



COMMERCIAL ARBITRATION: EFFICIENT TOOL to MANAGE BUSINESS RISKS

- Choose arbitration
- Enforcement

Tung Ngo

V | I | L | A | F

VIETNAM INTERNATIONAL LAW FIRM

choosing arbitration in Vietnam

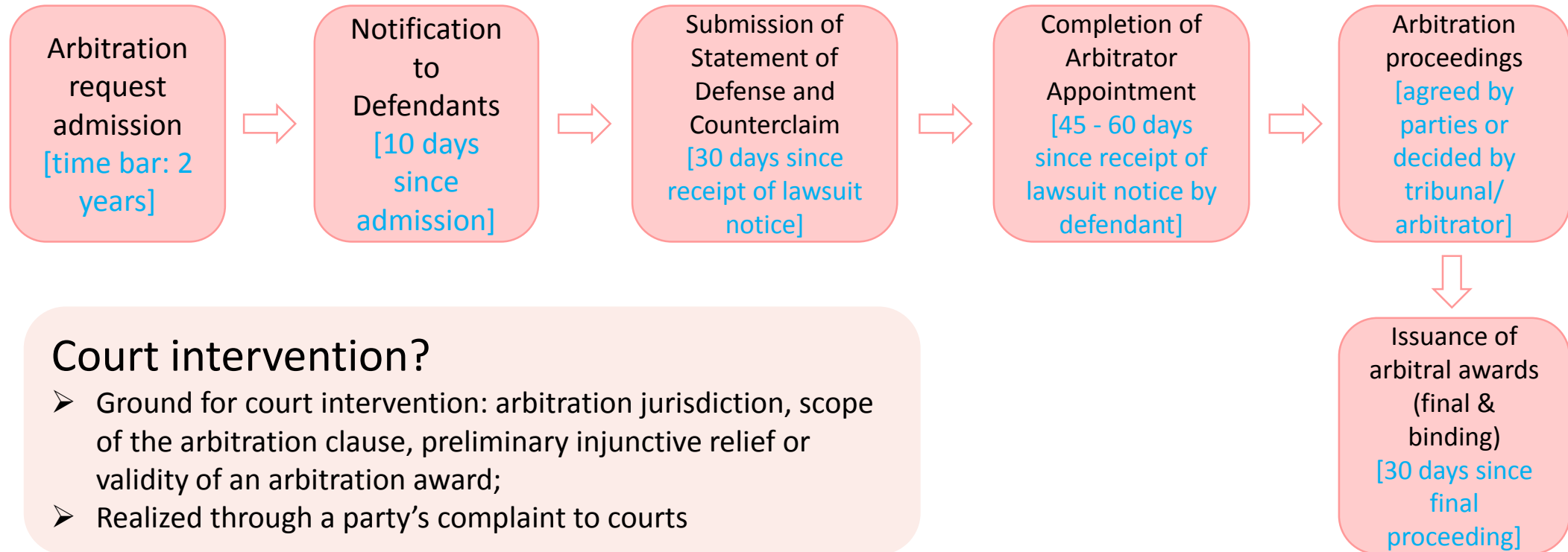
- Why arbitration should be chosen in context of Vietnam?
 - Less cost and better result, is it true?
- Compared to court proceedings: laws and practice
 - **Business orientated**: faster (due to shorter and tailored procedure), confidential, friendly to both domestic and foreign parties
 - **Efficiency**: conducting in the place/time/language of choice
 - **Effectiveness**: free to pick arbitrators with suitable expertise
 - **Safety**: no political pressure, corruption-free, unbiased to State-owned enterprises
 - **Fairness and equity**:
 - lawyers are carefully heard and free to present their arguments
 - if the laws are unclear, arbitrators tend to award based on common practice, equity and fairness

Why choosing arbitration in Vietnam (and which one to choose)

- **Which one: domestic or foreign arbitration?** Pros and cons: Costs, timing, venue, procedures, arbitrators, confidence, enforceability.
- **Domestic arbitration:**
 - Arbitrators have good understanding of the parties, practice, culture and business environment
 - Avoiding the risk of unenforceability of foreign arbitral awards
- **Why is VIAC the most chosen arbitration centre in Vietnam?**
 - Well established with good reputation
 - Outstanding arbitrators, including Vietnamese and foreign arbitrators



Arbitration procedures



Enforcement of domestic arbitral awards

1. Ad hoc arbitral awards must be registered at provincial level's courts prior to enforcement procedures
2. Award creditors requests for award enforcement
3. Enforcement agency informs its decisions to procuracy and involved parties
4. Award debtors voluntarily executes the awards (within 10 days from the date of delivery of the award)
5. Enforcement agency verifies and coercively enforces the awards after the voluntary execution period

Enforcement of domestic arbitral awards

Courts can cancel an arbitral awards on the ground of:

- 1) No arbitration agreements or invalid arbitration agreements
- 2) Improper or illegal tribunal composition or arbitration proceedings
- 3) Lack of jurisdiction of the arbitration tribunal
- 4) Counterfeit evidences
- 5) Unethical acts by arbitrators e.g. bribery etc.
- 6) Contrary to the fundamental principles of the laws of Vietnam

Enforcement of foreign arbitral awards

- I. Application for recognition: submitted to the Ministry of Justice or the provincial level's courts where the award debtors/ the objects subjected to enforcement are located
- II. Court recognition
- III. Enforcement procedures as in domestic cases



Time bar

Award debtor has 03 years as from the effective date of the arbitral award to request for recognition and enforcement in Vietnam.

Enforcement of foreign arbitral awards

A foreign arbitral award can be rejected for enforcement in Vietnam due to:

- 1) Void arbitration clauses (under governing law)
- 2) Lack or exceeding of arbitral jurisdiction
- 3) Improper tribunal composition or arbitration proceedings
- 4) Violation of right to be heard of award debtors
- 5) Contrary to basic legal principles of Vietnam
- 6) The fact the award is not yet binding or has been rescinded or suspended at the country of origin / applicable law

Enforcement of foreign arbitral awards

Practical obstacles in enforcing foreign arbitral awards:

- ☐ Time consuming: the procedures to enable enforcement could take more than a year in practice
- ☐ The need to work with local agents: for example, documents need to be translated into Vietnamese
- ☐ Undue influence from authorities
- ☐ Possibility of being rejected at the recognition phase, and therefore can not be enforced
- ☐ Shorter time bar for enforcement request: 03 years compared to 05 years of domestic arbitral awards

THANK YOU!

Tung Ngo

tung@vilaf.com.vn