III. RESOLUTION OF ENVIRONMENT DISPUTES IN VIETNAM

1. General Overview of Environment Disputes in Vietnam

1.1 General Comments:

Environment disputes are conflicts and disagreements between entities participating in an environment law relationship when they gather that their lawful rights and interests are violated or in danger of being violated.

In Vietnam, environment disputes are currently in the trend of increasing on a national scale. According to the year 2000 report of the Inspectorate of the Ministry of Science, Technology and Environment on the results of inspection, of dealing with breaches of environment protection laws and of compensation for damage caused by environment pollution, from 1994 to 2000, there were 3,252 cases of breach of environment protection laws, of which the breaching entities in 1,515 cases, accounting for 46.57% of the total number of breaches, had the responsibility to compensate for damage caused to organisations and individuals. This report also lists the following main types of environment disputes from 1994 to 2000:

- Requests of local people to project owners or bodies issuing licences to projects that project implementation be cancelled in order to protect environmental rights and interests which they believe are in danger of being violated. These disputes concentrate mainly in large urban areas like Hanoi, Ho Chi Minh City, Hai Phong City, Quang Ninh Province, Dong Nai Province, and a number of localities where there are many historical sites and beautiful landscape.

- Claims for damages for activities of production of bricks, tiles and other building materials; exploitation and processing of coal; thermal power generation; aquatic product processing; fuel business; especially claims for compensation for damage caused by production of pottery, noodles, etc. to the environment, agricultural production and aquaculture.

- Disputes over claims for damages for oil spills (25 cases), claims for damage caused by production or processing of insecticides, chemical fertilizers, GSM, cosmetics, textile, sugarcane, steel and so forth which pollute the environment and are detrimental to the health, crops and livestock of the local people.

1.2 Typical signs of environment disputes:

Environment disputes have the following typical signs:

- *Subjects of dispute:*

  The subjects of environment disputes are lawful environment rights and interests which are violated or in danger of being violated. This sign helps to distinguish between environment disputes and other disputes. For example, a dispute over

land intrusion causing damage to legal land users can be distinguished from a dispute arising from the act of burying or disposing toxic chemicals to the land, causing soil pollution which affects the productivity of crop or livestock and thus damaging production and business activities of land users. A special note should be taken here of the fact that an environment dispute may arise even when the lawful environment rights and interests of an entity is in danger of being violated. The danger of being violated means that damage has not yet been caused at the time the dispute arises, but will certainly occur if no preventive measure is taken at the stage of design and implementation. It is certainly very difficult to identify such cases of danger of causing damage. This should not be done by instinct or speculation but requires the opinion of and confirmation by scientists and professional bodies.

- *Contents of dispute:*

  The contents of environment disputes are specific demands regarding the environmental rights and interests which the parties believe should be restored.

  Organisations or individuals request that the organisations or individuals causing damage cease the act of breach, restore the original status of the polluted or degraded environment, compensate for human or asset damage caused to the aggrieved party, or take preventive measures against the hazard of damage. These are non-contractual disputes arising from acts of breaching environment laws, breaching regulations and standards of environment, causing damage or threatening to cause damage to organisations or individuals, giving rise to the responsibility to prevent potential hazards, to compensate for preventive costs or costs for restoring the original status of the aggrieved party. *Determination of the content of an environment dispute in this case means determination of the responsibility for compensation for non-contractual damage between the parties involved in the dispute.*

- *Disputing entities:*

  Disputing entities are the parties involved in a dispute when they believe that their lawful rights and interests are violated. When a dispute arise in an economic, labour, or land ... relationship, it is usually possible to identify the disputing parties and the interests being violated. The reason for that is most disputes arising in the above fields are contractual disputes from economic contracts or labour contracts, etc. Therefore, when a dispute arises, it is not difficult to identify the aggrieved party (the party having rights) and the party causing damage (the party having obligations). In the field of environment, it is not easy to identify the parties involved in a dispute at the time it arises. In many cases, the aggrieved party can determine the damage it suffers, but cannot specify the person causing such damage. An example is the case where two or more production establishments dispose wastes over the permitted level to a water source, polluting it and causing damage to the assets of aquatic product rearers. There are also many cases where the party causing damage is identified but the individual persons causing the damage cannot be specified, such as in events of oil spills or radioactivity accidents, which affect the life, health and assets of a huge number of residents in surrounding areas. An even more

complicated case is where many persons taking acts which are detrimental to the environment and at the same time cause damage to many other persons; none of them can be identified specifically or accurately at the time the dispute arises. As a result, environment disputes are often found between many aggrieved persons (a residential community) and many persons causing damage (companies or plants which cause environment pollution). This sign seems rare in other types of disputes.

1.3 Classification of environment disputes:

The following criteria are often used for classification of environment disputes:

+ Based on the *characteristic of the social relationship where the dispute arises*, environment disputes are classified into: 1) disputes arising in the field of State administration of the environment; 2) disputes arising between organisations and individuals in order to protect the common environment as well as to protect their own rights and interests.

  Disputes in the field of State administration of the environment often arise when the concerned parties believe that an administrative decision or administrative act of an environment management body or staff in charge of State administration of the environment has affected or will affect their lawful rights and interests. These disputes often include requests to environment management bodies or staff in charge of State administration of the environment that such administrative decision or administrative act be adjusted or amended in order to eliminate or minimize detriment to the concerned parties and compensation be paid for damage (if any).

  There can be two opinions on the existence of administrative disputes. One opinion is that there cannot be an administrative dispute because dispute means a conflict between parties which are often legally equal. The relationship of administrative law itself is an unequal relationship which always has the characteristic of compulsory order. If there is any objection, it will be from the managed party only. Therefore, there is no such thing as an administrative dispute. Another opinion is that an act of litigation of a citizen or organisation represents the conflict or disagreement between them and the person making the administrative decision or the person taking the administrative act which affects or damages their rights and interests. Consequently, such act of litigation or complaint of a citizen can be considered as a request for resolution of an administrative dispute.

  In the second section of this paper, we will present the mechanism for resolution of environment-related administrative disputes and the mechanism for resolution of environment disputes between organisations and individuals.

+ Based on the *characteristic of the act of an entity*, environment disputes comprise of: 1) disputes arising from acts of polluting or degrading the environment; 2) disputes arising from acts causing environment incidents.

+ Based on the *time of occurrence*, environment disputes consist of: 1) disputes arising where no actual damage has happened (including disputes arising both before implementation of a project and during implementation of a project which has not yet caused any actual damage); 2) disputes arising after actual damage has happened.

+ Based on the *right to use or exploit environment elements of the aggrieved person*, there are: 1) disputes between the person causing damage and the aggrieved person who is allocated with the right to use or exploit environment elements; 2) disputes between the person causing damage and the aggrieved person who is not allocated with the right to use or exploit environment elements.

+ Based on the *possibility of identifying accurately the number of entities involved in a dispute*, environment disputes are divided into: 1) disputes arising between one aggrieved organisation or individual with one identified party causing damage; 2) disputes arising between many aggrieved organisations or individuals which have not yet been specified with one identified party causing damage; 3) disputes arising between one aggrieved organisation or individual with a number of parties causing damage which have not yet been specified at the time of the dispute; 4) disputes arising between many aggrieved organisations or individuals which have not yet been specified with a number of parties causing damage which have not yet been specified either at the time of the dispute.

From the above analysis, the following characteristics of environment disputes in Vietnam can be deduced:

- Arising directly from or relating closely to environment protection activities, with environment protection construed in its broad meaning, including activities of State administration of the environment.

- Arising very early (from the time one party believes that the act of another party may violate its lawful rights and interests).

- Disputes are attached to not only the private interests of the involved entities but also the common interest of the whole community of residents.

- The plaintiff includes various entities, which may be the State, an organisation, an individual, and in many cases, households.

- The party causing damage is usually a business or production establishment (regardless of their scale), an enterprise in any economic sector, or owner of a highly dangerous source.

- The damage is usually difficult to determine and in some cases can be very big.

2. Mechanism for Resolution of Environment Disputes

In its most common meaning, a mechanism for resolution of disputes in general, and of environment disputes, in particular, includes invariable institutions (institutions which are organisational and have power) and variable institutions (legal mechanism). Invariable institutions comprise of State bodies, organisations and State officials (also referred to as the authorities) who are authorized by the State to consider and resolve disputes. Variable institutions are an uniform system of tools, facilities, legal procedures and methods used by authorized State bodies and State officials for resolution of conflicts and disagreements between disputing parties, and for restoration of the quality of the living environment which was damaged by an act of environment pollution or degradation.

As analysed in section 1, the difference in the two groups of environment disputes (group 1 includes disputes arising in the field of State administration of the environment and group 2, disputes arising between organisations and individuals in the protection of the common environment and protection of their own interests) has led to differences in the current legal mechanism for resolution of environment disputes from each group.

2.1. Mechanism for resolution of environment-related administrative disputes (group 1)

Group 1 environment disputes are administrative in their essence. They are disputes between organisations or individuals and a State body or State administrative employees in the field of environment management. An important legal basis for citizens to protect their lawful interests before authorized State bodies and State officials is their right to complain and take action.

Article 1 of the Law on Complaint and Denunciation dated 2 December 1998 stipulates that "Citizens, bodies and organisations have the right to appeal against an administrative decision or administrative act of a State administrative body or of an authorized person in a State administrative body where there is ground to believe that such decision or act is against the law and detrimental to their lawful rights and interests".

In the field of environment management, authorized State bodies and authorized persons in State administrative bodies often issue administrative decisions relating to the following: 1) Decision on issuance of investment licences or construction licences for works which have direct impacts on the quality of the environment; 2) Decision permitting export of goods being environment elements such as forestry and aquatic products; 3) Decision permitting import of goods which may cause environment pollution such as used machinery and equipment or toxic chemicals; 4) Decision on construction and management of works relating to the environment such as national parks, natural reserves, waste treatment systems, environment observation systems; 5) Decision on application of the environment standard system; 6) Decision on financial contribution obligations relating to the environment such as environmental taxes, fees or charges; 7) Decision on approval of an environment impact assessment report (as the basis for authorized bodies to issue an investment licence or construction licence for a

project); 8) Decision on issuance, renewal or withdrawal of a licence of satisfaction of environment standards; 9) Decision on inspection of or dealing with breaches of environment laws or compensation for environmental damage.

- *Resolution of environment-related administrative disputes in accordance with administrative procedures:*

Most of group 1 environment disputes are resolved in accordance with administrative procedures based on the provisions of the 1998 Law on Complaint and Denunciation and Decree No. 67/1999/ND-CP dated 7 August 1999 of the Government providing detailed guidelines for the implementation of the Law on Complaint and Denunciation. The authority and procedures for resolving administrative disputes in the field of environment protection are stipulated as follows: each dispute arising from complaints again State administrative staff shall be dealt with by the head of the body in charge of management of the contents of the respective dispute. Even when bodies, organisations or individuals have the right to take action to request that the court protect their lawful rights and interests, before taking an action, they must complain to the State body which issued the administrative decision or took the administrative act which they believe is illegal. In the case of disagreement with the decision resolving the complaint, they will have the right to complain to the direct superior of the State body, of the person issuing the administrative decision or taking the administrative act, or to take an action before a competent court.

The order and procedures for resolving administrative environment disputes are specified as follows:

> The complainant must complain to the person issuing an administrative decision or the body whose staff took an administrative act where the complainant believes that such decision or act is illegal or violates his or her lawful rights and interests. The limitation period is 90 days from the date of receipt of the administrative decision or the date of learning of the administrative act.
>
> Within 10 days from the date of receipt of a letter of complaint, the person authorized to deal with the complaint must accept the case for resolution and notify the complainant in writing. The duration of resolution of a complaint shall not exceed 30 days from the date of acceptance; and not exceed 60 days from the date of acceptance in complicated cases. Where, after 30 days from the end of the duration for resolution, a complaint is not resolved, or from the date of receipt of the decision on complaint resolution, the complainant disagrees, the complainant shall have the right to complain to the next person authorized to resolve complaints, or initiate an administrative action at a court.

- *Authority for resolution according to legal procedures:*

According to article 1 of the Ordinance on Amendment of and Addition to a Number of Articles of the Ordinance on Procedures for Resolution of Administrative Cases dated 25 December 1998, a competent court shall resolve the following cases of environment-related administrative litigation: 1) litigation against decisions on penalties for administrative breaches in the field of environment protection; 2) litigation against administrative decisions or administrative acts in issuance or withdrawal of licences for

capital construction or production or trading of goods which have significant impacts on the environment quality; 3) litigation against administrative decisions or administrative acts in collection of environment protection fees, fees for issuance of certificates of satisfaction of environment standards, or fees for evaluation of environment impact assessment reports.

2.2. Mechanism for resolution of environment disputes between organisations and individuals (group 2)

a) Mechanism for resolution of requests to cease environment polluting acts

As analysed in section 1, certain environment disputes arise from the time one of the parties believes that an act of the other party may violate their lawful environmental rights and interests. These can be considered as environment-related conflicts or disagreements which arise before any actual damage occurs. In this case, citizens may perform their right to complain and denounce to an authorized body, organisation or individual in the form of discovery of, recommendation on, request about, or report on the acts which show signs of breaching environment protection laws, cause damage or threaten to cause damage, affect the quality of the surrounding environment or affect their life quality.

Article 1 of the 1998 Law on Complaint and Denunciation provides that "Citizens have the right to make denunciation to authorized bodies, organisations or individuals against illegal acts of any body, organisation or individual which cause damage or threaten to cause damage to the State interest, or lawful rights and interests of citizens, bodies or organisations".

Article 26 of Decree 26/CP dated 26 April 1996 of the Government on dealing with administrative breaches in the field of environment protection stipulates that "Citizens have the right to make denunciation to authorized State bodies against administrative breaches in the field of environment protection of other organisations or individuals".

- Authority, order and procedures for dealing with reports on and denunciations of acts of breaching environment laws

Article 60 of the 1998 Law on Complaint and Denunciation provides that "Bodies in charge of State administration of each field shall be responsible for dealing with denunciations of acts of breaches of the laws in their respective field". Therefore, people's committees at various levels and bodies in charge of State administration of the environment shall be responsible for dealing with related denunciations.

At the grassroots level, people's inspection organisations shall, within the scope of their duties and powers, receive information and reports of the local people on complaints and denunciations and deal with same in their communes, wards, townships, bodies or units; promptly discover breaches of the laws on complaint and denunciation; and make recommendations to chairmen of people's committees at the commune level or heads of their bodies or units to deal with such complaints and denunciations.

Article 93 of the 1998 Law on Complaint and Denunciation stipulates that "Chairmen of people's committees at the commune level and heads of bodies or units at the grassroots level shall be responsible for notifying people's inspection organisations of the resolution of complaints and denunciations under their authority, and for considering and dealing with recommendations of people's inspection organisations".

During the handling of denunciations, where authorized State bodies discover that a denounced act is a breach of the laws on environment, they may take the following measures:

> Chairmen of people's committees at the commune level shall have the power to impose the following forms of penalty for administrative breaches in relation to the environment: (1) issuing a warning; (2) issuing a fine of up to two hundred thousand (200,000) Dong; (3) confiscating materials and means of committing administrative breaches whose value is up to 500,000 dong; (4) forcing compensation for damage caused by an administrative breach of up to 500,000 dong; (5) forcing restoration of the original state which was changed by an administrative breach (6) suspending activities which pollute the living environment, spread diseases and epidemics, or make noise which disturbs the mutual quietness; (7) destroying toxic products which adversely affect human health (Article 26 of the *Ordinance on Dealing with Administrative Breaches* dated 6 July 1995).
>
> Chairmen of people's committees at the district level shall have the power to impose the forms of penalty for administrative breaches in relation to the environment set out in Article 27 of the *Ordinance on Dealing with Administrative Breaches* (except for the right to deprive the right to use environmental permits).
>
> Chairmen of people's committees at the provincial level shall have the power to impose the forms of penalty for administrative breaches in relation to the environment set out in Article 27 of the *Ordinance on Dealing with Administrative Breaches* (except for the right to deprive the right to use environmental permits issued by the Ministry of Science, Technology and Environment and Departments of Environment).
>
> Chairmen of people's committees at the above-mentioned levels shall have the right to request authorized bodies issuing environmental permits to revoke such permits.

b) Mechanism for resolution of claims for compensation for damage caused by environment-polluting acts

Liability to compensate for damage caused by an environment-polluting act

The *Law on Protection of the Environment* which was adopted by the National Assembly on 27 December 1993 and has taken effect as of 10 January 1994 is the principal law in relation to environment protection. This law has provided the

principles for environment protection, such as: ensuring the right of a person to live in an unpolluted environment, the State assuming unified administration of environment protection; protecting the environment aimed at securing the long term development of the country; environment protection being a task of the entire people; Any organization or individual utilizing any of the environment elements for production or business purposes must pay costs and responsibilities for compensation for damage caused by acts of polluting the environment and so forth. The *1993 Law on Protection of the Environment* has made provisions on prevention, fighting and remedy of environmental degradation, pollution, or hazards. The law has provided the functions, duties and powers of State bodies in relation to protection of the environment. This law has also created legal basis for administrative liabilities and civil liability in relation to protection of the environment.

Articles 7, 30 and 52 of the *1993 Law on Protection of the Environment* provide that any organization or individual causing environmental degradation, pollution, or hazards through production, business, or other activities must implement remedial measures in accordance with the provisions of the local people's committee and the State Environment protection Authority, and shall be liable for payment of compensation for damage caused in accordance with the provisions of the law. Article 18.2 of Decree 175-CP of the Government dated 18 October 1994 providing guidelines for implementation of the *Law on Protection of the Environment* provides that commercial and manufacturing establishments shall be responsible for strictly complying with the provisions of the law on financial contributions to the protection of the environment and payment of compensation for any damage caused by any activities which are detrimental to the environment in accordance with the provisions of the law. Pursuant to article 1.3 of Decree 26-CP of the Government dated 26 April 1996 on Penalty for Administrative Breaches in Relation to Environment protection, any organization or individual committing an administrative breach in relation to environment protection thereby causing material damage must compensate for such damage in accordance with the provisions of the law. Article 2 of this Decree provides that: "Compensation for damage caused by an administrative breach in relation to environment protection shall be determined on the basis of the principle of mutual agreement of the offender and the offended. In cases where the material damage caused by an administrative breach in relation to environment protection is valued at up to one million (1,000,000) Dong and both parties cannot reach a mutual agreement on compensation, the person having the authority to impose a penalty shall decide the rate of compensation. Any damage valued at more than one million (1,000,000) Dong shall be resolved in accordance with the procedures for civil proceedings".

Among legal instruments on environment protection, there are two legal instruments in the form of circular which make provisions relating to compensation for damage caused by acts of polluting the environment. They are Circular 2370-TT-MTg dated 22 December 1995 providing provisional guidelines for remedy of oil leakage accidents and Circular 2262-TT-MTg dated 29 December 1995 of the Ministry of Science, Technology and Environment providing guidelines for remedy of oil spillage accidents.

The liability to compensate for damage caused by an environment-polluting act has been referred to in the *Civil Code* dated 28 October 1995. First all, Article 628 provides that *an individual, legal entity or other subject polluting the environment,*

thereby causing damage, must compensate in accordance with the law on environment protection, unless the aggrieved person is at fault. Article 268 also provides that when using, taking care of or renouncing his or her property, an owner must comply with the law on environment protection. If he or she causes environmental pollution, the owner must cease the acts which cause the pollution and take measures to remedy any consequences and compensate for any damage.

Apart from the legal bases mentioned above, the liability to compensate for damage caused by acts of polluting the environment has also been provided in many other legal instruments such as the *1990 Maritime Code* (articles 195 and 196), the *1996 Mineral Law* (articles 64 and 65), the *1998 Water Resource Law* (article 71) and so forth.

The above-mentioned provisions on compensation for damage in relation to the environment are only the general provisions of principle. It is a great difficulty for judicial bodies in considering and handling claims for compensation for damage caused by an environment-polluting act. However, initially, such provisions have created a legal basis for prosecution for civil liability with respect to subjects which conduct an environment-polluting act and taken actively part in the environment protection aimed at realizing the target of long-term national development of Vietnam.

Subjects bearing the liability to compensate for damage caused by acts of polluting the environment

Pursuant to article 7 of the *1993 Law on Protection of the Environment* and article 628 of the *1995 Civil Code*, in general, we may understand that subjects bearing the liability to compensate for damage caused by an environment-polluting act are organizations and individuals.

Organizations shall have the legal capacity and the capacity for liability to compensate for damage upon the establishment. Organizations which conduct any environment-polluting act thereby causing any damage when they participate in relations subject to the laws on the environment shall be responsible for compensating for the damage by recourse to their own property. Organizations may be a legal entity (such as State owned enterprises, limited liability companies, shareholding companies, co-operatives, research institutes and so forth) or other organizations which are not a legal entity (such as households, co-operative groups, private enterprises, partnerships and so forth).

With respect to individuals, persons who are eighteen (18) or more years of age and have full capacity for civil acts shall be personally liable to compensate for damage. Where a person who is between fifteen (15) and eighteen (18) years of age causes damage, such person must compensate by recourse to his or her own property. If such person has insufficient property to compensate, the parents of such person must satisfy the outstanding amount by recourse to their own property. Where a person under fifteen (15) years of age causes damage, his or her parents, if any, must compensate for the total damage. If the parents have insufficient property to compensate and the child who has caused the damage has property of his or her own, such property shall be used to satisfy the outstanding amount of compensation to the aggrieved person.

Where a minor, or a person who has lost the capacity for civil acts, causes damage, but there is an individual or organization acting as his or her guardian, then such individual or organization may use the property of the ward to compensate. If the ward has no, or insufficient, property to compensate, then the guardian must do so by recourse to the property of the guardian. If the guardian is able to prove that he or she was not at fault in respect of guardianship, the guardian shall not be required to use its property to compensate.

In practice, subjects polluting the environment mainly are enterprises. Because such commercial and manufacturing establishments have conducted their business or production activities without waste treating equipment or observance of other regulations on environment protection, they cause environmental degradation, pollution or hazards resulting in damage to other organizations and individuals. Thus, first of all, "potential" subjects being responsible for compensating for damage are enterprises in all economic sectors.

Conditions for giving rise to liabilities to compensate for damage caused by an environment-polluting act

The liability to compensate for damage caused by an environment-polluting act is the liability to compensate for non-contractual damage. Pursuant to the civil laws, the liability to compensate for non-contractual damage, including the liability to compensate damage caused by an environment-polluting act shall arise when the following conditions are satisfied:

Damage has occurred:

This is a precondition of the liability to compensate for damage because the purpose of the performance of this liability is to recover the state of the property or health of the aggrieved person. Damage usually is actual losses which can be calculated in terms of money caused by harming the life, health or property of an organization or individual. Damage caused by acts of polluting the environment may include the following damage:

- *Damage caused by infringement of property*. The damage may include destroyed or damaged property, damage caused by the reduction or loss of associated interests because the property cannot be used or exploited or the use or exploitation of the property is limited; costs for prevention and remedy of the damage. Example: a company discharges untreated waste water into rice-fields or crop-fields of households, harming such fields, resulting in the fact that their yield is materially reduced. Or because of oil spillage, ponds and lakes are poisoned, aquatic resources such as shrimp and fish die. Or when water sources and air are polluted or pasture is poisoned by waste discharged by industrial establishments, cattle and poultry are sick or die resulting in damage to the people. Resorts are closed because pollution resulting in a loss of income and reduction in profits, and so forth.

- *Damage caused by harm to health* may include reasonable costs for treating, nursing and rehabilitating health and losses and impairment of functions; loss of, or reduction in, the actual income of the aggrieved person or the carers of the aggrieved person and so forth. Example: when the living environment is polluted (water pollution, air pollution, soil pollution and so forth), human health is reduced, the people get respiratory diseases or digestive diseases and so forth. The persons suffering from such diseases have to pay costs of medical examination and treatment, at the same time, their income is reduced because they cannot work.

- *Damage caused by harm to life* may include costs for treating, nursing and caring for the aggrieved person prior to the death of the aggrieved person; funeral costs; support for the dependants of the aggrieved person. The damage caused by harm to life may arise upon occurrence of an environmental hazard such as oil spillage or explosions, forest fires and so forth.

- *Acts which cause damage being breaches of the laws on environment protection*

Breaches of the law on environment protection are multiform and plentiful. A number of relatively popular breaches may be listed as follows:

- Breaches of the provisions on prohibited acts of the *1993 Law on Protection of the Environment*. The following acts are strictly prohibited by article 29 of the *1993 Law on Protection of the Environment*: deliberate lighting of forest fires, destruction of forests, and careless exploitation of mineral resources resulting in damage to the environment and ecosystems; emission of smoke, dust, toxic gas, and putrid fumes; and emission of excess levels of radiation and radioactive particles into the surrounding environment; burial or dumping of harmful toxic wastes into the earth in unlawful quantities; discharge of oil and grease, harmful toxic chemicals, unlawful quantities of radioactive substances, wastes, animal corpses, plants, bacteria, and micro-bacteria spreading diseases into water sources; importing technology and equipment which does not meet environmental standards; importing or exporting wastes and so forth.

- Breaches of the provisions on environmental impact assessment or the written requirements set out in reports on appraisal of environmental impact assessment reports.

- Breaches of the provisions on protection of natural resources such as the provisions on protection of forest, exploitation and trading of valuable and endangered animals and plants; protection of land and land sources; breaches of the provisions on biological diversity and natural reserves and so forth.

- Breaches of the provisions on public hygiene such as the provisions on transportation and treatment of wastes or solid wastes; the provisions on noise and vibrations and so forth.

- Breaches of the provisions on preservation and use of substances which may cause pollution; breaches of the provisions on prevention of environmental

accidents during petroleum exploration, exploitation, or transportation; during exploration and mining and so forth.

Subjects which cause damage are at fault

In the field of environment protection, the liability to compensate for damage caused by an environment-polluting act shall be only released when the aggrieved person is at fault. This provision means that if the aggrieved person is not at fault, the person polluting the environment shall always bear the liability to compensate for damage caused by an environment-polluting act. In a number of specific cases, the liability to compensate for damage is not released even where the person polluting the environment is not at fault. Article 627.2 of the *1995 Civil Code* provides that "An owner, or person to whom an owner has transferred the possession or use, of a source of extreme danger, must compensate for any damage caused by such source, even where such owner or person is not at fault". This provision should apply to the resolution of disputes regarding a claim for compensation for damage caused by sources of extreme danger such as means of transport, industrial factories in operation, nuclear piles, nuclear power stations, weapon, explosive or flammable or radioactive substance warehouses and so forth. Recently, oil spillage accidents caused by means of transport by water have polluted the environment to a large extent and caused great damage to the people and organizations in surrounding areas[14].

There is a causal relation between damage and breaches of the laws on environment protection.

Actual damage which occurred is the result of breaches of the laws. Or in other words, breaches of the laws are the cause of the damage which occurred. This relation should be clarified during the process of identification of the liability to compensate for damage caused by an environment-polluting act.

Procedures for resolution of claims for compensation for damage caused by an environment-polluting act by way of legal proceedings

The procedures for resolution of claims for compensation for damage caused by an environment-polluting act are provided in the *Ordinance on Resolution Procedures for Civil Disputes* dated 29 November 1989. Any organization or individual suffering

[14] Example: *the oil spillage accident in Vung Tau territorial water*. At 1:20 a.m. on 7 September 2001, Formosa One Tanker bearing Liberia nationality hit Petrolimex 01 Tanker, causing 900 tons of oil from Petrolimex 01 Tanker to spill into and pollute the sea. The People's Committee of Ba Ria-Vung Tau Province, the Department of Science, Technology and Environment and Vietsovpetro mobilised all forces to remedy the oil spillage aimed at minimize pollution of the environment.

The oil spillage accident has led to the fact that tourists visiting Vung Tau were reduced by five sixths, causing damage of about 43,000,000,000 Vietnamese dong to the tourism industry. The damage to aquatic cultivation, inshore fishing and maritime logistics was 108,000,000,000 Vietnamese dong; the damage to salt production was 27,080,000,000 Vietnamese dong, the effect on the health of the community was 11,210,000,000 Vietnamese dong, costs for cleaning the environment were 60,000,000 Vietnamese dong. The total estimated damage was 260,000,000,000 Vietnamese dong, equivalent to USD17.2 million.

from damage caused by an environment-polluting act shall be entitled to take a legal action aimed at requesting a court to protect its or his or her legitimate interests. The organization or individual shall take the legal action by way of lodging an application with the court. Having studied the application for a legal action, where the judge considers that the case falls under the jurisdiction of his/her court, he or she shall immediately notify the plaintiff of payment of a court fee deposit. The court shall accept the case from the date on which the plaintiff pays a court fee deposit, then the court shall prepare for trial. The period of preparation for trial shall not exceed 4 months with respect to normal cases and 6 months with respect to complex cases. During the period of preparation for trial, the court shall perform the following works:

- Taking the testimony of concerned parties or witnesses in relation to relevant issues.

- Requesting relevant State bodies and social organizations to provide significant evidence for resolution of the case.

- Verifying on the spot.

- Requesting the service of an expert.

- Requesting specialized bodies to determine damage to health or property.

Courts of first instance must carry out conciliation between the concerned parties prior to conducting a trial. The conciliation shall be carried out with the presence of the concerned parties. Where the concerned parties reach an agreement on the settlement of the dispute, the judge shall prepare a record of the settlement. A copy of the record of the settlement shall be forwarded immediately to the inspectorate of the same jurisdiction. Within fifteen (15) days from the date on which the record of the settlement is prepared, if the concerned parties do not change their opinion and the inspectorate does not object the settlement, the court shall issue a decision acknowledging the settlement of the concerned parties. This decision shall be of legal effect upon issuance. Where the concerned parties cannot agree with each other on a settlement of the dispute, the court shall make a record of the non-settlement and issue a decision to conduct a trial of the case. After the decision to conduct a trial of the case is issued, the court shall conduct first instance hearing in accordance with the following procedures: (1) commencement procedure of the trial; (2) questioning in the trial; (3) pleading in the trial; (4) judgment; (5) pronouncing the judgment.

Within fifteen (15) days of the date on which the court pronounces its judgment, the concerned parties shall have a right to appeal to an upper court. The time limit for lodging a protest of the inspectorate of the same jurisdiction and of a higher jurisdiction shall be fifteen (15) and thirty (30) days respectively as from the date on which the court posts the judgment.

A provincial court shall conduct the appeal hearing of the judgment of the court of first instance which is appealed or protested against within three months and the Supreme People's Court shall conduct the appeal hearing within four months as from the date of receipt of the file of the case.

The procedures for hearings by the appellate court shall also include: (1) commencement procedure of the trial; (2) questioning in the trial; (3) pleading in the trial; (4) judgment; (5) pronouncing the judgment.

The council of adjudicators with appellate jurisdiction comprising three judges (without any juror) shall have the power to:

- Upheld the judgment of the court of first instance;

- Vary the judgment or decision of the court of first instance;

- Set aside the judgment in order to conduct a new trial in cases where (1) the verification by the court of first instance is not sufficient and the appellate court cannot admit any new evidence; (2) the composition of the council of adjudicators with first instance jurisdiction did not comply with the provisions of the law or there are serious breaches of litigatory procedures.

- Temporarily suspend or suspend the resolution of the case if there is any legal ground.

A legally enforceable judgment can be reviewed in accordance with judicial review or re-trial procedures.

Judicial review procedure is a special stage of civil procedures in which courts of a higher level review the legality and the bases of the legally enforceable civil judgments of lower level courts on the basis of protests by the competent persons.

Civil re-trial is also a special civil procedure stage in which courts of a higher level review the legality and bases of legally enforceable civil judgments of lower level courts if there is fresh evidence which have a bearing on the outcome of the case on the basis of protests by the competent persons.

3. Overview on the Practice of Resolution of Environment Disputes in Vietnam

In Vietnam, the practice of resolution of environment disputes has not become popular, only a few cases of environment disputes have been resolved and some of them are not resolved completely. However, real life requirements have led to the performance of dispute resolution activities in a number of localities and certain results have been achieved as follows:

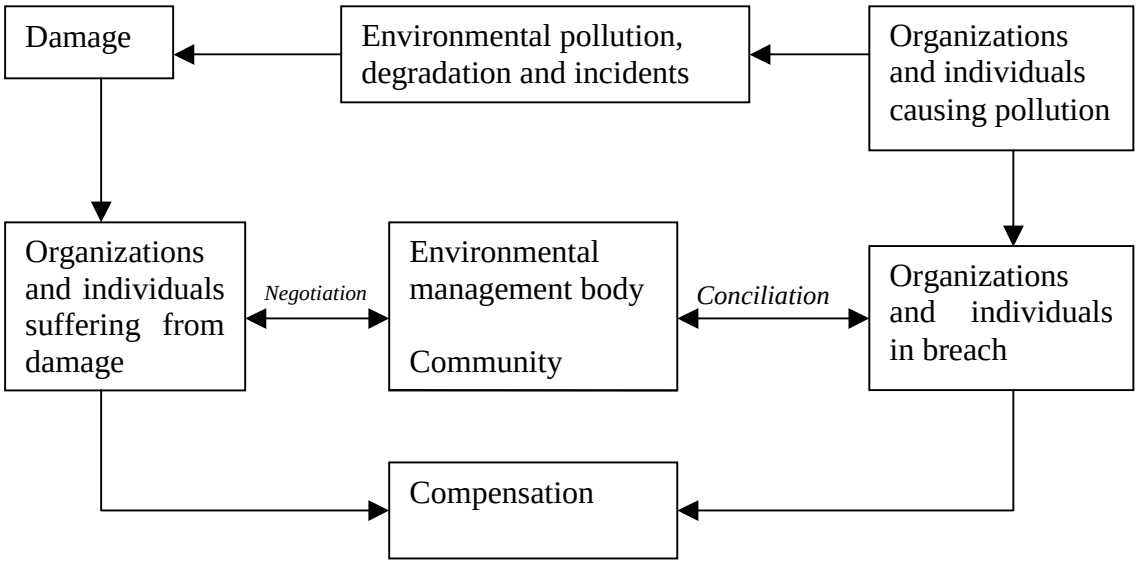
Firstly, with respect to administrative disputes (Group 1)

Most of the disputes in this group are resolved in an administrative way (in accordance with the order and procedures for resolution of complaints) and not by way of courts (in accordance with the order and procedures for resolution of administrative actions). According to the data and actual hearing records compiled

by the Office of the Supreme People's Court, from the date of establishment (1996) up to now, administrative courts of provinces and cities under central authority as well as the Administrative Court of the Supreme People's Court have neither processed nor heard any environment-related administrative proceedings. This has occurred because in accordance with Article 11 of the Ordinance on Resolution Procedures for Administrative Proceedings in Relation to the Environment, courts are only authorized for resolution of actions against decisions on penalties for administrative breaches, and other disputes are resolved by the way of complaint resolution.

Secondly, with respect to disputes claiming compensation for damage caused by environmental polluting acts (Group 2):

Most of the environmental disputes in this group are resolved by way of negotiation and conciliation with the participation of the body in charge of State administration of the environment as shown in the model below:



According to environmental management authorities, the application of the above model indicates the "preeminence" of the resolution of environment disputes with the participation of bodies in charge of State administration of the environment (mainly environment inspectors) as the conciliation intermediary. Environmental inspectors participate in the process of resolution of environment disputes as a specialized body for consideration and evaluation of the degree of environmental damage in term of pollution. It's also a key body for analysis and evaluation of legal evidence, recommending the bases for resolution and analyzing social relationships to enable the concerned parties to understand each other and voluntarily make compensation without referring the case to the court.

There are controversial opinions over whether environmental management bodies should participate and the degree of their participation in resolution of

environment disputes. However, up to now nearly 30 provinces and cities under central authority have applied this method for resolving successfully 51 cases of environment disputes of which the compensation amount is less than 50 million dong in 36 cases, from 50 million dong to 100 million dong: 1 case, from 100 million dong to 200 million dong: 5 cases, from 200 million dong to 500 million dong: 4 cases, from 500 million dong to one billion dong: 2 cases, and above one billion dong: 3 cases. Below are ten typical cases:

No.	Organizations or individuals to make compensation	Compensation amount
1	Nepture Arics Sea-going Vessel (Singapore)	US$ 4.2 million (60 billion dong)
2	Vedan Company	15 billion dong
3	Nghe An Non- ferrous Metals Company	508 million dong
4	The Hoa Weaving and Dyeing Company	430 million dong
5	Pouchen Company	360 million dong
6	Thai Binh Natural Gas Exploitation Company	336 million dong
7	Gemini Sea-going Vessel (Singapore)	250 million dong
8	La Nga Sugar Company	186 million dong
9	Bourbon Sugar Company	50 million dong
10	Daso Company	44 million dong

The above shows that resolution of environment disputes by way of referring to courts has not been chosen by disputing parties. This can be due to the following reasons: 1. Environment disputes are quite new in Vietnam so disputing parties are not very confident in courts for resolution of this type of disputes; 2. The concerned parties worry that resolution by courts is often time-consuming, having to go through first instance trial, appeal, judicial review procedures.

Thirdly, in almost all cases of disputes claiming for compensation for environmental damage which have been resolved, the compensation amount is only equal to 20 to 30 percent of the actual damage value and does not take into account any potential damage which the aggrieved party has not been able to quantify in full.

Fourthly, although most environment disputes have so far been resolved at the stage of negotiation and conciliation with the agreement by the concerned parties, it often takes a long time for the polluting party to fulfil the compensation obligation to the party suffering from damage. The reasons are that the compensation amount often exceeds the financial capability of the party causing damage, and minutes of successful conciliation often have low legal value.

Fifthly, the process to resolve environment disputes with a foreign element still has to cope with many difficulties, partly due to inconsistent interpretation and application of the provisions of substance laws (eg, inconsistent interpretation and application of the provisions on obligation to compensate for damage caused by environment polluting acts provided for in the Law on Protection of the Environment in 1993 and the Maritime Code in 1990). On the other hand, Vietnam's practical experience regarding this issue in the international arena is still limited.

Sixthly, although arbitration centres have been established in Vietnam, no environment disputes have been referred to these centres for resolution. The cause of this situation is that according to Decree 116 dated 5 September 1994 of the Government on Organization and Operation of Economic Arbitration, economic arbitration centres are not authorized to accept and resolve environment disputes.

4. Resolution of a Number of Specific Disputes

The first case: The request for compensation for environmental impacts by people of Nam Son, Bac Son, Hong Ky communes of Soc Son District, Hanoi City with respect to the implementation of the project for construction of the Nam Son solid waste treatment complex.

Pursuant to Decision 695-QD-TTg dated 10 August 1998 and Decision 605-QD-TTg dated 2 June 1999 of the Prime Minister of the Government on recovery of 83.3 hectares of land for construction of the Nam Son solid waste treatment complex, Hanoi People's Committee has assigned the implementation of this project to the Hanoi Transportation and Public Work Department. Upon being aware of the construction of the waste treatment complex, people of the three communes of Nam Son, Bac Son and Hong Ky submitted a request to Hanoi People's Committee that they be paid in advance an amount to compensate for the environment quality which would be declined due to the stink, fetidness and dust to be discharged from the waste treatment complex. It was clearly stated in the request of the people of the three above-mentioned communes that if their request is not satisfied, they will by all ways prevent the implementation of the project. Upon receipt of the request, Hanoi People's Committee assigned same to the Department of Science, Technology and Environment for consideration and resolution. The Department of Science, Technology and Environment of Hanoi carried out evaluation of the scope of environmental impacts by the project as the basis for the formulation of assistance plans for the households living in the area affected by the project in terms of the environment. The Director of the Department of Science, Technology and Environment sent Official Letter No. 1114/KHCNMT-QLMT dated 31 May 1999 to the Director of the Hanoi Transportation and Public Work Department, specifying the following two issues:

- The calculated radius of environmental impacts is 600m from the center of the landfill pit (under the current regulations, the landfill process involves compaction and covering with a layer of soil every 2 meters).

- This scope of impact will be revised and amended if results from environmental field observation conducted on a periodical basis indicate that there is a change in the scope of impact.

On the basis of the report from the Department of Science, Technology and Environment dated 9 August 1999, the Hanoi People's Committee issued Decision 3232/QDUB on approval of compensation policies for households residing within the scope of impact of the project for construction of the Nam Son solid waste treatment complex. Under this Decision, households residing 101 meters or more from the center of the landfill pit do not have to relocate their houses; and households residing within the range of 101 meters to 500 meters are entitled to a lump sum support for environmental impacts for a period of 20 years in proportion to the number of people of permanent residence as registered in the household status book at the time of formulating solutions for compensation. In particular:

- From 101 to 150 m: VND 40,000/person/month = VND 9,600,000/person/20 years
- From 151 to 300 m: VND 30,000/person/month = VND 7,200,000/person/20 years
- From 301 to 500 m: VND 25,000/person/month = 6,000,000/person/20 years.

These sums will be used by the local people to mitigate environmental impacts on their families such as planting trees around houses, installation of ventilating or deodorizing systems and so forth. Thanks to this Decision of the Hanoi People's Committee, the dispute between the local people and the Hanoi People's Committee was resolved. At present, the project works have been completed and put into operation. In order to prevent possible subsequent disputes, Hanoi Urban Environment Company has been actively seeking ways to work out efficient measures to minimize damage resulting from its operations.

The second case: Oil spillage caused by Nepture Arics Vessel at Cat Lai Port, Ho Chi Minh City.

At 1.30 pm on 13 October 1994, Nepture Arics Vessel of Singaporean nationality carrying 22,000 tons of DO oil collided with the pier when approaching the port of Cat Lai oil refinery plant, causing 1,600 tons of DO oil and 150 tons of petrol to spill into Sai Gon River. The contaminated area of oil spill expanded to the maximum of about 65,000 ha on the eighth day after the incident, of which 40,000 ha was heavily polluted. The content of oil in water was between twice and 300 times higher than the stipulated safety content. The incident caused enormous environmental damage, resulting in excessive deformity of the biological diversity (the oil spill caused immediate death to sensitive species and reduction of the number of zooplankton species by 50-60%), bringing about a change in the structure of aquatic flora and fauna (causing a loss of sensitive species and a structural change of dominant species), contaminating thousands of hectares of rice fields, (in heavily-polluted areas, rice plants died immediately, the rest died away due to rotten roots) and so forth.

Several days after the incident, as many as 1,500 statements of claims from organizations and individuals in Ho Chi Minh City and Dong Nai Province were lodged, claiming compensations for damage with the total value of up to 20 million US dollars.

On behalf of the local people, the People's Committee of Ho Chi Minh City initiated an action against the owner of Nepture Arics Vessel at the People's Court of Ho Chi Minh City.

With the assistance from the Ministry of Science, Technology and Environment, the Department of Environment, environment experts, lawyers home and abroad, the People's Committee of Ho Chi Minh City and people's committees of related districts made an overall assessment of damage resulting from the incident in the heavily-contaminated area, completed documentation and gathered necessary legal evidence in order to meet the requirements of the vessel-owner side (which are actually international insurance companies) for making compensation.

In the end, with goodwill and cooperation, particularly with the involvement of the Singapore Embassy, the two parties reached an agreement that the dispute would be resolved through amicable negotiation. On 14 December 1994, the chairman of the People's Committee of Ho Chi Minh City withdrew its statement of claim and issued an order to release the vessel. On 15 December 1994, seventy-three days after the occurrence of the incident, Nepture Arics Vessel left Sai Gon Port. The total value of compensation as agreed between the two parties was determined as follows:

> Compensation was made on the basis of compensation for economic damage (in the immediate future, compensation was made for economic loss suffered by the local population), costs for operations relating to salvage and gathering of spilt oil, survey studies, technical and legal consultancy, environmental impact assessment and organization of environmental clean-up for production restoration. The total compensation value for the damage mentioned above was USD 4,200,000.
>
> With respect to long-term effects, the ambassador of Singapore issued a written commitment on behalf of the Government of Singapore to consider and provide assistance to Ho Chi Minh City to deal with and overcome long-term consequences.

The third case: Pha Lai thermal power plant polluted the environment, damaging the health and assets of the residents of several districts in two provinces of Bac Ninh and Bac Giang

From late 1997 to early 1998, the Inspectorate of the Environment Bureau under the Ministry of Science, Technology and Environment received 18 letters from organizations and individuals of the two provinces of Bac Ninh and Bac Giang (the districts of Gia Luong, Que Vo and Yen Dung), requesting Pha Lai thermal power plant to compensate for damage to their health and production as a result of environment pollution produced from the operations of the plant over the past years. The total compensation for damage claimed was 22 billion Vietnamese dong.

On 27 March 1998, an inter-departmental environmental inspection team (headed by the Inspectorate of the Environment Bureau) conducted an extraordinary inspection of the plant to verify the truthfulness of the matters raised in such letter and came to the following conclusion:

- Pha Lai thermal power plant was designed, built and put into operation by the former Soviet Union at the end of 1983 with the total designed capacity of 440 MW (comprising 4 turbines with a capacity of 110 MW each, 8 boilers with a capacity of 220T/h, the annual electricity output of 2,86 Kwh, the annual coal volume consumed being 1,568 million tons, the chimney being 200m high with a diameter of 8m). The plant made an environment impact assessment report which was approved by the Ministry of Science, Technology and Environment in its Decision No. 1980/QD-MTg dated 20 August 1996 on the condition that a system for treatment of dust and waste gases had to be installed in accordance with technical requirements. However, the plant had overhauled only four out of its eight electrostatic filters of the system for treatment of waste gas from boilers, therefore the working efficiency was not as expected and the amount of smoke, dust and waste gas exceeded permissible levels. The inspection team decided to impose administrative penalties on the plant for its failure to comply satisfactorily with the requirements set out in the Decision on environment impact assessment report.

- The inspection team affirmed that the contents of the complaints were true. Waste smoke and dust produced by the plant was the major cause to the reduction of productivity and output of crops and livestock, specifically, causing withering leaves and falling flowers in rice crops and longan trees (in the areas opposite the plant), harm to the health of the local people such as a rapid increase of respiratory problems and sore eyes and so forth.

Since the dispute was quite complicated, involving various peoples and localities, the Inspectorate of the Environment Bureau and competent bodies convened a number of meeting sessions (5 sessions in the months of March, May, June, September and December of 1998 with the participation of the representatives from affected regions, representatives of the Department of Science, Technology and Environment, representatives of the Electricity of Vietnam and Pha Lai thermal power plant and so on) in order to make a joint effort to define the range of pollution-affected area, extent of environmental pollution as the basis for formulation of principles and solutions to resolve the dispute. Accordingly, in the intermediate future, the plant was responsible to compensate for the damage it caused in terms of human health and production to the people of three communes of Chau Phong, Duc Phong, and Phu Lang of Que Vo District (these communes are located to the northwest of the plant, between 1 and 6 kilometers from the plant and constantly exposed to coal dust coming in the southeast wind direction). The amount of compensations was as mutually agreed by the two parties in a meeting presided over by the People's Committee of Que Vo District with the participation of representatives of the Departments of Science, Technology and Environment of the provinces of Hai Duong and Bac Ninh.

Due to the extensive scope of impact, determination of the value of damages faced many difficulties. The Inspectorate of the Environmental Bureau provided guidance to localities on use of statistical methods combined with comparative and control selection among polluted and unpolluted communes in the years of pollution and years of no pollution. The People's Committee of Que Vo District provided data and statistics on damage (on the basis of statistical documents on agriculture and health in three years 1995, 1996 and 1997 and use of comparison methods among the three

communes mentioned above and the other 21 communes in the district which were insignificantly exposed to environmental pollution)

Subsequently, the affected communes and the plant worked together to reach a mutual agreement on a reasonable amount of compensation. The people in the affected area requested that the plant should build several works for public purposes for the three communes such as schools, safe water supply system, medical clinic and so on, and such request was accepted by Electricity of Vietnam (EVN). EVN and the plant co-operated with relevant bodies to carry out disbursement and transfer of the compensation funds of 900 million Dong (300 million/each commune) to the communes mentioned above. In addition, the plant also had to spend a significant sum on purchase and repairs of equipment for dust filtering and treatment of sewage and so on. The environmental conditions of the surrounding region have been, therefore, remarkably improved.