



LEGAL UPDATE

NOTABLE PROPOSALS IN THE DRAFT LAW AMENDING AND SUPPLEMENTING THE LAW ON COMMERCIAL ARBITRATION

Legislators and arbitration practitioners have reached broad consensus on the need to revise Law on Commercial Arbitration No. 54/2010/QH12 of Vietnam (“**LCA**”) to address practical limitations and align the country’s arbitration framework with international standards. In June 2024, the Vietnam Lawyers’ Association, as the agency tasked with leading the drafting process, submitted Proposal No. 186/TTr-HLGVN to the Government, setting out the plan for revising several provisions of the LCA, together with the Draft Law amending and supplementing a number of articles of the LCA (“**Draft Law**”). The proposed amendments, expected to be presented to the National Assembly for discussion and approval by the end of 2025, seek to broaden the scope of arbitrable disputes, refine arbitral procedures, enhance arbitral tribunals’ powers, and strengthen the enforceability of arbitral awards while reducing the risk of annulment. This update highlights notable features of the proposed reform.

1. Agreements to Waive the Right to Request Annulment of an Arbitral Award

In the Draft Law, Article 69.3 is added to allow parties in an arbitration dispute to agree to waive their right to request a competent Vietnamese court to annul the arbitral award.

This mechanism is already recognised under Vietnamese law by Resolution No. 222/2025/QH15 of the National Assembly of Vietnam on establishing the International Financial Center (IFC) in Vietnam.¹ Under Article 30.3 of the Resolution, in disputes between IFC’s members or between IFC’s members and external investors relating to investment and business activities at the IFC, which fall under the jurisdiction of the arbitral tribunal of the International Arbitration Center at the IFC, the parties may agree in writing to waive the right to request annulment of the arbitral award.

Several jurisdictions permit parties to waive their right to challenge arbitral awards. For example, Swiss and Belgian arbitration laws allow foreign parties to agree to exclude the right to challenge the arbitration award. Under French international arbitration law, any party may waive all grounds for setting aside an award. In Germany, parties may generally waive their rights to request annulment for specific grounds, provided those grounds are not intended to protect public or third-party interests.²

From the Vietnamese legal perspective, recognising the validity of the parties’ agreements waiving rights to request annulment of the arbitral award will align with the principle of Civil Code No. 91/2015/QH13 of Vietnam (“**Civil Code**”) that parties are free to agree on matters not prohibited by law. Since the right to seek annulment is a right - not an obligation - parties should be permitted to renounce it, provided that no third-party or public interests are adversely affected. Adopting this mechanism would facilitate the timely issuance of a final, enforceable arbitral award and safeguard the confidentiality of arbitration.

To demonstrate a strong commitment to upholding party autonomy and to align Vietnam’s arbitration framework with international commercial arbitration standards, Vietnam may consider formally recognising parties’ agreements to waive the right to seek annulment of arbitral awards, subject to safeguards ensuring that the arbitral award does not infringe upon third-party rights or public interests. Restricting the waiver to only disputes where all parties are foreign may also merit consideration.

2. Emergency Arbitrator

The Draft Law proposes adding Article 49(a) regarding an emergency arbitrator to address situations where interim relief is sought before the arbitral tribunal is constituted. In

¹ Resolution No. 222/2025/QH15 will take effect on 1 September 2025.

² Gary B Born, *International Commercial Arbitration* (Wolters Kluwer, 3rd edn)



practice, the tribunal formation can take time, during which a party may face irreparable harm if urgent measures are not granted. The proposed provision would permit the immediate appointment of an emergency arbitrator upon receipt of an application for interim measures. The emergency arbitrator's mandate would be strictly limited to deciding on such interim relief and would not extend to the merits of the dispute.

International practice shows a longstanding trend towards adopting this mechanism. Major arbitral institutions have incorporated emergency arbitrator provisions for over a decade, including the ICC, LCIA, SCC, SIAC, and HKIAC. These rules generally impose tight deadlines for decision-making. For example, under the 2021 ICC Rules of Arbitration, the President of the ICC Court must normally appoint an emergency arbitrator within two (02) days of receiving an application, with a decision on handling interim relief request being handed down within fifteen (15) days from the date the application for interim relief and the relevant submissions from the parties were transmitted to the emergency arbitrator (subject to extension). The 2025 SIAC Rules of Arbitration require appointment within twenty-four hours of receiving the application and fees, with the decision required within fourteen (14) days of appointment, unless extended by the Registrar.

Emergency arbitrator rulings are typically interim-binding and subject to termination or modification by the subsequently constituted tribunal. In some instances, such measures may also expire automatically. For example, under the 2025 SIAC Rules of Arbitration, an emergency order or award expires if the tribunal is not constituted within ninety (90) days from the emergency order's issuance, unless extended by the Registrar.

The Supreme People's Procuracy supports this proposal, noting that under the current framework, delays in constituting the tribunal often cause interim measures to lose their effectiveness.³

From a practical standpoint, while Vietnamese civil procedure law currently permits parties to seek interim

measures from the courts before the arbitral tribunal is constituted, the emergency arbitrator mechanism offers distinct advantages. It enables swifter decision-making than court proceedings, which are often delayed by administrative formalities and heavy caseloads, and preserves arbitration's confidentiality characteristic by preventing public disclosure of dispute details.

3. Statutory Time Limit for Initiating Arbitration

The Draft Law proposes to set the limitation period for initiating arbitration proceedings at three (03) years from the date on which the claimant knew or should have known that their lawful rights and interests were infringed, which is to ensure consistency with the Civil Code.

The Supreme People's Court supports the proposal to remove Article 33 of the LCA on the statutory time limit for arbitration initiation to resolve inconsistencies with the Civil Code. The Supreme People's Procuracy supports amending Article 33 of the LCA to align with the provision of the Civil Code.⁴

This change means that more disputes may fall within the statutory time limit, allowing a greater number of cases to be arbitrated instead of being barred for lateness.

4. Right to Recomence Arbitration After Arbitral Award Annulment

The proposal on parties' rights to recommence arbitration after an award is annulled appeared in the first draft amended law that the Vietnam Lawyers' Association circulated to relevant authorities for comment in October 2023. It sought to distinguish between annulment due to an invalid arbitration agreement and annulment caused by procedural errors or violation of due process by the arbitral tribunal or sole arbitrator. In the latter case, the arbitration agreement would remain valid and enforceable. As the Supreme People's Court did not support this proposed amendment⁵, it was **omitted** from the Draft Law officially submitted to the Government. Given its significance, we address this matter in this update.

³ Vietnam Lawyers' Association, *Report on explanation and incorporation of feedback from Ministries and other authorities regarding the draft proposal for amendments and supplements to certain articles of the Commercial Arbitration Law No. 189/HLGVN dated 3 June 2024*.

<<https://www.moj.gov.vn/dtvb/dtvbp/Lists/DsDuThao/Attachments/656/Bao%20cao%20giai%20trinh.pdf>> accessed 21 August 2025.

⁴ See Note 3.

⁵ See Note 3.



International practice widely recognises that when an arbitral award is set aside for reasons other than the non-existence and non-validity of the arbitration agreement, the parties remain bound by their agreement to resolve disputes through arbitration.

⁶ For example, in Singapore, setting aside an award does not affect the continued validity and force of the parties' arbitration agreement, unless the award was set aside on the ground of non-existence of the arbitration agreement.⁷ The party that obtained a vacated award may start a new arbitration on the basis that the dispute has not yet been resolved. For Belgium, if an arbitral award was set aside on any ground other than non-validity of the arbitration agreement, the parties can initiate new arbitration proceedings to resolve the disputes.⁸ Similarly, in France, in international arbitration, unless the arbitration agreement has been declared null and void or inapplicable, the merits of the dispute must be heard by a newly constituted arbitral tribunal, not the court of appeal that sets aside the award.⁹

This mechanism could be considered for application in cases where neither party is a domestic entity or individual, or to allow the claimant the choice between re-arbitration and court proceedings upon annulment. Such an approach would be particularly relevant in disputes involving confidentiality concerns or governed by foreign law, where preserving arbitration as the originally contemplated dispute resolution framework would likely provide significant benefits to the parties.

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⁶ Nigel Blackaby, Constantine Partasides et al, *Redfern and Hunter on International Arbitration* (Oxford University Press 2009)

⁷ Timothy Cooke, Min Jian Chan and Anand Tiwari, 'Challenging and Enforcing Arbitration Awards: Singapore' *Global Arbitration Review* <<https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/singapore>> accessed 21 August 2025.

⁸ Hakim Boularbah, Olivier van der Haegen and Julien Degrooff, 'Challenging and Enforcing Arbitration Awards: Belgium', *Global Arbitration Review*

<<https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/belgium>> accessed 21 August 2025.

⁹ Christophe Seraglini and Quentin Herruel, 'Challenging and Enforcing Arbitration Awards: France', *Global Arbitration Review* <<https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/france>> accessed 12 August 2025.