Part One Overview of the Dispute Resolution Mechanism in Vietnam II. Alternative Dispute Resolution in Vietnam: Types and Functions

II. ALTERNATIVE DISPUTE RESOLUTION IN VIETNAM: TYPES AND FUNCTIONS

1. Overview

The transition of Vietnam's economy into a market-driven economy characterised by the emergence of various economic sectors with different types of ownership have diversified and complicated economic relations. Under the impacts of market rules, profit is not only the underlying motive, a measurement of business performance but also serves as the ultimate objective and a means of survival for business entities.

The formation of a market-driven economy in Vietnam since late 1990s took place in a special context where economic relations developed strongly at an unprecedented pace as seen from both horizontal and vertical aspects. As a result, Vietnam's economy has gradually become an indispensable part of the world's economy. As a corollary of such a process, economic disputes in general and business disputes in particular, also became more diversified in types and sharper and more complex in features and scales. At the same time, it is a natural demand to introduce appropriate forms and modes of dispute resolution in better protecting legitimate rights and interests of economic entities, securing a strict compliance with the rule of law and by that ways helping to establish a sound legal environment for a socio-economic development process.

Academically, economic disputes and business disputes are concepts with different degrees of (narrow or wide) comprehension/connotation although they may be commonly defined as a difference in views, contradiction or conflict of interests, rights or obligations between parties to economic processes.

Despite the presence of different views, a majority of scientists agree that economic disputes should be defined as a difference in views and opinions, a contradiction or conflict of interests, rights or obligations between parties to economic relations which are varied in degrees. Basically, economic disputes may take the following forms:

- Business disputes, i.e. those disputes that arise from business entities and relate to investment, production, distribution of products or provision of services in the market for profit-making purposes.

- Disputes between foreign investors and investment hosting countries. Such a type of dispute often arise from the implementation of BTO, BT, or BOT contracts or bilateral or multilateral agreements on encouragement and protection of investments.

- Disputes between nations in enforcing bilateral or multilateral trade agreements.

- Disputes between nations and international economic institutions in the implementation of multilateral trade agreements e.g. US-EU disputes over banana import that is settled within the WTO framework.

Of the various types of international disputes as mentioned above, business disputes are seen as most popular. Therefore, under certain circumstances, the terms "business disputes" and "economic disputes" are used interchangeably.

From another approach, a business dispute may be defined as a disagreement on a legal mater that arises from economic life between participants to business transactions and are normally linked to property element and material interests. Thus, characteristics of business disputes may be summarised as follows:

+ Business disputes are in most cases associated with business activities carried out by business entities.
+ Parties to business disputes mainly include enterprises, or businesses.
+ Business disputes are treated as an external exposure and a manifestation of conflicts of economic interests between parties concerned[1].

It is noteworthy that the existence of business disputes is by itself reflecting typical features of economic relations in *naturally-oriented* economic mechanisms[2].

In a centrally planning economy, business disputes mainly took the form of disputes over economic contracts that indicate the monotony of interests that required protection in such an economic model. By the contrary, in a market-oriented economy, the involvement of various economic sectors results to a multiplicity of participants and interests to be protected; and the emergence of new business methods, markets and non-traditional production factors also trigger new types of disputes, namely disputes between company's members and the company; disputes between members of the companies during the establishment, operations and dissolution of the company; disputes over the acquisition and sales shares and bonds; disputes between joint venture partners or participants to a business association; disputes relating to advertising, insurance, auditing, consulting, inspection etc.; disputes over drafts and cheques; or disputes relating to the protection of commercial secrets... Thus in response to the country's economic transition as a whole and the changing substance and forms of business disputes in particular, methods of business dispute resolution are urgently needed to be adjusted subject to fundamental principles of a market-driven economy that is run under the State management.

[1] Tran Dinh Hao – Conciliation and negotiation in resolution of disputes over economic contracts, State and Law Journal, Vol. 1, 2000, p.28.

[2] "Economic Law of Vietnam", text book of the Faculty of Law, College of Social Sciences and Humanities, Hanoi National University, 1997, p.468.

2. Forms of business dispute resolution

Disputes are seen as an avoidable corollary of the conduct of business transactions. As a result, the dispute resolution is a natural demand of economic relations. In a common sense, resolution of business disputes may be defined as a selection of proper ways and measures to remove or eliminate contradiction, discontents or conflict of interests between the relevant parties with a view to restoring a balance of interests that is acceptable to all the disputing parties.

In the context of a market-driven economy, resolution of a business dispute is expected to meet the following requirements:

+ Promptness, convenience and having no hindrance or obstruction to a normal conduct of business transactions.
+ Restoring and maintaining co-operation and mutual confidence between business partners.
+ Securing commercial secrets and reputation of the parties concerned in business activities.
+ Cost-effectiveness.

In addition, it is interesting to observe that differences in customs, living habits, traditions and levels of socio-economic development have resulted to the fact that business dispute settlement mechanisms are greatly varied from country to country. However, based on the demands for a legal governance in a market-driven economy that requires a differentiation between business activities, up to now, major forms of dispute resolution that are widely introduced through the world include: negotiation, conciliation, (non-governmental) arbitration and courts of justice.

2.1. Negotiation

Negotiation is, as a form of business dispute resolution without a third party, basically characterised by a mutual expression of views and opinions, open discussions, seeking suitable ways-out and reaching an amicable solutions to the disputes by the disputing parties. Thanks to these salient features, negotiation is widely recognised as an appropriate form of business dispute resolution. Negotiation has long been preferred by merchants due to its simplicity, non-binding to cumbersome legal procedures, cost-effectiveness, less detriment to the inherent co-operation between business partners and confidentiality. Negotiation firstly requires a good will, honesty, co-operation and adequate understanding of professional and legal aspects by the negotiating parties. In complicated cases, each party may appoint specialists or professional organisation to represent their interests during the negotiation process. In securing a successful resolution of a business dispute through negotiation, a mixture of economic, technical, and legal experts are normally involved. As the time goes by, negotiation becomes a process where different views and opinions are exchanged or presented by the parties concerned with a view to reaching a final and amicable solution to the disputed issue. Thus in legal terminology, during the negotiation process, the disputing parties discuss, exchange views and reach an agreement through “transactions”. Therefore, more attention should be given to certain legal requirements as regard to representation,

authorisation (or delegation of powers), civil transactions, natural (or behavioural) capacity and so on. At the end of a negotiation process, parties concerned may make commitments or reach an agreement on specific solutions to overcome the dead-lock (or impasse), or discontents that are not anticipated by the negotiating parties.

The laws in developed market-driven economies often prescribe negotiation results to be recorded in a legal form of a memorandum or minutes which should include, among other things the following major details and particulars.

- Relevant legal events.
- Views/opinions of each disputing parties (or substance of the dispute).
- Proposed solutions.
- Agreements reached or commitments made.

Once a minutes of negotiation has been properly and duly prepared, agreements recorded in the minutes will be valid as contractual commitments and have binding effects to both parties. In case, one of the parties concerned fails to observe the negotiation results due to his/her lack of good will, the minutes will be used as an importance evidence to be submitted to economic dispute resolution bodies to request these institutions to recognise and enforce the agreement reached during negotiation.

Thanks to its advantages, negotiation as an effective means of dispute resolution is particularly preferred by major business groups or multinationals, especially those that engage in banking, insurance or securities businesses to safeguard their commercial secrets.

However, in the context of an economy in transition like Vietnam where SOEs still account for a large proportion of the entire economic structure, negotiation also has a number of disadvantages. In particular:

First, such a closed resolution of business disputes offers a furtile soil for negative phenomena between SOEs to mushroom through arbitrary rescheduling, writing off debts or reducing debt burden and so on that go contrary to the State financial regulations.

Secondly, negotiation process in transitional economies including Vietnam is entirely spontaneous and natural without a proper legal governance. Therefore, the legal validity of negotiation results are often poorly determined and abused by the parties to delay or postpone the performance of their obligations. In other words, since the materialisation of negotiation results is entirely at the sole discretion of the parties concerned, these negotiation results are in many cases unfeasible.

2.2. Conciliation

Conciliation is another form of alternative dispute resolution whereby the negotiation process is undertaken with the participation of an independent third party who is unanimously accepted or appointed to act as a mediator to facilitate the disputing parties to find appropriate solutions to their dispute in efforts to end the dispute or disagreement.

As a voluntary solution, conciliation is taken at the choice of disputing parties. Most importantly, the third party should be completely impartial and independent to the dispute in performing its intermediary functions. This requirement means that the third party should have no conflict of interests with both the disputing parties or its interest should not be closely associated with that of any disputing party.

The third party mediator during a conciliation process should not be seen as a representative of any party and should have no right to determine or deliberate as an ad-hoc arbitrator. On the other hand, the third party is expected to be individual or organisation having high levels of professional expertise and experience in handling cases that are relevant to the subject-matter of the dispute. A mediator often fulfils the following duties:

- Reviewing, considering, analysing and presenting his opinions and comments on technical and professional aspects and relevant issues for the parties concerned to consult. (In this regard, inspectors-surveyors, assessor, consultants and legal advisors are most suitable to act as mediators).

- Suggesting solutions or making feasible recommendations for the parties concerned to consult and make choice of.

To date, two well-known forms of conciliation include non-procedural conciliation and procedural conciliation.

Non-procedural conciliation may be defined as a conciliation through mediation which is undertaken by the disputing parties before their reference of the dispute to any dispute resolution bodies. Once specific forms of dispute resolution is agreed upon, the parties concerned should realise the agreed solution in a voluntary manners. As non-procedural conciliation is viewed as internal problem to be privately dealt with by the parties concerned, it is not directly or specifically governed by the laws in many countries. However, some legal issues also arise in relation to the introduction of such as an alternative dispute resolution. In particular:

Firstly, the choice of a perspective mediator (such as an inspector/surveyor or a council of inspectors etc) may be contractually pre-determined in principle and once a dispute arises, the parties concerned will appoint a specific mediator. In the absence of such a clause, the relevant parties will have to reach an agreement on appointing a mediator after the occurrence of their dispute.

Secondly, the parties concerned may determine a conciliation process to be followed. In case where such a determination is not available, it is implied that the parties have delegated the perspective mediator to have sole discretion in opting a flexible conciliation process.

Thirdly, opinions, views, defence and proposals of the mediator are of recommendatory and suggestive nature only. Once, agreed and accepted by the disputants, these suggestions will become binding and conclusive to the parties.

Fourthly, the recognition of the validity of these recommendations that are made by the mediator and accepted by the disputing parties must be institutionalised and secured for enforcement by laws and regulations. However, such a possibility is still open in Vietnam.

Fifthly, a service contract relating to the mediation and conciliation must be concluded between the disputing parties and the mediator to cover such matters as payment of mediation fees, criteria of mediation and conciliation, rights and obligations of the parties concerned.

By its virtue, conciliation and mediation seem to be more suitable to the resolution of disputes which requires not only the good wills of the disputing parties but also professional expertise that are unlikely to be obtained by the parties in such an accurate and objective manners. In many countries, conciliation is considered as an important way of resolving business disputes. Therefore the establishment and increasing popularity of conciliation centres (such as the Beijing Conciliation Centre with competence to resolve international trade and maritime disputes) and adoption of model conciliation procedures (such as Folloberg-Taylor conciliation procedures, the London-based ICC non-obligatory conciliation procedures, and 1980 UNCITRAL model conciliation procedures).

It may be said that dispute resolution through conciliation is not popular in Vietnam due partly to the absence of specific and concrete statutes and guidance and other reasons originating from professional unfeasibility and business culture. At present, conciliation through mediator is an ideal solution for dispute solution in Vietnam.

Procedural conciliation is a type of conciliation which is undertaken before the court of justice or an arbitration body at the request of the parties concerned. In these cases, the court or arbitration (in particular the presiding judge or responsible arbitrator) will act as a mediator.

Thus, procedural conciliation may be seen as a step and a phase of the whole process of dispute resolution through the court or arbitration. Such a step can only be taken when and only when a petition is lodged to the court or an arbitration body for its settlement of the dispute and the petition is accepted for registration.

Since any conciliation is based on self-determination of the parties concerned, during that process, the judge or arbitrator should not compel but respect the freedom of determination of the parties nor disclose the road map along which the case will be handled. As soon as the disputing parties reach a mutual agreement on the dispute resolution, the competent court or arbitration will prepare a minutes of successful conciliation and issue a decision to recognise the parties' agreement. Once made, the decision will be valid and enforceable as a court judgement or an arbitral award. This is also a major difference between non-procedural and procedural conciliation.

In developed market-driven economies, procedural conciliation in general and conciliation in court proceedings in particular should follow very strict processes. In the principle of respecting the parties' right to self-determination, conciliation may be conducted before and during the hearing or even after a court judgement or an arbitral

award has been rendered. This is because of a fact that the objective of a dispute resolution will be best achieved through mutual agreement of the parties concerned.

In Vietnam, the laws governing business dispute resolution and the existing arbitral procedures may be construed to require that procedural conciliation may only be undertaken before a court judgement or an arbitral award is rendered. Subject to fundamental principles of the Civil Code relating to freedom and volition in undertaking or reaching agreements (Article 7) and principle of conciliation (Article 11), we are of the view that all agreements reached by the parties concerned in compliance with the applicable laws before, during and after a proceeding should be recognised and enforced by the State and the laws.

2.3. Arbitration

Arbitral resolution of business disputes is a form of dispute resolution through the activities of arbitrators who act as an independent third party with a view to putting an end to the dispute by rendering an award that is binding to the parties concerned.

From a survey of experience in the organisation and operations of commercial arbitration in developed countries, we have identified major characteristics of this form of dispute resolution as follows:

> *Firstly*, commercial arbitration is a type of non-governmental organisations which is established and in existence subject to the laws and arbitration statute. In most developed market-driven economies, the State supports for arbitration are limited to securing the enforcement of arbitral awards only. In many Asian countries including South Korea, Malaysia, Thailand and the Philippines, however, arbitration is strongly supported by the State, especially in term of financial assistance. In Thailand, for example, an arbitration institute as an affiliate of the Ministry of Justice is provided by the Ministry with office space, administration costs to cover office expenses incurred by the arbitrators and salaries of their staff although individual arbitrators are themselves independent from the Ministry of Justice[3].
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> *Secondly*, dispute resolution through arbitration is a combination of two elements, namely agreement and jurisdiction. In particular, the agreement serves as a pre-requisite for the render of an arbitral award and no award may be rendered without due regard to the agreed issues. In principle, therefore, arbitral jurisdiction is not limited by the laws. At any point of time [during the settlement of their dispute], the parties concerned may choose any ad-hoc arbitrator or any arbitration organisation in the world to handle the dispute. However, in protecting the public interests, the laws in a majority of countries only recognise jurisdiction of arbitrators in cases that fall under the governance of private laws.

[3] Selected papers prepared within the framework of the VIE/94/003, Vol. 4, Part II, Chapter 3, p 83. and Economic Laws of Vietnam, text book, Social Sciences and Humanities College, p. 472.

Thirdly, arbitral resolution of disputes helps to secure a better freedom to self-determination by the disputing parties in comparison with that in court handling of these disputes. In particular, parties concerned are entitled to choose arbitrators, place of dispute resolution, procedures to be followed in resolving the disputes and the governing laws.

Fourthly, arbitral awards are final and conclusive and can not be challenged before any agencies or organisations. In principle, arbitration is held in close doors. Apart from the plaintiff and the defendant, arbitrators will only summon other parties if necessary.

Fifthly, though arbitration procedures are greatly differed from country to country, selection of individual arbitrators and proceedings of most arbitration centres in the world are based on the UNCITRAL Model Arbitration Statute.

Sixthly, in principle, the laws in many countries require supports from the courts in securing a proper enforcement of arbitral awards. Through its recognition and permission for an award to be enforced, the courts help to ensure the enforceability of arbitral awards if one of the parties concerned fails to implement:

- arbitral decisions to take emergency measures including restricting or allowing a number of certain actions, compiling an inventory of assets and so on to secure a practical effect of arbitral awards;
- arbitral awards relating to the dispute resolution.

Seventhly, commercial arbitration in many countries is organised in two major forms, namely, ad-hoc arbitration and permanent (or statutory) arbitration.

The former is characterised by the lack of a fixed office and supporting staff and independence from any proceeding rules. In principle, parties concerned may, when referring their dispute to an ad-hoc arbitration choose proceeding rules and formalities whereby the dispute resolution will be undertaken. Thanks to its simplicity in term of organisation and flexibility in operations, ad-hoc arbitration seems to be suitable to less complicated cases that require a swift handling, and where the disputing parties have legal knowledge and proceedings experience. However, the number of disputes that are resolved through ad-hoc arbitration is fairly modest.

In the meantime, permanent arbitration has its own office and a list of individual arbitrators and operates subject to its own charter. Most of the leading and reputable arbitration organisations in the world are set up and in existence in such a form though their names may be differed such as arbitration centres, arbitration committees, arbitration institutes or national or international arbitration councils.

In normal term, a permanent arbitration is structured into two sections namely,

+ A permanent section (including the board of management and a secretariat)
+ Councils of arbitrators (that are formed where a case is referred to the arbitration for settlement)
+ Supporting staff.

The most outstanding feature of a permanent arbitration is its separate proceeding statute which is comprehensively provided. Basically, disputing parties have no right to choose hearing procedures. In early 1980s, many international arbitration institutions allowed the parties concerned to use UNCITRAL model rules to handle their disputes. In practice, each arbitration organisation has its own charter that is regularly amended, supplemented and improved to better respond to changing conditions and demands. On the other hand, apart from lowering arbitration fees, world's arbitration organisations are making efforts to shorten the time length of dispute resolution an include in the list of arbitrators those who have high reputation, knowledgeability, professional expertise and experience in different areas of the economic life. These efforts are seen as helping to enhance the performance quality of these arbitration organisations. This also further explains why in developed market economies, arbitral resolution of dispute is favoured and preferred by the business circle to court dispute settlement.

2.4. Dispute settlement through the court system

Resolution of business disputes through the courts is a form of dispute settlement using the State judiciary system that exercises the sovereign powers to issue judgements compelling the relevant parties to comply with by all means including forcible measures.

As a result, courts are often referred to by the disputing parties as a last resort in effectively protecting their legitimate rights and interests after their unsuccessful negotiations or conciliation. More importantly, in this case, disputing parties have no intention to choose arbitral resolution of their dispute.

Findings from paper studies and field trips to industrialised nations with developed legal system such as France, Germany, Japan, UK and the US indicate that court settlement of business disputes in these countries has the following salient features:

Principle of organising the court systems

In these countries, the court systems are organised subject to levels of jurisdiction namely courts of first instance, courts of appeal and court of cassation. The number of courts is not determined by administrative boundaries but demands of adjudication. It is normal that capital cities and trade centres will have more courts of appeal in comparison with that in other localities.

Principle of determining jurisdiction on a case-by-case basis

In principle, under the civil and commercial procedural laws in the countries in question, a case-by-case based jurisdiction is prescribed to

determine jurisdiction between components of a court system, that is court's jurisdiction is not limited to cases arising from civil transactions in general and trade practices in particular. Since courts are often referred to by the disputing parties as a last resort in effectively protecting their legitimate rights and interests, the civil and commercial procedural laws in many countries recognise a principle whereby "a judge should not deny to adjudicate adducing the absence of applicable laws". Furthermore, such a denial may constitute a criminal offence and will be severely dealt with under the penal code. This approach has highlighted a significant role of the case law as a crucial source of law that is created by the court to enable its hearing activities.

Courts in the countries in question normally have jurisdiction over the following disputes:

+ Disputes between business persons from commercial transactions.
+ Disputes relating to the issuance, custody, guarantee and trading of stocks.
+ Disputes between a company and its members or between members of a company relating to the establishment, organisation, operation and dissolution of the company.
+ Disputes over commercial notes.
+ Disputes over acquisition, lease out or contracting out of a business.
+ Disputes over industrial property (such as patents, utility solutions, industrial designs, trade marks and origin of goods).
+ Disputes relating to unfair competition and monopoly control.
+ Disputes over international trade and maritime.

Proceedings

Procedures that are applicable to business dispute resolution, though based mainly on civil procedures also have some modifications to be more suitable to business practices, e.g. provisions on council of trial, time limits of procedural steps etc. Therefore in the countries under consideration, instead of enacting a separate procedural law to govern business disputes only, civil procedural law is introduced and referred to during the settlement of business disputes.

Organisational structure of the courts

Depending on the levels of socio-economic development, cultural conditions, customs and legal tradition, court systems in the countries in questions are organised in different ways. In general, business disputes are handled by one of the following courts:

+ Specialised courts (often termed economic courts or commercial courts) that are organisationally independent from the ordinary courts are created to resolve business disputes. This type of courts is often seen in European countries which are featured by a continental law system, e.g. France or Germany.

Noticeably, commercial judges are appointed or selected subject to a separate statute that is not applicable to other judges. In France, for

example, commercial judge is an honourable title whose holder is not paid. For jurors (or assessors) working in economic (or commercial) courts should be reputed or experienced merchants or economists, their appointments are often made at the request of the chamber of commerce and industry.

+ Jurisdiction over business disputes is delegated to civil courts. In countries adopting such a model of dispute settlement, there is no clear-cut distinction between civil disputes and business disputes since business disputes are, in nature, treated as a variant of civil disputes. Therefore, there is no need to differentiate the governance of procedural laws so that a separate procedural law must be enacted for the business dispute settlement only. This model of court organisation is popular in common law countries including the UK, US, and some transitional countries such as China or Czech Republic.

In comparison with arbitral resolution of disputes, the dispute resolution through the court system enjoys overwhelming advantages in terms of proceeding and enforceability of the judgements. However, this method of dispute settlement is normally lengthier and more costly given the arbitral dispute resolution. Furthermore, the principle of open hearing that is pursued by the courts also raises concern among business circle as it may not secure their business secrets and reputation.

In sum, each method of business dispute resolution has its own characteristics and limits. Only the parties concerned and their lawyers know which method is most suitable to the settlement of their disputes. Practices from business dispute resolution in many countries show that in developed market economies, negotiations, conciliation and arbitration are prevailing among methods of dispute settlement while in transitional economies, the courts continue to be the most important form of dispute settlement.

3. A brief history of the development of business dispute resolution laws and practices in Vietnam

The history of laws governing business dispute resolution in Vietnam has experienced the following significant milestones:

1945-1956:

There was no distinction between business disputes and other types of property disputes. In this context, business dispute resolution was not created as an independent specialised mechanism of dispute resolution.

1956-1960:

Business disputes started to be distinguished from other types of property disputes after the Temporary Regulation No. 735-TTg on business contracts was promulgated on 10 April 1956 by the then Prime Minister. In accordance with Article 1 of the Regulation, a business contract was defined as "*a written document determining the relation between two or more business entities who voluntarily undertake to fulfil a number of certain tasks with a view to*

promoting industrial production and trade and contributing to the implementation of the State plans".

Subject to Article 20 of the Regulation, a dispute resolution is provided as follows:

- Disputes between private enterprises or between a private enterprise and a SOE or a co-operative will be referred to a registration or certification body for its settlement. In case where a public prosecution is needed, the registration body will initiate a law suit before the local court.

- Disputes between co-operatives or between SOEs will be referred to higher authorities or to an inter-branch meeting of higher authorities for their settlement.

The registration and certification of business contracts is prescribed in Article 8 as follows:

"Within 5 days from the date of their conclusion, all contracts entered into between private enterprises or between a private enterprise and a SOE or co-operative shall be registered with the industry-commerce board of the province or the authorised district administrative committee where these contracts are concluded.

Contracts entered into between SOEs or co-operatives, or between a SOE and a co-operative shall not be registered subject to procedures stipulated in Article 9 but shall be copied to the competent industry-commerce board for its observation.

Contracts of small values that are entered into between SOEs or co-operatives and farmer collectives (such as collective production teams or mutual aid groups) must be certified by the local commune's administrative committee.

Thus, the first bodies having jurisdiction over business disputes in Vietnam were provincial industry and commerce boards, administrative committees at district and commune levels, higher authorities of co-operatives, SOEs or people's courts[4].

1960-1994:

The building of a centrally planning mechanism in this period offered premises for the establishment of the State economic arbitration - a new dispute resolution body affiliated to the executive branch. The economic and legal foundations for the emergence of the State arbitration system are demonstrated as follows:

Firstly, it is the special legal status of the SOEs that requires a direct management of the State in all areas of activities. Although enjoying a relative independence in terms of their organisation and business and production activities, SOEs were, by their virtue a component of the entire economy where the State was the sole owner of all means of production. SOEs operating in a

[4] Selected documents prepared within the framework of the VIE/94/003 project, Vol. IV, Part II, Chapter I, p.50.

branch, industry or a certain area were placed under a uniform administration of a line ministry. However, due to their relative independence, SOEs could still maintain a mutual exchange and co-operation within the boundary of a branch or between different branches or areas. Under these circumstances, the State management is not directly undertaken by the line ministries but through the State Economic Arbitration.

Secondly, a centrally-planning mechanism requires SOEs to concentrate their business and production activities on the achievement of statutory targets set by the State. To ensure a successful fulfillment of such a task, the State economic arbitration was founded to supervise and monitor the operations of SOEs on the one hand and act as a co-ordinator of operations between various branches and economic management agencies during their implementation of the State plan on the other hand.

Thirdly, the existence of economic contracts as a special legal form of an equal exchange and co-operation between SOEs required a specialised State body to administer the conclusion and performance of these contracts, as well as resolve disputes once they arise[5].

After the promulgation of a series of legislation including Decree No. 20-TTg dated 14 January 1960, Decree No. 94/CP dated 10 June 1965, Decree No.75/CP dated 14 April 1975, Decree No. 24/HDBT dated 10 August 1984 and particularly the Ordinance on Economic Contracts dated 10 January 1990, the State Economic Arbitration has become a nation-wide system affiliated to the executive branch. This system was organised at three tiers, namely the central, provincial and district. The main function of the State economic arbitration system was to monitor and administer the conclusion, performance and termination of economic contracts with emphasis on:

- Maintaining discipline in complying with economic contract regulations and dealing with illegal economic contracts.
- Resolving disputes from economic contracts.
- Jointly or independently drafting regulations to govern economic contracts.
- Disseminating, educating or providing guidance on the implementation of regulations concerning economic contracts and economic arbitration.

Together with the State economic arbitration, economic activities in Vietnam during early 1960s required to set up non-governmental arbitration organisation to resolve disputes from international economic relations including not only the economic relations between Vietnam, the former Soviet Union and the eastern block but also the economic relations between Vietnam and developed market economies. In response to such a demand, the Foreign Trade Arbitration Council and Maritime Arbitration Council were established under Decree No. 59/CP dated 30 April 1963 and Decree No. 153/CP dated 5 October 1964 of the Council of Government respectively. These arbitration bodies had jurisdiction over disputes from foreign trade contracts, international payments, international transport, international maritime and insurance... After 30 years in existence, under Decision No. 204-TTg dated 28 April 1993 of the

[5] First draft of the "Economic Law of Vietnam" – text book, Faculty of Law, Hanoi National University, p.313.

Prime Minister, these arbitration bodies were merged into the Vietnam International Arbitration Centre.

Despite their 30-year history, the number of cases handled by these arbitration councils was insignificant especially during 1963-1986 when disputes were not so serious and often resolved through mutual negotiation for SOEs were then not treated as a full legal person.

Since 1986, as Vietnamese businesses have been transformed to operate on a cost-accounting basis, disputes increased in number and became complicated in substance. Consequently, more disputes were referred to the Foreign Trade Arbitration Council. Between 1988-1993, the arbitration organisation registered about 20 cases each year, a half of which were resolved through court hearings, while the remaining cases ended after successful negotiations between the parties concerned[6].

From 1994 until now

The transition of Vietnam's economy into a market-driven economy has witnessed a diversity of economic activities and participation of various economic sectors having different types of ownership. This also results to considerable changes in the form and substance of business disputes that require a fundamental renovation of the ways in which economic disputes are resolved. For that reason, in its fourth session the Tenth National Assembly adopted the Law on Amendments of and Additions to a Number of the Law on the Organisation of the People's Courts on 28 December 1993. Under the amended Law, from 1 July 1994, an economic court as a specialised chamber in the system of the people's courts was created to adjudicate economic cases. This event also marked the end of the State economic arbitration in the economic life of the country.

In response to natural demands for diversifying modes of business dispute resolution to fit to the operation of market rules, and at the same time to bolster regional and international economic integration, the Government issued Decree No. 116/CP dated 05 September 1994 on the organisation and operations of economic arbitration centres at provincial level.

Thus, together with the economic courts as the only State dispute settlement body, there are currently two non-governmental dispute resolution bodies in parallel existence, namely the Vietnam International Arbitration Centre affiliated to the Vietnam Chamber of Commerce and Industry and provincial economic arbitration centres. These institutions are regulated by different legislation that makes it a special characteristic during the evolution of economic laws in Vietnam over the past years.

[6] Selected documents prepared within the framework of the VIE/94/003 project, Vol. IV, Part II, Chapter I, p.52.