties, are responsible for inspection and dealing with any breach in printing and using labels, and advertisement of goods and products.
- People’s Committees at all levels
 - Ministry of Culture, Information and Tourism
 - Market Control Agencies
 - Agencies for Measuring and Quality Standards
 - Agencies for industrial properties
 - Agencies for internal affairs and other administrative bodies.
- vi) All organizations and individuals are prohibited from trading labels of goods and products, printed packs and boxes.
- vii) Organizations and individuals that breach those regulations, upon levels of violations, shall be punished at administrative measures or sued according to criminal laws.
- viii) In order to ensure rights and interests, and improve legal awareness of consumers, the Circular stipulated that all organizations and individuals are entitled to inform breaches in printing and using labels, and advertisement of goods and products to competent authorities in accordance with sub-paragraph v), and be awarded according to the prevailing regulations.

To me, to effectively administer information and advertisement, the State should approve Advertisement Law. Most countries have Advertisement Acts. For example, the US Commercial Committee Act said that:

“Fraudulent advertisement is the main target of this Act in the area of: fraudulent and not genuine actions and practice”

d) Dealing with complaints of consumers and penalties

Article 74 of the Constitution 1992 stated that:

“Citizens are entitled to claim State competent authorities about any legal violations made by State authorities, social and economic organizations.

Claims and disputes must be reviewed and resolved within a period of time permitted by laws.”

- Measures dealing with unqualified and counterfeit products and goods.

However, due to subjective and objective reasons, inspection and resolution of claims are not determined and clear.

In order to improve resolution of claims and deal with breaches of consumer protection regulations, the Government must frequently examine and urge competent authorities to resolve on time claims and disputes by consumers in order to improve public confidence. In cases of many transactions, People’s Committees at all levels shall coordinate with Divisions for Standards – Measuring – Quality to establish task force (one or two persons) specializing in dealing with claims and disputes of consumers, and enabling consumers to inform any breach of regulations on products and goods.

e) Propagating and training consumers

Article 35 of the Constitution 1992 stated that:

“The State is to develop education in order to improve public understanding, train human resources, nurse talent persons”.

This is an important measure where good and regular implementation of the State authorities shall avoid any mistake, dispute among consumers, state authorities and manufacturers, traders.

In addition, with the process of social development and civilized people, consumption needs shall be modern and complicated. Therefore, it is necessary for the State to train and propagate knowledge to consumers.

The State authorities shall train and propagate knowledge to consumers in the following aspects: providing accurate and complete knowledge about the State regulations and policies on consumer protection, quality of products and services, and other necessary consumer-related information.

The State authorities are liable to explaining, clarifying contents and implication of all legal regulations on consumers, quality of products and services, etc., as well as responsibilities and protective measures conducted by the State authorities, traders.

The State is liable to establishing a separate program on mass media, such as “Consumer Forum”; in order to propagate and publicize all legal documents related to consumer protection like the system of measuring standards, quality of products and services.

The State authorities shall be liable to organizing and training knowledgeable, specialized staff for Consumer Associations and the State organism.

The State authorities less effectively and inappropriately conduct the propagation of knowledge to consumers. The State should provide propagating and training measures appropriate to consumers' life and habits.

f) The State authorities should provide applicable measures to gather, synthesize, and deal with consumers' opinions in the process of making and implementing consumer-related regulations and policies

This is a practical measure, that, in one hand, encourages consumers participate actively into State operations, and understand legal regulations and their rights as well. On the other hand, it makes the process of preparing and implementing consumer-related regulations and policies feasible and objective.

The State authorities, within their power and duties, are liable to making orientations and policies, stipulating legal documents relating to consumer protection.

During implementing those power and duties, the State authorities must have appropriate measures to gather, synthesize and deal with opinions of consumers, such as seminars; contributions to proposed legal documents in oral or written forms.

The State authorities at various levels and branches must establish a specialized body to gather and deal with opinions of consumers.

Article 21 stated that:

“Organizations, individuals who utilize measuring tools and equipment, must adhere to regulations on maintenance and operation of measuring tools and equipment in order to ensure correct and unanimous measuring methods”.

Business units must create favorable conditions for consumers to check quantity upon delivery.

In general, business organizations and individuals have implemented those legal documents. However, the State authorities should strengthen activities of examination, inspection, especially small business units.

g) Business organizations and individuals must ensure true information, price quotation, publication of place, time and terms of guarantee, usage of goods and services in labels, information and advertisement in order to avoid mistakes and difficulties to consumers in selection, purchase and use of goods and services.

Organizations, individuals who sell goods, must know exactly origins and quality of those goods, and present true information in quality, guide consumers to select, use and maintain goods, and be liable to consumers for product quality.

It is compulsory to quote prices of goods in shops in conformity with quality and quantity in case of goods required quoting prices by the State.

It is compulsory to business organizations and individuals publicize place, time and terms of guarantee in case of guaranteed goods.

Organizations and individuals, which trade, import or pack goods, must present fundamental issues to consumers such as manufacturer, effect, contents, usage, standards, and other necessary information.

h) Business organization and individuals must effectively and reasonably deal with complaints and claims for compensation of consumers due to unsatisfied goods and services.

There are a number of legal documents relating to dispute resolution and compensation for consumers.

Article 25 of the Ordinance on Quality of Products stated that: “Consumers are entitled to claim business organizations and individuals to compensate for any damages resulted from unqualified products”.

Article 21 of the Ordinance on Measuring Activities stated that:

“Business units must create favorable conditions for consumers to check quantity upon delivery.”

The Ordinance on Civil Contracts also stipulated liabilities in case of implementation unsatisfactory to the quality as agreed. Article 47 state that:

1. In case where one party violates quality standards, which have been agreed or legally stated, the other party is entitled to not accept products, or require price reduction or correction, and claim compensation for damage.
2. If there is any disqualification during guarantee period, the guaranteed is entitled to ask for repair free of charge or price reduction, to change for other goods, or return the goods and get the money back and ask for compensation.

In general, business organizations and individuals have fast and reasonably resolved and compensated consumers in order to improve public confidence, expanded terms of guarantee.

However, the State also should stipulate unanimous legal documents making in details the process of dispute resolution and compensation by business organizations and individuals.

i) Gathering consumer’s opinions

Business organizations and individuals must actively gather consumers' opinions relating to goods and services during the process of research, production and supply, in order to amend and improve quality of products and services.

In order to get consumers' acceptance on their supplied goods and services, business organizations and individuals must actively gather consumers' opinions during the process of research, production and supply of goods and services. Consumers, who directly use products and services, understand clearly good and bad things of those products and services. Therefore, their opinions are very precious and necessary.

Manufacturers and traders must appreciate consumers, and follow the principle of "Customers are always right" for their development.

Each consumer has his/her own needs, financial condition and style. Manufacturers and traders must accept consumers' opinions on selected basis in order to improve quality and form satisfactory to the needs and styles of different consumers during the process of research, production and supply of goods and services.

Business organizations and individuals are recommended to establish systems of gathering consumers' opinions at trading areas, which will create favorable conditions for consumers to contribute their comments.

3.2 Responsibilities and measures undertaken by social organizations, public associations

a) Supervising activities taken by the State, business organizations and individuals in resolution of consumers' claims and disputes

Social organizations and public associations - the representatives of their members, are liable to protecting consumer's rights and legitimate interest.

Article 4 of the Ordinance on Quality of Product stated that:

" All organizations, individuals are entitled to claim and make known any violation of regulations on product quality to People's Council and Committees at all levels, State authorities in charge of product quality or other competent agencies.

Those agencies, within their power and duties, are liable to reviewing and resolving disputes, claims and recommendations in accordance with laws and regulations".

Article 4 of the Ordinance on Measuring Activities stated that:

" All State authorities, social organizations, business and production units, within their power and duties, are liable to examining, supervising and creating favorable conditions for unanimous and correct measuring activities".

In order to implement their rights as well as duties to their members, social organizations and public associations should study all prevailing legal documents; supervise dispute and claim resolution of the State authorities, business organizations and individuals; recommend and request the State authorities, business organizations and individuals to resolve disputes in conformity with laws.

b) Propagating knowledge and training consumers

Social organizations and public associations, through training courses, prints, mass media, should conduct all necessary activities to improve knowledge and understanding of consumers.

Social organizations and public associations representing consumers in different areas, branches, professions, gender, shall be responsible for, within their power and duties, training, providing information on State policies and regulations with respect to consumer protection. Trainees shall be liable for re-informing their members and participants.

In addition, social organizations and public associations, especially Consumer Associations, must publish information, prints to consumers.

Mass media like radio; newspapers, etc. should have special programs on propagation and provision of information to consumers.

Consumers in our country are less understanding about laws and regulations on consumer protection.

Consumer Association has only the monthly issued Consumer Review. Therefore, it is necessary to strengthen provision and contents of information appropriate to different consumers.

In order to make training activities efficient, prints and information of social organizations and public associations useful to consumers, the State should have some assistant measures in providing trainers, especially funds.

c) Gathering opinions and comments of all members

Social organizations and public associations shall be responsible for gathering opinions and comments of all members as consumers, and recommending all consumer-related issues to State authorities, business organizations and individuals.

Social organizations and public associations as representatives of consumers shall participate into making state consumption policies, legal documents.

Social organizations and public associations shall consolidate opinions and comments of their members to recommend to the State through the forms of contribution to preparing laws and ordinances.

In addition, social organizations and public associations shall consolidate opinions and comments of their members on goods and services to recommend business organizations and individuals for amendment and efficient measures in consumer protection.

3.3 Responsibilities and measures undertaken by consumers

Consumer protection is responsibilities of the State, business organization and individuals, social organizations and public associations, and consumers as well.

Consumers must actively protect their rights and legitimate interests.

a) Consumers participate actively into preparing and implementing policies and regulations on consumer protection

Consumers participate actively into preparing proposed state policies and regulations, providing measures and requirements on standards of goods and services, such as the Ordinance on Measuring Activities, the Ordinance on Product Quality, etc.

Consumers also request business organizations and individuals to fulfill their responsibilities for consumer protection; disclose unqualified and counterfeit goods and services, and any fraud in measuring activities; claim and sue any violation in consumer protection.

b) Consumers participate into Consumer Protection Organization

Consumers have to improve their understanding about quality of goods and services, effect of consumption on ecological environment in order to ensure safety and interests, and improve and rationalize consumption.

Consumers also have to support qualified goods and services in order to create a level of playing field for business.

Article 29 of the Constitution 1992 stated that:

“Citizens are entitled to associate in accordance with laws”

In the filed of consumer protection, consumers always face inequity in financial conditions, knowledge and negotiation. Therefore, it is recommended that consumers should establish Consumer Association in order to represent, protect and reflect their opinions and comments. The State should pay attention to enabling consumers to establish and participate into that organization.

Consumer Association is responsible for propagating information to its members through publications, seminars, etc. Consumer Association is responsible for propagating State consumption policies to its members, guiding its members for appropriate needs and measures in order to ensure consumer interests, no bad effect on

ecological environment, and to improve and rationalize consumption. For example, obsolescent motorbikes are not permitted in operation.

Consumers should play an important and active role in stabilizing and improving their life through the ways of studying and gathering consumption-related information in conformity with the socio-economic development, confident and reasonable treatment.

II. PROCEDURES FOR SETTLEMENT OF LABOUR DISPUTES

1. Types of labour disputes

Disputes over labour rights and interests may arise from a relation between the employer and the employee. These disputes are collectively termed labour disputes. In accordance with Article 157 of the Labour Code adopted by the National Assembly on 23 June 1994 (hereinafter referred to as the Labour Code), a labour dispute may be defined as “a dispute over rights and interests relating to employment, wages, incomes and other working conditions, the performance of labour contracts, labour collective agreements and apprenticeship”.

Subject to Clause 2 of Article 157 of the Labour Code, there are two types of labour disputes namely, individual labour disputes and collective labour disputes.

Since the adoption of the 1994 Labour Code, most of labour disputes have arisen in form of individual labour disputes. Although to date, sufficient and accurate statistics of individual labour disputes are yet to be available, this type of disputes is known to arise from different causes.

However, the number of individual labour disputes that has been registered by the court helps to tell the true story of current situation of this type of disputes. According to year-end reports of the People’s Supreme Court in 1997, 1998, 1999 and 2000, people’s courts at all levels have registered 406 cases in 1997, 495 cases in 1998, 422 cases in 1999 and 547 cases in 2000.

In 2000 alone, of the total number of nearly 18,000 labour disputes that arose, only 547 cases were registered and 472 cases were resolved by the courts. In practice, a large majority of labour disputes were centred on the exercise of rights and performance of obligations by relevant parties including notably disputes over late payment of wages, unilateral termination of labour contracts or dismissals. Only a few of disputes over payment of damages to the employers were handled by the courts. It is noteworthy that disputes over unilateral termination of labour contracts account for 60-70% of the total number of labour disputes reported in recent years.

In spite of their small number, strikes tended to be on the rise. According to insufficient statistics, between 1995 and October 2000⁹, some 351 strikes have taken place in all economic sectors throughout the country. By the type of enterprises where strikes have taken place, strikes may be classified as follows:

⁹ Report on the survey of strikes in enterprises during 1995-October 2000, “Report on solutions for the grass-root trade unions to legally play their representative role in staging lawful strikes”, Vietnam General Federation of Labour, 2000.

Year	Number of strikes	State owned enterprises		Foreign invested enterprises		Non-state enterprises	
		Number	%	Number	%	Number	%
1995	60	11	18.3	28	46.7	21	35.0
1996	52	6	11.5	32	61.6	14	26.9
1997	48	10	20.8	24	50.0	14	29.2
1998	62	11	17.7	30	48.4	21	33.2
1999	63	4	6.4	38	60.3	21	33.3
10/2000	66	15	22.7	34	51.1	17	25.8
Total	351	57	16.2	186	53	108	30.8

Thus, strikes took place in all types of enterprises most of which were reported to occur in foreign invested enterprises (53%).

A large majority of strikes were concentrated on request for handling such issues as wages, bonuses, probationary period, working hours, holidays, improvement of working conditions and respect to human dignity of the employees.

2. Causes of labour disputes

Over the past years, labour disputes tended to be on the rise and have a growing impacts on various areas of the social life. Some labour disputes have resulted to strikes due to improper handling. Exceptionally, a number of strikes have taken place on a large scale e.g. the 9-days long strike in Thai Binh Rubber Enterprise or the strike in Dong Nai province that involved over 1,000 employees.

The practice of labour dispute settlement in Vietnam has highlighted the following main reasons of this type of disputes:

Firstly, subjective reasons that arise from disputing parties themselves.

On the part of the employees, these reasons include violations of labour laws concerning dismissals, termination of labour contracts, wages, working conditions and so on. A considerable number of labour disputes arose from disrespect or maltreatment of employees by business owners, especially in FDI sector.

Many enterprises are reported to maintain harsh working disciplines, high intensity, unsafe working conditions, unsecured occupational hygiene, excessive overtime, underpayment of employee benefits such as low wages, discrimination

against female workers, outstanding wages, reducing salaries, non-compliance with labour safety requirement, avoidance to enter into written labour contracts, non-arrangement of shift breaks, or non-payment of severance allowance etc. It is one of the reasons leading to the occurrence of labour disputes and strikes.

On the part of the employees, poor understanding of laws, excessive demands that are beyond the employer's capacity, and unjustified claims that fall into other areas of public administration are seen as major problems causing labour disputes.

Secondly, there are also other reasons such as limited issuance, dissemination and education of laws, poor performance of labour dispute arbitration institutions etc.

Furthermore, trade union's participation in resolving labour disputes (through grass-root labour conciliation councils, labour arbitration councils or the courts) and protecting labour interests is still ineffective. The number of labour disputes where trade unions participated in dispute settlement is still modest. For example, in Dong Nai province alone, of the 160 labour disputes that have been registered by the labour court, trade unions only participated in over 40 cases as the defender of the employee's rights and interests at their request.¹⁰

Most of strikes were unlawful due to non-compliance with statutory procedures. It is mainly resulted from poor understanding of legal provisions relating to strikes by the employees. In addition, there may also be other reasons such as the absence of grass-root labour conciliation councils, trade unions or the fact that the strikes were not led by trade unions.

According to a strike survey of enterprises during 1995-2000 conducted by the Vietnam General Federation of Labour, some 20.3% of the interviewed employees considered that the illegality of their strikes originated from the absence of trade unions, 20.3% - lack of trade union's role in organising the strikes, and 17.93% - unavailability of the grass root labour conciliation councils. In the meantime, employers cited the following reasons as those that resulted to unlawful strikes: absence of trade unions (8.1%), unavailability of grass-root labour conciliation councils (18%), lack of trade union participation in organising the strikes (18%). In the view of trade union activists at grass root levels, reasons of unlawful strikes include the absence of trade unions (2.5%), unavailability of grass-root labour conciliation councils (23%), and lack of trade union participation in organising the strikes (12%).¹¹

3. Labour dispute settlement organisations

Once a labour dispute arises, the following options may be available to the parties concerned:

¹⁰ Training materials on "Trade unions' participation in resolving labour disputes and strikes", Vietnam General Federation of Labour, 2000.

¹¹ Analytical report on the survey results of strikes in enterprises during 1995-2000, Vietnam General Federation of Labour, October 2000.

Firstly, the disputing parties may conduct negotiations and conciliation to neutralise any disagreement immediately upon its occurrence. Even when such an agreement has been handled by a competent body, the parties concerned may still continue negotiations to resolve their disputes. In general, such an ADR option is always encouraged by the laws of Vietnam any point of time during a labour dispute settlement process. If, however, such a solution is not fruitful, the labour dispute may be settled subject to the following procedures:

Secondly, resolving labour disputes by filing complaints and/or denunciations with one of the following bodies:

- + People's committees at all levels: In accordance with Article 17 of Decree No. 41/CP of the Government dated 06 July 1995 making detailed provisions and guidance on the implementation of a number of Articles of the Labour Code concerning labour disciplines and material responsibilities, people's committees at all levels are entitled to resolve complaints from workers who are disciplined, suspended from their jobs or requested to pay damages for material losses they are accused to cause. The local labour agency is obliged to assist the relevant people's committee in resolving these complaints. Pending the final result of the handling of their complaints, the complainant are still required to comply with these aforesaid disciplinary actions.

In fact, however, disputing parties have rarely take this option to bring their dispute to the people's committees due to its low efficiency and cumbersome procedures. On the other hand, most of the provincial people's committees have transferred complaints lodged with them by the employees to labour inspection bureau for its handling.

- + Labour inspection bureau: In accordance with Article 186 of the Labour Code, labour inspection bureau is entitled to deal with complaints and denunciations of the employees as regard violations of the labour laws, and issue decisions to handle the violations or request other competent bodies to handle the cases.

According to findings of a survey conducted by the Ministry of Labour, War Invalids and Social Affairs (MoLISA) within the VIE/97/003 Project, by November 1999, there was a total of 312 labour inspectors throughout the country of which 47 inspectors are based in the MoLISA and the remaining 265 inspectors are working in 61 provinces. As a result of such a small number of labour inspectors, their performance could not be as effective as desired. Consequently, the efficiency of labour dispute settlement by labour inspectors is questionable.

Thirdly, disputing parties may choose to resolve their disputes through judiciary channels and subject to statutory procedures as may be applicable to individual and collective labour disputes.

Under these procedures, disputing parties should first file a request for conciliation with a grass-root labour conciliation council or a conciliator of a district labour agency (in case where such a grass-root labour conciliation council is not available). If the requested conciliation is proven unsuccessful, of the parties to an individual labour dispute may bring an action [against the other party] to the court.

In respect of collective labour disputes, after the unsuccessful conciliation efforts at grass-root level, the parties concerned may request a provincial labour arbitration council to resolve their dispute only. If the disputing parties still disagree with a dispute resolution decision given by the provincial labour arbitration council, they then may initiate a lawsuit to the court. In addition, the labour collective may also choose to go on strike. Thus a labour dispute may, depending on its nature be resolved through three channels including: grass-root labour conciliation councils or conciliators of district labour agencies, provincial labour arbitration councils and people's courts.

3.1 Labour conciliation at grass-root level

As a first step of the whole process of labour dispute settlement, conciliation may be undertaken by either a grass-root labour conciliation council or a conciliator of the district labour agency. Conciliation at grass root level is a compulsory procedure of labour dispute settlement prescribed by the Labour Code in respect of both individuals and collective labour disputes. There are also three exceptions where a party concerned to an individual labour dispute may immediately bring a lawsuit against the other party, namely disputes over dismissals, termination of labour contracts and payment of damages to the employers (clause 2 of Article 166 of the Labour Code).

- Jurisdiction and organisation:

Under the Labour Code, the grass-root labour conciliation councils are designed to act as a labour dispute settlement organisation which is set up in establishments employing 10 labourers or more. These bodies are equally represented by the employer and employee. The number of members of a grass-root labour conciliation council will be mutually decided by the employee and employer but should not be less than 4 members. Each council will have a two-year term of office during which, every six months representatives of each party (i.e. the employer or employee) will serve as a chairperson and a secretary of the council on a rotational basis. The grass-root labour conciliation council will operate in the principle of mutual agreement and unanimity (Article 163 of the Labour Code). Thus grass-root labour conciliation councils are seen as a collective and equal mechanism through which both the employer and employee may exercise their rights.

Labour conciliators are expected to be of full capacity, qualification and reputation in conducting conciliation. Conciliators are to be appointed by district labour agencies and are provided with working facilities to enable their performance of the assigned duties. The conciliators are responsible for conducting conciliation of individual labour disputes in enterprises employing 10 workers and less, disputes between domestic workers and the employer, or dispute over the implementation of apprentice contracts and vocational training fees (Article 165.1 of the Labour Code).

- Grass-root conciliation costs:

As representatives of the employees during the conciliation of labour disputes, members of the grass-root labour conciliation councils participate in activities that are relevant to the fulfillment of their duties and therefore, their wages are paid in

full for the time they work in that capacity. Conciliators of district labour agencies are paid by the State to undertake conciliation within the limits of their duties. Disputing parties are not required to pay costs relating to their request for a grass-root conciliation of their dispute. On its part, the employer is obliged to create adequate conditions that are needed for the performance of the grass-root labour conciliation council or conciliator of the district labour agency (such as providing office space or equipment for conciliation).

In addition, disputing parties are expected to pay legal fees from their own pockets if they hire lawyers to defend their interests. After a successful conciliation, the losing party is not required to pay such legal fees that are born by the winning party. In practice, lawyers are rarely hired to participate in conciliation process except where the legal knowledge of the parties is low and one of the disputing party has a previous relation with the lawyer.

- A grass-root conciliation is normally undertaken in the three following steps:
- *Step 1:* Registering the request and making necessary preparation for the conciliation (including reviewing and gathering relevant documents and evidence etc). A proposed conciliation plan is prepared by a competent conciliation body at this stage.
- *Step 2:* Conducting the conciliation within 7 days from the date on which the request for conciliation is filed. The grass-root labour conciliation council or conciliator will conduct the conciliation in the presence of all relevant parties. During the conciliation, the disputing parties may present their views and proposals as well as seek defence by a third party. The grass-root labour conciliation council (or conciliator) will analyse and assess the facts, indicate the wrongdoings and rightdoings for the parties concerned to conciliate by themselves or propose a conciliation plan for their consideration (clauses 1 and 2 of Article 164 of the Labour Code). Furthermore, the disputing parties may also:
- *Step 3:* prepare a conciliation minutes.
If the parties concerned agreed on the proposed conciliation plan or successfully conciliated by themselves, a minutes of successful conciliation would be prepared. Otherwise, a minutes of unsuccessful conciliation would be prepared and signed by the chairperson and secretary of the grass-root labour conciliation council (or the conciliator). The later should also specify views and opinions of the disputing parties. A copy of the minutes of unsuccessful conciliation will be sent to the disputing parties within 3 days from the date of unsuccessful conciliation (clauses 2 and 3 of Article 164 of the Labour Code). The parties may then be entitled to handle their disputes under other statutory procedures. In particular, parties to individual labour disputes may initiate a lawsuit to the court within 3 days from the date on which the minutes of unsuccessful conciliation is prepared (clause 3 of Article 164 of the Labour Code). Correspondingly, parties to a collective labour dispute may in this case request a provincial labour arbitration council to resolve their dispute.

Broadly speaking, the current provisions on grass-root settlement of labour disputes are proven appropriate and helpful in dealing with a significant number of labour disputes. However, there remain shortcomings and constraints during the labour dispute settlement at grass root level.

According to insufficient statistics, grass-root labour conciliation councils have been formed in nearly 60% of SOEs and 20% of non-State enterprises¹². This undesired situation is resulted from improper and inadequate understanding of the employer and grass-root trade unions about the need and importance of grass-root labour conciliation councils. Furthermore, the absence of grass-root labour conciliation councils is also due to the fact that trade unions were still not established in many enterprises. In this context, labour disputes in establishments employing less than 10 workers but having no grass-root labour conciliation council were actually unsolved. Since these disputes are not under the jurisdiction of conciliators, grass-root conciliation became unfeasible and the disputes (in respect of collective labour disputes) were not referred to the court or provincial labour arbitration councils for settlement neither. In a number of enterprises where grass-root labour conciliation councils have been set up, their performance was ineffective as most trade union activists have participated in grass-root labour conciliation councils on a part-time basis. On the other hand, due to poor legal understanding, these labour representatives could not effectively protect the interests of employees nor propose convincing solutions to conciliation.

3.2 Provincial labour arbitration councils

Provincial labour arbitration councils are established under the Labour Code and Circular No. 02/LDTB-XH of the MoLISA dated 08 January 1997.

- *In respect of their jurisdiction*, provincial labour arbitration councils have competence to handle collective labour disputes which were not successfully conciliated at the grass-root level and upon the request of one of the disputing parties.

- *In respect of their organisational structure*, provincial labour arbitration councils include full time and part-time members namely, a representative of the provincial federation of labour, a representative of employers (to be nominated by a legitimate association of employers), an official of the provincial Department of Labour, War Invalid and Social Affairs (who serves as a full time secretary of the councils), one or more other members being lawyers, managers, and social activists with adequate knowledge of labour and social issues and high reputation in the local community who are nominated by the provincial Fatherland Front. Additionally, the provincial Department of Labour, War Invalids and Social Affairs, provincial Federation of Labour and employers' association may nominate one substitute member to replace their official member who is absent or required to be changed by the disputing parties.

Provincial labour arbitration councils are established under a decision of the Director of the Department of Labour, War Invalids and Social Affairs. The council has its head office inside the principal office of the Department of Labour, War Invalids and

¹² Training materials on "Trade unions' participation in resolving labour disputes and strikes", Vietnam General Federation of Labour, 2000.

Social Affairs, its own seal and operating budget provided by the State as part of the annual budget allocated to the Department of Labour, War Invalids and Social Affairs. The Department of Labour, War Invalids and Social Affairs is responsible for securing necessary conditions for the operations of the provincial labour arbitration council (section II of Circular No. 02/LDTBXH-TT dated 08 January 1997). Lawyers costs are born by the party hiring lawyers as in the case of grass-root conciliation.

In general, provincial labour arbitration council is a mixed mechanism consisting of social and sovereign characteristics. More importantly, these bodies have the right to make decisions on the settlement of labour disputes at their sole discretion.

- As regard dispute settlement procedures, provincial labour arbitration councils will carry out conciliation and settlement of labour disputes within 10 days from the date of their receipt of a request from parties concerned through the following steps:

- Step 1: Registering the cases (e.g. receiving requests and supporting documents). At the request of one of the disputing party, the provincial labour arbitration council will obtain relevant files and documents from the grass-root labour conciliation council. In so doing, it may also request the parties concerned to submit [additional] documents and evidence that are needed for the dispute settlement.
- Step 2: Preparing and conducting conciliation. The provincial labour arbitration council will conduct conciliation in the presence of authorised representatives from the disputing parties (clause 1 of Article 171 of the Labour Code). In case one of the parties concerned is absent from the conciliation without any reason, the provincial labour arbitration council will postpone the dispute settlement process. If one of the disputing parties is absent for the second time (as determined under subpoena serviced) without a justified reasons, the provincial labour arbitration council will continue to proceed with its settlement of the dispute.

During the dispute settlement, the provincial labour arbitration council may propose a conciliation solution for the parties to consider. If such a solution is agreed by the parties concerned, a minutes of successful conciliation will be prepared and signed by the chairperson of the council and the disputing parties. In case of unsuccessful conciliation, the provincial labour arbitration council will move to the third step.

- Step 3: Making a decision on the dispute settlement

In case of unsuccessful conciliation, the provincial labour arbitration council will issue a decision on dispute settlement (instead of preparing a minutes of unsuccessful conciliation) and give a prompt notice of its decision to the disputing parties. The decision will automatically take effect if it is not responded by the parties concerned (clause 3 of Article 173 of the Labour Code).

In case of its disagreement with the decision made by the provincial labour arbitration council, the employer may request a competent court to reconsider the decision while if the labour collective disagrees with the decision of the

provincial labour arbitration council, it may request the court's settlement or stage a strike (Article 172 of the Labour Code).

To date, provincial labour arbitration councils have been established in all 61 provinces throughout the country. However, their activities are still far from being desired. Even in some cases, provincial labour arbitration councils have denied to handle collective labour disputes. For example, the Hanoi labour arbitration council is reported to have declined to deal with a collective labour dispute in the ABB transformer manufacturing joint venture company. By contrast, in certain cases, provincial labour arbitration councils have registered for settlement of cases which fall outside the scope of their jurisdiction. For instance, when VietSolighter – a Ho Chi Minh-based joint venture was dissolved under a decision of the Ministry of Planning and Investment, a number of workers of the Cua Cam Port Enterprise (Hai Phong) which is the local partner of the joint venture have initiated a lawsuit to demand full payment of severance benefits by the board of liquidation. Under these circumstances, the registration and handling of the case by the Ho Chi Minh labour arbitration council was improper as it went beyond its assigned mandate.

3.3 Roadmap of a labour dispute settlement from the occurrence of the dispute to the end of the dispute settlement

In respect of individual labour disputes (Articles 164, 165 and 166 of the Labour Code): See Chart No.1 regarding procedures for settlement of individual labour disputes.

Disputing parties are entitled to file a petition to the grass-root labour conciliation council or conciliator of the district labour agency (in the absence of a grass-root labour conciliation council) for the settlement of their dispute within 6 months from the date of its occurrence. In respect of disputes over dismissals, termination of labour contracts or payment of damages to the employer, the parties concerned may immediately bring a lawsuit to the court within one year from the occurrence of the dispute without recourse to grass-root conciliation.

Within 7 days from the date of its receipt of the petition for settlement of a labour dispute, the grass-root labour conciliation council or conciliator must hold a conciliation meeting. The meeting should be held in the presence of the disputing parties or their authorised representatives. In case of a successful conciliation, the grass-root labour conciliation council or the conciliator will prepare a minutes of successful conciliation which is signed by the disputing parties and the conciliator. Parties concerned are bound to realise commitments stated in the minutes. If the disputing parties fail to reach an agreement on the settlement of their dispute, the grass-root labour conciliation council or the conciliator will prepare a minutes of unsuccessful conciliation. Within 6 months from the date on which the minutes of unsuccessful conciliation is prepared, the parties concerned may take an action to the court.

In respect of collective labour disputes (Articles 170, 171 and 172 of the Labour Code): See Chart No.2 regarding procedures for settlement of collective labour disputes.

Collective labour disputes are also first handled by grass-root labour conciliation councils or a conciliator of the district labour agency (where such a grass-root labour conciliation council is absent). Unlike individual labour disputes, however, the Labour Code does not fix any time limit for a grass-root settlement of collective labour disputes. Procedures for a grass-root conciliation of collective labour disputes are similar to those applicable to individual labour disputes.

Within 7 days from the date of its receipt of the petition for settlement of a labour dispute, the grass-root labour conciliation council or conciliator must hold a conciliation meeting. In case of a successful conciliation, a minutes of successful conciliation will be prepared. Parties concerned are bound to realise commitments stated in the minutes. If the disputing parties fail to reach an agreement on the settlement of their dispute, the grass-root labour conciliation council or the conciliator will prepare a minutes of unsuccessful conciliation. The parties concerned may then file a petition to the provincial labour arbitration council requesting for its settlement of their dispute. There is again no specific provision under the Labour Code as regard the time limit within which such a petition should be handled.

Within 10 days from the date of its receipt of the petition, the provincial labour arbitration council must hold a meeting to resolve the collective labour dispute with the participation of authorised representatives of the disputing parties. Also in this meeting, if the dispute may be ended through conciliation, a minutes of successful conciliation will be prepared by the provincial labour arbitration council that has a binding effect of the parties concerned. In case of unsuccessful conciliation, the provincial labour arbitration council will issue a decision on its settlement of the dispute. Within 3 months from the date on which the provincial labour arbitration council issues such a decision, the parties concerned may take an action to the court if they disagree with the decision and the labour collective may choose to stage a strike.

4. Choice of dispute settlement channels by the parties concerned

As described above in Section 1.2, the employer and the employee may, as parties to a dispute, choose one of the three following channels to resolve their disputes:

- *First*, conduct negotiation by themselves or through mediation by a third party who is highly reputed before referring their dispute to a competent body.
- *Second*, requesting for the dispute to be handled through administrative channels by filing a petition with people's committees at all levels or with the labour inspection agencies.
- *Third*, requesting for the dispute to be handled through judiciary channels.

In Vietnam's context, when a disagreement or contention arises from a labour relation and through the whole process of dispute settlement, self-negotiation and conciliation (i.e. the first solution) is widely recognised as optimal solutions. In fact, a large majority of conflicts and disagreement have been resolved through mutual negotiations. This is due to various reasons including:

- Cultural tradition of the Vietnamese which has placed a special emphasis on “a peaceful resolution of disputes”.
- Since the country's economy in general and agricultural production in particular is still under-developed, most labour disputes are of individual character. It is this factor together with employment pressure that make employees almost unable to negotiate but accept offers given by the employer as part of a dispute settlement package, although in many cases, their legitimate interests are not always properly protected.
- Many contentions and conflicts are of spontaneous nature but the demands raised by the employees are not excessive. Therefore, the employees may easily accept concessions made by the employer without recourse to other dispute settlement alternatives in efforts to obtain a “sympathy” from their employer.

Nevertheless, some labour disputes have been resolved through administrative channels. Most of labour disputes that are referred to the people's committees or labour inspection bureaus are initiated by the employees, although the number of labour disputes handled by these bodies is insignificant. In fact, only when their enterprises are visited by inspectors, the employees could make complaints or denunciations regarding labour safety and occupational hygiene. It is because of too complex and ineffective procedures to be followed in making such complaints or denunciations.

In this context, the courts have emerged as a popular channel of labour disputes settlement. Despite psychological hesitation to litigate, the settlement of labour disputes through judiciary system is proven highly flexible and effective especially in conciliation. Since conciliation is always prioritised during all stages of labour dispute settlement by the courts, up to nearly 70% of labour disputes that are referred to the courts are ended in conciliation. On the other hand, one of the outstanding advantages of judiciary settlement of labour disputes is its equality and equitability. In other words, legitimate rights and interests of the parties concerned are protected by the courts. Furthermore, decisions or judgements which are rendered by the courts to resolve the disputes are enforceable and bound by the parties concerned. Finally, the costs which may be incurred in relation to the judiciary settlement of labour disputes are inconsiderable; disputing parties are not required to pay any fee for grass-root conciliation.

5. Case studies

5.1 Labour dispute over unilateral termination of labour contracts

For example: A dispute arose between Sai Gon Transport joint venture enterprise (located in Binh Thanh District, HCM City) and Ms. Ha Thi Thuy – a staff of the Project Management Unit of Sai Gon Passenger Transport Company who is authorised to represent the Vietnamese party in the management of the joint venture enterprise over wage payment after the unilateral termination of labour contract by the joint venture¹³.

Upon the occurrence of the dispute, parties concerned have requested the labour inspection bureau of the HCMC Department of Labour, War Invalids and Social Affairs to handle. In other words, the parties have made a proper choice of an administrative body to resolve their dispute. In a conciliation meeting held by the labour inspection bureau, the disputing parties have reached an agreement on wage payment and hence the bureau has prepared a working minutes No. 298/BBLV dated 17 November 1995. Ms Thuy then disagreed with the said agreement and decided to take action to the court. Such a choice is made in entire compliance with the relevant provisions whereby the disputing parties may choose to settle their dispute by negotiations through administrative channels but may at the same time request for the dispute to be resolved under judiciary procedures. In case of disputes over unilateral termination of labour contracts, it is not obligatory to undertake a grass-root conciliation.

After its registration of the case, the HCMC Court ruled that the aforesaid working minutes No. 298/BBLV dated 17 November 1995 was treated as a minutes of successful conciliation and decided to suspend the settlement of the case. This is in fact a wrongful argument by the court since the working minutes should under no circumstance constitute a minutes of successful conciliation prescribed by the Labour Code. To be qualified as such, a minutes of successful conciliation could only be prepared by one of the four following entities, namely grass-root labour conciliation council, conciliator of the district labour agency, provincial labour arbitration council (in respect of collective labour disputes) and the court.

5.2 Labour disputes over payment of compensation for working accidents

For example: There is a dispute between Mr. Tran Xuan Tien – a field engineer who entered into a labour contract with indefinite term and the Civil Engineering Company No. 4 – a member of the Hanoi-based General Transport Construction Corporation No.8.

On 24 July 1998, during his on-site supervision and monitoring, Mr. Tien accidentally fell from the third floor of a building due to a collapse of the scaffolding. As a result, the Company has paid hospital fee for the time he was hospitalised to receive medical treatment of the broken leg (1 month). However, Mr. Tien disagreed with the Company on such a payment arguing he was out of work for 3 months. He requested

¹³ Judgement No.04/UBTP-LD dated 11 September 1997 of the People's Supreme Court.

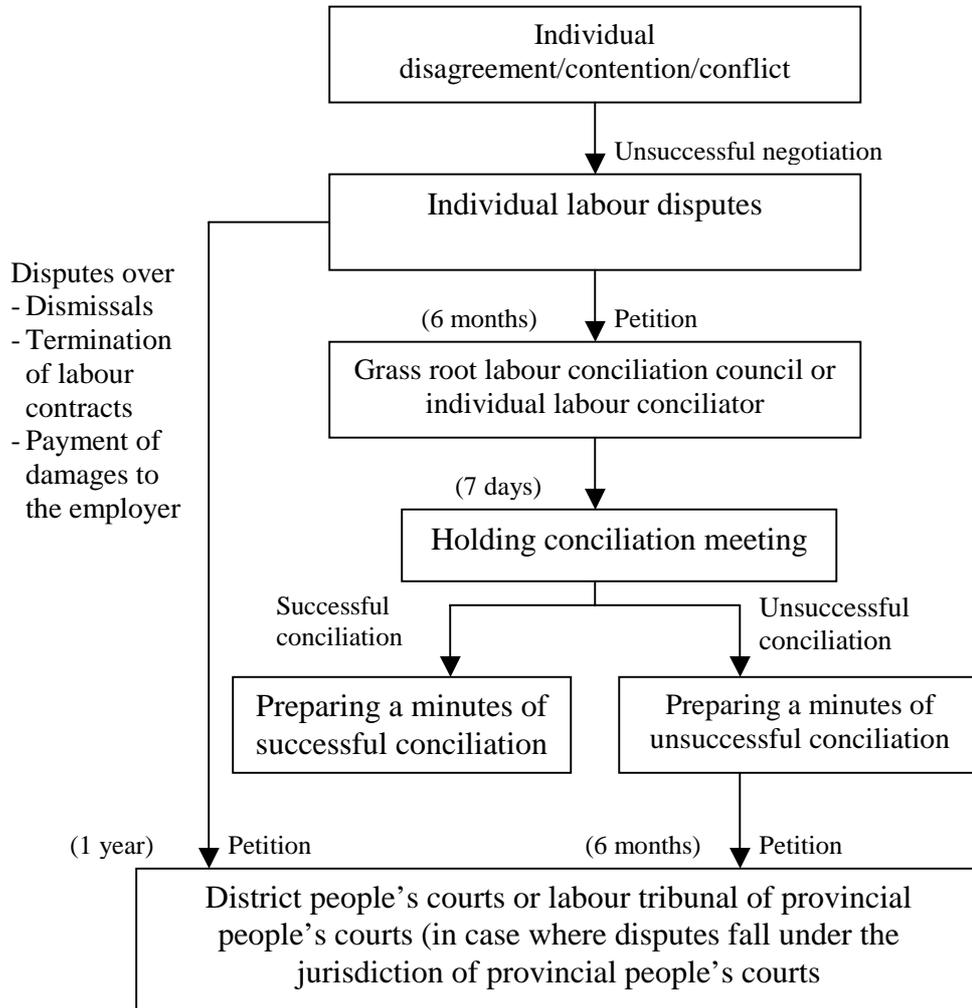
the Company to make additional payment of compensation for his working accident but the Company declined to meet his demand. 5 months later, Mr. Tien referred his dispute to the grass-root labour conciliation council for its settlement. After 4 days from the date of his submission, the grass-root labour conciliation council held a conciliation meeting without the participation of employer's representative. At the end of the meeting, a minutes of unsuccessful conciliation was prepared. Consequently, Mr. Tien brought an action to Hanoi People's Court asking his Company to pay compensation for the working accident he suffered. The Court has surprisingly registered and handled the case under first instance procedures on the grounds that the legitimate interests of employee are contravened and compensation offered by the Company was unreasonable.

In practice, the court registration of the case was proven inappropriate since:

Under Section IV of Circular No. 10/LDTB-XH/TT dated 25 March 1997, if one of the disputing parties fails to be present in the first conciliation meeting, the grass-root labour conciliation council must postpone the meeting (if the 7-day limit for conciliation has not yet expired), summon the parties concerned to the conciliation for a second time and re-hold the conciliation meeting. Only when the 7-day limit has expired but one of the disputing parties was still absent, the grass-root labour conciliation council could prepare a minutes of unsuccessful conciliation.

In the above described case, although the time limit for conciliation has not yet expired (i.e. there were still 3 days more) but the grass-root labour conciliation council proceeded with its preparation of the minutes of unsuccessful conciliation. As a result, the court has made a wrong decision in registering the case as the dispute in question has not yet undergone a grass-root conciliation as required by the law. Therefore, the Court of Appeal of the People's Supreme Court has overruled the first instance judgement of the Hanoi People's Court and returned the petition to Mr. Tien for his requesting the Company to re-start its handling of the dispute under statutory procedures./.

**CHART ILLUSTRATING THE PROCEDURES FOR SETTLEMENT OF
INDIVIDUAL LABOUR DISPUTES
(Articles 164, 165 and 166 of the Labour Code)**



**CHART ILLUSTRATING THE PROCEDURES FOR SETTLEMENT OF
COLLECTIVE LABOUR DISPUTES
(Articles 170, 171 and 172 of the Labour Code)**

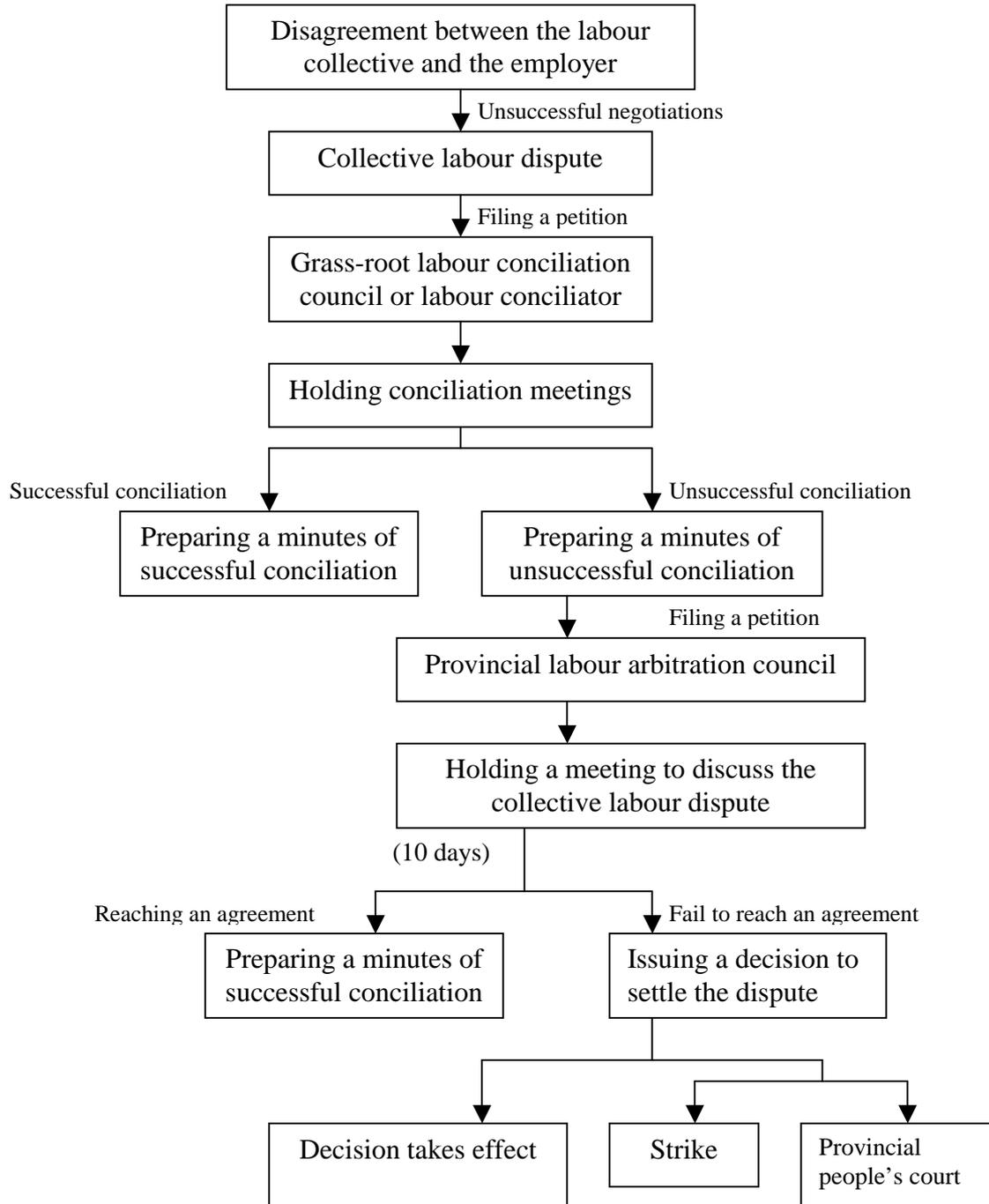
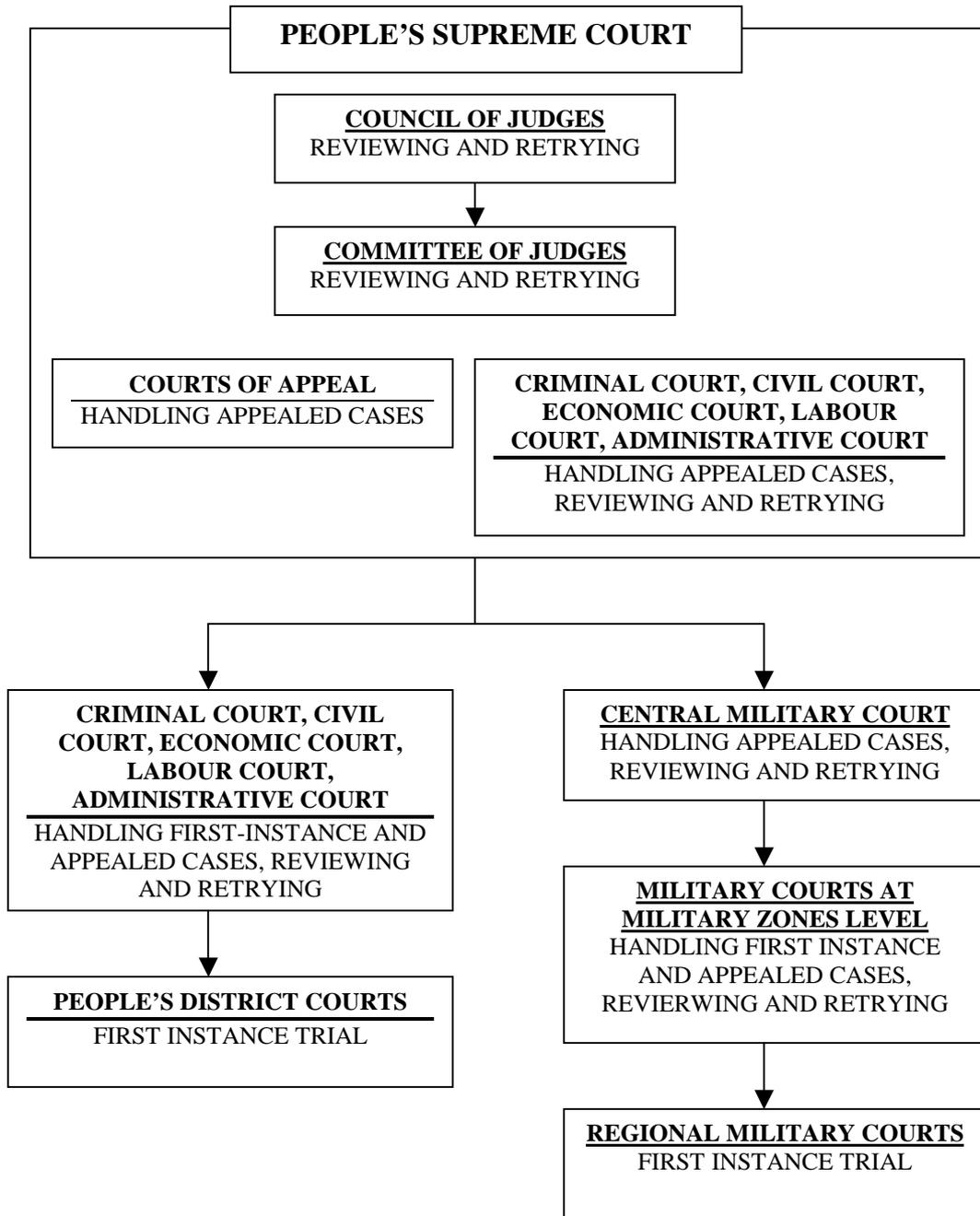


CHART ILLUSTRATING THE ORGANISATION STRUCTURE AND JURISDICTION OF THE COURT SYSTEM IN VIETNAM UNDER THE EXISTING LAWS AND REGULATIONS



III. RESOLUTION OF ENVIRONMENT DISPUTES IN VIETNAM

1. General Overview of Environment Disputes in Vietnam

1.1 General Comments:

Environment disputes are conflicts and disagreements between entities participating in an environment law relationship when they gather that their lawful rights and interests are violated or in danger of being violated.

In Vietnam, environment disputes are currently in the trend of increasing on a national scale. According to the year 2000 report of the Inspectorate of the Ministry of Science, Technology and Environment on the results of inspection, of dealing with breaches of environment protection laws and of compensation for damage caused by environment pollution, from 1994 to 2000, there were 3,252 cases of breach of environment protection laws, of which the breaching entities in 1,515 cases, accounting for 46.57% of the total number of breaches, had the responsibility to compensate for damage caused to organisations and individuals. This report also lists the following main types of environment disputes from 1994 to 2000:

- Requests of local people to project owners or bodies issuing licences to projects that project implementation be cancelled in order to protect environmental rights and interests which they believe are in danger of being violated. These disputes concentrate mainly in large urban areas like Hanoi, Ho Chi Minh City, Hai Phong City, Quang Ninh Province, Dong Nai Province, and a number of localities where there are many historical sites and beautiful landscape.
- Claims for damages for activities of production of bricks, tiles and other building materials; exploitation and processing of coal; thermal power generation; aquatic product processing; fuel business; especially claims for compensation for damage caused by production of pottery, noodles, etc. to the environment, agricultural production and aquaculture.
- Disputes over claims for damages for oil spills (25 cases), claims for damage caused by production or processing of insecticides, chemical fertilizers, GSM, cosmetics, textile, sugarcane, steel and so forth which pollute the environment and are detrimental to the health, crops and livestock of the local people.

1.2 Typical signs of environment disputes:

Environment disputes have the following typical signs:

- *Subjects of dispute:*

The subjects of environment disputes are lawful environment rights and interests which are violated or in danger of being violated. This sign helps to distinguish between environment disputes and other disputes. For example, a dispute over

land intrusion causing damage to legal land users can be distinguished from a dispute arising from the act of burying or disposing toxic chemicals to the land, causing soil pollution which affects the productivity of crop or livestock and thus damaging production and business activities of land users. A special note should be taken here of the fact that an environment dispute may arise even when the lawful environment rights and interests of an entity is in danger of being violated. The danger of being violated means that damage has not yet been caused at the time the dispute arises, but will certainly occur if no preventive measure is taken at the stage of design and implementation. It is certainly very difficult to identify such cases of danger of causing damage. This should not be done by instinct or speculation but requires the opinion of and confirmation by scientists and professional bodies.

- *Contents of dispute:*

The contents of environment disputes are specific demands regarding the environmental rights and interests which the parties believe should be restored.

Organisations or individuals request that the organisations or individuals causing damage cease the act of breach, restore the original status of the polluted or degraded environment, compensate for human or asset damage caused to the aggrieved party, or take preventive measures against the hazard of damage. These are non-contractual disputes arising from acts of breaching environment laws, breaching regulations and standards of environment, causing damage or threatening to cause damage to organisations or individuals, giving rise to the responsibility to prevent potential hazards, to compensate for preventive costs or costs for restoring the original status of the aggrieved party. *Determination of the content of an environment dispute in this case means determination of the responsibility for compensation for non-contractual damage between the parties involved in the dispute.*

- *Disputing entities:*

Disputing entities are the parties involved in a dispute when they believe that their lawful rights and interests are violated. When a dispute arise in an economic, labour, or land ... relationship, it is usually possible to identify the disputing parties and the interests being violated. The reason for that is most disputes arising in the above fields are contractual disputes from economic contracts or labour contracts, etc. Therefore, when a dispute arises, it is not difficult to identify the aggrieved party (the party having rights) and the party causing damage (the party having obligations). In the field of environment, it is not easy to identify the parties involved in a dispute at the time it arises. In many cases, the aggrieved party can determine the damage it suffers, but cannot specify the person causing such damage. An example is the case where two or more production establishments dispose wastes over the permitted level to a water source, polluting it and causing damage to the assets of aquatic product rearers. There are also many cases where the party causing damage is identified but the individual persons causing the damage cannot be specified, such as in events of oil spills or radioactivity accidents, which affect the life, health and assets of a huge number of residents in surrounding areas. An even more

complicated case is where many persons taking acts which are detrimental to the environment and at the same time cause damage to many other persons; none of them can be identified specifically or accurately at the time the dispute arises. As a result, environment disputes are often found between many aggrieved persons (a residential community) and many persons causing damage (companies or plants which cause environment pollution). This sign seems rare in other types of disputes.

1.3 Classification of environment disputes:

The following criteria are often used for classification of environment disputes:

- + Based on the *characteristic of the social relationship where the dispute arises*, environment disputes are classified into: 1) disputes arising in the field of State administration of the environment; 2) disputes arising between organisations and individuals in order to protect the common environment as well as to protect their own rights and interests.

Disputes in the field of State administration of the environment often arise when the concerned parties believe that an administrative decision or administrative act of an environment management body or staff in charge of State administration of the environment has affected or will affect their lawful rights and interests. These disputes often include requests to environment management bodies or staff in charge of State administration of the environment that such administrative decision or administrative act be adjusted or amended in order to eliminate or minimize detriment to the concerned parties and compensation be paid for damage (if any).

There can be two opinions on the existence of administrative disputes. One opinion is that there cannot be an administrative dispute because dispute means a conflict between parties which are often legally equal. The relationship of administrative law itself is an unequal relationship which always has the characteristic of compulsory order. If there is any objection, it will be from the managed party only. Therefore, there is no such thing as an administrative dispute. Another opinion is that an act of litigation of a citizen or organisation represents the conflict or disagreement between them and the person making the administrative decision or the person taking the administrative act which affects or damages their rights and interests. Consequently, such act of litigation or complaint of a citizen can be considered as a request for resolution of an administrative dispute.

In the second section of this paper, we will present the mechanism for resolution of environment-related administrative disputes and the mechanism for resolution of environment disputes between organisations and individuals.

- + Based on the *characteristic of the act of an entity*, environment disputes comprise of: 1) disputes arising from acts of polluting or degrading the environment; 2) disputes arising from acts causing environment incidents.

- + Based on the *time of occurrence*, environment disputes consist of: 1) disputes arising where no actual damage has happened (including disputes arising both before implementation of a project and during implementation of a project which has not yet caused any actual damage); 2) disputes arising after actual damage has happened.
- + Based on the *right to use or exploit environment elements of the aggrieved person*, there are: 1) disputes between the person causing damage and the aggrieved person who is allocated with the right to use or exploit environment elements; 2) disputes between the person causing damage and the aggrieved person who is not allocated with the right to use or exploit environment elements.
- + Based on the *possibility of identifying accurately the number of entities involved in a dispute*, environment disputes are divided into: 1) disputes arising between one aggrieved organisation or individual with one identified party causing damage; 2) disputes arising between many aggrieved organisations or individuals which have not yet been specified with one identified party causing damage; 3) disputes arising between one aggrieved organisation or individual with a number of parties causing damage which have not yet been specified at the time of the dispute; 4) disputes arising between many aggrieved organisations or individuals which have not yet been specified with a number of parties causing damage which have not yet been specified either at the time of the dispute.

From the above analysis, the following characteristics of environment disputes in Vietnam can be deduced:

- Arising directly from or relating closely to environment protection activities, with environment protection construed in its broad meaning, including activities of State administration of the environment.
- Arising very early (from the time one party believes that the act of another party may violate its lawful rights and interests).
- Disputes are attached to not only the private interests of the involved entities but also the common interest of the whole community of residents.
- The plaintiff includes various entities, which may be the State, an organisation, an individual, and in many cases, households.
- The party causing damage is usually a business or production establishment (regardless of their scale), an enterprise in any economic sector, or owner of a highly dangerous source.
- The damage is usually difficult to determine and in some cases can be very big.

2. Mechanism for Resolution of Environment Disputes

In its most common meaning, a mechanism for resolution of disputes in general, and of environment disputes, in particular, includes invariable institutions (institutions which are organisational and have power) and variable institutions (legal mechanism). Invariable institutions comprise of State bodies, organisations and State officials (also referred to as the authorities) who are authorized by the State to consider and resolve disputes. Variable institutions are an uniform system of tools, facilities, legal procedures and methods used by authorized State bodies and State officials for resolution of conflicts and disagreements between disputing parties, and for restoration of the quality of the living environment which was damaged by an act of environment pollution or degradation.

As analysed in section 1, the difference in the two groups of environment disputes (group 1 includes disputes arising in the field of State administration of the environment and group 2, disputes arising between organisations and individuals in the protection of the common environment and protection of their own interests) has led to differences in the current legal mechanism for resolution of environment disputes from each group.

2.1. Mechanism for resolution of environment-related administrative disputes (group 1)

Group 1 environment disputes are administrative in their essence. They are disputes between organisations or individuals and a State body or State administrative employees in the field of environment management. An important legal basis for citizens to protect their lawful interests before authorized State bodies and State officials is their right to complain and take action.

Article 1 of the Law on Complaint and Denunciation dated 2 December 1998 stipulates that "Citizens, bodies and organisations have the right to appeal against an administrative decision or administrative act of a State administrative body or of an authorized person in a State administrative body where there is ground to believe that such decision or act is against the law and detrimental to their lawful rights and interests".

In the field of environment management, authorized State bodies and authorized persons in State administrative bodies often issue administrative decisions relating to the following: 1) Decision on issuance of investment licences or construction licences for works which have direct impacts on the quality of the environment; 2) Decision permitting export of goods being environment elements such as forestry and aquatic products; 3) Decision permitting import of goods which may cause environment pollution such as used machinery and equipment or toxic chemicals; 4) Decision on construction and management of works relating to the environment such as national parks, natural reserves, waste treatment systems, environment observation systems; 5) Decision on application of the environment standard system; 6) Decision on financial contribution obligations relating to the environment such as environmental taxes, fees or charges; 7) Decision on approval of an environment impact assessment report (as the basis for authorized bodies to issue an investment licence or construction licence for a

project); 8) Decision on issuance, renewal or withdrawal of a licence of satisfaction of environment standards; 9) Decision on inspection of or dealing with breaches of environment laws or compensation for environmental damage.

- *Resolution of environment-related administrative disputes in accordance with administrative procedures:*

Most of group 1 environment disputes are resolved in accordance with administrative procedures based on the provisions of the 1998 Law on Complaint and Denunciation and Decree No. 67/1999/ND-CP dated 7 August 1999 of the Government providing detailed guidelines for the implementation of the Law on Complaint and Denunciation. The authority and procedures for resolving administrative disputes in the field of environment protection are stipulated as follows: each dispute arising from complaints against State administrative staff shall be dealt with by the head of the body in charge of management of the contents of the respective dispute. Even when bodies, organisations or individuals have the right to take action to request that the court protect their lawful rights and interests, before taking an action, they must complain to the State body which issued the administrative decision or took the administrative act which they believe is illegal. In the case of disagreement with the decision resolving the complaint, they will have the right to complain to the direct superior of the State body, of the person issuing the administrative decision or taking the administrative act, or to take an action before a competent court.

The order and procedures for resolving administrative environment disputes are specified as follows:

The complainant must complain to the person issuing an administrative decision or the body whose staff took an administrative act where the complainant believes that such decision or act is illegal or violates his or her lawful rights and interests. The limitation period is 90 days from the date of receipt of the administrative decision or the date of learning of the administrative act.

Within 10 days from the date of receipt of a letter of complaint, the person authorized to deal with the complaint must accept the case for resolution and notify the complainant in writing. The duration of resolution of a complaint shall not exceed 30 days from the date of acceptance; and not exceed 60 days from the date of acceptance in complicated cases. Where, after 30 days from the end of the duration for resolution, a complaint is not resolved, or from the date of receipt of the decision on complaint resolution, the complainant disagrees, the complainant shall have the right to complain to the next person authorized to resolve complaints, or initiate an administrative action at a court.

- *Authority for resolution according to legal procedures:*

According to article 1 of the Ordinance on Amendment of and Addition to a Number of Articles of the Ordinance on Procedures for Resolution of Administrative Cases dated 25 December 1998, a competent court shall resolve the following cases of environment-related administrative litigation: 1) litigation against decisions on penalties for administrative breaches in the field of environment protection; 2) litigation against administrative decisions or administrative acts in issuance or withdrawal of licences for

capital construction or production or trading of goods which have significant impacts on the environment quality; 3) litigation against administrative decisions or administrative acts in collection of environment protection fees, fees for issuance of certificates of satisfaction of environment standards, or fees for evaluation of environment impact assessment reports.

2.2. Mechanism for resolution of environment disputes between organisations and individuals (group 2)

a) Mechanism for resolution of requests to cease environment polluting acts

As analysed in section 1, certain environment disputes arise from the time one of the parties believes that an act of the other party may violate their lawful environmental rights and interests. These can be considered as environment-related conflicts or disagreements which arise before any actual damage occurs. In this case, citizens may perform their right to complain and denounce to an authorized body, organisation or individual in the form of discovery of, recommendation on, request about, or report on the acts which show signs of breaching environment protection laws, cause damage or threaten to cause damage, affect the quality of the surrounding environment or affect their life quality.

Article 1 of the 1998 Law on Complaint and Denunciation provides that "Citizens have the right to make denunciation to authorized bodies, organisations or individuals against illegal acts of any body, organisation or individual which cause damage or threaten to cause damage to the State interest, or lawful rights and interests of citizens, bodies or organisations".

Article 26 of Decree 26/CP dated 26 April 1996 of the Government on dealing with administrative breaches in the field of environment protection stipulates that "Citizens have the right to make denunciation to authorized State bodies against administrative breaches in the field of environment protection of other organisations or individuals".

- Authority, order and procedures for dealing with reports on and denunciations of acts of breaching environment laws

Article 60 of the 1998 Law on Complaint and Denunciation provides that "Bodies in charge of State administration of each field shall be responsible for dealing with denunciations of acts of breaches of the laws in their respective field". Therefore, people's committees at various levels and bodies in charge of State administration of the environment shall be responsible for dealing with related denunciations.

At the grassroots level, people's inspection organisations shall, within the scope of their duties and powers, receive information and reports of the local people on complaints and denunciations and deal with same in their communes, wards, townships, bodies or units; promptly discover breaches of the laws on complaint and denunciation; and make recommendations to chairmen of people's committees at the commune level or heads of their bodies or units to deal with such complaints and denunciations.

Article 93 of the 1998 Law on Complaint and Denunciation stipulates that "Chairmen of people's committees at the commune level and heads of bodies or units at the grassroots level shall be responsible for notifying people's inspection organisations of the resolution of complaints and denunciations under their authority, and for considering and dealing with recommendations of people's inspection organisations".

During the handling of denunciations, where authorized State bodies discover that a denounced act is a breach of the laws on environment, they may take the following measures:

Chairmen of people's committees at the commune level shall have the power to impose the following forms of penalty for administrative breaches in relation to the environment: (1) issuing a warning; (2) issuing a fine of up to two hundred thousand (200,000) Dong; (3) confiscating materials and means of committing administrative breaches whose value is up to 500,000 dong; (4) forcing compensation for damage caused by an administrative breach of up to 500,000 dong; (5) forcing restoration of the original state which was changed by an administrative breach (6) suspending activities which pollute the living environment, spread diseases and epidemics, or make noise which disturbs the mutual quietness; (7) destroying toxic products which adversely affect human health (Article 26 of the *Ordinance on Dealing with Administrative Breaches* dated 6 July 1995).

Chairmen of people's committees at the district level shall have the power to impose the forms of penalty for administrative breaches in relation to the environment set out in Article 27 of the *Ordinance on Dealing with Administrative Breaches* (except for the right to deprive the right to use environmental permits).

Chairmen of people's committees at the provincial level shall have the power to impose the forms of penalty for administrative breaches in relation to the environment set out in Article 27 of the *Ordinance on Dealing with Administrative Breaches* (except for the right to deprive the right to use environmental permits issued by the Ministry of Science, Technology and Environment and Departments of Environment).

Chairmen of people's committees at the above-mentioned levels shall have the right to request authorized bodies issuing environmental permits to revoke such permits.

b) Mechanism for resolution of claims for compensation for damage caused by environment-polluting acts

Liability to compensate for damage caused by an environment-polluting act

The *Law on Protection of the Environment* which was adopted by the National Assembly on 27 December 1993 and has taken effect as of 10 January 1994 is the principal law in relation to environment protection. This law has provided the

principles for environment protection, such as: ensuring the right of a person to live in an unpolluted environment, the State assuming unified administration of environment protection; protecting the environment aimed at securing the long term development of the country; environment protection being a task of the entire people; Any organization or individual utilizing any of the environment elements for production or business purposes must pay costs and responsibilities for compensation for damage caused by acts of polluting the environment and so forth. The *1993 Law on Protection of the Environment* has made provisions on prevention, fighting and remedy of environmental degradation, pollution, or hazards. The law has provided the functions, duties and powers of State bodies in relation to protection of the environment. This law has also created legal basis for administrative liabilities and civil liability in relation to protection of the environment.

Articles 7, 30 and 52 of the *1993 Law on Protection of the Environment* provide that any organization or individual causing environmental degradation, pollution, or hazards through production, business, or other activities must implement remedial measures in accordance with the provisions of the local people's committee and the State Environment protection Authority, and shall be liable for payment of compensation for damage caused in accordance with the provisions of the law. Article 18.2 of Decree 175-CP of the Government dated 18 October 1994 providing guidelines for implementation of the *Law on Protection of the Environment* provides that commercial and manufacturing establishments shall be responsible for strictly complying with the provisions of the law on financial contributions to the protection of the environment and payment of compensation for any damage caused by any activities which are detrimental to the environment in accordance with the provisions of the law. Pursuant to article 1.3 of Decree 26-CP of the Government dated 26 April 1996 on Penalty for Administrative Breaches in Relation to Environment protection, any organization or individual committing an administrative breach in relation to environment protection thereby causing material damage must compensate for such damage in accordance with the provisions of the law. Article 2 of this Decree provides that: "Compensation for damage caused by an administrative breach in relation to environment protection shall be determined on the basis of the principle of mutual agreement of the offender and the offended. In cases where the material damage caused by an administrative breach in relation to environment protection is valued at up to one million (1,000,000) Dong and both parties cannot reach a mutual agreement on compensation, the person having the authority to impose a penalty shall decide the rate of compensation. Any damage valued at more than one million (1,000,000) Dong shall be resolved in accordance with the procedures for civil proceedings".

Among legal instruments on environment protection, there are two legal instruments in the form of circular which make provisions relating to compensation for damage caused by acts of polluting the environment. They are Circular 2370-TT-MTg dated 22 December 1995 providing provisional guidelines for remedy of oil leakage accidents and Circular 2262-TT-MTg dated 29 December 1995 of the Ministry of Science, Technology and Environment providing guidelines for remedy of oil spillage accidents.

The liability to compensate for damage caused by an environment-polluting act has been referred to in the *Civil Code* dated 28 October 1995. First all, Article 628 provides that *an individual, legal entity or other subject polluting the environment,*

thereby causing damage, must compensate in accordance with the law on environment protection, unless the aggrieved person is at fault. Article 268 also provides that when using, taking care of or renouncing his or her property, an owner must comply with the law on environment protection. If he or she causes environmental pollution, the owner must cease the acts which cause the pollution and take measures to remedy any consequences and compensate for any damage.

Apart from the legal bases mentioned above, the liability to compensate for damage caused by acts of polluting the environment has also been provided in many other legal instruments such as the *1990 Maritime Code* (articles 195 and 196), the *1996 Mineral Law* (articles 64 and 65), the *1998 Water Resource Law* (article 71) and so forth.

The above-mentioned provisions on compensation for damage in relation to the environment are only the general provisions of principle. It is a great difficulty for judicial bodies in considering and handling claims for compensation for damage caused by an environment-polluting act. However, initially, such provisions have created a legal basis for prosecution for civil liability with respect to subjects which conduct an environment-polluting act and taken actively part in the environment protection aimed at realizing the target of long-term national development of Vietnam.

Subjects bearing the liability to compensate for damage caused by acts of polluting the environment

Pursuant to article 7 of the *1993 Law on Protection of the Environment* and article 628 of the *1995 Civil Code*, in general, we may understand that subjects bearing the liability to compensate for damage caused by an environment-polluting act are organizations and individuals.

Organizations shall have the legal capacity and the capacity for liability to compensate for damage upon the establishment. Organizations which conduct any environment-polluting act thereby causing any damage when they participate in relations subject to the laws on the environment shall be responsible for compensating for the damage by recourse to their own property. Organizations may be a legal entity (such as State owned enterprises, limited liability companies, shareholding companies, co-operatives, research institutes and so forth) or other organizations which are not a legal entity (such as households, co-operative groups, private enterprises, partnerships and so forth).

With respect to individuals, persons who are eighteen (18) or more years of age and have full capacity for civil acts shall be personally liable to compensate for damage. Where a person who is between fifteen (15) and eighteen (18) years of age causes damage, such person must compensate by recourse to his or her own property. If such person has insufficient property to compensate, the parents of such person must satisfy the outstanding amount by recourse to their own property. Where a person under fifteen (15) years of age causes damage, his or her parents, if any, must compensate for the total damage. If the parents have insufficient property to compensate and the child who has caused the damage has property of his or her own, such property shall be used to satisfy the outstanding amount of compensation to the aggrieved person.

Where a minor, or a person who has lost the capacity for civil acts, causes damage, but there is an individual or organization acting as his or her guardian, then such individual or organization may use the property of the ward to compensate. If the ward has no, or insufficient, property to compensate, then the guardian must do so by recourse to the property of the guardian. If the guardian is able to prove that he or she was not at fault in respect of guardianship, the guardian shall not be required to use its property to compensate.

In practice, subjects polluting the environment mainly are enterprises. Because such commercial and manufacturing establishments have conducted their business or production activities without waste treating equipment or observance of other regulations on environment protection, they cause environmental degradation, pollution or hazards resulting in damage to other organizations and individuals. Thus, first of all, "potential" subjects being responsible for compensating for damage are enterprises in all economic sectors.

Conditions for giving rise to liabilities to compensate for damage caused by an environment-polluting act

The liability to compensate for damage caused by an environment-polluting act is the liability to compensate for non-contractual damage. Pursuant to the civil laws, the liability to compensate for non-contractual damage, including the liability to compensate damage caused by an environment-polluting act shall arise when the following conditions are satisfied:

Damage has occurred:

This is a precondition of the liability to compensate for damage because the purpose of the performance of this liability is to recover the state of the property or health of the aggrieved person. Damage usually is actual losses which can be calculated in terms of money caused by harming the life, health or property of an organization or individual. Damage caused by acts of polluting the environment may include the following damage:

- *Damage caused by infringement of property.* The damage may include destroyed or damaged property, damage caused by the reduction or loss of associated interests because the property cannot be used or exploited or the use or exploitation of the property is limited; costs for prevention and remedy of the damage. Example: a company discharges untreated waste water into rice-fields or crop-fields of households, harming such fields, resulting in the fact that their yield is materially reduced. Or because of oil spillage, ponds and lakes are poisoned, aquatic resources such as shrimp and fish die. Or when water sources and air are polluted or pasture is poisoned by waste discharged by industrial establishments, cattle and poultry are sick or die resulting in damage to the people. Resorts are closed because pollution resulting in a loss of income and reduction in profits, and so forth.

- *Damage caused by harm to health* may include reasonable costs for treating, nursing and rehabilitating health and losses and impairment of functions; loss of, or reduction in, the actual income of the aggrieved person or the carers of the aggrieved person and so forth. Example: when the living environment is polluted (water pollution, air pollution, soil pollution and so forth), human health is reduced, the people get respiratory diseases or digestive diseases and so forth. The persons suffering from such diseases have to pay costs of medical examination and treatment, at the same time, their income is reduced because they cannot work.
- *Damage caused by harm to life* may include costs for treating, nursing and caring for the aggrieved person prior to the death of the aggrieved person; funeral costs; support for the dependants of the aggrieved person. The damage caused by harm to life may arise upon occurrence of an environmental hazard such as oil spillage or explosions, forest fires and so forth.
- *Acts which cause damage being breaches of the laws on environment protection*

Breaches of the law on environment protection are multiform and plentiful. A number of relatively popular breaches may be listed as follows:

- Breaches of the provisions on prohibited acts of the *1993 Law on Protection of the Environment*. The following acts are strictly prohibited by article 29 of the *1993 Law on Protection of the Environment*: deliberate lighting of forest fires, destruction of forests, and careless exploitation of mineral resources resulting in damage to the environment and ecosystems; emission of smoke, dust, toxic gas, and putrid fumes; and emission of excess levels of radiation and radioactive particles into the surrounding environment; burial or dumping of harmful toxic wastes into the earth in unlawful quantities; discharge of oil and grease, harmful toxic chemicals, unlawful quantities of radioactive substances, wastes, animal corpses, plants, bacteria, and micro-bacteria spreading diseases into water sources; importing technology and equipment which does not meet environmental standards; importing or exporting wastes and so forth.
- Breaches of the provisions on environmental impact assessment or the written requirements set out in reports on appraisal of environmental impact assessment reports.
- Breaches of the provisions on protection of natural resources such as the provisions on protection of forest, exploitation and trading of valuable and endangered animals and plants; protection of land and land sources; breaches of the provisions on biological diversity and natural reserves and so forth.
- Breaches of the provisions on public hygiene such as the provisions on transportation and treatment of wastes or solid wastes; the provisions on noise and vibrations and so forth.
- Breaches of the provisions on preservation and use of substances which may cause pollution; breaches of the provisions on prevention of environmental

accidents during petroleum exploration, exploitation, or transportation; during exploration and mining and so forth.

Subjects which cause damage are at fault

In the field of environment protection, the liability to compensate for damage caused by an environment-polluting act shall be only released when the aggrieved person is at fault. This provision means that if the aggrieved person is not at fault, the person polluting the environment shall always bear the liability to compensate for damage caused by an environment-polluting act. In a number of specific cases, the liability to compensate for damage is not released even where the person polluting the environment is not at fault. Article 627.2 of the *1995 Civil Code* provides that “An owner, or person to whom an owner has transferred the possession or use, of a source of extreme danger, must compensate for any damage caused by such source, even where such owner or person is not at fault”. This provision should apply to the resolution of disputes regarding a claim for compensation for damage caused by sources of extreme danger such as means of transport, industrial factories in operation, nuclear piles, nuclear power stations, weapon, explosive or flammable or radioactive substance warehouses and so forth. Recently, oil spillage accidents caused by means of transport by water have polluted the environment to a large extent and caused great damage to the people and organizations in surrounding areas¹⁴.

There is a causal relation between damage and breaches of the laws on environment protection.

Actual damage which occurred is the result of breaches of the laws. Or in other words, breaches of the laws are the cause of the damage which occurred. This relation should be clarified during the process of identification of the liability to compensate for damage caused by an environment-polluting act.

Procedures for resolution of claims for compensation for damage caused by an environment-polluting act by way of legal proceedings

The procedures for resolution of claims for compensation for damage caused by an environment-polluting act are provided in the *Ordinance on Resolution Procedures for Civil Disputes* dated 29 November 1989. Any organization or individual suffering

¹⁴ Example: *the oil spillage accident in Vung Tau territorial water*. At 1:20 a.m. on 7 September 2001, Formosa One Tanker bearing Liberia nationality hit Petrolimex 01 Tanker, causing 900 tons of oil from Petrolimex 01 Tanker to spill into and pollute the sea. The People’s Committee of Ba Ria-Vung Tau Province, the Department of Science, Technology and Environment and Vietsovpetro mobilised all forces to remedy the oil spillage aimed at minimize pollution of the environment.

The oil spillage accident has led to the fact that tourists visiting Vung Tau were reduced by five sixths, causing damage of about 43,000,000,000 Vietnamese dong to the tourism industry. The damage to aquatic cultivation, inshore fishing and maritime logistics was 108,000,000,000 Vietnamese dong; the damage to salt production was 27,080,000,000 Vietnamese dong, the effect on the health of the community was 11,210,000,000 Vietnamese dong, costs for cleaning the environment were 60,000,000 Vietnamese dong. The total estimated damage was 260,000,000,000 Vietnamese dong, equivalent to USD17.2 million.

from damage caused by an environment-polluting act shall be entitled to take a legal action aimed at requesting a court to protect its or his or her legitimate interests. The organization or individual shall take the legal action by way of lodging an application with the court. Having studied the application for a legal action, where the judge considers that the case falls under the jurisdiction of his/her court, he or she shall immediately notify the plaintiff of payment of a court fee deposit. The court shall accept the case from the date on which the plaintiff pays a court fee deposit, then the court shall prepare for trial. The period of preparation for trial shall not exceed 4 months with respect to normal cases and 6 months with respect to complex cases. During the period of preparation for trial, the court shall perform the following works:

- Taking the testimony of concerned parties or witnesses in relation to relevant issues.
- Requesting relevant State bodies and social organizations to provide significant evidence for resolution of the case.
- Verifying on the spot.
- Requesting the service of an expert.
- Requesting specialized bodies to determine damage to health or property.

Courts of first instance must carry out conciliation between the concerned parties prior to conducting a trial. The conciliation shall be carried out with the presence of the concerned parties. Where the concerned parties reach an agreement on the settlement of the dispute, the judge shall prepare a record of the settlement. A copy of the record of the settlement shall be forwarded immediately to the inspectorate of the same jurisdiction. Within fifteen (15) days from the date on which the record of the settlement is prepared, if the concerned parties do not change their opinion and the inspectorate does not object the settlement, the court shall issue a decision acknowledging the settlement of the concerned parties. This decision shall be of legal effect upon issuance. Where the concerned parties cannot agree with each other on a settlement of the dispute, the court shall make a record of the non-settlement and issue a decision to conduct a trial of the case. After the decision to conduct a trial of the case is issued, the court shall conduct first instance hearing in accordance with the following procedures: (1) commencement procedure of the trial; (2) questioning in the trial; (3) pleading in the trial; (4) judgment; (5) pronouncing the judgment.

Within fifteen (15) days of the date on which the court pronounces its judgment, the concerned parties shall have a right to appeal to an upper court. The time limit for lodging a protest of the inspectorate of the same jurisdiction and of a higher jurisdiction shall be fifteen (15) and thirty (30) days respectively as from the date on which the court posts the judgment.

A provincial court shall conduct the appeal hearing of the judgment of the court of first instance which is appealed or protested against within three months and the Supreme People's Court shall conduct the appeal hearing within four months as from the date of receipt of the file of the case.

The procedures for hearings by the appellate court shall also include: (1) commencement procedure of the trial; (2) questioning in the trial; (3) pleading in the trial; (4) judgment; (5) pronouncing the judgment.

The council of adjudicators with appellate jurisdiction comprising three judges (without any juror) shall have the power to:

- Upheld the judgment of the court of first instance;
- Vary the judgment or decision of the court of first instance;
- Set aside the judgment in order to conduct a new trial in cases where (1) the verification by the court of first instance is not sufficient and the appellate court cannot admit any new evidence; (2) the composition of the council of adjudicators with first instance jurisdiction did not comply with the provisions of the law or there are serious breaches of litigatory procedures.
- Temporarily suspend or suspend the resolution of the case if there is any legal ground.

A legally enforceable judgment can be reviewed in accordance with judicial review or re-trial procedures.

Judicial review procedure is a special stage of civil procedures in which courts of a higher level review the legality and the bases of the legally enforceable civil judgments of lower level courts on the basis of protests by the competent persons.

Civil re-trial is also a special civil procedure stage in which courts of a higher level review the legality and bases of legally enforceable civil judgments of lower level courts if there is fresh evidence which have a bearing on the outcome of the case on the basis of protests by the competent persons.

3. Overview on the Practice of Resolution of Environment Disputes in Vietnam

In Vietnam, the practice of resolution of environment disputes has not become popular, only a few cases of environment disputes have been resolved and some of them are not resolved completely. However, real life requirements have led to the performance of dispute resolution activities in a number of localities and certain results have been achieved as follows:

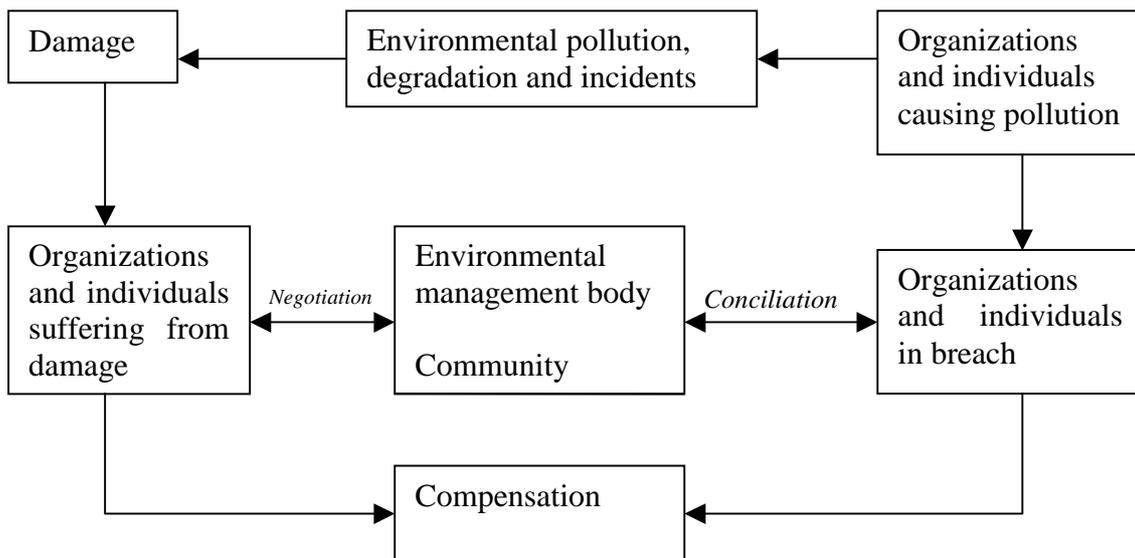
Firstly, with respect to administrative disputes (Group 1)

Most of the disputes in this group are resolved in an administrative way (in accordance with the order and procedures for resolution of complaints) and not by way of courts (in accordance with the order and procedures for resolution of administrative actions). According to the data and actual hearing records compiled

by the Office of the Supreme People's Court, from the date of establishment (1996) up to now, administrative courts of provinces and cities under central authority as well as the Administrative Court of the Supreme People's Court have neither processed nor heard any environment-related administrative proceedings. This has occurred because in accordance with Article 11 of the Ordinance on Resolution Procedures for Administrative Proceedings in Relation to the Environment, courts are only authorized for resolution of actions against decisions on penalties for administrative breaches, and other disputes are resolved by the way of complaint resolution.

Secondly, with respect to disputes claiming compensation for damage caused by environmental polluting acts (Group 2):

Most of the environmental disputes in this group are resolved by way of negotiation and conciliation with the participation of the body in charge of State administration of the environment as shown in the model below:



According to environmental management authorities, the application of the above model indicates the "preeminence" of the resolution of environment disputes with the participation of bodies in charge of State administration of the environment (mainly environment inspectors) as the conciliation intermediary. Environmental inspectors participate in the process of resolution of environment disputes as a specialized body for consideration and evaluation of the degree of environmental damage in term of pollution. It's also a key body for analysis and evaluation of legal evidence, recommending the bases for resolution and analyzing social relationships to enable the concerned parties to understand each other and voluntarily make compensation without referring the case to the court.

There are controversial opinions over whether environmental management bodies should participate and the degree of their participation in resolution of

environment disputes. However, up to now nearly 30 provinces and cities under central authority have applied this method for resolving successfully 51 cases of environment disputes of which the compensation amount is less than 50 million dong in 36 cases, from 50 million dong to 100 million dong: 1 case, from 100 million dong to 200 million dong: 5 cases, from 200 million dong to 500 million dong: 4 cases, from 500 million dong to one billion dong: 2 cases, and above one billion dong: 3 cases. Below are ten typical cases:

N o.	Organizations or individuals to make compensation	Compensation amount
1	Neptune Arics Sea-going Vessel (Singapore)	US\$ 4.2 million (60 billion dong)
2	Vedan Company	15 billion dong
3	Nghe An Non-ferrous Metals Company	508 million dong
4	The Hoa Weaving and Dyeing Company	430 million dong
5	Pouchen Company	360 million dong
6	Thai Binh Natural Gas Exploitation Company	336 million dong
7	Gemini Sea-going Vessel (Singapore)	250 million dong
8	La Nga Sugar Company	186 million dong
9	Bourbon Sugar Company	50 million dong
10	Daso Company	44 million dong

The above shows that resolution of environment disputes by way of referring to courts has not been chosen by disputing parties. This can be due to the following reasons: 1. Environment disputes are quite new in Vietnam so disputing parties are not very confident in courts for resolution of this type of disputes; 2. The concerned parties worry that resolution by courts is often time-consuming, having to go through first instance trial, appeal, judicial review procedures.

Thirdly, in almost all cases of disputes claiming for compensation for environmental damage which have been resolved, the compensation amount is only equal to 20 to 30 percent of the actual damage value and does not take into account any potential damage which the aggrieved party has not been able to quantify in full.

Fourthly, although most environment disputes have so far been resolved at the stage of negotiation and conciliation with the agreement by the concerned parties, it often takes a long time for the polluting party to fulfil the compensation obligation to the party suffering from damage. The reasons are that the compensation amount often exceeds the financial capability of the party causing damage, and minutes of successful conciliation often have low legal value.

Fifthly, the process to resolve environment disputes with a foreign element still has to cope with many difficulties, partly due to inconsistent interpretation and application of the provisions of substance laws (eg, inconsistent interpretation and application of the provisions on obligation to compensate for damage caused by environment polluting acts provided for in the Law on Protection of the Environment in 1993 and the Maritime Code in 1990). On the other hand, Vietnam's practical experience regarding this issue in the international arena is still limited.

Sixthly, although arbitration centres have been established in Vietnam, no environment disputes have been referred to these centres for resolution. The cause of this situation is that according to Decree 116 dated 5 September 1994 of the Government on Organization and Operation of Economic Arbitration, economic arbitration centres are not authorized to accept and resolve environment disputes.

4. Resolution of a Number of Specific Disputes

The first case: The request for compensation for environmental impacts by people of Nam Son, Bac Son, Hong Ky communes of Soc Son District, Hanoi City with respect to the implementation of the project for construction of the Nam Son solid waste treatment complex.

Pursuant to Decision 695-QD-TTg dated 10 August 1998 and Decision 605-QD-TTg dated 2 June 1999 of the Prime Minister of the Government on recovery of 83.3 hectares of land for construction of the Nam Son solid waste treatment complex, Hanoi People's Committee has assigned the implementation of this project to the Hanoi Transportation and Public Work Department. Upon being aware of the construction of the waste treatment complex, people of the three communes of Nam Son, Bac Son and Hong Ky submitted a request to Hanoi People's Committee that they be paid in advance an amount to compensate for the environment quality which would be declined due to the stink, fetidness and dust to be discharged from the waste treatment complex. It was clearly stated in the request of the people of the three above-mentioned communes that if their request is not satisfied, they will by all ways prevent the implementation of the project. Upon receipt of the request, Hanoi People's Committee assigned same to the Department of Science, Technology and Environment for consideration and resolution. The Department of Science, Technology and Environment of Hanoi carried out evaluation of the scope of environmental impacts by the project as the basis for the formulation of assistance plans for the households living in the area affected by the project in terms of the environment. The Director of the Department of Science, Technology and Environment sent Official Letter No. 1114/KHCNMT-QLMT dated 31 May 1999 to the Director of the Hanoi Transportation and Public Work Department, specifying the following two issues:

- The calculated radius of environmental impacts is 600m from the center of the landfill pit (under the current regulations, the landfill process involves compaction and covering with a layer of soil every 2 meters).

- This scope of impact will be revised and amended if results from environmental field observation conducted on a periodical basis indicate that there is a change in the scope of impact.

On the basis of the report from the Department of Science, Technology and Environment dated 9 August 1999, the Hanoi People's Committee issued Decision 3232/QDUB on approval of compensation policies for households residing within the scope of impact of the project for construction of the Nam Son solid waste treatment complex. Under this Decision, households residing 101 meters or more from the center of the landfill pit do not have to relocate their houses; and households residing within the range of 101 meters to 500 meters are entitled to a lump sum support for environmental impacts for a period of 20 years in proportion to the number of people of permanent residence as registered in the household status book at the time of formulating solutions for compensation. In particular:

- From 101 to 150 m: VND 40,000/person/month = VND 9,600,000/person/20 years
- From 151 to 300 m: VND 30,000/person/month = VND 7,200,000/person/20 years
- From 301 to 500 m: VND 25,000/person/month = 6,000,000/person/20 years.

These sums will be used by the local people to mitigate environmental impacts on their families such as planting trees around houses, installation of ventilating or deodorizing systems and so forth. Thanks to this Decision of the Hanoi People's Committee, the dispute between the local people and the Hanoi People's Committee was resolved. At present, the project works have been completed and put into operation. In order to prevent possible subsequent disputes, Hanoi Urban Environment Company has been actively seeking ways to work out efficient measures to minimize damage resulting from its operations.

The second case: Oil spillage caused by Neptune Arics Vessel at Cat Lai Port, Ho Chi Minh City.

At 1.30 pm on 13 October 1994, Neptune Arics Vessel of Singaporean nationality carrying 22,000 tons of DO oil collided with the pier when approaching the port of Cat Lai oil refinery plant, causing 1,600 tons of DO oil and 150 tons of petrol to spill into Sai Gon River. The contaminated area of oil spill expanded to the maximum of about 65,000 ha on the eighth day after the incident, of which 40,000 ha was heavily polluted. The content of oil in water was between twice and 300 times higher than the stipulated safety content. The incident caused enormous environmental damage, resulting in excessive deformity of the biological diversity (the oil spill caused immediate death to sensitive species and reduction of the number of zooplankton species by 50-60%), bringing about a change in the structure of aquatic flora and fauna (causing a loss of sensitive species and a structural change of dominant species), contaminating thousands of hectares of rice fields, (in heavily-polluted areas, rice plants died immediately, the rest died away due to rotten roots) and so forth.

Several days after the incident, as many as 1,500 statements of claims from organizations and individuals in Ho Chi Minh City and Dong Nai Province were lodged, claiming compensations for damage with the total value of up to 20 million US dollars.

On behalf of the local people, the People's Committee of Ho Chi Minh City initiated an action against the owner of Neptune Arics Vessel at the People's Court of Ho Chi Minh City.

With the assistance from the Ministry of Science, Technology and Environment, the Department of Environment, environment experts, lawyers home and abroad, the People's Committee of Ho Chi Minh City and people's committees of related districts made an overall assessment of damage resulting from the incident in the heavily-contaminated area, completed documentation and gathered necessary legal evidence in order to meet the requirements of the vessel-owner side (which are actually international insurance companies) for making compensation.

In the end, with goodwill and cooperation, particularly with the involvement of the Singapore Embassy, the two parties reached an agreement that the dispute would be resolved through amicable negotiation. On 14 December 1994, the chairman of the People's Committee of Ho Chi Minh City withdrew its statement of claim and issued an order to release the vessel. On 15 December 1994, seventy-three days after the occurrence of the incident, Neptune Arics Vessel left Sai Gon Port. The total value of compensation as agreed between the two parties was determined as follows:

Compensation was made on the basis of compensation for economic damage (in the immediate future, compensation was made for economic loss suffered by the local population), costs for operations relating to salvage and gathering of spilled oil, survey studies, technical and legal consultancy, environmental impact assessment and organization of environmental clean-up for production restoration. The total compensation value for the damage mentioned above was USD 4,200,000.

With respect to long-term effects, the ambassador of Singapore issued a written commitment on behalf of the Government of Singapore to consider and provide assistance to Ho Chi Minh City to deal with and overcome long-term consequences.

The third case: Pha Lai thermal power plant polluted the environment, damaging the health and assets of the residents of several districts in two provinces of Bac Ninh and Bac Giang

From late 1997 to early 1998, the Inspectorate of the Environment Bureau under the Ministry of Science, Technology and Environment received 18 letters from organizations and individuals of the two provinces of Bac Ninh and Bac Giang (the districts of Gia Luong, Que Vo and Yen Dung), requesting Pha Lai thermal power plant to compensate for damage to their health and production as a result of environment pollution produced from the operations of the plant over the past years. The total compensation for damage claimed was 22 billion Vietnamese dong.

On 27 March 1998, an inter-departmental environmental inspection team (headed by the Inspectorate of the Environment Bureau) conducted an extraordinary inspection of the plant to verify the truthfulness of the matters raised in such letter and came to the following conclusion:

- Pha Lai thermal power plant was designed, built and put into operation by the former Soviet Union at the end of 1983 with the total designed capacity of 440 MW (comprising 4 turbines with a capacity of 110 MW each, 8 boilers with a capacity of 220T/h, the annual electricity output of 2,86 Kwh, the annual coal volume consumed being 1,568 million tons, the chimney being 200m high with a diameter of 8m). The plant made an environment impact assessment report which was approved by the Ministry of Science, Technology and Environment in its Decision No. 1980/QD-MTg dated 20 August 1996 on the condition that a system for treatment of dust and waste gases had to be installed in accordance with technical requirements. However, the plant had overhauled only four out of its eight electrostatic filters of the system for treatment of waste gas from boilers, therefore the working efficiency was not as expected and the amount of smoke, dust and waste gas exceeded permissible levels. The inspection team decided to impose administrative penalties on the plant for its failure to comply satisfactorily with the requirements set out in the Decision on environment impact assessment report.
- The inspection team affirmed that the contents of the complaints were true. Waste smoke and dust produced by the plant was the major cause to the reduction of productivity and output of crops and livestock, specifically, causing withering leaves and falling flowers in rice crops and longan trees (in the areas opposite the plant), harm to the health of the local people such as a rapid increase of respiratory problems and sore eyes and so forth.

Since the dispute was quite complicated, involving various peoples and localities, the Inspectorate of the Environment Bureau and competent bodies convened a number of meeting sessions (5 sessions in the months of March, May, June, September and December of 1998 with the participation of the representatives from affected regions, representatives of the Department of Science, Technology and Environment, representatives of the Electricity of Vietnam and Pha Lai thermal power plant and so on) in order to make a joint effort to define the range of pollution-affected area, extent of environmental pollution as the basis for formulation of principles and solutions to resolve the dispute. Accordingly, in the intermediate future, the plant was responsible to compensate for the damage it caused in terms of human health and production to the people of three communes of Chau Phong, Duc Phong, and Phu Lang of Que Vo District (these communes are located to the northwest of the plant, between 1 and 6 kilometers from the plant and constantly exposed to coal dust coming in the southeast wind direction). The amount of compensations was as mutually agreed by the two parties in a meeting presided over by the People's Committee of Que Vo District with the participation of representatives of the Departments of Science, Technology and Environment of the provinces of Hai Duong and Bac Ninh.

Due to the extensive scope of impact, determination of the value of damages faced many difficulties. The Inspectorate of the Environmental Bureau provided guidance to localities on use of statistical methods combined with comparative and control selection among polluted and unpolluted communes in the years of pollution and years of no pollution. The People's Committee of Que Vo District provided data and statistics on damage (on the basis of statistical documents on agriculture and health in three years 1995, 1996 and 1997 and use of comparison methods among the three

communes mentioned above and the other 21 communes in the district which were insignificantly exposed to environmental pollution)

Subsequently, the affected communes and the plant worked together to reach a mutual agreement on a reasonable amount of compensation. The people in the affected area requested that the plant should build several works for public purposes for the three communes such as schools, safe water supply system, medical clinic and so on, and such request was accepted by Electricity of Vietnam (EVN). EVN and the plant cooperated with relevant bodies to carry out disbursement and transfer of the compensation funds of 900 million Dong (300 million/each commune) to the communes mentioned above. In addition, the plant also had to spend a significant sum on purchase and repairs of equipment for dust filtering and treatment of sewage and so on. The environmental conditions of the surrounding region have been, therefore, remarkably improved.

Part One	Overview of the Dispute Resolution Mechanisms in Vietnam	1
I.	Court System in Vietnam	1
1.	Organization of the Court System	1
2.	Judges: Mechanism for training and appointing.....	3
2.1.	Development of training judges	3
2.2.	Mechanism for appointing judges	5
a.	Standards for Judges of every levels:	5
b.	The selection and appointment of fudges at every level:	6
3.	The fact of judicial activities of the court system over the last years:	7
3.1.	Criminal trial:	8
3.2.	In respect of civil, family and marriage cases	12
3.3.	In respect of economic cases	14
3.4.	In respect of labour cases.....	14
3.5.	In respect of administrative cases.....	16
3.6.	Brief remarks on judgment activities of the court system over last few years	17
3.7.	Orientation and solutions to reform organization and operation of the court system in out country.....	19
II.	ALTERNATIVE DISPUTE RESOLUTION IN VIETNAM: TYPES AND FUNCTIONS.....	21
1.	Overview	21
2.	Forms of business dispute resolution.....	23
2.1.	Negotiation	23
2.2.	Conciliation	24
2.3.	Arbitration	27
2.4.	Dispute settlement through the court system.....	29
3.	A brief history of the development of business dispute resolution laws and practices in Vietnam	31
III.	CURRENT PRACTICES OF ARBITRAL RESOLUTION OF BUSINESS DISPUTES IN VIETNAM.....	35
1.	Resolution of business disputes through the Vietnam International Arbitration Centre (VIAC).....	35
1.1.	Jurisdiction of the VIAC	35
1.2.	Selection of arbitrator(s).....	36
1.3.	Procedures for dispute settlement.....	36
1.4.	Arbitral awards	37
2.	Resolution of business disputes through economic centres established under Decree No. 116/CP dated 5 September 1994 of the Government.	38
2.1.	Jurisdiction	38
2.2.	Selection of arbitrators	39
2.3.	Procedures	39
2.4.	Arbitral decision	40
IV.	RESOLUTION OF BUSINESS DISPUTES THROUGH THE COURT SYSTEM	42
1.	Jurisdiction of the people’s courts over economic disputes	42
2.	Underlying principles of economic proceedings	45
2.1.	Self-determination and conciliation by parties concerned	45
2.2.	Equality before the law.....	46
2.3.	Court rulings are not based on investigations but on a verification and gathering of evidence.....	46
2.4.	Prompt and swift resolution of the case	46

3.	Procedures for settlement of economic cases	47
3.1.	Time limit for taking actions	47
3.2.	Procedures for first instance settlement of an economic case	47
3.2.1.	Initiation and registration of a lawsuit	47
3.2.2.	Preparation for trial.....	48
3.2.3.	First instance court session	50
3.3.	Appellate procedures	52
3.3.	Reviewing procedures	53
3.4.	Retrying procedures.....	54
V.	PROCEDURES FOR RECOGNISING AND ENFORCING FOREIGN ARBITRAL AWARDS IN VIETNAM.....	55
1.	1958 New York Convention and Vietnam’s accession.....	55
2.	Procedures for recognising and enforcing foreign arbitral awards.....	57
2.1.	Foreign arbitral awards.....	57
2.2.	Procedures for recognition and enforcement.....	58
2.2.1.	Acceptance and registration of the application.....	58
2.2.2.	Adjudication of the application	59
2.2.3.	Enforcement of foreign arbitral awards.....	59
2.2.4.	Non-recognition of foreign arbitral awards in Vietnam	60
PART TWO	STUDY ON DISPUTE RESOLUTION PROCESS IN SPECIFIC CASE.....	61
I.	Dispute Resolution in Consumer Protection	61
1.	Concept of Consumer	61
2	Rights of Consumer	62
3.	Mechanism in Consumer Protection	71
3.1	Responsibilities and measures undertaken by the State	71
a)	Issuance and implementation of laws, policies on consumer protection	71
b)	The State is responsible for issuing and implementing standards on safety and quality; examining and inspecting goods and services; inspecting and correcting measuring tools and equipment in order to ensure proper measuring activities.	74
c)	Ensuring correct advertisement on goods and services	76
d)	Dealing with complaints of consumers and penalties:	78
e)	Propagating and training consumers	78
f)	The State authorities should provide applicable measures to gather, synthesize, and deal with consumers’ opinions in the process of making and implementing consumer-related regulations and policies	79
g)	Business organizations and individuals must ensure true information, price quotation, publication of place, time and terms of guarantee, usage of goods and services in labels, information and advertisement in order to avoid mistakes and difficulties to consumers in selection, purchase and use of goods and services.	79
h)	Business organization and individuals must effectively and reasonably deal with complaints and claims for compensation of consumers due to unsatisfied goods and services.....	80
i)	Gathering consumer’s opinions	80
3.2	Responsibilities and measures undertaken by social organizations, public associations.....	81
a)	Supervising activities taken by the State, business organizations and individuals in resolution of consumers’ claims and disputes	81
b)	Propagating knowledge and training consumers	82

c)	Gathering opinions and comments of all members	82
3.3	Responsibilities and measures undertaken by consumers	83
a)	Consumers participate actively into preparing and implementing policies and regulations on consumer protection	83
b)	Consumers participate into Consumer Protection Organization	83
II.	Procedures for Settlement of Labour Disputes	85
1.	Types of labour disputes	85
2.	Causes of labour disputes	86
3.	Labour dispute settlement organisations	87
3.1	Labour conciliation at grass-root level	89
3.2	Provincial labour arbitration councils	91
3.3	Roadmap of a labour dispute settlement from the occurrence of the dispute to the end of the dispute settlement	93
4.	Choice of dispute settlement channels by the parties concerned	94
5.	Case studies	96
5.1	Labour dispute over unilateral termination of labour contracts	96
5.2	Labour disputes over payment of compensation for working accidents	96
III.	Resolution of Environment Disputes in Vietnam	101
1.	General Overview of Environment Disputes in Vietnam	101
1.1	General Comments:	101
1.2	Typical signs of environment disputes:	101
1.3	Classification of environment disputes:	103
2.	MECHANISM FOR RESOLUTION OF ENVIRONMENT DISPUTES ...	105
2.1.	Mechanism for resolution of environment-related administrative disputes (group 1)	105
2.2.	Mechanism for resolution of environment disputes between organisations and individuals (group 2)	107
a)	Mechanism for resolution of requests to cease environment polluting acts	107
b)	Mechanism for resolution of claims for compensation for damage caused by environment-polluting acts	108
3.	OVERVIEW ON THE PRACTICE OF RESOLUTION OF ENVIRONMENT DISPUTES IN VIETNAM	115
4.	RESOLUTION OF A NUMBER OF SPECIFIC DISPUTES	118

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