

ONLINE ARBITRATION UNDER VIETNAMESE LAW

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In Vietnam, the implementation of national digital transformation has been a strongly promoted initiative by the government. Especially, following the COVID-19 pandemic, online transactions have been robustly deployed and have gradually become a prevailing trend. Similar to traditional transactions, electronic transactions require certain elements to ensure their formation and performance, an effective dispute resolution mechanism must be established to address potential issues that may arise along the way. Online dispute resolution methods, including online arbitration, will serve as a suitable mechanism for resolving disputes.

1. Definition of Online Arbitration

In essence, Online Dispute Resolution (“**ODR**”) involves utilizing traditional dispute resolution methods combined with digital technology and tools to conduct various stages of the dispute resolution process. ODR can be carried out through various methods such as negotiation, mediation, arbitration, and court proceedings. Thus, the concept of online arbitration refers to resolving disputes through arbitration, where part or all of the process is conducted via online mechanisms such as the Internet or other technological platforms that enable virtual information exchanges, without requiring the parties to be physically present in a specific venue.

2. Online Arbitration under Vietnamese Law

The Law on Commercial Arbitration 2010 does not specifically address the procedures for conducting online arbitration. Therefore, in essence, the regulations governing online arbitration are applied similarly to traditional arbitration and in accordance with the rules of

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arbitration established by arbitration centers. However, given the nature of online arbitration, where disputes are resolved in cyberspace, there are some differences compared to traditional arbitration in terms of execution methods and the legality of online arbitration procedures.

2.1. Types of Disputes Resolved Through Online Arbitration

The Law on Commercial Arbitration 2010 does not provide any provisions regarding the types of disputes that can be resolved through online arbitration. Instead, these specifics are outlined in the arbitration rules of each arbitration center. Based on the regulations regarding the types of disputes resolved through online arbitration at the Hanoi International Arbitration Center (“**HIAC**”), these disputes generally exhibit the following characteristics:

- Online arbitration is not limited to resolving online disputes; it can also be applied to offline disputes - those arising from transactions not conducted via the internet.
- It is suitable for disputes where the parties are either unable, restricted, or unwilling to meet in person.
- It involves disputes of relatively low value; the circumstances and nature of the disputes are straightforward or clear materials and evidence.

2.2. Forms of Arbitration Agreement

According to Article 16.2(a) of the Law on Commercial Arbitration 2010, arbitration agreements must be established in writing. Such agreements may be made through communication between the parties by telegram, fax, telex, email or other forms as prescribed by law, all of which are considered to be in written form. Although there

are no specific provisions regarding the form of online arbitration agreements, the regulations governing traditional arbitration agreements recognize equivalent written forms, such as electronic messages, thereby providing a legal basis for the performance of online arbitration agreements.

2.3. Request for Arbitration and Electronic Materials and Evidence

Due to the unique nature of online arbitration, the submission of requests for arbitration and evidence is typically conducted through electronic means. The Law on Commercial Arbitration 2010 does not specify the submission of request for arbitration and evidence via electronic methods, only stating that arbitration centers or councils may notify the parties through electronic means. Consequently, whether parties can submit electronic filings to an arbitration center depends entirely on whether the center accepts such submissions and has established a receiving system.

In practice, arbitration centers in Vietnam have begun establishing systems for receiving electronic submissions. A prime example is the VIAC eCase platform developed by the Vietnam International Arbitration Centre ("**VIAC**"). This platform offers key features such as electronic filing and document management, case tracking, notifications of important developments in disputes, and deadline reminders for document submissions.

In addition, the validity of electronic documents and evidence provided in online arbitration is a critical issue. Vietnamese law has recognized the legality of electronic evidence. Articles 94 and 95 of the Civil Procedure Code 2015 have included "electronic data" as admissible evidence that can be collected. Furthermore, the Law on Electronic Transactions 2023 affirms that data messages in the form of electronic data exchange have the same validity as written documents. Therefore, submitting evidence when using online

arbitration methods is feasible. However, there is currently no mandatory regulation for the authentication of electronic data. This lack of regulation can pose challenges for parties in providing electronic evidence that may require authentication.

2.4. Dispute Resolution Meetings

Currently, the regulations on dispute resolution meetings do not specify the formality of these meetings, instead granting arbitration centers the authority to establish procedures in their rules of arbitration. Presently, some arbitration centers, such as VIAC, have included provisions for conducting online dispute resolution hearings through various formats like teleconference, videoconference, or other appropriate methods. The rules of the HIAC, for instance, stipulate that the arbitral tribunal may conduct meetings to resolve disputes in an online format through the HIAC's official website.

2.5. Seat of Arbitration

Article 3.8 of the Law on Commercial Arbitration 2010 stipulates that the seat of arbitration means “a place in which an arbitration tribunal resolves the dispute which is selected as agreed by the parties or as decided by the arbitration tribunal if the parties have no such agreement. If a seat is within the Vietnamese territory, the award must be regarded as having been awarded in Vietnam regardless of the place in which the arbitration council holds a meeting to issue such an award”. This provision implies that online arbitration is inherently linked to a specific “geographical venue”. However, online arbitration proceedings are conducted in cyberspace, with the arbitral tribunal and disputing parties not meeting in a physically defined geographical venue. Since the determination of the seat of arbitration is directly related to the validity of the arbitration award, this provision could pose a risk of the award being denied recognition

and enforcement in Vietnam or being annulled due to violations in arbitration procedures.

2.6. Online Arbitration Award

Vietnamese law stipulates that the form of an arbitration award must be in writing and signed by the arbitrator(s). With the recognition of the legitimacy of electronic messages and electronic signatures, the form of online arbitration awards can be considered as an “electronic award” meaning it is displayed in an electronic format with an electronic signature. However, current legislation does not clarify whether electronic awards are recognized as original documents or if electronic signatures can substitute for traditional signatures. To mitigate the risks regarding the legality of electronic awards, the arbitration council may issue a written award with valid signatures, similar to traditional arbitration awards, and subsequently scan this document to store it in electronic format.

In summary, while online arbitration is supported by Vietnam's legal framework, certain gaps and ambiguities remain. The ongoing development of arbitration center rules and technological infrastructure will be essential in addressing these issues, ensuring that online arbitration can be effectively implemented and recognized within the Vietnamese legal system.