

# Enforcement of International Court of Arbitration in Maritime Field in Vietnam

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## ABSTRACT

Time is a key issue in maritime disputes, especially for goods that may quickly deteriorate or deteriorate and because of the possibility of having to pay a late discharge due to the ship's arrival being slower than expected. National courts are often unsuitable for the quick resolution of such disputes, so arbitral tribunals are often preferably selected to resolve maritime disputes. Within the scope of the article, the author generalizes the basic theories about maritime arbitration, the situation of settlement, enforcement of arbitral awards in Vietnam, the causes and solutions to enhance the role of arbitration through the verdict.

**Keywords:** *arbitration, judgment, enforcement, maritime, Vietnam*

## 1. INTRODUCTION

Vietnam is a coastal country with a fairly long coastline: 3260 km, Vietnam's import and export goods are transported by sea, accounting for over 90% of total import and export goods, more than 108 major seaports, small was built, with 23,335m bridge. The activities of marine exploitation and use in maritime development are more and more diversified and diversified with specific characteristics, requiring adjustment by separate procedural rules.

The law on settlement of maritime disputes is a combination of methods and methods prescribed by domestic law and international treaties applied to resolve conflicts, conflicts and disagreements on interests between the parties. to protect the legal rights and interests of individuals, legal entities, the State and other entities. The methods used to resolve current maritime disputes include: negotiation, conciliation, arbitration and court.

The settlement of disputes by arbitration has existed for a long time and is favored by developed countries and widely used in international trade transactions. For example, England is the country that applies unwritten laws that have enacted three laws on arbitration. The first permanent arbitration institutions formed in the UK. In France, a prestigious arbitral tribunal in the world business world is located at the International Chamber of Commerce in Paris.

The resolution of maritime disputes by the mode of arbitration in Vietnam has not been selected much, due to many limitations, especially in the enforcement of arbitral awards. Therefore, large and synchronous solutions are needed to enhance the role of arbitration through judgments

## 2. SETTLEMENT OF MARITIME DISPUTES BY ARBITRATION

There are many different views of scientific researchers when discussing the concept of arbitration. Such as according to Professor Ph. Fouchar (University of Paris II): "Arbitration is a method of resolving disputes, whereby the parties agree to give an individual (arbitrator) the authority to resolve disputes arising between them" . Referee, according to the law dictionary Black "s do West. Pu.CO, published in 1991 (Black "s Law Dictionary), is a process of resolving disputes voluntarily selected by the parties, in which neutral third parties (arbitrators) after listening to the parties will making a binding decision on disputes.

As can be seen, arbitration is a method of resolving disputes outside the court, whereby the parties agree, choose to bring the dispute to a neutral third person for settlement.

Arbitration is a form of dispute resolution that combines the advantages of negotiation, mediation and court, so it is very suitable for resolving disputes in general and maritime disputes. Particularly especially in maritime trade. Compared to the method of negotiation, mediation and court, the arbitration procedure is a method of resolving disputes with many advantages:

Firstly, the arbitration procedure is simple and fast so the disputing parties do not spend much time and money. The arbitration award is valid for judgment, so it does not have to go to court according to the appellate procedure, making the settlement of disputes quickly and timely, without disrupting the business activities of the parties. Features have many preeminent features than the court settlement method. This is because, in maritime disputes, especially in trade-related disputes such as the transportation of goods, the issue of time is extremely important, and goods may be quickly damaged or damaged. If the goods are

unloaded later than the scheduled time, the ship-owner may be subject to a penalty for storage due to overdue storage. Normally, judicial courts of the State are not suitable for quickly settling these disputes because complicated judicial procedures take a long time, leading to delayed settlement despite court intervention. The judgment is extremely necessary when temporary emergency measures such as preventing one party from dispersing or arresting the ship are necessary.

Secondly: Dispute parties have the ability to influence the arbitration process; control the supply of evidence and this helps the parties to keep their business secrets.

Thirdly, the ability to appoint an arbitrator to set up an Arbitration Council to solve cases helps the parties to select good and experienced arbitrators, who have a deep understanding of the dispute so that they can solve it. Fast, accurate.

Fourthly: The principle of arbitration without public trial helps the parties limit the disclosure of business secrets, and maintain the reputation of the parties in the marketplace.

Fifthly: The arbitration fee is usually lower than the court fee.

Sixthly: Arbitration does not represent the judicial power of the State, so very suitable for maritime disputes involving foreign elements.

However, the resolution of disputes by arbitration procedure also reveals certain limitations. Because the Arbitration Center does not represent State power, the enforcement of arbitral awards is not high. In many cases, the implementation of arbitral awards depends entirely on the willingness of the parties to the dispute.

In fact, many of the Arbitrator's rulings are voluntarily enforced by the parties, but sometimes the losing party deferred execution or deliberately failed to enforce the judgment. In that case, the winning party must go through the court of the losing country to ensure the arbitration's judgment is enforced. The prevailing party must make an application to enforce the award of the arbitration together with that decision and send it to the court of the losing party to ask the court to intervene in the judgment being executed. The court of the losing party will consider the request and may issue an order to enforce the arbitral award sent to the losing party for its execution. If the losing party still fails to comply, the enforcement procedure will apply. When considering to issue an order to enforce an arbitral award, the court may rely on a relevant international treaty between the two countries or on its own law without the relevant international treaty, which is the Convention. New York, 1958 on the recognition and enforcement of foreign arbitral awards, the 1961 European Convention on Commercial Arbitration. In addition, the enforcement of arbitral awards is stipulated in maritime trade treaties and trade agreements.

Regarding the validity of arbitral awards: Currently, countries in the world are divided into two views. In some countries, the arbitration award is valid as a court judgment or decision and is enforced; in other countries, the arbitral award is not considered the judgment or

decision of a court judgment and no enforcement measures.

### **3. RESTRICTIONS IN VIETNAMESE LAW ON THE SETTLEMENT OF MARITIME DISPUTES BY ARBITRATION**

Although the Arbitration law, particularly the 2003 Commercial Arbitration Ordinance, contains many new points, which actively contribute to protecting the legitimate rights and interests of the parties in maritime disputes. However, in this Ordinance itself has also revealed a number of indispensable limitations not mentioned below:

Restrictions on the jurisdiction of arbitration: The jurisdiction of arbitration under the provisions of the Ordinance is mainly disputes arising from commercial legal relations, which are related to goods law relations, maritime disputes such as disputes arising from contracts of carriage of goods by sea, disputes arising from maritime insurance relations, disputes arising from charter parties, from agency contracts and ship brokers... Meanwhile, according to the provisions of the Maritime Code, the maritime disputes not only arise from activities of transporting goods, passengers, activities of exploiting and using seaports but also arising from relations. possession of property such as a ship's lien, lien, mortgage or arrest of the ship or paintings Hamlets related to the division of rescue remuneration between the owner of the rescue ship and the crew of the rescue ship; salvage sunken property; disputes related to general average, to compensation for damage to persons, cargo and ship in ship collision accident; disputes over pilots, disputes related to expenses for lifting, moving, salvaging, destroying or harming wrecks of shipwrecked, sunk, stranded or abandoned ..., tonnage charges , other seaport charges and fees; disputes related to salaries and other payables to crew members, captains, officers, etc. The above-mentioned disputes are mainly those related to civil law relations. The question is whether the arbitrator has jurisdiction over maritime disputes related to civil matters or labor? While the Arbitration Ordinance only stipulates the jurisdiction of arbitration in the field of commerce, although this provision of jurisdiction is much wider than 14 commercial acts under the Vietnam Commercial Law 1997 but According to maritime law, this is too narrow, not covering all other maritime legal relations. Not only that, the invisible intangible has hindered the right of the parties to decide freely in the choice of settlement methods. In fact, if the litigants want to choose the Arbitrator to resolve the dispute arising between them to save time and effort, it will not affect their business relationship compared to initiating a lawsuit to the Court, What legal basis will they base when the dispute between them is not under the jurisdiction of the Arbitration? Obviously, this provision is in conflict with the provisions on agreement and selection of the parties in Article 4, Article 241 and 242 of the Maritime Code. In this regard, the law of some countries

in the world stipulates that the Arbitration is very wide, the Arbitration has jurisdiction to resolve all disputes related to all fields such as commerce, civil, economic ... except those If the arbitrator is not allowed to resolve the law, the Arbitration law in these countries does not list the cases adjudicated by the Arbitration as the Law of Vietnam but only the cases not resolved by Arbitration.

On the other hand, the above provisions on jurisdiction of Arbitration under the Ordinance on Vietnamese Commercial Arbitration also affect the issue of recognition and enforcement in Vietnam of foreign arbitral awards. The Vietnam Civil Procedure Code 2004 stipulates one of the cases of non-recognition and enforcement in Vietnam of a foreign arbitral award if, according to Vietnamese law, the dispute cannot be resolved in a formal manner. arbitration. This means that if the dispute is not prescribed by Vietnamese law under the jurisdiction of the Arbitration, the Vietnamese Court will not recognize and enforce the decision of the Foreign Arbitration. Therefore, if according to the above provisions, the Vietnamese Court will only recognize and enforce the foreign arbitral award for the dispute if the dispute is a commercial dispute resolved by the arbitration method according to Ordinance on Vietnamese Commercial Arbitration, disputes related to other fields such as maritime, civil or labor which have been resolved by foreign arbitration will not be recognized and allowed for examination in Vietnam. (except for cases recognized on the basis of the principle of reciprocity prescribed in Clause 3, Article 343 of the Civil Procedure Code). With the above provision, it will not guarantee the lawful rights and interests of the litigants, especially the litigants being Vietnamese individuals and organizations whose interests are violated when the dispute is not under the jurisdiction of the Arbitration. What legal basis will they base on to request Vietnamese judgment enforcement agencies to enforce the foreign arbitral awards in order to protect their rights?

Restrictions on Arbitration: The Ordinance on Commercial Arbitration in 2003 stipulates that Arbitrators should have full civil act capacity; have good moral qualities, impartial and impartial honesty; have a university degree, have passed the practical work in the field studied for 5 years or more. However, the application of these regulations in practice is somewhat limited. To resolve the dispute, the parties have very high freedom of disposition, including the right to select arbitrators. Therefore, the standards of arbitrators should be consistent with the practical requirements and especially the requirements of the parties to the dispute. The arbitrator resolves disputes with the aim of being quick, inexpensive and maintaining relations between the parties. Thus, the position of the arbitrator is determined by market demand and the selection is made by the parties to the dispute because they pay the arbitrators themselves. The above provisions have somewhat restricted the right of the involved parties to choose. The laws of many countries regulate the selection of arbitrators on a large scale, in principle any individual can be appointed as Arbitrator. Impartiality and objectivity are the top criteria of arbitrators (Article 10 of the

UNCITRAL Arbitration Rules; Article 6 Arbitration Rules of the European Community Economic Commission).

#### **4. PRACTICING SETTLEMENT AND ENFORCEMENT OF MARITIME ARBITRATION AWARDS IN VIETNAM**

Survey of dispute resolution activities of non-governmental Arbitration centers in our country shows that the number of maritime disputes resolved by arbitration procedures is not much. According to the report of the Vietnam International Arbitration Center (VIAC), since its inception, Vietnam International Arbitration has tried 20 cases per year, of which half of them are resolved through negotiation. conciliation. The 2016 operation report and the 2017 plan of the Vietnam International Arbitration Center showed that in 2016, the Vietnam International Arbitration Center handled 26 cases, an increase of 85.7% compared to the year. 2015 (14 cases), 62.5% compared to 2014 (16 cases), 85.7% compared to 2013 (14 cases) and 23.8% compared to 2012 (21 cases). Of the 26 lawsuits filed in 2016, the number of disputes involving foreign elements was 18, accounting for 69%, the number of domestic disputes including joint-venture disputes was 8 (accounting for 31%). . The main types of disputes are goods purchase and sale contracts, accounting for 69.2% (18vents), technical equipment lease contracts (2 cases), construction contracts (1 case), house lease contracts (1 case). ), distribution contracts (1 case), business cooperation contracts (1 service), processing contracts (1 case), transportation contracts (1 case). The parties to the dispute include South Korea, Sigapore, Spain, Hong Kong, etc., these disputes are mainly disputes involving foreign elements, of which 15 cases were foreigner defendants (83%).

It is noteworthy that compared to 2015 and previous years, the number of disputes brought to Vietnam International Arbitration Center has increased steadily both disputes involving foreign elements and domestic disputes. In particular, the number of domestic disputes accounted for 31%, while the number of domestic disputes accounted for less than 10% of the previous years. This is a new phenomenon appearing since the Center was approved by the Prime Minister to expand the authority to resolve domestic disputes from 1996 to the present. This shows that domestic businesses have begun to get acquainted and have a positive awareness of resolving disputes by arbitration.

However, in the business and commercial disputes that the Arbitration settled from 1999 to 2016, maritime disputes accounted for a very small proportion, these maritime disputes were mainly disputes related to goods transportation. goods, not paying freight; unable to prepare cargo ships; not paying for old ship fee ... Thus, it shows that the arbitration mechanism for maritime disputes in our country is not really popular, has not created trust for businesses and individuals in choosing. choose this mechanism to resolve maritime disputes while in reality,

maritime disputes are taking place more and more, diverse but also very complicated.

From the actual operation process at the Vietnam International Arbitration Center, there may be a number of reasons leading to the fact that Vietnam's arbitration has not really developed:

The Ordinance on Commercial Arbitration has just been issued, so it has not gained much attention or been known to many businesses. The propaganda has not been conducted regularly on a large scale.

Due to previous arbitration activities, there were too many inadequacies, especially the arbitration decision was not enforced, there was no enforcement mechanism.

The business does not trust and choose the arbitrator. Although the Ordinance has been issued but has not really changed the perception of businesses. Enterprises are still hesitant, reserved and not yet confident in the mechanism of dispute resolution by arbitration. Therefore, more time is needed to change corporate perceptions. In addition, the mechanism for canceling the Arbitration Decision without adequate explanation or propagation may cause bad influence on the arbitration's activities. According to the provisions of the Ordinance, there are only 6 bases to cancel the judgment. However, there are currently cases where the losing parties have abused the provisions of the Ordinance to make a request for the court to cancel the arbitration's decision. Up to now, the Hanoi City People's Court has accepted 3 decisions to cancel the arbitration decision of the Center, including 1 case of cancellation of the arbitration decision, 1 case of dismissal request, 1 The case is being resolved.

Arbitration team is limited in number and experience. The arbitrators are concurrently, limited in time to invest in arbitration, weak in foreign languages, deviating in composition (mostly jurists), the number of

The arbitrator with too little expertise in maritime law and international law is too few. Arbitrator's understanding of maritime laws is limited.

The fact that through the trials of disputes occurring in maritime activities under arbitration procedures in recent years, it shows that the understanding and application of maritime law by the arbitration team in trials are still weak, arbitrary.

## **5. PERFECTING THE LAW ON SETTLEMENT OF MARITIME DISPUTES BY ARBITRATION**

Firstly, from the perspective of maritime law, the jurisdiction of arbitration as stipulated by the Ordinance on Commercial Arbitration 2003 is too narrow compared to maritime activities specified in the Vietnam Maritime Code and the actual There are no legal documents guiding this issue yet. Therefore, the arbitration law needs to supplement the jurisdiction of dispute settlement of arbitration in the maritime field as a legal basis for the

dispute settlement activities of our country's judicial agencies.

Secondly, the fact shows that the quantity and quality of Vietnamese arbitrators are limited, and there are still many arbitrators with expertise in the field of maritime. In order to overcome this limitation, it is necessary to establish Vietnam Maritime Arbitration Court under the Vietnam International Arbitration Center similar to the London Maritime Arbitration Court. This Arbitration Organization specializes in resolving disputes arising in the maritime field. This organization will be a venue for the gathering of highly qualified arbitrators, with in-depth knowledge in the maritime field. The establishment of Vietnam Maritime Arbitration Court is an objective indispensable to the current situation of domestic maritime dispute resolution and the trend of international integration of our country today.

In order to effectively implement the above solution, it is necessary to standardize the standards of arbitrators in the direction of expanding the object to become an arbitrator. Arbitrators are the central figure of the arbitration institution and are an important guarantee for the success of arbitration. Experience from other countries shows that it is advisable to expand the scope of those who can become arbitrators and the arbitrator should not become a regular profession. Any person who has professional experience and meets the ethical standards required by law can become an arbitrator if appointed or invited. Besides the team of arbitrators who are Vietnamese citizens, perhaps the foreign arbitrators should be allowed to practice in Vietnam. This will contribute to the development of international trade relations. On the other hand, should create the most favorable conditions for Vietnamese arbitrators to participate in arbitration activities abroad. This will motivate Vietnamese referees to improve themselves, improve their knowledge and learn from international experience, so that arbitration activities become better and better.

Thirdly, although the Ordinance on Commercial Arbitration, issued in 2003, has not been widely disseminated among the people and enterprises because the propagation and dissemination of the law has not been regular and effective. Therefore, it is necessary to strengthen the propaganda and dissemination of the arbitration law on a regular basis, take appropriate and effective legal propaganda measures, diversify the forms of law propagation and dissemination in order to bring The arbitration law reaches every citizen in the most timely manner.

## 6. CONCLUSION

All recommendations on solutions to perfect the arbitration institution mentioned above can only be implemented when we develop and issue a unified legal document on Arbitration, if there is only one Ordinance of Commercial Arbitration. The current trade is not enough, it does not cover all disputes that need to be resolved by arbitration including maritime disputes. Therefore, it is necessary to quickly enact such an Arbitration law in order to overcome the limitations and shortcomings in the current mechanism of dispute settlement by arbitration.

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