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ORIGINAL ARTICLE

PROPOSAL FOR THE ESTABLISHMENT OF REGULATIONS ON ONLINE COMMERCIAL ARBITRATION FOR DISPUTE RESOLUTION IN VIETNAM

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Abstract

Dispute resolution in the digital realm, empowered by the boundless development of electronic techniques, intangible technologies, and information technology, has been increasingly adopted for methods like negotiation, mediation, or arbitration. However, the legal foundation for online commercial arbitration as a dispute resolution method remains a contentious issue. This paper analyzes the legal framework of Vietnam, highlighting the gaps in the establishment of regulations concerning online commercial arbitration within the Vietnamese legal system. Based on this analysis, the paper proposes solutions for the development of regulations pertaining to online commercial arbitration for dispute resolution in Vietnam.

Keywords: Online Commercial Arbitration, Dispute Resolution, Vietnam Legal Framework, Digital Negotiation, Mediation Techniques, Electronic Arbitration, Regulatory Gaps, Legal Analysis, Information Technology, Legal Reform Proposals.

INTRODUCTION

The trend of technological transition has profoundly permeated the field of dispute resolution, paralleling the robust growth of electronic commerce (e-commerce) spurred by the early development of the internet. The inception and implementation of Online Dispute Resolution (ODR) in countries globally, ranging from developed to developing nations and across all continents, including Europe, signify a pivotal shift. Commercial activities are increasingly evolving, adopting new and complex forms. This evolution has led to a continual rise in both the number and value of commercial disputes. Consequently, the variety of commercial disputes has expanded, necessitating the adoption of non-traditional dispute resolution methods. The internet and social media are emerging as boundless marketplaces, with commercial activities increasingly gravitating towards the cyber environment.

In Vietnam, commercial arbitration was established in the late 19th century, influenced by cultural factors in the business practices of merchants, and was later codified in the Commercial Arbitration Ordinance of 2003. By 2010, the National Assembly passed the Commercial Arbitration Law, marking a new phase in Vietnamese arbitration law. Accompanied by legal provisions on electronic transactions, the Civil Procedure Code of 2015 includes several regulations supporting online dispute resolution (ODR), indicating that the application of commercial arbitration through online methods will be a new trend in Vietnam in the near future. However, in Vietnam, the issue of resolving disputes through commercial arbitration via online methods remains a gap both in theory and legally. Several

unresolved questions include: What is the relationship between commercial arbitration via online methods and traditional commercial arbitration, as well as other resolution methods? What principles are necessary for the operation of commercial arbitration via online methods? What challenges does commercial arbitration via online methods pose regarding the knowledge and skills of online arbitrators? Are the mechanisms for implementing the regulations and decisions of commercial arbitration via online methods assured? Given the burgeoning demand for resolving commercial arbitration via online methods in Vietnam, developing and perfecting the legal basis for commercial arbitration via online methods is an urgent issue that requires further attention.

This paper will present the legal basis for resolving commercial arbitration via online methods in Vietnam, identify legal gaps, and propose directions for developing legislation on resolving commercial arbitration via online in Vietnam

The Concept of Online Arbitration for Dispute Resolution

The concept of resolving disputes through online arbitration lacks a definitive legal definition in legislative texts. Numerous researchers have proposed definitions for this method of dispute resolution.

Karnad and Kanchan (2020), the concept of online arbitration (OA) is defined as a branch of dispute resolution that employs technology and the internet to facilitate the resolution of disputes between parties. It is also known as cyber-arbitration, cybitration, virtual arbitration, electronic arbitration, or arbitration online techniques. OA combines conventional arbitration under the Arbitration & Conciliation Act, 1996 with technological features from the Information Technology Act, 2000. It involves using email, chat, audio-conferencing, or video-conferencing for communication between the arbitrator and the parties. This form of dispute resolution is gaining popularity due to its speed and cost-effectiveness, particularly for resolving Business to Business (B2B) and Business to Consumer (B2C) disputes.

Arakelian, Ivanchenko, and Todoshchak (2020), the concept of alternative dispute resolution (ADR) is presented as an independent and effective method for resolving disputes, particularly in the context of e-commerce and other online interactions. It emphasizes the use of digital platforms and communication technologies to facilitate the arbitration process, removing the need for physical presence and significantly reducing logistical complexities. The document highlights ODR's ability to address cross-border disputes rapidly and universally, making it a valuable alternative to traditional dispute resolution methods. The efficiency, cost-effectiveness, and accessibility of ODR are noted as key advantages, especially given the growing prevalence of online transactions and global commerce.

Shawani and Tiwari (2020), the concept of online arbitration (OA) is described as a method of dispute resolution that utilizes technology, particularly the Internet, to facilitate arbitration processes. This approach is seen as a modern complement to traditional alternative dispute resolution (ADR) mechanisms like mediation and negotiation. OA leverages Information and Communication Technology (ICT) to make the dispute resolution process more convenient, cost-effective, efficient, and speedy. It can be applied to a wide range of disputes, from simple civil cases to certain compoundable criminal matters. The document also discusses the legal framework in India that supports OA, highlighting its potential to overcome jurisdictional issues, reduce geographical barriers, and provide a speedy and economical solution to disputes. Thus, a general definition of online commercial arbitration for dispute resolution can be formulated as follows: Online commercial arbitration for dispute resolution is understood as the incorporation of online modalities, as mentioned above, into part or the entirety of the commercial dispute resolution process through arbitration. The integration of information technology elements into the arbitration process,

rendering it online, does not alter the fundamental nature of arbitration. Instead, the primary consideration here is the method of communication between the negotiating parties and between intermediaries and the other parties involved.

Legal Basis for Online Commercial Arbitration for Dispute Resolution in Vietnam

In Vietnam, the legal framework for online commercial arbitration for dispute resolution (OCADR) is still in a nascent stage. As of now, there isn't a comprehensive legislative document specifically dedicated to OCADR. The existing legal foundation for OCADR in Vietnam is pieced together from various laws and decrees that indirectly address aspects of online dispute resolution in the context of commercial arbitration.

Currently, in Vietnam, there is no specific legislative document that establishes a legal foundation for online commercial arbitration (OCA). Among the methods of online dispute resolution, only the method of online commercial mediation is regulated under Decree No. 22/2017/ND-CP on commercial mediation. A significant source of Vietnamese law, judicial precedent, has no cases addressing Online Commercial Arbitration for Dispute Resolution. Specifically, among the 39 effective precedents published on the legal website, none address online commercial arbitration. This absence of legal regulation creates challenges in applying online methods to e-commerce dispute resolution.

However, foundational legal documents in Vietnam support online commercial arbitration for dispute resolution, such as the Law on Electronic Transactions of 2005, the Law on Information Technology of 2006, and several government decrees, including Decree No. 52/2013/ND-CP and its amendment, Decree No. 85/2021/ND-CP, on e-commerce. In addition, relating to traditional commercial arbitration, the Commercial Arbitration Law of 2010 addresses "the authority of commercial arbitration, forms of arbitration, arbitration organizations, arbitrators; procedures and processes in arbitration; rights, obligations, and responsibilities of parties in arbitration proceedings; court jurisdiction over arbitration activities; organization and operation of foreign arbitration in Vietnam, enforcement of arbitration awards" (Article 1 of the Commercial Arbitration Law of 2010). The Civil Procedure Code of 2015 also provides regulations on the recognition and enforcement of foreign arbitration awards, which can be the limited legal foundations for online commercial arbitration for dispute resolution in Vietnam.

Linking online commercial arbitration for dispute resolution and electronic transactions is the Law on Electronic Transactions of 2005, which provides a basic legal foundation for electronic transactions in society by recognizing the legal value of data messages and regulating electronic signatures. Specific regulations include Decrees No. 52/2013/ND-CP, No. 130/2018/ND-CP on electronic transactions regarding digital signatures and certification services, No. 165/2018/ND-CP on electronic transactions in financial activities, No. 35/2007/ND-CP on electronic transactions in banking activities, and No. 85/2021/ND-CP amending Decree No. 52/2013/ND-CP on e-commerce. These decrees, especially No. 52/2013/ND-CP and No. 85/2021/ND-CP on e-commerce, regulate e-commerce activities and include mechanisms for dispute resolution, encouraging online resolution methods. Although these regulations are scattered and focus on procedural aspects of online commercial arbitration for dispute resolution, they undoubtedly lay the groundwork for developing a future ODR system.

The legal system for consumer protection includes regulations on arbitration in general and online commercial arbitration for dispute resolution in particular. The Consumer Protection Law of 2010 details the rights of consumers, the responsibilities of merchants in goods and service transactions, and the dispute resolution process between consumers and businesses. This includes clear rules and procedures for dispute resolution, encompassing four steps: negotiation, mediation, arbitration, or court.



Recommendations for the establishment of Regulations on Online Commercial Arbitration for Dispute Resolution in Vietnam

Despite the ongoing implementation of online commercial arbitration for dispute resolution in Vietnam, the absence of explicit regulations regarding this method could result in hesitancy among parties to choose it, as well as increased procedures and processes for online participation confirmation. Therefore, specific regulations are needed to instill confidence in the parties and provide a legal foundation for the development of online commercial arbitration for dispute resolution. A proposal to amend the 2010 Commercial Arbitration Law should include a separate chapter on online commercial arbitration for dispute resolution.

To contribute to the establishment of regulations on online commercial arbitration for dispute resolution in Vietnam, the chapter on online commercial arbitration for dispute resolution should include the following five basic regulations:

Firstly, the chapter should contain regulations regarding the agreement for dispute resolution, ensuring that online arbitration agreements are legally binding and enforceable. This includes guaranteeing that parties have agreed to the terms of the agreement, that the agreement is clear and unambiguous, and that the parties have had the opportunity to review and understand its terms. This might involve ensuring that the agreement meets the requirements of an electronic contract under current law.

Secondly, there should be regulations concerning the confidentiality requirements for the parties involved in online commercial arbitration for dispute resolution. Privacy and secrecy are particularly crucial in dispute resolution as personal and sensitive information may be shared among parties and arbitrators. The legal framework should mandate compliance with all current data privacy laws, including those related to data protection, data retention, and data security. This might include implementing measures to protect data, such as encryption, ensuring safe data storage, and restricting data access.

Thirdly, provisions should be added contents regarding an accessible, cost-effective dispute resolution platform with 24/7 technical support. The regulation should ensure that online commercial arbitration for dispute resolution platforms is accessible to all parties, including people with disabilities. It should ensure that the platform is user-friendly and that technical support is readily available for those in need. Furthermore, the legislation on online commercial arbitration for dispute resolution should ensure that this platform complies with all current consumer protection laws, including those related to advertising, marketing, and consumer rights. This might involve providing clear and accurate information about the services offered, ensuring that the service fees are transparent and reasonable, and providing clear, accessible information about the rights and obligations of the parties involved.

Fourthly, it is necessary to add regulations on the requirements for arbitrators participating in online commercial arbitration for dispute resolution to have information technology skills as well as skills and proficiency in online dispute resolution. Since the skills required for online commercial arbitration for dispute resolution differ from those needed for traditional commercial arbitration, it is essential to establish requirements for arbitrators in online settings to possess IT skills and online dispute resolution expertise. This requirement could be implemented by specifying the number of training hours and the content of training for arbitrators or by developing a process to assess and select qualified arbitrators, while ensuring that your platform provides adequate training and support for those engaged in online commercial arbitration for dispute resolution.

Fifthly, there is a need to establish regulations for certifying websites that provide services for online commercial arbitration for dispute resolution. With the development trend of online commercial arbitration, many arbitration centers have been established, and websites of companies and e-commerce platforms also feature functions for online



commercial arbitration for dispute resolution. However, there must be a mechanism to monitor and evaluate the performance of websites offering these services to protect consumers. This could involve establishing criteria for certification, periodic reviews, and compliance checks to ensure these platforms meet established standards and operate transparently and ethically.

Sixthly, it is crucial to develop regulations regarding the recognition and enforcement of arbitration awards. While online commercial arbitration for dispute resolution is being applied, the process of recognizing and enforcing arbitration decisions faces challenges due to the lack of regulations for an online system. This includes procedures for online submission of arbitration records, verification of electronic signatures of the parties, methods for calculating and paying fees over the internet, and addressing unnecessary costs for disputing parties, especially in cases where parties are geographically distant. To make online commercial arbitration for dispute resolution a complete online cycle, regulations for the recognition and enforcement of online arbitration decisions need to be established. However, implementing this requires ensuring adequate information technology and communication infrastructure, as well as the human resources capacity of arbitration centers.

Seventhly, it is necessary to establish procedural guidelines for online dispute resolution, as it differs significantly from traditional methods. The Civil Procedure Law of 2015 should also include provisions for expedited resolution in commercial cases that use electronic means, partially or entirely, to meet practical demands. Additionally, the Civil Procedure Law of 2015 must be supplemented with regulations on the collection of electronic evidence to ensure its authenticity and legality, thereby supporting the claims of the parties involved in the dispute-resolution process. These steps will help adapt the legal framework to the evolving nature of online commercial arbitration and ensure effective, fair, and efficient dispute resolution.

CONCLUSION

In conclusion, this paper emphasizes the necessity for Vietnam to develop and refine its legal framework to support Online Commercial Arbitration for Dispute Resolution (OCADR). Despite the existence of various laws and decrees indirectly supporting OCADR, Vietnam lacks specific legislation addressing the complexities and requirements of online arbitration. The paper suggests amendments to existing laws, including the establishment of clear regulations for online arbitration agreements, confidentiality requirements, accessible and cost-effective dispute resolution platforms, standards for arbitrators, certification of websites offering OCADR services, and procedures for recognition and enforcement of online arbitration decisions. These proposed reforms aim to enhance the effectiveness, fairness, and efficiency of dispute resolution in the digital realm, adapting to the evolving nature of commercial arbitration and ensuring its alignment with modern technological advancements.

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