

# CIVIL LITIGATION IN VIETNAM

# Civil Litigation in Vietnam

As in many jurisdictions, litigation in Vietnam is often considered a last resort for resolving disputes. Parties typically seek to avoid the court process, fearing potential disruptions to business relationships, increased legal costs, and delays in reaching a resolution. However, litigation can sometimes be the only option for obtaining relief. A party may also find itself as a defendant in a lawsuit. When faced with these situations, knowledge of the Vietnamese court system and practices is recommended.

*Civil Litigation in Vietnam* aims to introduce some of the fundamentals of Vietnamese civil court procedures and practices. While it is not an in-depth study, this brief guide covers the main issues concerning civil litigation in Vietnam as either a plaintiff or a defendant.

## Overview of Court Litigation in Vietnam

In deciding whether to litigate, parties need to consider factors such as the timing and expected duration of litigation, the costs, ability to enforce any judgment, and other circumstances.

**Vietnamese legal system.** Vietnam is a civil law country that is influenced by French civil law and communist legal theory. Laws are enacted by the National Assembly, the country's legislative body.

**Courts in Vietnam.** The highest court of the state is the Supreme People's Court, beneath which are three High (or Superior) People's Courts, 63 Provincial or Centrally Run Cities People's Courts (collectively referred to as "Provincial People's Courts"), and 710 District People's Courts.

- **Supreme People's Court.** The Supreme People's Court is the highest court, which, *inter alia*, reviews cases judgments and decisions of lower courts. The Supreme People's Court also submits to the National Assembly draft laws and resolutions; and submits to the National Assembly Standing Committee draft ordinances and resolutions.
- **High People's Courts.** The three High Courts hear appeals over first-instance judgments or decisions of the Provincial People's Courts within their territorial jurisdiction which have not yet taken legal effect and conduct cassation or reopening procedures in which judgments or decisions of the Provincial People's Courts, the people's courts of districts, towns, cities, and equivalent jurisdictions within their territorial authority, have taken legal effect.
- **Provincial People's Courts.** The Provincial Courts have jurisdiction over appeals of first-instance judgments or decisions of people's courts of rural districts, urban districts, towns, cities or the equivalent which have not yet taken legal effect, and hear first instance cases in certain circumstances specified by law, especially cases that involve foreign elements.
- **District People's Courts.** The District Courts conduct first-instance trials of cases and settle other matters prescribed by law.
- **Specialized Courts.** Proposals for the establishment of specialized courts in Vietnam have been made in recent years and have now been institutionalized in the new 2024 Law on the Organization of People's Courts, which is set to come into effect on January 1, 2025. Specialized courts, such as intellectual property courts or bankruptcy courts, will function as internal divisions within the above broader court system, staffed by personnel with specialized and profound expertise in these fields. This is aimed at improving the resolution of complex disputes.

**Length of trials.** Unless settled by compromise, civil litigation typically lasts between 12 and 18 months, counting from initiation of an action until a judgment by the court of first instance. Cases in the Courts of Appeal usually take an additional 10–14 months, with a similar period for appeals to the Supreme Court.

**Amount of claims.** Under Vietnamese law, there are no restrictions on the amount of claims, allowing any claim to be presented in court. However, because of the substantial time and cost involved, it may not be worthwhile to pursue a civil suit in Vietnam for claims under VND 100,000,000 (approx. USD 4,000).

**Court costs.** A plaintiff must pay a court filing fee when submitting a case. The court fee is calculated on a pro-rata basis based on the value in dispute, or the so-called amount of claims. The plaintiff must advance part of the estimated court fee after the filing of its lawsuit, and the total court fee will be allocated in the final judgment.

**Appeals.** In civil cases, appeals must be filed within 15 days after the judgment is read. At the appellate instance, the appealing party must also deposit additional court costs of VND 300,000 (approx. USD 12) for civil dispute, and VND 2,000,000 (approx. USD 80) for commercial disputes.

**Power of attorney.** If any party to the dispute wishes to hire a lawyer, they must execute a power of attorney to authorize one or more attorneys to act on their behalf in a suit.

**Plaintiff/defendant.** If the plaintiff or defendant is a legal entity, all submissions must be executed (signed in wet ink) by the company's legal representative (e.g., chief executive officer, director) and affixed with the company seal. The company may authorize other personnel or counsel, other than the company's legal representative, to execute and submit documents on its behalf. However, it is important to note that the Statement of Claims should be executed by the company's representative personally, other than any other authorized representatives.

**Language of documents.** All documents submitted to a Vietnamese court must be in Vietnamese. Foreign documents must be originals or certified copies and need to be notarized and authenticated/legalized by a Vietnamese consulate authority. A certified translation of the documents must be made into Vietnamese for submission. Tilleke & Gibbins has a dedicated team of certified translators and can prepare all necessary translations and assist with notarization or authentication/legalization.

**Evidence disclosure.** In Vietnam civil litigation, the process of disclosing evidence is not as formalized or broad as it is in common law systems. There is no recognized concept of "privilege". Parties are generally not required to disclose all relevant documents unless specifically requested by the court. If the court requests evidence, parties are theoretically obligated to comply. However, if a party fails to provide any evidence, the law does not specify a penalty and the court tends to generally proceed with the case resolution based on the readily available documents.

**Statute of limitations.** The general statute of limitations for non-contractual civil disputes (e.g. property disputes, family disputes) is three years, starting from the date the aggrieved party becomes aware of the infringement of their rights and interests. Meanwhile, the statute of limitations for commercial disputes (e.g. contractual disputes) is two years from when a party's legitimate rights and interests are infringed upon. Additionally, there are specific provisions regarding the statute of limitations for certain types of disputes, such as construction and insurance disputes.

## Litigation Process and Procedures

Litigation begins when an aggrieved party, the plaintiff, files a lawsuit dossier, which pleads the facts and allegations constituting the basis of the claim, with the competent court. Below are the main steps of the litigation process.

**Filing of petition.** Agencies, organizations and individuals filing a lawsuit must file a petition and submit it directly to the court or send it via postal service. The petition must be accompanied by documents and evidence proving that the plaintiff's legitimate rights and interests have been violated. The plaintiff must supplement or submit additional documents and evidence as requested by the court during the process of resolving the case.

**Acceptance of the lawsuit petition.** Within three working days from the date of receipt of the petition, the chief justice of the court will assign a judge to review the petition. Within five working days from the date of assignment, the judge must review the petition and make one of the following decisions:

- Request to amend or supplement the petition;
- Conduct the procedure for accepting the case according to the normal procedure or the simplified procedure if applicable;
- Transfer the petition to a competent court and notify the plaintiff if the case falls under the jurisdiction of another court; or
- Return the petition to the plaintiff if the case is not within the jurisdiction of the court.

If the court accepts the case, it will issue a request for payment of the advance court fee. The plaintiff must pay the advance court fee to the Civil Judgment Enforcement Agency (CJEA) at the same level of the court, and then submit the payment receipt issued by the CJEA back to the court. The court must then issue a notice of acceptance of the case for handling after the plaintiff's submission of the payment receipt.

In practice, it may take the courts up to one month or more to process the paperwork, decide on the acceptance of the petition, and issue the request for payment of advance court fee.

**Notice of lawsuit to defendant.** The Civil Procedure Code stipulates that the plaintiff is obligated to serve a copy of the lawsuit petition to the defendant. However, there is no penalty imposed if the plaintiff fails to fulfill this obligation. As a result, in practice, the defendant is often notified of the lawsuit only when it receives the court's notice of acceptance of the case for handling.

**Court-annexed mediation.** Under the Civil Procedure Code and the 2020 Law on Mediation and Dialogue at court, courts are required to encourage mediation as a preliminary step before proceeding with litigation. Mediation is conducted by court-appointed mediators who are either judges or trained professionals. Parties have the option to opt out of court mediation and proceed directly with litigation. In practice, parties often bypass this mediation process due to its perceived inefficiency, preferring to continue negotiations during the litigation proceedings. Any settlement reached during litigation can still be recognized by the judge.

**Meeting to review the submission, access, disclosure of evidence and reconciliation.** The judge is required to hold meetings to examine the submission, access, disclosure of evidence and conciliation between the parties. In this meeting, the judge hears the parties' opinions regarding the dispute, encourages the parties to negotiate, and allows the parties to capture each other's submissions.

**Preliminary injunctions.** This legal mechanism is theoretically available at any time from the filing of the petition to the entry of judgment. Accordingly, upon filing the lawsuit petition and during the process of resolving a case, the parties can request the court to apply a preliminary injunction. As a matter of practice, however, Vietnamese courts are unlikely to grant such relief unless the petition is well-founded and the injunctions address urgent requests from the involved parties, aimed at protecting life, health, and property, preserving evidence, maintaining current conditions to prevent irreparable harm, and ensuring the proper resolution of the lawsuit or execution of the judgment. The likelihood of Vietnamese courts granting preliminary injunctions is generally not high.

If deemed necessary, the court may request the applicant to perform a security for the application of the preliminary injunction as indemnification for a wrongfully ordered injunction.

**Trials.** The trial must be oral and conducted in a courtroom. During the trial, the court must directly determine the circumstances of the case by asking and listening to the statements of the plaintiff, defendant, persons with rights and obligations related to the case; examine collected documents and evidence; conducting and listening to debates between the parties; and listening to the prosecutor expressing the opinion of the Procuracy (when applicable).

**Judgment.** A trial panel reads the judgment in the presence of the parties after deliberation. In some complex cases, the trial panel may announce that it will take a longer deliberation period of 5-10 days to render the judgment. The official written judgment is issued to the parties afterward.

## Procedures after Trial

**Execution of judgment against a defaulting party.** Judgments issued by a first-instance court are not immediately final and legally binding. If no appeal is lodged within the statutory period of 15 days from the date of judgment announcement, the first-instance judgment becomes legally effective, final, and enforceable. If the judgment debtor fails to voluntarily execute the judgment, the judgment creditor may request the CJEa to coercively enforce the final judgment. The CJEa will charge the judgment enforcement costs on a pro-rata basis based on the actual amount collected from the debtor, which can be up to 3%.

**Application for appellate trial.** The subject filing for appellate trial must submit the application for appellate trial to the first-instance court itself or via its authorized representatives. The contents of the application should include details required by law, together with other evidentiary materials. The appellate court may, *inter alia*, uphold the first-instance judgment, revise the first-instance judgment, or annul the whole or part of the first-instance judgment and remand the case to the first-instance court for retrial.

**Cassation/retrial.** Cassation and retrial are two extraordinary remedies available in Vietnam for reviewing court judgments that have taken legal effect. The Supreme People's Court typically oversees these processes, especially for important or complex cases involving legal violations at lower courts.

Cassation typically refers to the review of legally effective court judgments or decisions that may have been issued with serious legal violations. The time limit for appeal according to cassation procedures is three years from the day on which the court's judgments/decisions takes legally effect, except for some specific cases.

Retrial typically refers to a process where the case is reopened and retried due to new, crucial evidence that was not available during the original proceedings. This could be because the evidence was unknown

or was not discovered despite reasonable efforts at the time. In this case, a re-trial must be requested within one year from the date the new evidence is discovered.

Recognition of foreign judgments or arbitral awards. Vietnam recognizes a foreign court judgment or arbitral award based on an international treaty to which the home country of the judgment/award and Vietnam are members, or the principle of reciprocity. The statute of limitations for the recognition and enforcement of a foreign court judgment or arbitral award is three years from the date on which the judgment/award takes legal effect. Vietnam is a member state of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the New York Convention).

For a foreign court judgment/decision or arbitral award to be enforced in Vietnam, two separate procedures must be followed: recognition before the competent court and enforcement before the competent CJEA. The actual total duration of the two procedures may vary from 18 months to three years, depending on the complexity of the case, the workload of the authorities, and the level of cooperation from the opposing party.

From January 1, 2012, to September 30, 2019, the recorded success rate for the recognition and enforcement of foreign arbitral awards in Vietnam was 49%. Recent years have seen an increase in the number of successfully recognized and enforced foreign arbitral awards under the New York Convention. For enforcement of foreign judgments in Vietnam during the same period, the recorded success rate was around 46%.

## Key Takeaways of Court Litigation in Vietnam

- Before initiating any court litigation (which is also applicable for arbitration), plaintiffs should conduct a thorough investigation into the nature and extent of the defendant's assets in Vietnam. A monetary judgment may be of limited value if the defendant possesses few or no recoverable assets. Accordingly, any available information regarding the opposing party should be carefully evaluated at the outset of the case or as early as possible. Although there is no publicly accessible database for tracking an entity's assets, Tilleke & Gibbins has a dedicated team of in-house investigators capable of obtaining as much information as possible regarding the defendant's financial status.
- Vietnam's court system is hierarchical, with the People's Courts at the district, provincial, and Supreme levels. Cases with foreign elements typically begin at the provincial level.
- While the Civil Procedure Code sets out specific timeframes for case processing, delays are common due to court backlogs.
- Foreign documents are required to be notarized, legalized, and translated into Vietnamese. This process can be time-consuming and costly for complex disputes with voluminous documents, which the parties should take into consideration before commencing a lawsuit.
- During the enforcement process at the CJEA, verifying the assets of the judgment debtor or carrying out coercive enforcement can be challenging. The CJEA often needs to request information from and collaborate with other relevant regulatory authorities, which can be slow to respond and act, thereby causing delays in the enforcement process.
- Foreign partial judgments/awards or foreign preliminary injunctions which are not final and definite generally cannot be accepted for recognition and enforcement in Vietnam.

- The courts apply statutes of limitation according to the request for the application of the statute of limitations by one or multiple parties, provided that such requests are made before the first-instance court issues the judgment/decision on a case.

## Arbitration and Alternative Dispute Resolution

Other than court proceedings, civil disputes in Vietnam may also be settled via the following alternative means, including:

**Commercial mediation.** Commercial mediation is available as a dispute resolution mechanism in Vietnam, allowing parties to resolve conflicts amicably with the assistance of a neutral third-party mediator, without resorting to formal litigation or arbitration. The process is voluntary and focuses on facilitating mutually agreeable solutions. It is particularly suitable for commercial disputes where maintaining business relationships is a key consideration. A mediated settlement agreement can be applied for recognition by the court, making it binding and enforceable.

**Arbitration.** Arbitration is the second most-used dispute resolution mechanism in Vietnam, after court litigation, due to its flexibility and efficiency. The Vietnam International Arbitration Centre (VIAC) is a commonly used venue in Vietnam for arbitration. An arbitral award is final and enforceable on the date of its issuance

**Cancellation of arbitral award.** An arbitral award is final and enforceable on the date of its issuance. However, the parties to the arbitration proceedings can request the competent court to cancel (or set aside) the award within 30 days from their receipt of the award. If the award is set aside, the parties may reach a new agreement to bring their dispute to arbitration or any of them may initiate a lawsuit at court.

An arbitral award can be canceled in any of the following cases:

- There is no arbitration agreement or the arbitration agreement is invalid;
- The arbitral tribunal's constitution or procedures of arbitral proceedings is non-compliant with the parties' agreement or the arbitration law;
- The dispute falls beyond the arbitral tribunal's jurisdiction; when an arbitral award contains the details falling beyond the arbitral tribunal's jurisdiction, such details must be canceled;
- The evidence provided by the parties on which the arbitral tribunal bases the award on is forged; an arbitrator receives money, assets or other material benefits from one disputing party, thus affecting the objectivity and impartiality of the award; and
- The award contravenes the fundamental principles of Vietnamese law. In practice, the interpretation of what constitutes "*fundamental principles of Vietnamese law*" is not explicitly guided, leading to inconsistencies and unpredictability in its application among Vietnamese courts.

Where the parties to an arbitration are foreign entities, certain key documents, such as the Power of Attorney for local counsel (if any), should be duly notarized and legalized. There has been precedent where an award was canceled due to issues with these documents, even though the 2010 Law on Commercial Arbitration does not explicitly require notarization or legalization.

## Closing remarks

Tilleke & Gibbins' dispute resolution group has extensive experience representing clients in disputes before Vietnamese courts and international arbitration institutions. Cultivated from years of experience, our team has a deep understanding of how the Vietnamese courts and arbitration institutions work. We have also built strong professional relationships with various stakeholders, which enables us to monitor and handle cases effectively and efficiently from start to finish. Further, we have a strong network of Vietnamese experts, scholars, and academics, whose highly regarded opinions are often able to provide support for our cases.

Our local associate firm T&G Law Firm LLC (TGVN) specializes in handling local litigation in Vietnam. Through our close collaboration with TGVN, we are able to advise clients on case strategy for disputes and then, when necessary, provide representation in court.

With the capability to advise on a wide range of contentious matters, our team draws across multiple practice areas to serve our clients. In recent years, we handled numerous dispute cases at VIAC, and successfully secured fruitful settlements for our clients in arbitration at Singapore International Arbitration Centre (SIAC). Additionally, we secure to the very end our clients' legitimate rights and interests by effectively navigating the process of recognizing and enforcing foreign arbitral awards and court judgments within Vietnam. Our dedicated team of legal experts possesses extensive experience in international enforcement procedures, enabling us to overcome potential challenges and ensure that our clients' hard-fought victories are fully recognized and upheld. We have successfully requested the CJEa to apply security measures on enforcement cases.

If you have additional comments or questions, please let us know at [vietnam@tilleke.com](mailto:vietnam@tilleke.com).



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