# CHAPTER 6
# JUDICIARY PROCEDURES IN VIETNAM

## I. PROCEDURES FOR EXAMINATION OF HEARING ACTIVITIES

One of the underlying principles of the hearing activities is that the court's judgements or decisions must always ensure the reasonability and legality. However, due to different reasons, errors and mistakes are regrettably still found in the hearing activities. As a result, the reasonability and legality of the court's judgements or decisions should be subject to regular examination before and after these documents have become effective.

In Vietnam, in accordance with Article 127 of the 1992 Constitution and Article 1 of the 1992 Law on the Organisation of the Courts, "the Supreme Court, local courts, military courts and other courts prescribed by the law shall be the judicial organ of the Socialist Republic of Vietnam". As a component of the State apparatus, the courts are subject to the examination and supervision of the entire society, especially the National Assembly – a highest legislative body in the country. Nevertheless, the procedural examination which is conducted to uncover and rectify errors and violations of the law in the hearing activities must be carried out by agencies implementing the judicial procedures, namely the procuracy and the courts of higher levels.

Hearing activities are undertaken by the courts subject to principles that are recognised under the procedural laws, particular the principle whereby "during a trial, judges and people's jurors shall be independent and shall only obey the law". Examination of hearing activities have, therefore peculiarities and must be conducted under the procedures stipulated by the law.

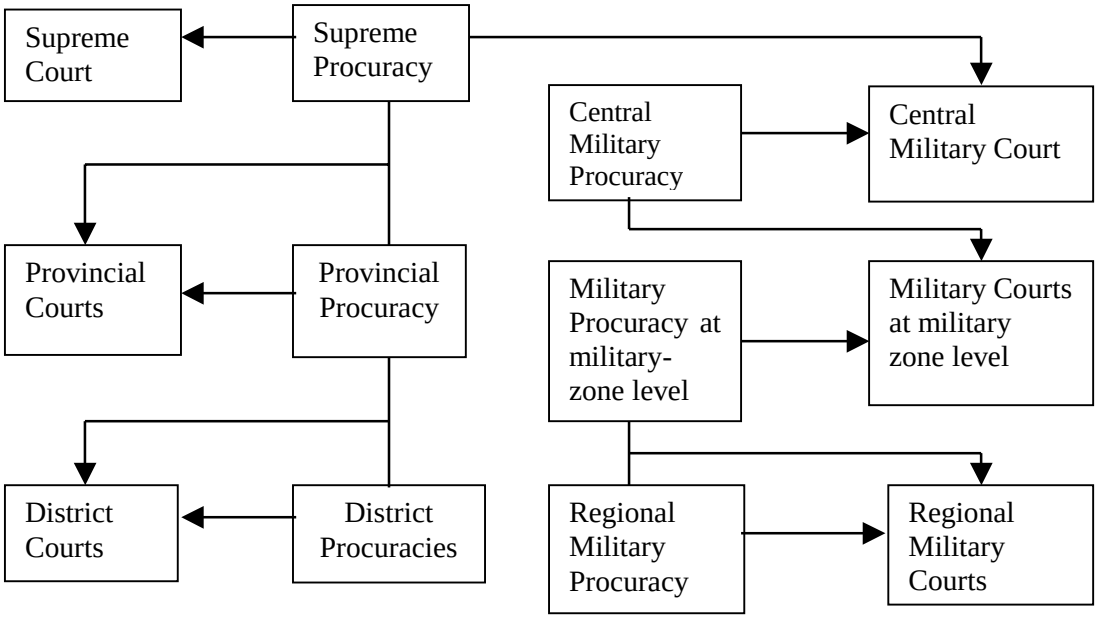
**1. Procedures for examination of hearing activities by the procuracy**

A protest may be understood as rights and obligations of the procuracy subject to certain grounds to request the next higher court in writing to re-hear the [inferior court's] judgements and decisions in accordance with procedures prescribed by the law.

Since the courts conduct their hearing activities "in an independent manners and only obey the law", during the examination and supervision of the law obedience in respect of the hearing activities and exercising right to prosecute, the procuracy will not be allowed to directly interfere in the hearing activities of the court but maintain its control through protests against ineffective court judgements and decisions under appellate procedures or effective court judgements or decisions through reviewing or re-hearing procedures. In ensuring the quality and law obedience of the protests, the procuracy should first discover errors and violations in the court judgements or decisions through its participation into first-instance court sessions or research of copies of judgements or decisions forwarded by the court of first instance as prescribed by the law. In respect of criminal cases, the participation of the procuracy of the same level is obligatory in order to undertake the supervision and control of law obedience by the courts during hearing activities and exercise of the right to prosecute. In respect of civil, economic, administrative and labour cases, the procuracy must attend court sessions in the events where the case is initiated by the procuracy with a view to protecting the interests of the State, society and citizens. In other events, the procuracy may attend the court sessions if it deems necessary. In facilitating the procuracy to fully exercise the right to protest, procedural laws specify the time limit within which the court of first instance must send duplicate copies of the judgements or decisions to the procuracy. For example, Article 203 of the Criminal Procedural Code states: "Within 15 days at the latest from the date on which a judgment is rendered, the court must deliver a copy of the judgement to the procuracy of the same level..." In accordance with Article 57 of the Ordinance on Procedures for Settlement of Economic Cases, "within 7 days at the latest from the date on which a judgment or a decision is rendered, the court must deliver a copy of the judgement or decision to the procuracy of the same level..." After its receipt of the duplicate copy of the judgment forwarded by the court of first instance, the procuracy must promptly study and take into serious consideration. If one of the following problems is discovered, the procuracy must immediately report to person having competence to make protest under the appellate procedures to exercise this right:

- the investigation and testimony at the court sessions are proven inadequate;
- conclusion of the first instance judgement or decision is not suitable to the facts and the case;
- there were serious violations during the application of laws, and so on.

**Chart 1. Competence of the procuracy in making protests under appellate procedures**




The power to lodge protests under appellate procedures is vested subject to clause 3 of Article 16 of the 1992 Law on the Organisation of Procuracy, Article 244 of the Criminal Procedural Code, Article 72 of the Ordinance on Procedures for Settlement of Civil Cases, and Article 74 of the Ordinance on Procedures for Settlement of Economic Cases etc. Under these provisions,

- the President of the Supreme Procuracy has a competence to protest against effective judgements or decisions of the courts at all levels;
- the Vice-Presidents of the Supreme Procuracy have a competence to protest against effective judgements or decisions of the courts at inferior levels;
- the heads of the provincial procuracies have a competence to protest against effective judgements or decisions of the district courts.

Thus procedures for examination of the hearing activities by the procuracy includes a series of procedural activities from discovering errors and violations in the court judgements or decisions, making protests as required by the law, to participating in appellate, reviewing or re-trial court sessions to protect its views, and enable the higher courts to rectify errors and violations committed by the inferior courts, and enhance the efficiency of the hearing activities.

**2. Procedures for examination of hearing activities by the courts**

Examination by the courts of the hearing activities will be conducted mainly through a process whereby the next higher courts re-hear judgements or decisions rendered by the lower courts under the statutory procedures upon the receipt of appeals or protests. In their nature, appellate, reviewing or re-hearing procedures should be treated as separate stages of the entire hearing process which is carried out by the higher courts in accordance with the 1992 Constitution, the 1989 Criminal Procedural Code, the 1989 Ordinance on Procedures for Settlement of Civil Cases, the 1994 Ordinance on Procedures for Settlement of Economic Cases, the 1996 Ordinance on Procedures for Settlement of Administrative Cases and the 1996 Ordinance on Procedures for Settlement of Civil Cases. Through these states of the hearing process, the next higher courts examine and rectify errors, if any on the judgments or decisions issued by the lower courts, and provide timely guidelines to ensure a uniform application of the law.

**The appellate procedures as a form by which the higher courts examine and supervise the hearing activities of the lower courts**

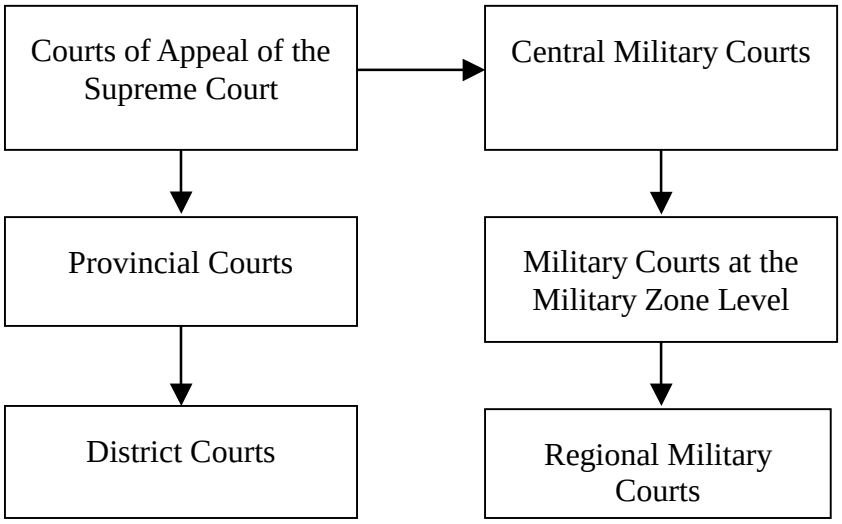
By their virtue, the appellate procedures constitute a hearing stage which is conducted by the next higher courts with a view to judging the first instance ineffective judgements or decisions issued by the lower courts which are appealed or protested in accordance with the statutory formalities. The purpose of the appellate hearing is to verify the reasonability and legality of the first instance ineffective judgements or decisions which are appealed or protested in accordance with the statutory formalities. Thus the presence of an appeal or a decision constitutes a decisive pre-requisite for the .starting of an appellate hearing of the first instance ineffective judgements or decisions.

Since appellate hearing serves as a form by which the higher courts examine and supervise the hearing activities of the lower courts, it may also be considered a

second level of trial whose focus is given on discovering and rectifying errors found in the first instance ineffective judgements or decisions which are made by the lower courts. The appellate procedures, or in other words the form by which the higher courts examine and supervise the hearing activities of the lower courts must be undertaken in strict compliance with the competence prescribed by the law. In accordance with Article 215 of the Criminal Procedural Code, Article 64 of the Ordinance on Procedures for Settlement of Civil Cases, Article 13 of the Ordinance on Procedures for Settlement of Economic Cases, Article 12 of the Ordinance on Procedures for Settlement of Administrative Cases and Article 12 of the Ordinance on Procedures for Settlement of Civil Cases:

- provincial courts are competent to hear under appellate procedures ineffective judgements or decisions issued by district courts;
- the courts of appeal of the Supreme Court are competent to hear under appellate procedures ineffective judgements or decisions issued by provincial courts. In criminal proceedings, the central military court are competent to hear under appellate procedures ineffective judgements or decisions issued by the military courts at the military zone-level.

**Chart 2 Competence to hear cases under appellate procedures**




Thus, the procedural laws have set forth specific provisions on the time limit for an appellate trial. Pursuant to Article 215 of the Criminal Procedural Code the time limit for an appellate hearing by:

(i) the provincial courts or military courts at military zone levels will be no more than 60 days; and

(ii) the central military court and courts of appeal of the Supreme Court will be no more than 90 days from the date of the receipt of the case file.

In respect of civil proceedings, in accordance with the Ordinance on Procedures for Settlement of Civil Code, the time limit for an appellate hearing by

(i) the provincial courts will be no more than 3 months; and

(ii) the courts of appeal of the Supreme Court will be no more than 4 months from the date of the receipt of the case file.

As regards economic, administrative and labour proceedings, there is no distinction of the time limit for appellate hearing between the provincial courts and courts of appeals of the Supreme Court. However, the time limit for an appellate hearing is varied between economic, administrative and labour proceedings, for example, the time limit for an appellate hearing of an economic case will be one month from the date when the court of appeal receives the case file. In the event of complicated cases, such a time limit may be extended to 2 months.

The time limit for an appellate hearing of an administrative case will be 60 days from the date when the court of appeal receives the case file. In case of complicated cases, such a time limit may be extended to 90 days. Within the time limit mentioned above, the courts of appellate level must open an appellate court session. Meanwhile, in respect of labour proceedings, the courts at appellate level must open an appellate court session within 20 days from the date of receipt of the case file forwarded by the first instance courts. In the event of complicated cases, the time limit may be extended to 30 days. Of course, an appellate court session may be opened earlier, at any point of time during the time period dedicated to the preparation of an appellate hearing, provided that the appellate court session will not be held after the time limit stipulated by the law. Therefore, after the receipt of an appeal or a protest and the related case file which are forwarded by the first instance court, the courts of appellate level will promptly start the preparation of the appellate court sessions.

In exercising their right to supervise the hearing activities of the lower courts, during the preparation for an appellate court session, the appellate courts must verify the case file and study the facts of the case and requests mentioned in the written appeals or

the written protests. The appellate courts may than, by considering and comparing, take necessary measures including "the application, change of termination of preventive measures" (Article 215a of the Criminal Procedural Code), "application of temporary emergency measures" (Article 65 of the Ordinance on Procedures for Settlement of Civil Cases, Article 62 of the Ordinance on Procedures for Settlement of Administrative Cases, Article 68 of the Ordinance on Procedures for Settlement of Labour Cases). From their examination of ineffective judgements or decisions issued by the first instance courts which are appealed or protested against, the appellate courts may, if it deems unjustified,

(i) request the procuracy to provide additional evidences (in accordance with clause 1 of Article 218 of the Criminal Procedural Code); or

(ii) itself conduct or authorise another court to conduct additional investigations in accordance with Article 65 of the Ordinance on Procedures for Settlement of Civil Cases.

In the event where new evidences have been supplemented, the appellate courts may itself or authorise another court to verify in accordance with Article 65 of the Ordinance on Procedures for Settlement of Economic Cases and Article 59 of the Ordinance on Procedures for Settlement of Administrative Cases. If the appeals or protests are related to a claim for an increase in the level of indemnity for bodily damages and the court of first instance failed to consult with experts or it is evident from the fact that the expert conclusion is improper, the appellate courts may call or recall for expert's opinions. Such a call for or recall for expert's opinions may be given in case there is a need for a verification of the authenticity of documentary evidence relating to the creation of ownership to an disputed asset, signatures in economic and civil contracts etc. In respect of appeals or protests relating to liquidation of a contract, division of the couple's assets upon their divorce, or distribution of the inherited estates and so on, if the first instance courts have not yet carried out the evaluation of the assets, or it is well established that the previous asset evaluation council was partial [biased] in the evaluation of assets, the appellate courts will make decision to create a new council for asset evaluation.

The reviewing procedures as a form by which the higher courts examine and supervise the hearing activities of the lower courts

Once a court judgment or a decision has taken effect, it should be respected and

strictly observed by relevant State bodies, social organisations, economic organisations, units of the armed forces, and individual citizens. However, due to different reasons, even judgments or decisions which have taken effects may contain errors causing damages or losses to the legitimate interests of the convicts, relevant parties, the State, organisations and the society. In remedying these shortcomings, the procedural laws provide a special hearing procedures called the reviewing procedures. By their virtue, reviewing procedures constitute a special hearing stage which is conducted by the next higher courts with a view to reconsidering the effective judgements or decisions issued by the lower courts on the grounds of the alleged errors and subject to the protests of the competent persons. As a special hearing stage, the reviewing procedures are centered on a reconsideration of the effective judgements or decisions including:

- first instance judgements or decisions which are not appealed nor protested under the appellate procedures;
- judgments and decisions rendered by the appellate courts;
- judgments and decisions rendered by the reviewing or re-hearing courts;

Not all cases, however are subject to this hearing stage. A reviewing proceeding become compulsory when effective court judgements or decisions are protested in accordance with the relevant laws. The aim of reviewing procedures is to remedy errors and mistakes committed in the effective court judgements or decisions and to ensure the reasonability and legality of the court rulings. In other words, reviewing procedures offer a new possibility for a better protection of the rights and legitimate interests of citizens, the State and the society. At the same time, through reviewing procedures, the higher courts may examine the hearing activities of their lower courts, and hence provide timely instructions and ensure a uniform application of law during the hearing activities. For these reasons, the competence to conduct reviewing procedures is always vested with the next higher courts of the courts which have rendered the judgments or decisions to be subject to a review.

**The re-hearing procedures as a form by which the hearing activities of the courts are examined and supervised**

There are certain cases where the execution of effective court judgements or decisions results to the discovery of new facts which may change of the court's rulings. Under these circumstances, the effective court judgements or decisions will be protested

against by competent persons for a hearing by competent courts. This process may be termed “re-hearing procedures”.

Basically, reviewing and re-hearing is similar in many aspects, particularly, the subject-matter of these procedures are effective court judgements or decisions. Therefore, their legal conditions and formalities are relatively identical. However, it should be stressed that these procedures are entirely independent from one each other. It does not mean that re-hearing must always be conducted after the review of an effective court judgement or decision, or the review should always be carried out before the re-trial of the effective court judgement or decision. The problem lies in the fact that in respect of the same judgement or decision, if errors are uncovered, the case will be protested under the reviewing procedures while if new facts are uncovered, the case will be protested under the re-hearing procedures.

What could constitute a “new fact” ? Theoretically, a new fact may be defined as a fact which could not be known or should have not been known to the proceeding participants. For example, in civil proceedings, where there has been no news of a person’s survival or death for 6 months since the date of its giving notice, the court may render a judgement declaring that person dead. In this context, the re-appearance and return of the person who has been declared dead by the court is obviously a fact which could not be known to or should have not been know by the court and relevant parties. Therefore, this fact has completely changed the case which has been handled by the court.

An effective court judgement or decision, which is although found with new facts that may change the substance of the case, should not be re-heard without a protest to be made by competent persons. In other words, a protest constitutes a pre-requisite for the start of re-hearing procedures. In accordance with Article 50 of the Ordinance on Procedures for Settlement of Civil Cases, Article 81 of the Ordinance on Procedures for Settlement of Economic Cases, Article 68 of the Ordinance on Procedures for Settlement of Administrative Cases, and Article 74 of the Ordinance on Procedures for Settlement of Labour Cases, apart from certain officials of the procuracy who are entitled to make a protest under the re-hearing procedures (as above mentioned), the chief justice of the Supreme Court may lodge a protest against effective judgements or decisions rendered by courts at all levels; the chief justice of the provincial court may lodge a protest against effective judgements or decisions rendered by district courts. In special case of civil proceedings, the right to a re-hearing protest will only be belonged

to the procuracy.

Within its competence to examine and supervise the hearing activities of the lower courts, the reviewing panel may have the right to issue one of the following decisions:

- Non-acceptance of the protest and preserving the effective judgements or decisions;
- Repealing the protested judgement or decision and start a re-investigation or re-hearing process;
- Repealing the protested judgements or decision under circumstances provided by the laws.

## II. CRIMINAL PROCEDURES

The 1998 Criminal Procedural Code sets forth provisions on procedures for initiating a criminal case, conducting investigations, prosecuting, hearing and executing criminal judgements in the Socialist Republic of Vietnam. Under this Code, criminal proceedings in Vietnam include the following procedures:

### 1. Initiating a criminal case

Under the 1998 Criminal Procedural Code, initiating a criminal case represents the first stage of the settlement of a criminal case whereby, the competent proceeding initiators issue a decision to take a criminal proceeding when various requirements stipulated by the law have been satisfied.

The following bodies have competence to initiate a criminal case:

- Investigating bureaus including investigation agencies under the authority of the Ministry of Police, Ministry of Defence and the procuracy;
- Other bodies which may be authorised to conduct a limited number of investigations such as the customs offices, rangers, border guards, and other relevant bodies within the structure of the people's police, people's security forces, or the people's armed forces;
- the procuracy; and
- the courts. (The courts initiate a criminal proceeding and hand over to a competent investigation bureau in case new crimes or new criminals are unveiled during the hearing process).

The Criminal Procedural Code also provides on some cases where the proceeding initiators may only initiate a criminal proceeding at the request of the victims. These cases include causing bodily injuries which result to loss of below 31% of the victim's health, sexual crimes [or sexual assaults] without severe consequences, infringements of patents, inventions or copyrights.

In restricting and remedying illegal initiation of a criminal proceeding or illegal initiation of a public prosecution, Article 89 of the Criminal Procedural Code clarifies specific grounds for not taking a criminal case including cases where no crime was committed, or the alleged action did not constitute a crime, or the alleged criminal [i.e. person whose actions endanger the public interests] have not yet attained a certain age at which that person may bear criminal responsibility; or persons whose offences have been discharged under an effective judgement or decision to suspend the proceedings; or the time limit for putting a person under criminal prosecution has expired; or a crime have been subject to an amnesty, or the person whose actions are alleged to endanger the public interests dies except where a re-trial is needed in respect of others.

**2. Investigating a criminal case**

Investigatory methods which have been adopted in criminal procedures include: examination of the scene; application, change and termination of preventive measures; searching; investigatory experiment; consultation with experts; examination and excavation of the dead bodies; interrogation; questioning the witness, the victim, civil plaintiff and defendant, persons with related rights and obligations; cross-examination; identifying; seizing, arresting and taking stocks. All these measures must be taken in strict procedures provided by the Criminal Procedural Code and be recorded in a minutes which is signed by competent persons, proceeding initiator, participants or witnesses of the introduction of these measures.

The time limit within which an investigation may be conducted is no more than 2 months in respect of less serious crimes, 3 months in respect of serious crimes, and 4 months in respect of very serious and extremely serious crimes. Such a time limit commences from the initiation of the criminal proceeding until the end of the investigation.

In case where an extension of the time limit for an investigation is needed because of its complexity, at least 10 days before the end of the time limit, the investigatory bureau must file a request to the head of the procuracy for the extension of

the time limit of the investigation.

Under the Ordinance on the Organisation of Criminal Investigations enacted by the State Council (presently the Standing Committee of the National Assembly) on 4 April 1989, there are currently following investigatory bureaus in the Socialist Republic of Vietnam:

a) The investigatory bureau of the people's police forces which is in charge of investigating all criminal cases except grave violations of national security committed by a non-member of the armed forces;

b) The investigatory bureau of the people's security forces which is in charge of investigating crimes against the national security which are committed by a non-member of the armed forces;

c) The investigatory bureau of the people's army (including the army's criminal investigatory bureau and army security agency) which is in charge of investigating all crimes committed by members of the armed forces and other crimes against the interests of the army;

d) The investigatory bureau of the procuracy which is in charge of investigating crimes against the judiciary operations, or offences which are directly discovered by the procuracy through its general control activities, and other crimes falling within the competence of other investigatory bureau that are chosen to be investigated by the procuracy.

During the initiation of a criminal proceeding, the investigation is placed under the supervision of the procuracy of the same level. Through its control of investigating activities, the procuracy will promptly uncover violations of law and suggest ways to remedy. Furthermore, the procuracy is obliged to take all measures provided by the law to ensure that:

- all offences must be investigated and dealt with in a timely manner,
- no person may be unjustly treated or no offender may escape punishment;
- the detainees or the arrested are not caused to suffer illegal restriction of civic rights, or damages of life or property, human dignity and honour;
- the investigation is conducted in compliance with the law and is aimed at gathering both accusing and defending evidences, verifying extenuating and aggravating circumstances and finding out causes and conditions of the crime;

- the criminal prosecution of the accused is initiated in a well-reasoned and legal manners.

Also in this period, the procuracy has the right to:

- control and supervise the initiation of a criminal proceeding, or itself take a criminal action and hand over the file to competent bodies;
- approve or decline to approve decisions made by the investigatory bureau, a decisions to apply, change or terminate preventive measures, or request the investigatory bureaus to hunt for the indictees;
- control and supervise all investigatory actions taken by the investigatory bureaus;
- engage in direct interrogation of the indictees if necessary, or request for a substitution of the investigator if there is evidence that this person has violated the law during his conduct of the investigation.

After the end of the investigation, the case file and the investigatory findings to the procuracy. Within 20 days in respect of less serious crimes and serious crimes and 30 days in respect of extremely serious crimes, the procuracy must issue one of the following decisions:

- Bring the indictees to justice by an indictment;
- Return the case file for additional investigations.

**3. Suspending or temporarily suspending the case**

In accordance with Article 143a of the 1988 of the Criminal Procedural Code the procuracy may return the case file for additional investigations under the following circumstances:

- There is a lack of important evidences which can not be supplemented through the procuracy's investigation;
- There is a basis for initiating a criminal prosecution against the indictees for another crime or there are other accomplices.
- There is a serious breach of the procedural laws.

If, after studying the case file and agree with the views expressed therein by the

investigatory bureau, the procuracy will prepare an indictment to bring the indictee to a trial and hand over the entire case file to a competent court for its opening of a first instance court session.

**4. First instance trial of a criminal case**

Pursuant to clause 2 of Article 151 of the 1988 Criminal Procedural Code which was subsequently amended by the Law No.20/2000/QH10 provides that within 30 days in respect of the less serious crimes, 45 days in respect of serious crimes and 2 months in respect of very serious crimes, and 3 months in respect of extremely serious crimes, the assigned judge must issue one of the following decisions:

a) Bringing the case to a trial;

b) Return the case file for additional investigations; and

c) Suspending or temporarily suspending the case.

In the Socialist Republic of Vietnam, a first instance court session is conducted in a direct, verbal and continuous manners.

## III. ADMINISTRATIVE PROCEEDINGS

Under the law of Vietnam, administrative complaints may be resolved through either one of the two ways or procedures. The first way is concerned with administrative settlement of complaints. Under administrative procedures which are must simpler than the judiciary procedures, administrative bodies handle almost all complaints filed by citizens or organisations. By its virtue, administrative resolution of complaints may be considered as a self-examination by the executive branch of their administrative decisions or actions but not a judging process.

In practice, the settlement of administrative disputes by the courts was later introduced. Both law-makers and legal practitioners are well aware that it is a process of resolving administrative dispute whereby the courts undertake an external examination of administrative decisions and actions taken by State bodies under closely monitored procedures in order to ensure objectivity, democracy and law obedience. In this respect, Decree No. 004 on election of the People's Councils and Administrative Committees at all levels dated 20 July 1957 may be seen as the first legislation establishing these procedures. In accordance with Article 15 of this Decree, complaints

of citizens on the list of voters should be first lodged to the body which is in charge of preparing the list of voters for its handling. In case where the complainant disagrees with the complaint settlement by that body, he may file his claims to a competent court. The law may not happen to determine such a way of dispute settlement by the courts. Law-makers should have, to various extents well understood that court's settlement of administrative disputes might be a reliable process under which legality and citizen's rights could be better safeguarded given a purely administrative procedure for it constitutes an external examination by the judiciary branch of the performance of the administrative branch. Such an examination is ensured by a principle whereby "during their trials, the courts are independent and only obey the law". On the other hand, judiciary procedures are of higher supremacy as compared to administrative procedures. The aforesaid Decree may be considered as a beginning of the administrative justice in Vietnam which is characterised by the following features: (i) administrative disputes could only arise from complaints on preparation of the lists of voters, (ii) these disputes did normally fall under the jurisdiction of the district courts, and (iii) civil procedures were applied. Procedurally speaking, formalities under that scheme were incomplete and lasted for a long period of time from 1957 to the end of 1989.

**Fundaments of Vietnam's administrative proceedings**

As mentioned above, on 28 October 1995, the National Assembly of the Socialist Republic of Vietnam adopted the Law on Amendments of and Additions to a Number of Articles of the Law on the Organisation of the Courts under which the administrative court, as a component of the court system is organised as follows:

1. At central level, the Administrative Court of the Supreme Court is constituted as a tribunal similar to other courts such as the Criminal Court, the Civil Court, the Economic Court, the Labour Court, the Central Military Court and Courts of Appeal.
2. At local levels, administrative court is set up within the structure of the provincial courts together with the criminal court, the civil court, the economic court, and the labour court. At district level, although a separate administrative court is not established, certain judges may be specifically assigned to hear administrative cases

**Jurisdiction of the administrative courts under the Ordinance on the Procedures for the Settlement of Administrative Cases**

Under Article 12 of this Ordinance, the administrative courts have the competence to hear the following administrative cases:

1. Protests against decisions to impose fines against administrative violations;
2. Protests against administrative decisions or administrative actions taken during the application or implementation of administrative measures in the form of re-education at communes, wards or townships; sending to re-education schools, re-education establishments, medical establishments or placing under administrative custody;
3. Protests against decisions to dismiss State officials or public servants who are ranked as departmental directors or lower; protests against administrative decisions and administrative actions taken in relation to land management;
4. Protests against administrative decisions or administrative actions taken in relation to the grant and withdrawal of permits and revocation of licences in the areas of capital construction, production and business;
5. Protests against administrative decisions or administrative actions taken in relation to forcible requisitions, forcible purchase or confiscation of assets; protests against administrative decisions and administrative actions taken in relation to tax collections and tax arrears collections;
6. Protests against administrative decisions and administrative actions taken in relation to collection of charges and fees; and
7. Other types of protests as may be prescribed by the law.

**Procedures for hearings of administrative cases**

Courts hold trials of administrative cases under procedures stipulated under the Ordinance. Similar to other types of procedures such as civil, economic and labour procedures, administrative procedures include the following steps [phases]:

(i) taking actions, initiation of a law suit and registration of a case;
(ii) preparing for the trial;
(iii) first instance court session;

(iv) appellate hearing; and

(v) rehearing of effective judgements and decisions.

***Taking actions, initiation of a law suit and registration of an administrative case***

The initiation of prosecution or a law suit must be carried out by at a competent court in accordance with Articles 11 and 12 of the Ordinance.

As regard the initiation of a public prosecution, pursuant to Article 18 of the Ordinance, the Procuracy may be entitled to institute administrative lawsuit where the administrative decisions or administrative actions in question are related to legitimate interests of the minors, the physically or mentally handicapped if nobody initiates the law suit. In these cases, the Procuracy will be responsible for providing evidences.

As regards the initiation of a lawsuit, Article 2 of the Ordinance states that individuals, State bodies and/or organisations are only entitled to initiate an administrative lawsuit against an administrative decision or an administrative action in the events where the time limit for an administrative settlement of a complaint expires but the complaint remains unresolved or the complainant disagrees with the settlement. Under both circumstances, the complainant is no longer able to rely on administrative procedures to continue his claims (for more detail, see Articles 19-25 and Article 36 of the Law on Complaints and Denunciations). Under certain circumstance where State officials or public servants who are ranked as departmental directors or lower have the right to bring a lawsuit against the decision on their dismissals, provided that the complaints have first been filed with competent persons but the complainants disagrees with the settlement of the claims and choose not to continue their complaints to a higher competent person.

The suer must make a petition to the court for the settlement of the administrative case within 30 days from the date on which the time limit for the first settlement of the complaint stipulated in the Law on Complaints and Denunciations expires but the complaint remains unresolved or from the date on which the complainant receives a decision on the first settlement of the complaint but disagrees on such a decision. In respect of a decision on disciplinary dismissal, the affected State officials or public servants should make a petition to the court for the settlement of the administrative case within 30 days from the date on which the complainant receives a decision on the first settlement of the complaint but disagrees on such a decision.

After the registration of the case by a competent court, the relevant party may

request the court to take temporarily urgent measures to protect his/her interests provided that that party will take responsibility before the law for his/her request and be obliged to pay compensation for the damages or losses caused at his/her fault. The procuracy may also request the court to take the aforesaid temporarily urgent measures.

***First instance court sessions***

The first instance court session will be conducted in the presence of the relevant parties or their representatives. The session may also be conducted in the absence of one of the relevant parties at its request or in cases where the defendant has been properly summoned for the second time but still fails to appear.

For cases with obvious contents and adequate evidence which are acknowledged by the parties who participation in the court session is not required, the competent court will open the first instance session without the presence of the proceeding participants.

The first instance court session will be conducted in the following order:

- When opening the court session in the presence of the proceeding parties, the chairman of the court session will read out the decision to open the case for trial, check the presence of and identify ID cards of persons who are summoned to the court, and explain to them their rights and obligations at the court session.
- The trial panel will examine all details of the case by hearing the opinions of the suer [claimant], the defendant, the persons with related rights and obligations or the parties' representatives, the defender(s) of the parties' legitimate rights and interests, the witness and experts and than compare these opinions with the collected documents and evidence.
- When the trial panel has finished the questioning, the relevant parties, the defender(s) of the parties' legitimate rights and interests will take part in the debate; the procurator participating in the court session will present his/her opinion on the settlement of the case.
- At the court session, all decisions made by the trial panel must be discussed by its members and approved majority voting.
- When the verdict is rendered, opinions at the debate and the trial panel's ruling must be recorded in written minutes. The judgement must include

the following main contents: the full names of the members of the trial panel, the procurator and the court clerk; names and addresses of the relevant parties or the their representatives; the relevant parties' claims; the verified details; the evidence and legal bases for the settlement of the lawsuit; the court's decisions; the relevant parties' right to appeal against the court's judgement etc.

- Together with the render of the judgment, the court will make decisions to settle issues arising from the settlement of the administrative case. Before opening the court session, the judge(s) assigned to take charge of the case will be entitled to make relevant decisions. At the court session, all decisions will be made by the trial panel. The decisions will include the following particulars and details: the name of the court hearing the case; the names and addresses of the relevant parties and other proceeding participants; the relevant parties' requests or the reasoning of such decision(s); the legal bases on which the decision is made; the parties' right to appeal against the court's judgment etc.

After the court session ends, the relevant parties will be provided by the court with excerpts of the judgement of the ruling. Within 7 days from the date on which the judgement or the ruling is rendered, the court must deliver copies of the judgement or ruling to the relevant parties at their request and to the procuracy of the same level.

***Appellate hearing***

The relevant parties or their representatives have the right to appeal and the procuracy at the same or higher levels has the right to protest against the judgement, the decision on the temporary suspension or suspension of the settlement of the case which is issued by the first instance court, except for the cases stipulated in clause 2 of Article 41 of this Ordinance (as mentioned in the phase of trial preparation). The appellant must make a written appeal; the procuracy must make a written protest. In the appeal petition or protest, the three following points must be specified:

a) the contents of the appealed or protested part of the judgement or ruling of the first instance court;
b) the reasons for the appeal or protest; and
c) the claims of the appellant or protestor.

The time limit for submitting an appeal is 10 days from the date on which the judgment is rendered or the decision is made by the court; if the relevant party is absent from the court session, this time limit will be calculated from the date on which the copy of the judgement or ruling is delivered to them or their relatives or is posted at the head office of the people's committees of the commune, ward or township where he/she resides or where the relevant party's head office is located, if this party is a legal person.

The time limit is 10 days for raising a protest by the procuracy of the same level or 20 days for raising a protest by a procuracy of the higher level starting from the date on which the court renders the judgement or makes the decision. If the procurator does not participate in the court session, the time limit for a protest will be calculated from the date on which the procuracy of the same level receives a copy of the court's judgment or ruling.

The appeal or protest will be forwarded to the first instance court which has handled the case. Within 7 days of the date of receipt of the appeal or the protest, or from the date on which the appellant produces the receipt of his/her deposits of the appellate trial fees if he/she is obliged to pay, the first instance court must send the appeal or protest together with the file of the case to the appellate court.

The appellate court will only consider part of the judgment or ruling which is related to the appeal or protest.

Within 60 days (or 90 days in respect of complicated cases) from the date of receipt of the full file from the first instance court, the appellate court will have to open an appellate court session.

The appellate court will be empowered to:

a) Reject the appeal or protest and preserve the judgment or ruling of the first instance trial;

b) Amend part of the entire contents of the judgment or ruling of the first instance trial;

c) Cancel the first instance court judgment or ruling and forward the dossier of the case to the first instance court for its re-trial in case where serious violations of the proceedings are found or the examination or collection of evidence are proven incomplete and can not be supplemented by the appellate court;

d) Temporarily suspend the settlement of the case in accordance with Article

40 of the Ordinance;

e) Cancel the first instance judgment or ruling and suspend the settlement of the case in accordance with Article 41 of the Ordinance.

Practices of the administrative courts over the past few years indicate that the awareness of both citizens and State employees did not match with a new phenomenon. For example, a large majority of the population misunderstood that all administrative decisions or administrative actions may be sued against regardless whether these decisions or actions have been complained under administrative procedures or not, or the time limit for initiating a lawsuit has not yet expired. On the other hand, a significant number of State officials who are holding key positions and powers do not consider the lawsuit which is initiated against them a normal phenomenon in a democratic society. By contrast, they tend to be psychologically worried about lawsuits or complaints filed against them or the threats of losing personal reputation. Even in some cases, these officials have excessively reacted during their participation in the proceedings. In ensuring an adequate perception among all citizens of the settlement of administrative disputes by the courts as well as ways to bring into full play the courts' efficiency, it is required to boost the education and dissemination campaigns and enhance the efficiency of the courts' operations.

On their part, although the courts at all levels have accumulated experience in hearing criminal and civil cases over the past 50 years, the trials of administrative cases is proven quite new. During their trials of administrative cases, many courts are faced with problems and difficulties. Judges seem hesitate to touch on the complained or sued administrative bodies which results to delays in preparation for the opening a court session. The fact shows that the settlement of administrative disputes between citizens and State bodies represents a dedicate and complicated issue. However, it creates and mounts pressures on the State bodies in making administrative decisions or taking administrative actions.

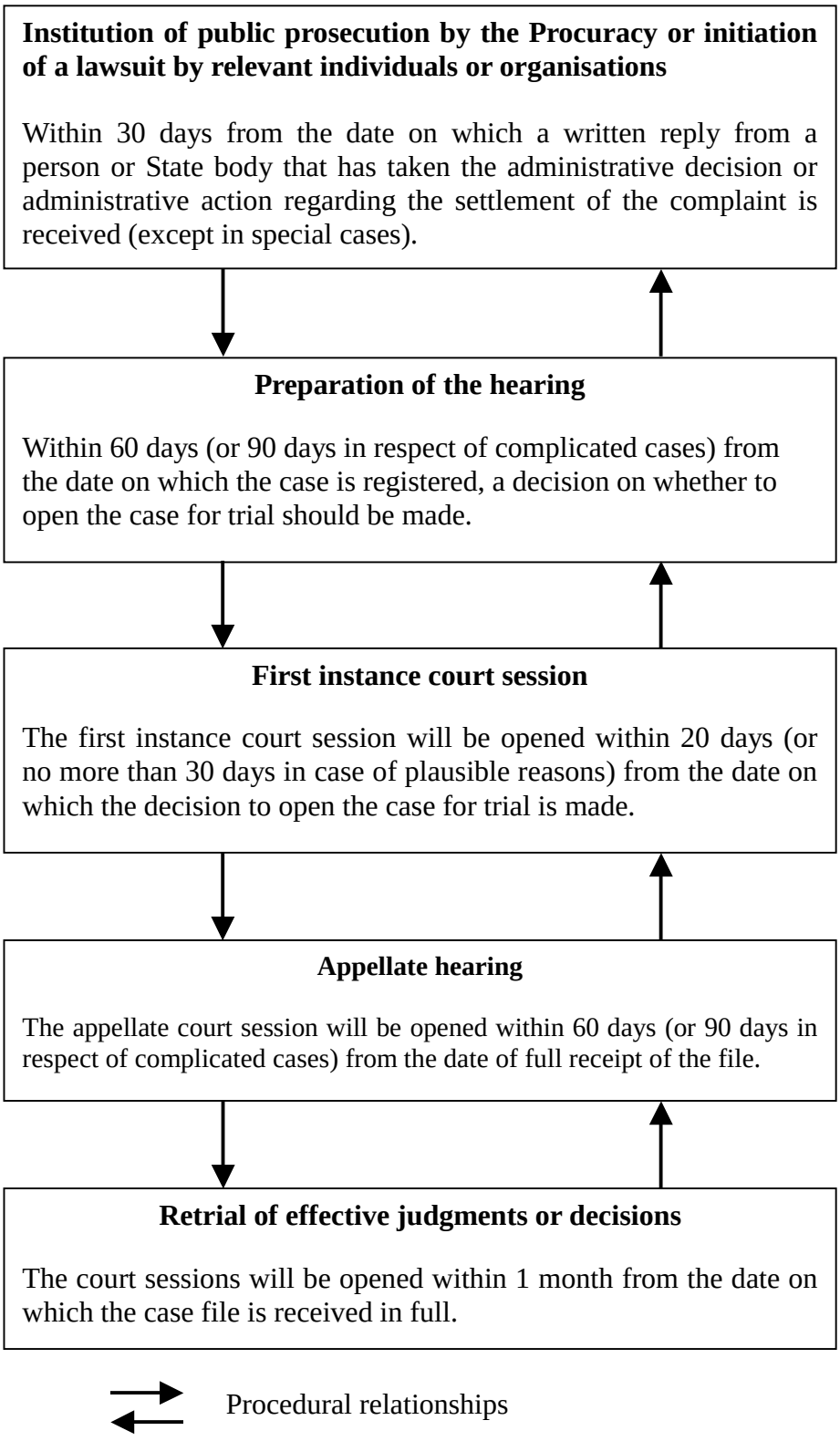
After some years of operation, courts' settlement of administrative cases has initially produced good results. According to incomplete statistics, over the past 4 years starting from 1 July 1996 when the Ordinance on Procedures for Settlement of Administrative Cases went into effect, courts at all levels received tens of thousands of petitions for administrative cases.

In 2000 alone, reports from 39 provincial courts to the Supreme Court during

January-September draw the following picture of petitions for and settlement of administrative cases. As regard first instance trials, provincial courts registered 137 new administrative cases which together with the outstanding cases bring the total amount of administrative cases to 183. Of these administrative cases, a significant number (83,6%) are initiated by petitions from citizens, next are petitions from social and political organisations (16.4%). It is noteworthy that no State body file any petition for the opening of administrative cases. As mentioned above, there are 7 categories of complaints or petitions that are subject to the administrative jurisdiction of the courts. Among the 183 registered administrative cases, petitions against administrative and administrative actions which have been taken in relation to the grant and withdrawal of permits and revocation of licences in the areas of capital construction, production and business, and land management accounts for a highest percentage of 57.7%. Second in proportion are petitions against decisions to impose fines against administrative violations or to apply measures for the compulsory dismantlement of the illegally-built dwelling houses, projects or fixtures with 24.6% (i.e. 45/183 cases). The lowest percentage is made up by petitions against administrative decisions or administrative actions taken during the application or implementation of administrative measures in the form of re-education at communes, wards or townships; sending to re-education schools, re-education establishments, medical establishments or placing under administrative custody with 0.6% (or 1/183 cases).

As a whole, administrative competitions are promptly and legally handled by the courts and are often ended at the appellate court sessions. Of the administrative cases which were heard, only 18 cases were subject to the courts' review by the Committee for Judges of the Supreme Court and the Administrative Court of the Supreme Court due to errors and mistakes. According to the "Final Report on the courts' performance in 1999 and orientations of their activities in 2000", in 1999 alone, the courts at all levels dealt with 319 administrative cases of the total number of 408 registered cases or 78.1%. After the settlement of these administrative cases, the Supreme Court received only 63 petitions for the cases to be re-examined under the reviewing procedures of which only 12 cases were actually handled under the reviewing procedures while the remaining 51 cases were settled in strict compliance with the law.

**Chart describing the whole process of hearing an administrative case**


Institution of public prosecution by the Procuracy or initiation of a lawsuit by relevant individuals or organisations
Within 30 days from the date on which a written reply from a person or State body that has taken the administrative decision or administrative action regarding the settlement of the complaint is received (except in special cases).
Preparation of the hearing
Within 60 days (or 90 days in respect of complicated cases) from the date on which the case is registered, a decision on whether to open the case for trial should be made.
First instance court session
The first instance court session will be opened within 20 days (or no more than 30 days in case of plausible reasons) from the date on which the decision to open the case for trial is made.
Appellate hearing
The appellate court session will be opened within 60 days (or 90 days in respect of complicated cases) from the date of full receipt of the file.
Retrial of effective judgments or decisions
The court sessions will be opened within 1 month from the date on which the case file is received in full.
Procedural relationships

## IV. CIVIL PROCEDURES

### 1. Courts' jurisdiction over civil cases

Procedures for settlement of civil cases are provided for in the Ordinance on the Procedures for Settlement of Civil Cases of the Standing Committee of the National Assembly dated 29 November 1989.

**General jurisdiction:**

Pursuant to Article 10 of the Ordinance on the Procedures for Settlement of Civil Cases, the general jurisdiction of the courts covers the following cases:

a) Disputes over civil legal relations including disputes over ownership, contracts, torts and other disputes over rights and obligations stipulated by the civil law between citizens and citizens, citizens and legal persons, and between legal persons and legal persons except those that fall within the competence of other organisations or bodies.

b) Cases arising from marriage and family such as divorce, cancellation of illegal marriages, division of the couple's property after divorce, or a spouse dies or at the request of either spouse during the marriage, claims of alimony, determination of parenthood for children, or cancellation of adoption etc.

c) Complaints on the lists of voters;

d) Other cases as may be prescribed by the law.

***Jurisdiction of the courts at all levels***

District courts have jurisdiction to hear under first-instance procedures all civil cases mentioned above except those which gall within the competence of the provincial courts.

***Jurisdiction of the provincial courts***

Provincial courts have jurisdiction to hear the following civil cases:

a) Cases where at least one of the parties concerned is a foreigner or an overseas Vietnamese;

b) Disputes over industrial property. Notably, disputes over intellectual

property with foreign element continue to fall within the competence of the Ho Chi Minh City Court and Hanoi Court;

c) Cases which, though fall within the competence of the district courts, are chosen to be heard by provincial courts;

***Supreme Court's jurisdiction over civil cases***

The applicable law does not specify civil cases which are directly tried by the Supreme Court. However, in accordance with clause 3 of Article 11 of the Ordinance on Procedures for Settlement of Civil Cases, under special circumstances, the Supreme Court may settle under first-instance-and-final procedures in respect of civil cases which fall within the competence of the provincial courts but are chosen to be heard by the Supreme Court.

**Territorial jurisdiction**

*General principle*: The court that is competent to hear a civil case must be the court having best conditions for the settlement of the case. In this spirit, Article 13 of the Ordinance provides that:

The court having competence to judge a civil case will be the court of the locality where the defendant resides or works. If the defendant is a legal person, the competent court will be the court of the locality where the legal person's head office is located.

In the event where the subject matter of the dispute is a property [i.e. a real estate], the competent court will be the court of the locality where the real estate is situated.

In some cases, parties concerned may agree to refer their dispute to the court of the locality where the plaintiff resides for settlement.

Under the following circumstances, the plaintiff may be entitled to choose a competent court for the settlement of the dispute:

a) If the address of the defendant is unknown to the plaintiff or if the defendant has no place of residence in Vietnam, the plaintiff may request the court of the locality where the [defendant's] property is located or where the defendant has the last place of residence to handle the case;

b) If the case arises from the operation of a branch of a legal person, the plaintiff may request the court of the locality where the head office of that

legal person is located or where the branch is established for settlement;

c) If the case involves a claim of alimony, the plaintiff may request the court of the locality where he/she resides for settlement;

d) If the case involves a request for indemnity [or compensation] for loss of life or damages to health, the plaintiff may request the court of the locality where he/she resides or where the loss or damage occurs, or where the defendant resides for settlement;

e) If the case arises from a contractual relationship, the plaintiff may bring a lawsuit to a court of the locality where the defendant resides or where the contract is performed. If the two parties concerned have a previous agreement on the choice of a competent court upon the conclusion of their contract, the plaintiff could only take actions against the plaintiff at this court;

f) If the defendants have different places of residence, the plaintiff may request the court of the locality where one of the defendant resides to handle the case.

**2. Proceeding procedures**

Civil procedures represent a process whereby a civil case will be settled starting from the initiation of a law suit (or public prosecution) and registration of a case to the execution of a court judgment or decision, protection, recovery and determination of legitimate rights and interests of the State, organisations and individuals concerned. Based on a petition for a lawsuit or a decision to initiate public prosecution made by competent and eligible persons, the court will register the civil case. After the completion of the files and finding it justifiable, the competent court will decide to hear the case at a first instance court session.

The court's hearing activities are carried out at two levels namely, the first instance and the appellate levels.

Hearing *at the first instance level* is considered most important since at this stage, the contents of the case will be discussed in consideration of all detail which may help to clarify and establish the nature of the case.

The hearing *at the appellate level* will only be conducted if appeals or protests are filed in accordance with the law against ineffective judgements or decisions which were rendered to the dissatisfaction of the parties concerned.

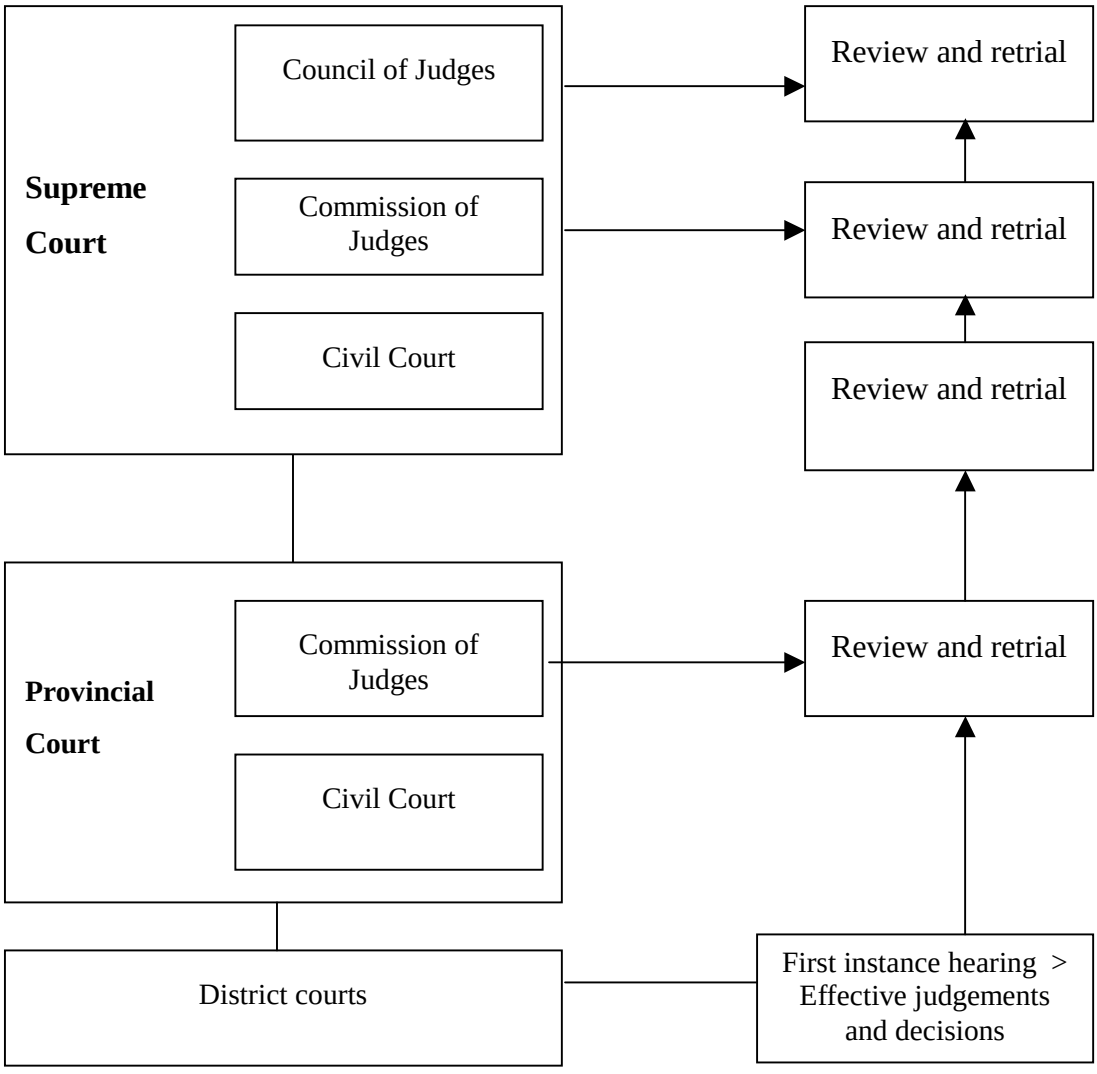
The court hearing activities also include re-examination of effective court judgments or decisions under:

(i) the reviewing procedures upon the discovery of errors made during the application of substantive laws or violations of procedural laws; and

(ii) the re-hearing procedures if new detail are uncovered that may change the contents of the case.

These two types of procedures are undertaken when protests are filed by competent persons in accordance with the relevant laws. As a special hearing procedures, re-examination of the effective court judgments or decisions is, by its virtue, aimed at supervising and monitoring the observance of law during the hearing activities and protecting social justice. The re-examination of the effective court judgments or decisions under reviewing procedures could not therefore, be considered as a third level or special level of trial.

**Chart 1: Procedures for trial of a civil case**



### 3. Execution of civil judgments

Execution of judgments is an activity carried out by competent State body in implementing effective court judgments and decisions. This is the last stage of the civil procedures.

**a) Effective court judgments and decisions**

Article 3 of the 1993 Ordinance on the Execution of Civil Judgments states that judgments which are to be executed under the procedures for the execution of civil judgments include:

- Judgments and decisions of the first-instance-and-final court sessions;
- Judgments and decisions of the first instance court sessions which are not appealed or protested against;
- Judgments and decisions of the courts at appellate level;
- Decisions of the courts at reviewing level;
- Judgments of foreign courts and awards of foreign arbitration which have been recognised by a competent court of Vietnam for execution in Vietnam; and
- Decisions on civil compensation as part of a civil judgment.

**b) Judgments and decisions which, although not yet taken effect are subject to immediate execution**

- Judgments and decisions of the first instance court sessions concerning provision of alimony, payment of wages or salaries to employees, or compensation for loss of life or damages to the health of citizens or prohibition or forcible conduct of a certain action; and
- Decision on the application of temporary emergency measures.

***Procedures for execution of civil judgments***

- Delivering copies of the court judgment or decision;
- Upon the execution of a court judgment or decision, the court that has rendered such a judgment or decision is required to issue copies of the judgement or decision to persons in whose favour the judgement or decision is to be executed or persons who are obliged to execute the

judgement of decision. The phrase “For Execution” should be affixed on each copy. On the other hand, an explanation of the right to file a petition for execution of the judgment must be given to the persons in whose favour the judgement or decision is to be executed.

*Measures taken for the execution of the judgments* include:

- Voluntary measures; and
- Forcible measures.

The persons in whose favour the judgement or decision is to be executed will be entitled to file a petition to a competent judgment execution body to request for the execution of the judgment in case where the persons who are obliged to execute the judgment fail to fulfill their responsibility on a voluntary basis.

Within 10 days from the date of receipt of the petition, the judgment execution body must issue a decision to execute the judgment.

Within 7 days from the date of receipt of copies of the court judgments or decisions, the head of the competent judgement execution body should take initiative in making a decision to execute the judgment or decision.

After the receipt of the judgement execution decision or petition of the persons in whose favour the judgement or decision is to be executed, the judgement execution officer(s) will give the persons who are obliged to execute the judgement 30 days for their voluntary execution of the judgment.

If the judgment is not voluntarily executed upon the expiry of such a time limit, the judgement execution officer(s) make decide to recourse on forcible measures, in particular the taking inventory of all assets and properties, except those assets which are not subject to inventory such as food, medicine needed for the persons who are obliged to execute the judgement or their family members, production instruments, clothes and daily necessities, and worship objects.

## V. PROCEDURES FOR SETTLEMENT OF MARRIAGE AND FAMILY DISPUTES

There is no distinction under the procedural laws of Vietnam as regard the procedures for settlement of civil disputes and that applicable to the settlement of

marriage and family disputes. In fact, the procedural laws may contain general provisions on procedures for settlement of civil cases and marriage and family cases.

For the purpose of this research, the following legal documents have been referred to:

- the 2000 Law on Marriage and Family;
- the Ordinance on Procedures for Settlement of Civil Cases dated 29 November 1989; and
- guiding circulars issued by the Supreme Court over the past years.

Based on an in-depth analysis of the existing legislation relating to marriage and family, we may draw out the following conclusions:

a) There is a huge number of legal documents concerning marriage and family, most of which took the form of circulars, directives or official correspondences providing further guidelines.

b) Since the first ever 1946 Constitution, an overall equality between men and women has been recognised laying the first legal foundations for the formation of marital and family relations under the new regime.

c) The 1959 Law on Marriage and Family marked a new development as seen from both the quantitative and qualitative aspects during the course of improving Vietnam's legal system in general and the Law on Marriage and Family in particular.

**1. Courts' jurisdiction over marriage and family cases**

The courts have jurisdiction over the following marriage and family cases

1. Request for cancellation of illegal marriages;
2. Divorce;
3. Division of jointly owned properties during the marriage or after the divorce; assignment of children to a spouse for his/her care after the divorce;
4. Provision of alimony to family members; determination of parenthood for illegitimate children; and
5. Cancellation of adoption, change of guardian of minors.

## 2. Procedures for settlement of disputes over marriage and family relations

### a) Divorce (or divorce dispute)

A request for divorce may be filed to the courts by any spouse or by both the spouses. Disputes arising from a divorce may cover the following matters:

- Request for termination of the marital relation;
- Assignment of juvenile children to one or both the spouses to foster;
- Provision of alimony for the care of juvenile children;
- Division of jointly owned properties (which remain upon the time of the divorce) and allocation of responsibilities.

Disputes over rights and obligations of the couple normally arise in relation to the following matters:

- Right to inherit assets of either the wife or husband;
- Division of jointly-owned properties during the marriage;
- Declaration of the disappearance or the death of the wife or the husband;
- Cancellation of illegal marriage;
- Divorce from the disappeared;
- Determination of rights and obligations between parents and children.

This category of disputes may be classified into:

- *Disputes over the obligation to take care or foster;*
- *Disputes over the obligations to take care of old and ill parents who lost their working capacity;*
- *Disputes over the rights to inherit children's assets;*
- *Disputes over the rights to represent juvenile children;*
- *Disputes over cancellation of adoption;*
- *Disputes over guardianship; and*
- *Other disputes.*

- • Disputes over rights and obligations between brothers and sisters and other family members;
- • Disputes over determination of fatherhood, motherhood and childhood.

**b) Procedures for settlement of marriage and family relations**

Under the Ordinance on Procedures for Settlement of Civil Cases dated 29 November 1989, the settlement of marriage and family disputes is undertaken in the following stages:

**Registration of the case:**

Citizens who initiate the lawsuit must be persons having civil procedural capacity and whose civil rights are disputed or infringed.

Organisations which bring action as a party concerned must be those whose interests are allegedly violated. The 1986 Law on Marriage and Family specifies that the Vietnam Women's Union, Ho Chi Minh Communist Youth League, and trade unions are entitled to initiate actions under Articles 9, 31 and 39 of the Law in respect of the following cases:

- Request for cancellation of illegal marriages;
- Request for cancellation of adoption;
- Request for determination of parenthood for illegitimate children.

Upon the registration of the case, the assigned judge should carefully study the detail of the case to decide where the case falls within the competence of his/her court.

**Investigation of the case**

Investigations will be conducted after the registration of the case in accordance with Articles 38, 39 and 40 of the Ordinance dated 29 November 1989.

Parties concerned will have the right to make requests and obligation to submit evidence and arguments to support their claims and protect their legitimate interests.

Parities concerned may also enjoy equality in submitting evidence and requesting the court to take investigatory measures as required. Furthermore, during its investigations, the court needs to notify relevant parties of their obligation to provide evidence in accordance with Article 3 and 20 of the Ordinance dated 29 November 1989.

In this respect, petition for determining fatherhood of illegitimate children or petition by mature children for determination of their fatherhood may be viewed as a complicated category of cases. Pursuant to Circular No. 15/TATC dated 27 September 1974 of the Supreme Court, sufficient evidences must be found to verify the following detail:

- During the possible time-length of the pregnancy (which may normally last for no more than 300 days or no less than 180 days), the alleged father and the mother lived together as a couple;
- Both the spouses love one each other and promised to get marriage. During the possible time of pregnancy, the spouses have sexual relation. However, after the child was born, no marriage took place;
- There is an evidence of the alleged father's writing as to the fact that the child who was given birth by the mother was their own child etc.

In case where none of the four events mentioned above could not be well established, the court may reject a petition for determining fatherhood of a child.

The duration for investigation and first instance trial will be 4 months starting from the date of registration of the case. In case of complicated cases or the investigations run into difficulties, such a time limit may be extended to 6 months (Article 47 of the Ordinance dated 29 November 1989.)

**Conciliation**

Conciliation is considered as an amicable settlement of the disputes by the parties concerned in a voluntary and legal manner and under the court's guidance. Conciliation represents a statutory procedural stage before the opening of the first-instance hearings. In principle, the courts are obliged to conciliate all civil cases except those which can not be settled by the relevant parties under conciliatory procedures as prescribed by the law.

The conciliation must be conducted in presence of the parties concerned. Clause 1 of Article 44 of the Ordinance dated 29 November 1989 states: "Plaintiff(s), defendant(s) and interested parties must be present at the conciliation".

In cases of voluntary divorces provided for in Article 40 of the 1986 Law on Marriage and Divorce, conciliation remains an obligatory formality even both the spouses file application for voluntary divorce. Therefore, if the court has held conciliation for the two parties to reunite but the parties insist on a divorce, the court will first prepare a minutes of unsuccessful conciliation for reunification before making a minutes of the relevant parties' agreement on a voluntary divorce, division of assets and responsibility for taking care of children. Within 15 days from the on which the minutes are recorded, the court will make decision to recognise the agreement of the

parties concerned on a voluntary divorce or to open a trial.

One of the main features of the conciliatory process in marriage and family cases is that the agreement and negotiation are conducted by the very parties concerned. As subjects of disputes, these parties may be entitled to self determine to resolve these disputes. As a result, in cases which are instituted by a procuracy or initiated by a social organisation, the [individual] parties could not engage in a conciliatory process for they are not treated as subjects of the dispute but protectors of the public interests.

In accordance with Article 43 of the Ordinance dated 29 November 1989, the courts will not carry out conciliation in respect of the following cases:

- Cancellation of illegal marriages. Upon the receipt of a petition for cancellation of an illegal marriage, the court will make a decision to cancellation such a marriage without referring to conciliation;
- Petition for a divorce in case the plaintiff is insane.
- In some exceptions (such as a petition for a divorce is filed by a wife who is maltreated or brutally bitten by the husband), the court may, if the conciliation is deemed to be unreasonable or the reunion is very unlikely to take place, not be required to initiate conciliation, provided that the court judgment must specify the reason why a conciliation is not undertaken.

Relevant parties may plead and give their suggestions on how to solve the case. Participants in open discussions may respond to arguments raised by others provided that only one time of responding may be available as regard one disputed opinion. Where necessary, the trying panel may allow additional pleadings and discussions.

Discussions before a judgment is rendered will be conducted in a separate room called judgment discussing room. The presiding judge will summarise detail of the case. The judge will be the last person expressing views and opinions. This requirement is needed to ensure the compliance with principle of independent hearings. At the end of the discussions, a judgment will be rendered by the trying panel. The judgement represent the outcome of the entire process of trial in general and the panel's discussions in particular. The judgment should overview all detail of the case, questions which have been clarified, evidences and legal bases the court relies on to settle the case, decision of the court concerning the settlement of the case, court fees and right to appeal by relevant parties (see the enclosed chart).

### 3. Current situation of the application of procedures for settlement of marriage and family cases

According to the 1997 Final Report of the Supreme Court, 30,867 marriage and family cases have been heard of the total number of 87,652 marriage and family cases registered.

| Year | 1998 | 1999 |
|---|---|---|
| A | 40,894 | 40,988 |
| B | 3,994 | 3,295 |
| C | 2,377 | 50 |
| D | 71 | 24 |

A number of cases which are heard under first-instance procedures
B number of cases with successful conciliation by the courts
C number of cases which are heard under appellate procedures
D number of cases which are heard under reviewing procedures

## VI. PROCEDURES FOR SETTLEMENT OF LABOUR DISPUTES

### 1. Labour disputes

For the purpose of this Part, a labour dispute may be defined as a dispute between the wage-earning employee and the employer of a labour collective in accordance with relevant provisions of the Labour Code of the Socialist Republic of Vietnam adopted by the National Assembly on 23 June 1994 with effect from 1 January 1995 (herein after referred to as the "Labour Code"). Under the Labour Code a labour dispute is a dispute over rights and benefits in respect of working conditions, salaries, incomes and other labour conditions; the performance of the labour contract and the collective agreement; and over issues which arise during a training or apprenticeship period.

### 2. Procedures for settlement of individual labour disputes

***Conciliation of a labour dispute at the grass-roots***

When a disagreement or dispute arises between an individual employee and the

employer, in principle, that disagreement or dispute will be resolved through direct negotiation and conciliation between the disputing parties at the place where the dispute arise (Article 158 of the Labour Code)

The settlement of labour disputes by labour dispute resolution bodies or organisations will be conducted if either party refuses to negotiate, or if both the parties fail to resolve the dispute by way of negotiation, or if one or both of the disputing parties lodge a request for resolution of the labour dispute. The competent labour dispute resolution bodies or organisations include:

1.- *Labour conciliatory councils at the grass-root level or a labour conciliator of a labour agency at district level* (in cases where there is no such a labour conciliatory council at the grass-root level).

2. *Courts*

In principle, a petition for court's settlement of individual labour disputes can only be admitted once the dispute has been conciliated without any success by the either the labour conciliatory councils at the grass-root level or a labour conciliator, except where a conciliation at the grass-root level is required, in particular:

a) Disputes over disciplinary dismissals in respect of a breach of labour rules or disputes which arise from the unilateral termination of a labour contract;

b) Disputes over payments of compensation for damages suffered by an employer (Clause 2 of Article 166 of the Labour Code and clause 2 of Article 11 of the Ordinance on Procedures for Settlement of Labour Disputes dated 11 April 1996, herein after referred to as the "Ordinance").

Upon the receipt of a petition for settlement of a labour dispute, the secretary of the council must record in the working book specifying date and month of such a receipt. (The date of receipt of the petition will be considered as a date of registration of the case). After studying the available file, the chairman of the council may convene a council's meeting to:

- Put forward a conciliation proposal (which may include an acceptance of the plaintiff's petition, if the petition is considered reasonable, or conciliation for the plaintiff's withdrawal of the petition, if the petition is considered unreasonable or a mediate solution for the parties to discuss

and negotiate);

- Fix a date on which the conciliatory meeting will take place; and
- Serve notice of the meeting to disputing parties and witnesses (if necessary).

The conciliatory meeting will be held within 7 days from the date of the case registration.

**Settlement of individual labour disputes at the courts**

***Initiating a lawsuit and registering a case***

In case where the conciliation at the grass-root fails, or where the conciliation is not required as mentioned above, disputing parties may be entitled to file a petition for the settlement a labour case to request the courts' protection of their legitimate rights and interests (Article 166 of the Labour Code and Article 11 of the Ordinance). The time limit for initiating a lawsuit will be 6 months. In respect of labour disputes which are not required to be first settled through conciliation, the time limit will be extended to 1 year (Article 167 of the Labour Code and Article 32 of the Ordinance).

Within 7 days from the date of submission of the petition, the plaintiff is required to make an advanced payment of court fees, except in the cases of exemptions. The parties must pay court fees depending on the specific types of disputes, interests and seriousness of their errors in the legal relation to be solved by the court (in respect of losers). Specific levels of court fees are provided in a decree by the Government in consultation with the Supreme Court which may be changed from time to time.

Court fees do not cover legal costs which may incurred by the winners. In principle, the plaintiff must make advanced payments of the court fees and the loser of the case will have to pay the court fees.

The court may remand a lawsuit in the following cases:

+ the initiator is not eligible to bring a lawsuit;
+ the petition for the lawsuit is not made in compliance with clause 2 of Article 32 of the Ordinance;
+ the statutory time limit expires;
+ the subject matter of the case has not been solved at the grass-root level as required by the law, except in the case where a conciliation at the grass-

root level is not required;

+ the case has already been solved by an effective court judgment or decision by a competent State body; or
+ the case does not fall within the competence of the court.

***First instance court sessions***

The trying panel of a first-instance court session will consist of 2 judges and one juror. The first instance court session will be conducted under the following procedures:

- Formalities for opening a trial;
- Conciliation at a trial
- Cross-examination at a trial
- Pleading at a trial
- Deliberation of a judgement; and
- Declaration of a judgment.

***Appellate procedures***

Parties concerned or their representatives, or trade unions which initiates a law suit will have the right to appeal the judgment or decision on settlement of a labour case by the first instance court to request the immediate higher court to conduct an appellate trial, except for cases where decisions made by the first instance court recognises agreement of the relevant parties in case of unsuccessful conciliation (before or at the court session). The procuracy of the same level or of high level is entitled to protest against the judgments or decision of the first instance courts.

The time limit is 10 days for making an appeal and 7 days for making a protest by the procuracy of the same level after the court renders the judgment or decision. In case where the parties concerned are absent or the procurator has not participated in the trial, (i) the time limit for making an appeal will commence from the date on which the judgment is delivered to the parties concerned or displayed at the head office of the communes where the parties reside or have their head office; (ii) the time limit for making a protest will commence from the date on which the procuracy of the same level receives the court judgment or decision.

If an appeal or a protest is made beyond that time limit due to force majeure events, such a time limit may be extended to 10 days in respect of an appeal and 7 days

from the date on which the obstacles cease to exist.

During a two-year period (1998-1999), each year, the number of individual labour disputes which was registered by the court amounted to around 360 cases, of which the number of successful conciliations accounted for a third. In general, most of labour disputes which were submitted to the courts are individual labour disputes and related to dismissals or termination of labour contracts, while no collective labour disputes were reported.

## 3. Procedures for settlement of collective labour disputes

### Negotiation and conciliation at the grass-root

Collective labour disputes (as defined above) must be first settled through negotiation and conciliation at the grass-root level under procedures applicable to individual labour disputes (for more detail, see section 2.1 of this Part).

### Settlement of collective labour disputes through provincial labour arbitration council

#### *Initiation of a lawsuit to request the court's settlement of collective labour disputes*

Where the labour collective is not satisfied with the decision of the labour arbitration council, it will have the right to request the court to resolve the matter or to strike (Article 172 of the Labour Code).

Procedures for initiation of a lawsuit and resolution of a collective labour dispute will be similar to those applicable to individual labour disputes as mentioned above (for more detail, see section 2.2 of this Part).

The right of the employer to bring a lawsuit to request the court to reconsider decision of the arbitration council will not limit the right to strikes by the labour collective.

### Strikes and settlement of strikes

#### *Strikes*

After the decision of a provincial labour arbitration council concerning the settlement of a collective labour dispute and the labour collective disagrees on that

decision but chooses not to bring a lawsuit to request for the court's settlement of the dispute, the labour collective will have the right to strike. A strike can only be legal when the following conditions are fully met and strictly complied with:

a) the strike must arise from a collective labour dispute and fall within the scope of a labour relation;
b) the strike is staged by employees of an enterprise within that enterprise;
c) the involved labour collective disagrees with the decision of the provincial labour arbitration council of the respective province but chooses not to bring a lawsuit to request the court to solve the case;
d) the strike is staged in non-violation of provisions concerning prevention, suspension or cancellation of strikes stipulated in clause 1 of Article 173 and Articles 174 and 175 of the Labour Code;
e) the strike is staged in accordance with procedures prescribed by clause 2 of Article 173 of the Labour Code.

***Procedures for court's settlement of strikes***

These procedures include the following steps:

a) Filing and registering a petition for settlement of a strike;
b) Preparation for settlement of a strike;
c) Conciliatory meeting;
d) Determination of the legitimacy of a strike.

Before, during and after a strike,

+ the executive committee of the trade union at the grass-root level may file a petition for the court to declare the strike lawful;
+ The employer will have the right to file a petition for the court to declare the strike unlawful;

In addition, before and during a strike, provincial trade unions or provincial labour agency are also entitled to make a written petition to request the court to declare the strike lawful or unlawful. The procuracy is entitled to institute a public prosecution to request the court to rule the strike unlawful.

Labour tribunal of the people's court of the province where the head office of the enterprise whose labour collective go on strike is located will have the jurisdiction

to settle the strike. Within 3 days from the date of receipt of the petition, if the case is considered to be within the competence of the court, the court may register the petition and notify of relevant parties, provincial labour agency, provincial federation of labour and procuracy of the same level of the registration. Immediately after the registration of a petition, the Chief Justice of the Labour Tribunal will assign one judge to settle the strike. Within 3 days from the date of registration, the designated judge must decide whether:

+ To settle the strike; or
+ To suspend the settlement of the strike, if (i) the petitioner withdraws his/her request, or the procuracy withdraws its protest, or (ii) parties concerned reach an agreement on the settlement of the strike before the court issues a decision to settle the strike.

The council for strike settlement will discuss and make a decision based on a majority voting on the legitimacy of the strike.

In case where the court makes a decision to declare the strike lawful, if the employer is found guilty, the employees will receive full payments for the whole period of the strike, and the employer must meet the legitimate demands and other interests of the employees in accordance with provisions of the law.

In case the strike is declared unlawful by the court and the labour collective is obliged to stop the strike, the court will base on the faults of each party to decide wages payment and meet other interests of the employees as stipulated by the Government.

Those employees who have not participated in the strike but had to stop working will be paid at the rate agreed upon by the two parties concerned provided that such a rate will not be lower than the minimum wage fixed by the Government.

The decision of the labour tribunal of the provincial people's court on the strike will take immediate effect. Within 3 days from the date of receiving the decision, the relevant parties may be entitled to make an appeal against this decision to the Supreme Court.

Within 5 days from the date of full receipt of the dossier relating to the strike settlement, a group of three judges assigned by the Chief Justice of the Court of Appeal of the Supreme Court must resolve the appeal. The decision made by the Court of Appeal of the Supreme Court will be final and binding on the settlement of the strike.

**Chart illustrating the procedures for conciliation and settlement of individual labour disputes**

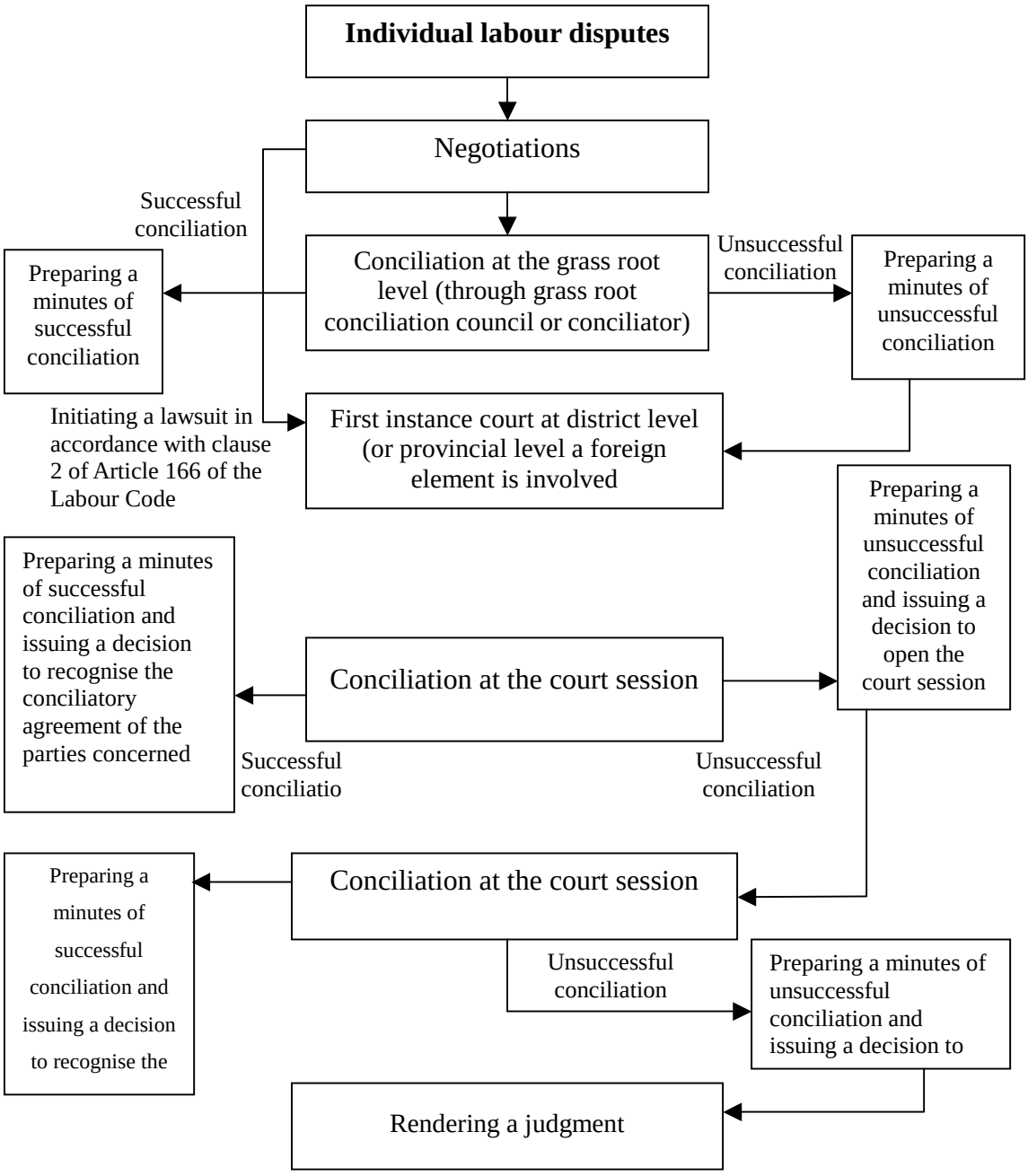


**Chart illustrating the procedures for conciliation and settlement of collective labour disputes**

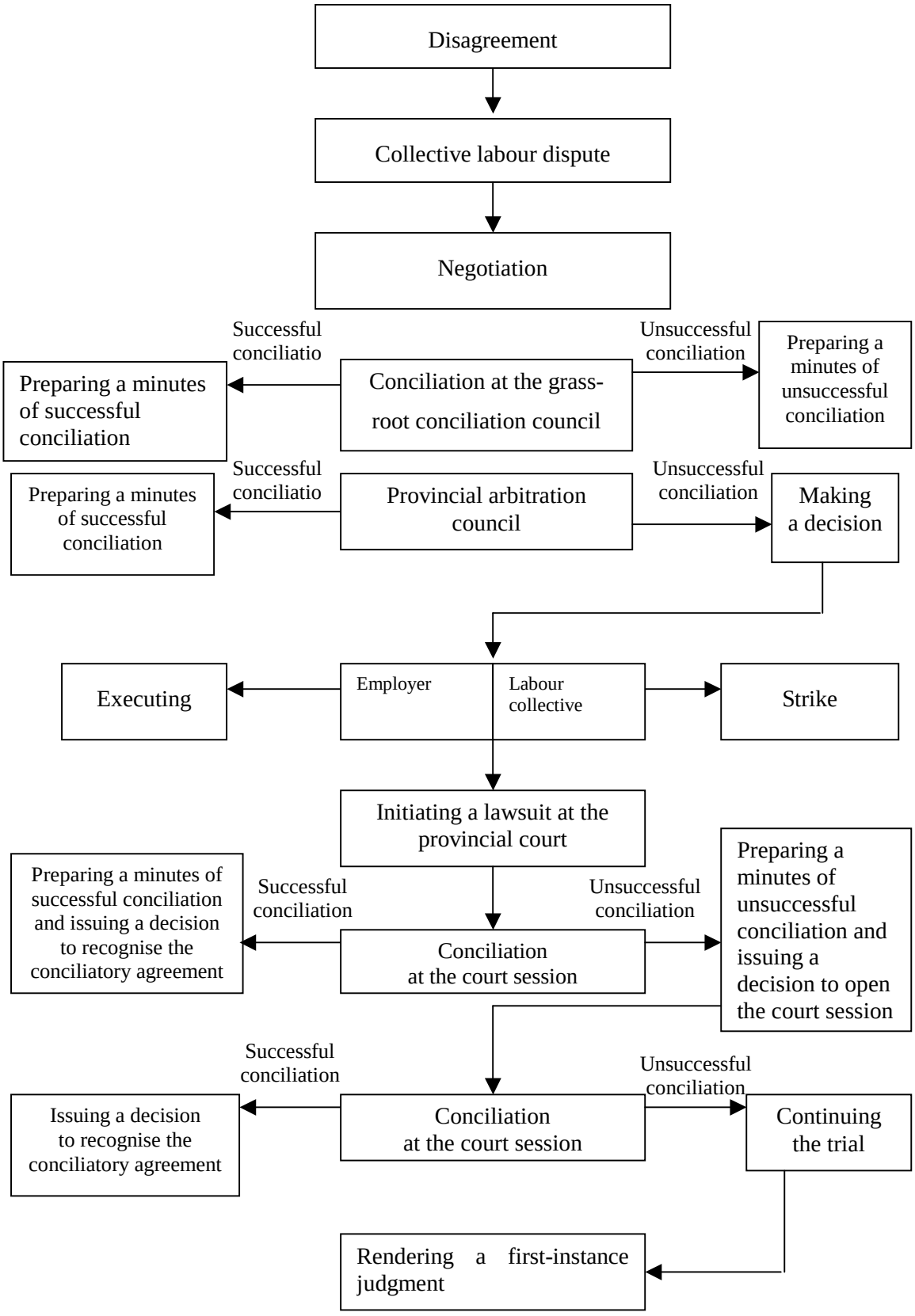
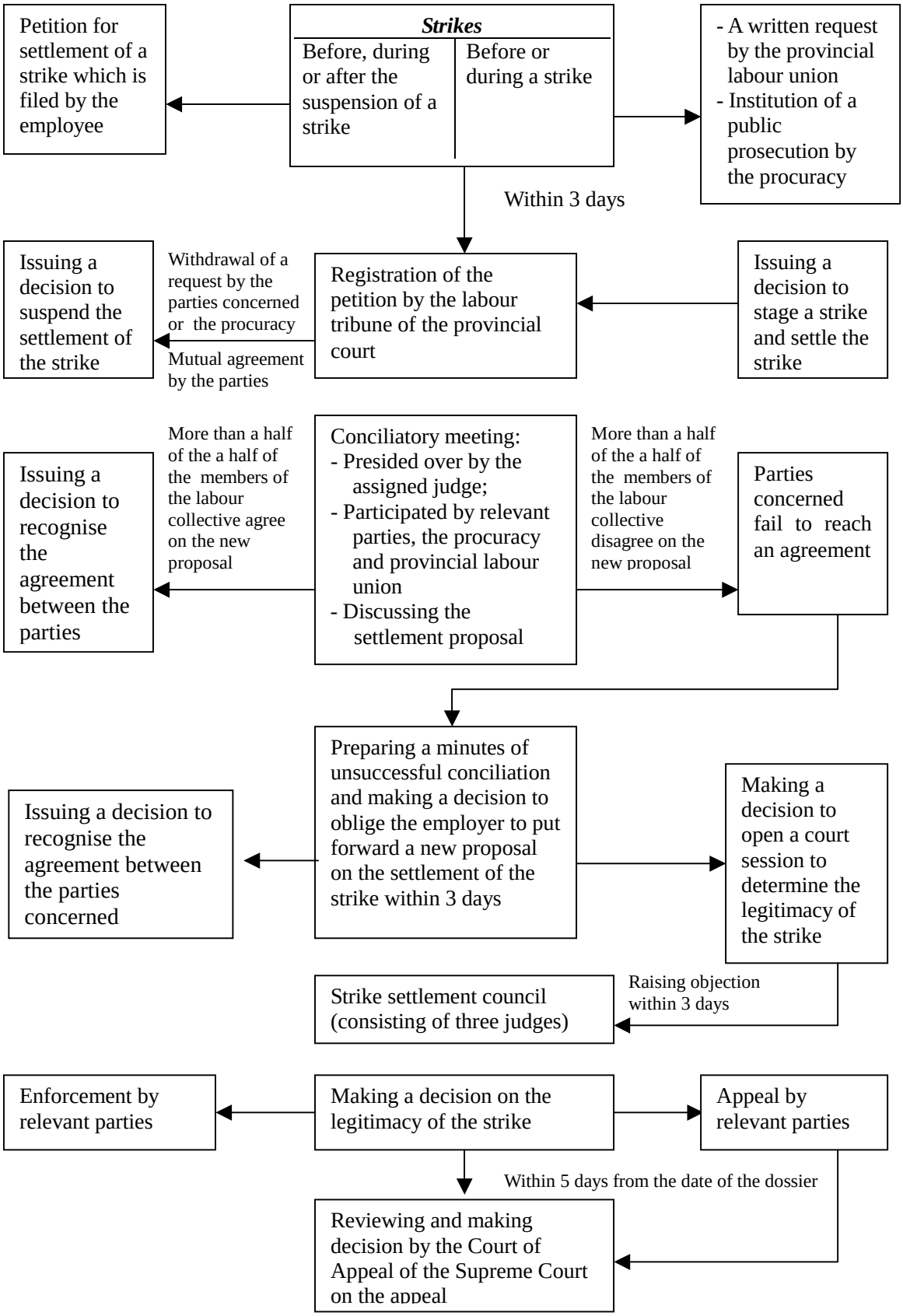


**Chart illustrating the procedures for a court's settlement of a strike**



## VII. ECONOMIC COURT PROCEEDINGS

### 1. The creation of economic court as an economic dispute resolution body

In late 1980s and early 1990s, Vietnam has embarked on a market-oriented economy. Since 1 July 1994, the establishment of economic court within the structure of the court system with a competence to handle economic disputes and petition for declaration of business bankruptcy has marked a new but crucial development in the settlement of economic disputes in Vietnam.

Under the Law on the Organisation of the Courts adopted on 28 December 1993, economic courts are to be set up in the Supreme Court and provincial courts.

+ The Economic Court of the Supreme Court, as a specialised tribunal of the Supreme Court, has jurisdiction to review and retry economic cases whose judgments or decisions have become effective which are appealed or protested against in compliance with the law.
+ Economic courts of the provincial people's courts have a competence to hear under first-instance procedures economic cases whose first-instance judgments or decisions of the inferior courts (i.e. the district courts) are appealed or protested against; and handle business bankruptcy as prescribed by the law.

### 2. Procedures for settlement of economic cases

The Ordinance on the Settlement of Economic Cases was enacted by the Standing Committee of the National Assembly on 16 March 1994. This legislation may be seen as an indispensable procedural basis for the courts to resolve economic disputes in accordance with the assigned function and tasks.

#### Time limit for taking actions

Paragraph 1 of Article 31 of the Ordinance states: "The initiator [suer] must file a petition for the court settlement of an economic case within 6 months from the date on which the dispute arises, except otherwise provided by the law".

Thus under the Ordinance, the time limit for initiating an economic case will be "6 months from the date on which the dispute arises" with a view to resolving the

dispute in a prompt and complete way by the parties concerned to stabilise production and business activities. However, practice of economic dispute settlement shows that the Ordinance's provision on time limit of action is proven inappropriate since it fails to bring into full play the co-operation, negotiation and self-conciliation of the disputing parties. As the statutory time limit of action is too short, the legitimate rights and interests of the parities concerned are not actually protected.

In addition, due to lack of specific and clear guidance, there is an inconsistent perception of the time limit of action between judges of courts at all levels, especially as regard the starting point of the time limit (or the time at which the dispute arises).

**Jurisdiction**

***Case-by-case jurisdiction***

Pursuant to Article 12 of the Ordinance on the Procedures for Settlement of Economic Cases, economic courts have competence to judge the following cases:

- Disputes over economic contracts between legal persons, and between legal persons and individuals with business registration;
- Disputes between a company and its members; disputes between members of the companies over the establishment, operation and dissolution of the company;
- Disputes over sales and purchases of shares and bonds;
- Other economic disputes as may be prescribed by the law.

The requirement whereby jurisdiction is determined on a case-by-case basis is aimed at identifying whether the case in question falls within the competence of the economic court or of other bodies.

In fact, since its establishment, economic courts mainly deal with disputes over economic contracts as other types of disputes provided for in clause 2 of Article 12 are very limited. The economic courts have almost not registered for settlement any disputes stipulated in clause 3 of Article 12.

At present, some types of newly arising disputes are submitted to the courts for settlement such as disputes over the opening and enforcement of letters of credit, disputes over bills of lading etc which are under hot debate on the jurisdiction in the absence of further guidelines. A number of courts still registered for settlement of the

above mentioned disputes as in the case of other disputes over economic contracts.

***Jurisdiction by levels of adjudication***

The courts have powers and function to handle economic disputes as stipulated in Article 12 of the Ordinance. The court's jurisdiction by levels of adjudication is specified in Article 13 of the Ordinance as follows:

- District courts have a competence to hear under first-instance procedures disputes over economic contracts where the disputed value fall below VND 50 millions, except cases having foreign elements which fall within the competence of the provincial courts;
- Provincial courts have a competence to judge economic cases under first instance procedures in respect of all economic disputes in accordance with Article 12 of the Ordinance. However, the provincial courts may choose to handle cases which are under the jurisdiction of the district courts in case of necessity (such as complicated cases, or cases relating to many other localities, or the district courts have no qualified judges to handle economic cases...).

***Territorial jurisdiction***

In accordance with Article 14 of the Ordinance, if an economic dispute arises between parties whose head offices are located in different localities, the court of the locality where the defendant has its office or resides (in respect of individuals with business registration) will have the competence to adjudicate under first-instance procedures. However, if the case is related to a real property only, the court of the locality where the property is situated will have jurisdiction to settle.

***Jurisdiction at the choice of the plaintiff***

Apart from their allocation of competence to resolve economic disputes under the first-instance procedures between various levels of the court system, the court's jurisdiction may also be determined at the choice of the plaintiff (Article 15 of the Ordinance). In particular:

- If the place where the head office is situated or the place of residence of the defendant is not determined, the plaintiff may request the court of the locality where the property or head office of the plaintiff or where the

plaintiff resides to handle the case;

- The plaintiff may also request the court of the locality where the plaintiff's head office is situated or the court of the locality where the branch of the defendant is located to handle the case if the economic dispute arises from the branch's operations;
- The plaintiff may also request the court of the locality where the economic contract is performed to handle the case if a dispute arises from a breach of the economic contract;
- In case where there are many defendants with head offices located in different areas or with different places of residence, the plaintiff may request the court of the locality where one of the defendants has its head office or resides to handle the case;
- The plaintiff may also request the court of the locality where the plaintiff has its head office or resides or where the plaintiff's real property is situated to handle the case if the only subject matter of the dispute is related to a real property;
- In case where the disputes are related to real properties located in different localities, the plaintiff may request the court of one of these localities to settle the case.

**Procedures for first instance settlement of an economic case**

***Initiation and registration of a lawsuit***

Article 1 of the Ordinance recognises the right to file a lawsuit by relevant parties whereby "individuals and legal persons may, under the procedures provided by the law, initiate an economic lawsuit to request the court to protect their legitimate rights and interests".

The court will only register the case when the following conditions are met:

- The suer has the right to file a lawsuit;
- The case in question falls within the competence of the court;
- The time limit of action has not yet expired;
- The case has not yet been settled by an effective judgement or decision; and
- The disputing parties has no prior agreement whereby the dispute with be

referred to an arbitration body.

***Preparation for trial***

Under the Ordinance, the time limit for preparation of a trial of an economic case will be 40 days from the date on which the case is registered. In respect of complicated cases, the above mentioned time limit may be extended to 60 days. In reality, the preparation for a trial should be considered as a major stage including many important works needed during the settlement of the case.

The verification and collection of evidence by the court may be undertaken by various methods such as requesting the relevant parties to present and provide evidence, the witnesses to give explanation on related issues, the relevant state bodies and organisations to provide materials, documents and other evidence required for the settlement of the case. Additionally, specialised bodies and council for evaluation of assets may also be called for to provide professional opinions concerning the settlement of the case. There are also cases where after registration of a case, the competent court authorises a court in another locality to obtain testimony and gather evidence relating to the case.

- Conducting a conciliation between relevant parties: During the settlement of a dispute, in order to assists the judges in verifying files, taking appropriate hearing approaches and help the relevant parties to better understand the causes of their dispute and hence to enable the conciliatory process, the relevant parties are arranged to directly meet to determine the nature of their dispute and problems arising from the conclusion and performance of an economic contract. Cross examination of relevant parties will be held before the conciliation.

On its part, conciliation represents an obligatory process provided by the economic procedural law. In conducting the conciliation of a case, the court must convene all relevant parties to be present at the court. The judge should provide an analysis and explanation of legal issues to ensure a full and accurate understanding of the State policies and laws by the relevant parties and a voluntary settlement of the case. During the conciliatory process, the court should act as a mediator to avoid possible imposition of opinions on the parties concerned any bias or partiality.

If the parties concerned could reach a mutual agreement on the settlement of the case, the court will prepare a minutes of successful conciliation and issue a decision to “recognise the agreement of the parties”. This decision will take immediate effect.

If the parties concerned could not reach a mutual agreement on the settlement of the case, the court will prepare a minutes of unsuccessful conciliation and issue a decision to "bring the case to trial".

***First instance court session***

Clause 3 of Article 32 of the Ordinance states: "Within 10 days from the date of issuance of a decision to bring the case to a trial, the court should open the court session. In case of force majeure or legitimate reason, such a time limit may be extended to no more than 20 days".

Before the opening of a first instance session, the court must convene all parties concerned who are indicated as proceeding persons participants and give a notice thereof to the procuracy. Other persons such as the witnesses, interpreters, experts of professional bodies may, depending on the necessity of the case be convened...

A first instance court session of an economic case may be conducted with a three-member hearing panel including 2 judges (an presiding judge inclusive), and one juror. All decisions at the court session will be made by the hearing panel subject to principles of equality and majority voting.

Parties concerned may submit detail, evidence and views to protect their legitimate rights and interests and make proposal on the settlement of the case. If a party is represented by a law to defend their legitimate rights and interests, the lawyer will represent the party concerned to make presentation which is subject to additions and supplements by relevant parties. Under the instruction of the hearing panel, parties concerned may engage and open debates for at least two times (if they are requested to involve in such debates).

At the end of the debate by the parties concerned, the procuracy's representative will put forward his view on the settlement of the case.

During the course of the court session, the plaintiff may be entitled to withdraw the entire or part of his/her petition or supplement or alter the petition.

Parties concerned have the right to conciliate at the court session and the hearing panel will make relevant decision on a case-by case basis such as suspending or recognising the agreement... These decisions will take immediate effect..

If, during the court session, the hearing panel finds out grounds for a temporary suspension or suspension, the decision thereon with be issued.

***Deliberation and declaration of a judgement***

Procedures for deliberation, declaration and contents of a judgement will be in accordance with Articles 51, 52 and 53 of the Ordinance.

Since a judgement represents a "legal document" reflecting both the State powers and views of the hearing panel relating to the settlement of the disputes between relevant parties, the judgment must be adequate, short, accurate and well reasoned. Otherwise, it will not ensure the persuasiveness and educational effects on the businessmen in particular and the public in general.

***Appellate procedures***

The first-instance judgement of an economic case and a number of decisions issued by the first-instance court (including decisions to suspend or temporarily suspend the case) which are appealed or protested against will be retired under appellate procedures by a next higher court.

The rights to appeal or protest, the contents, duration and procedures for appeals or protests are provided in Articles 59, 60, 61 and 63 of the Ordinance.

The duration for an appellate trial stipulated in Article 66 of the Ordinance is one month from the date of full receipt of relevant documents submitted by the first-instance court to the appellate court. In fact, this provision seems to be unsuitable to the specific conditions of courts at all levels, particularly as regards first instance trial of economic cases which fall within the competence of provincial courts. There are many reasons resulting to the unenforceability of this provision.

The appellate court session is conducted by 3 judges including a presiding judge and follows the same procedures as applicable to first instance court sessions. The only difference lies in the fact that before the cross-examination section, the presiding judge will represent the hearing panel to summarise the contents of the case and decisions issued in the first-instance court session.

### 3. Practice of court's settlement of economic disputes

*Figures of economic disputes registered and handled in 1997:*

| Classification of cases by type of economic contracts | Total number of registered cases | Total number of cases handled |
|---|---|---|
| Contract for purchase and sale of goods | 247 | 222 |
| Contracts for transportation of goods | 23 | 19 |
| Contract for capital construction | 55 | 49 |
| Contract for authorised export and import | 43 | 39 |
| Contract with foreign elements | 6 | 5 |
| Credit contracts | 198 | 172 |
| Other contracts | | |
| Joint venture contracts | 11 | 9 |
| Auditing contracts | 1 | 1 |
| Charter parties | 1 | 1 |
| Borrowing contracts | 2 | 2 |
| Insurance contracts | 3 | 1 |
| Service contracts | 45 | 32 |
| Distribution contract | 1 | 1 |
| **Total** | **636** | **553** |

*Figures of economic disputes registered and handled in 1998:*

| Classification of cases by type of economic contracts | Total number of registered cases | Total number of cases handled |
|---|---|---|
| Contract for purchase and sale of goods | 395 | 350 |
| Contracts for transportation of goods | 54 | 54 |
| Contract for capital construction | 55 | 43 |
| Contract for authorised export and import | 34 | 25 |
| Contract with foreign elements | 17 | 15 |
| Credit contracts | 22 | 228 |
| Other contracts | 164 | 159 |
| Joint venture contracts | 55 | 21 |
| Investment contracts | 1 | 1 |
| Agency contracts | 13 | 12 |
| Borrowing contracts | 11 | 11 |
| Insurance contracts | 86 | 58 |
| Service contracts | 64 | 54 |
| Capital Lease contracts | 30 | 24 |
| L/C contracts | 16 | 4 |
| Processing contracts | 2 | 2 |
| Deposit contracts | 2 | 2 |
| **Total** | **1,261** | **1,063** |

*Figures of economic disputes registered and handled in the first quarter of 1999:*

| Classification of cases by type of economic contracts | Total number of registered cases | Total number of cases handled |
|---|---|---|
| Contract for purchase and sale of goods | 113 | 64 |
| Contracts for transportation of goods | 16 | 7 |
| Contract for capital construction | 23 | 12 |
| Contract for authorised export and import | 13 | 12 |
| Contract with foreign elements | 11 | 3 |
| Credit contracts | 82 | 50 |
| Other contracts | 30 | 24 |
| Joint venture contracts | 8 | 3 |
| Agency contracts | 3 | 1 |
| Leasing contracts | 4 | 2 |
| L/C contracts | 13 | 1 |
| Insurance contracts | 38 | 25 |
| Service contracts | 13 | 9 |
| Total | **367** | **213** |

**4. Source: Supreme Court**

From the above-cited figures and field study, we are of the opinion that:

- Many economic disputes which have arisen in fact are not referred by the disputing parties to the court for its settlement.
- A large majority of economic disputes which have been registered and settled are disputes over economic contracts;
- The number of registered cases which have been resolved accounts for an insignificant proportion;
- Many cases have not been completely and fairly settled due to both the legal loopholes and vagueness (why the courts are generally not empowered to interpret the law) and the limited capacity of the judges.

## VIII. ECONOMIC ARBITRATION PROCEDURES

### A. DOMESTIC ARBITRATION

As mentioned above, as Vietnam transits to a market economy, the existence of Economic Arbitration as a State management body of the centrally commanding mechanism is no longer appropriate. The diversity of economic patterns and participation of various economic sectors with different forms of ownership resulted to changes in the form and nature of disputes as well as the subject-matter of the disputes. In this context, methods of economic dispute settlement must be consequently renovated. To this end, *the National Assembly of the Socialist Republic of Vietnam enacted the Law on Amendments of and Additions to a Number of Articles of the Law on the Organisation of the Courts on 28 December 1993. Under this law, economic court as a specialised tribunal of the court system was created to resolve economic disputes. At the same time, the then existing system of economic arbitration was dissolved. On 16 March 1994, the Standing Committee of the National Assembly adopted the Ordinance on Procedures for Settlement of Economic Disputes.*

In response to objective demands for a diversification of forms and methods of business disputes in conformity with the characteristics of a market mechanism and acceleration of the international integration, the Government promulgated Decree No. 116-CP dated 5 September 1994 on the organisation and operations of economic arbitration centres.

#### 1. Models of economic arbitration organisations

Under Decree No. 116, economic arbitration centres are to be established in provinces and cities under central authority.

Article 7 of the Decree states: “An economic arbitration centre shall only be permitted to be established when it is founded by at least five arbitrators An application for the establishment of an economic arbitration centre must be filed with the people’s committee of the province or city under central authority where the head office of the centre is intended to be located”.

At present, economic arbitration centres will be set up in large cities and provinces with a relatively developed economy. In the future, together with a stronger

economic development and higher demands, more economic arbitration centres may be created throughout the country.

**2. Competence**

In principle, if the contractual parties have previously reached an agreement to refer their disputes, if any to an economic arbitration body, the court will not be entitled to register the case for settlement. On the contrary, an economic arbitration body has no right to handle an economic dispute which is currently solved by the court neither.

In genera, a economic arbitration body will be competent to handle the following economic disputes:

- *Disputes over economic contracts;*
- *Disputes between a company and its members; disputes between members of the companies over the establishment, operation and dissolution of the company;*
- *Disputes over sales and purchases of shares and bonds;*

Notably, arbitration centres become more popular in many countries with their competence specialising in certain areas relating to the professional expertise of the disputing parties such as Maritime Arbitration, Securities Arbitration and Construction Arbitration etc.

In Vietnam, specific arbitration bodies have their own jurisdiction over certain categories of disputes. Under Decree No 116/CP, an application for the establishment and a licence for the establishment of an economic arbitration centre must specify the authorised scope of activities of the centre [on a case by case basis]. The State will only set forth provisions on the general competence of economic arbitration centres in resolving economic disputes as may be agreed upon by the disputing parties.

There is currently a distinction between economic disputes and civil disputes. Previously, arbitration organisations (such as the State Economic Arbitration, Foreign Trade Arbitration, and Maritime Arbitration) could only handle disputes relating to business operations (or economic disputes). At present, the competence of economic arbitration centres is also limited to the settlement of economic disputes only.

**3. Economic arbitration procedures**

In principle, economic arbitration procedures in Vietnam must be established on the basis of a selective introduction of the UNCITRAL Arbitration Rules.

Since one the of the fundamental principles of arbitration is to respect the right to self-determination by the parties concerned, the selection of arbitrators or the number of arbitrators needed for the settlement of the dispute fall entirely within the choice and sole discretion of the disputing parties, although, relevant parties could not always reach an agreement on the selection of arbitrators.

In line with foreign experience and international practices, Decree No. 116/CP of the Government dated 5 September 1994 on the organisation and operations of economic arbitration provides that the plaintiff must specify in his/her application to the economic arbitration centre for an arbitral settlement of the dispute the full name(s) of the arbitrator(s) he/she has selected from the list of arbitrators of the centre.

*In case where the dispute is to be resolved by an arbitration tribunal, each party shall select one arbitrator and the two arbitrators selected by the parties shall select a third arbitrator who shall act as the chairman of the arbitration tribunal* (Article 16 of Decree No.166).

Where the two arbitrators selected by the parties fail to select the third arbitrator within 10 days from the date of selection of the second arbitrator, the chairman of the economic arbitration centre shall appoint the third arbitrator who shall act as the chairman of the arbitration tribunal.

In the event where the parties concerned agree to a resolution of their dispute by a single arbitrator but fail to reach an agreement on the selection of such an arbitrator, the chairman of the economic arbitration centre must, within 7 days from the date on which the parties are notified of their right to select an arbitrator, appoint an arbitrator to resolve the dispute.

"*Where there is evidence to prove that an arbitrator may not be impartial during the resolution of a dispute, the arbitrator concerned must decline the appointment or the relevant parties may request that he/she do so. Each party may challenge only the arbitrator selected by that party*" (Article 18 of Decree No. 116/CP).

In the event that an arbitrator becomes unable to continue with the arbitration proceedings, a substitute arbitrator shall be selected or appointed in such a manners that are applicable to the first selection of arbitrators for the settlement of the dispute.

***Place of arbitration***

Decree No. 116/CP states that: "*The chairman of the arbitration tribunal of the arbitrator shall determine the time and place of resolution of the dispute unless it is otherwise agreed by the parties concerned*" (Article 21).

Following the general practices, Decree No. 116/CP stipulates that: "*Upon making an application for the resolution of a dispute, the plaintiff must submit to the economic arbitration centre a written agreement of the parties whereby the disputes will be referred to that economic arbitration centre for resolution.*

The application shall contain the following detail and particulars:

- *The date, month and year when the application is made;*
- *The names and addresses of the relevant parties;*
- *The name of the economic arbitration centre which is requested to resolve the dispute;*
- *A summary of the dispute and the request for resolution;*
- *Any measures of negotiation or conciliation which have been take unsuccessfully;*
- *The full name of the arbitrator selected by the applicant from the list of arbitrators of the economic arbitration centre.*

*Together with the application, the plaintiff must submit to the economic arbitration centre all necessary documents to support his/her request*" (Article 13.)

When submitting an application, the plaintiff will also be required to make advanced payment of the arbitration fees. The arbitration fees will be born by the losing party unless otherwise agreed upon by the parties concerned.

Within 7 days from the date of receipt of the application, the secretary of the economic arbitration centre will forward a copy of the application lodged by the plaintiff and the list of arbitrators of the centre to the defendant. Within the time limit stipulated by the economic arbitration centre, the defendant must respond in writing to the center and the plaintiff.

The parties will, in their own interest be obliged to provide relevant evidence, and secure and bear responsibility for the accuracy of the evidence they have provided.

Where necessary, the arbitrator may call for expert's opinion, conduct an investigation and interview relevant individuals... It should be emphasised that this is not an obligatory procedure for an arbitral settlement of the dispute. Only in case of

necessity, the arbitrator will have to follow procedures applicable to the courts in making dispute settlement decisions. At the request of either party, the arbitration council may take temporary and preventive measures to safeguard the goods and assets which are subject to the dispute.

After its investigation and examination, the arbitrator must first advise, assist and enable the parties concerned to reach an amicable solution through negotiation and conciliation. Article 30 of Decree No.116/CP states: "*During the resolution of the dispute, if the parties reach an agreement by means of negotiation, the arbitration tribunal shall terminate the proceedings. The parties may request that the chairman of the economic arbitration centre to confirm such an agreement in writing. Such documents shall be of equal validity to an arbitral award*".

In case where the disputing parties still put their faith on the economic arbitration centre in spite of unsuccessful conciliation, the arbitration council will give an award. The arbitration tribunal will make decisions by a majority vote except in the case of a single arbitrator.

The arbitration council or the arbitrator may make a decision on a partial settlement of the dispute, if it deems appropriate.

***Governing law***

Under the specific conditions of Vietnam, general practices whereby Vietnamese economic arbitration centres will apply Vietnamese laws unless otherwise agreed upon by the disputing parties are highly recommended. In case where the relevant parties are Vietnamese individuals or Vietnamese legal persons, only Vietnamese laws may be applied.

***Arbitration fees***

Arbitration fees are needed to cover legal proceeding costs, remuneration to arbitrators, and administration costs incurred by the economic arbitration centre and reasonable costs born by the centre.

Article 14 of Decree No. 116/CP states: "When submitting the request, the plaintiff must pay in advance the arbitration fees. The arbitration fees shall be determined by the economic arbitration centre in accordance with the schedule of arbitration fees stipulated by the Ministry of Finance and the Ministry of Justice".

During the hearing process, the arbitration council may request the parties concerned to pay additional deposits. At the end of the proceedings, unused amount of deposits will be refunded to the parties.

Remuneration for the economic arbitration centre will be determined on the basis of a list of actual payments in consideration of the non-profitability of the centre.

In principle, the losing party will bear the arbitration fees. However, the arbitration council will attribute in proportion these costs to the relevant parties if it deems that such a proportion is reasonable taking into account of condition and characteristics of the case.

If the parties concerned reach an agreement to withdraw their case before the economic arbitration centre renders its arbitral award, the arbitration council may at their choice, refund all of part of the arbitration fees to the disputing parties.

***Arbitration awards***

The arbitration proceedings will be ended by an arbitral award which is final and binding to the disputing parties. Article 2 of Decree No.116/CP stipulates:

*"An arbitral award shall contain the following detail and particulars:*

- *The name of the arbitration centre;*
- *The date on which and the place where the award is rendered;*
- *The full names of the arbitrators who resolved the dispute;*
- *The names and addresses of the parties;*
- *A summary of the dispute;*
- *The basis for and terms of the awards; and*
- *The amount of arbitration fees to be bone by the parties.*

*The arbitral award shall be signed by all arbitrators and shall specify and date when and place where the award is rendered. In case where the arbitration council consists of three arbitrators, but one of the arbitrators refuses to sign, the reasons of such a refusal should be stated in the very award*" (Clause 4 of Article 32).

Under Decree No. 116/CP, "the arbitration shall make decisions by majority vote" (Article 26).

An arbitral award will take effect immediately after it is rendered by the arbitration tribunal and the parties concerned have no right to appeal since arbitration

proceedings are generally conducted at one level only and the arbitral award is final. In case where the parties concerned disagree and challenge the arbitral award, they may request the court to repeal or conduct a trial under civil procedures. However, in most countries, it is required that once the parties have chosen the arbitration as a channel of resolving their disputes if any, they are deemed to have waived their right to appeal to the courts against any matters relating to the arbitral award.

Furthermore, an arbitral award may be reviewed at the court in a very limited number of cases. In principle, the court will only review and re-examine suitability of arbitration proceedings and legality of the award but will not go into the substance of the case. The court may abolish an arbitral award if there is a serious breach of the arbitration procedures, a corruption or bribery or where the award is rendered in violation of the law; or the arbitration council has not been constituted in compliance with the relevant procedures or the arbitration council exceeds its scope of competence.

Where necessary, the arbitration council may issue a decision to supplement or amend an arbitral award if the award is considered incomplete or vague even such a supplement or amendment may alter the already rendered award. Since the supplement or amendment of an already rendered award represents part of that award, the parties concerned will not be required to bear the additional costs if any.

Pursuant to Decree No.116/CP, "after the award is rendered, the arbitration tribunal or the arbitrator may not make any amendment thereof or additions thereto except in the cases where obvious mistakes have been made in relation to calculation or spelling, in which cases the parties shall be immediately informed thereof".

Current situation of the establishment and operation of economic arbitration centres in Vietnam

To date, after three batches of issuing of certificates, the Ministry of Justice has granted arbitrator certificates to 94 individuals from 12 provinces and cities under central authority. Consequently, people's committees of a number of provinces and cities under central authority have issued decisions on the establishment various economic arbitration centres. So far, 4 economic arbitration centres have been set up including

(i) Hanoi Economic Arbitration Centre (HEAC) established under Decision No.05 dated 16 May 1997 of the Chairman of Hanoi People's Committee;

(ii) Thang Long Economic Arbitration Centre established under Decision No.03 dated 16 May 1997 of the Chairman of Hanoi People's Committee;

(iii) Bac Giang Economic Arbitration Centre established under Decision No.207/GP-TT of the Chairman of Ha Bac People's Committee; and

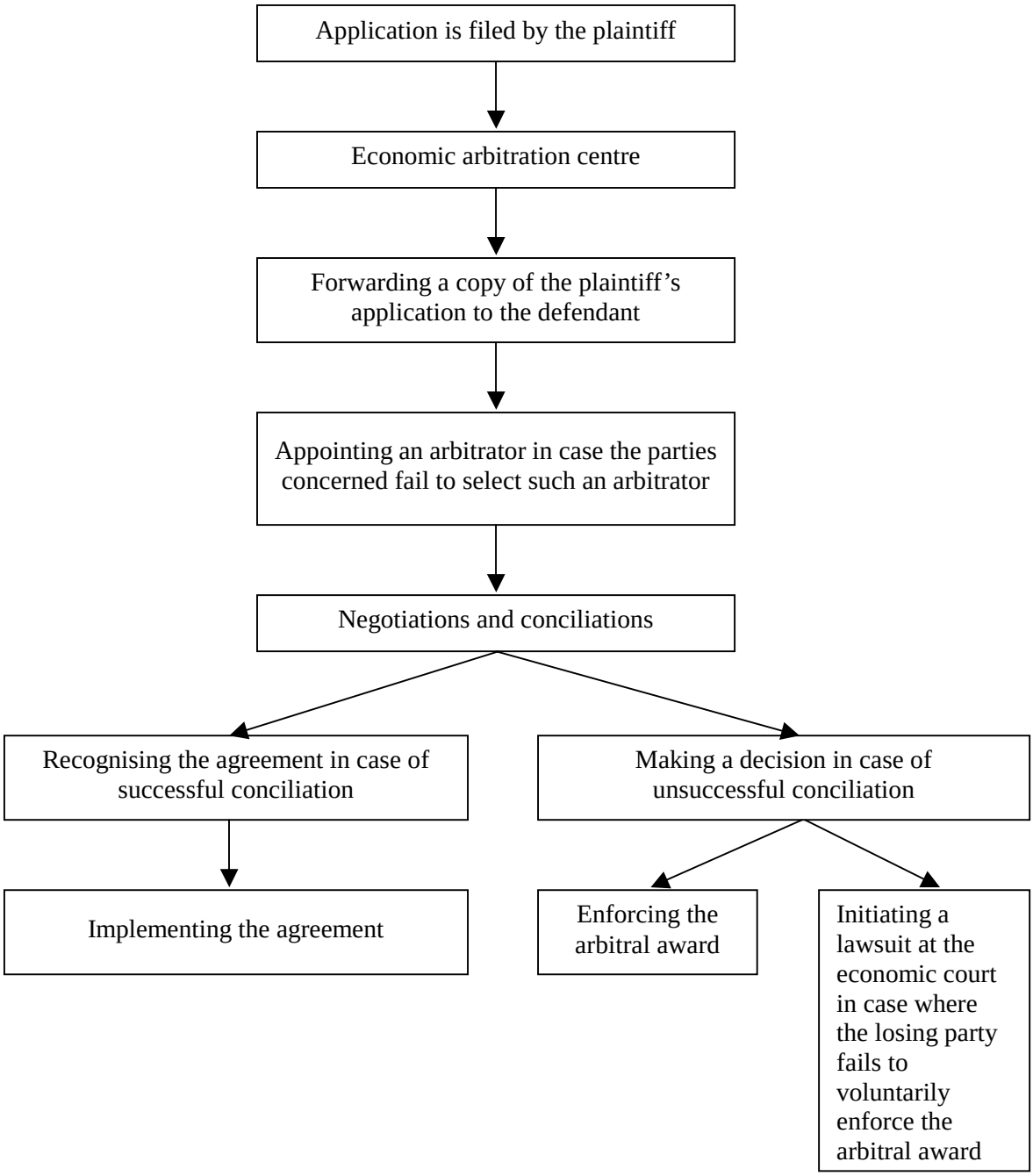
(iv) Sai Gon Economic Arbitration Centre established under Licence No. 2404/GP-UB dated 8 October 1997 of the Chairman of Ho Chi Minh City People's Committee.

In some other provinces, arbitrators are proceeding with application for the establishment of respective economic arbitration centres.

The number of disputes resolved by the existing economic arbitration centres was, nevertheless still modest. For example, the Hanoi Economic Arbitration Centre has registered 10 cases of which 7 cases were resolved through negotiation (4 successful negotiations and 3 unsuccessful negotiations), and two cases were resolved by decisions. Apart from their role in resolving economic disputes, economic arbitration centres also co-operate with economics universities, research institutes and consulting centres in organising seminars and workshops in efforts to disseminate and educate knowledge of economic laws in general and laws governing economic dispute settlement in particular.

***Chart illustrating arbitration procedures at economic arbitration centres***

***(under Decree No.116/CP dated 5 September 1994)***



## B. INTERNATIONAL ARBITRATION

### 1. Establishment of the Vietnam International Arbitration Center (VIAC)

Before the establishment of the VIAC, the Foreign Trade Arbitration Council and Maritime Arbitration Council were created under Decree No. 59/CP dated 30 April 1963 and Decree No. 154/CP dated 10 May 1964 respectively. Though affiliated to the Vietnam Chamber of Commerce and Industry, these institutions were independent from one each other and had different jurisdiction over disputes arising from foreign trade activities.

In response to the practical demands, the Prime Minister has authorised the establishment of the VIAC under Decision No. 204/TTg dated 28 April 1993 which was issued in conjunction with the Statutes of the VIAC. Article 1 of the Statutes determines the legal status of the VIAC as follows: “”The VIAC is a non-governmental institution established at the Vietnam Chamber of Commerce and Industry”.

#### Qualifications of arbitrators

In accordance with Article 4 of the Statutes, arbitrators must be persons with the requisite knowledge and experience in the fields of law, foreign trade, investment, finance, banking, transport, insurance, who are among other things selected by the Standing Committee of the Vietnam Chamber of Commerce and Industry.

#### Jurisdiction of the VIAC

The jurisdiction of the VIAC is provided in Decision No. 204/TTg dated 28 April 1993, the Statute of the VIAC and Decision No. 144/TTg dated 26 February 1996. Pursuant to these legal documents, the VIAC has competence to resolve economic disputes arising from two categories of economic relations namely foreign trade relations and domestic economic relations. In particular:

Under the Statutes of the VIAC, “the VIAC shall have jurisdiction over economic disputes arising from international economic relations, such as foreign trade contracts, and contracts relating to investment, tourism, international transport and insurance, licensing, international credit and payment” (Article 2).

This category of relations is characterised by the presence of foreign elements

which are determined by many factors of which at least one of the parties concerned is a foreign individual or a foreign legal person.

Article 1 of Decision No.114/TTg dated 26 February 1996 states: "The VIAC shall be allowed to expand its jurisdiction to cover the settlement of economic disputes arising from domestic economic relations". By this provision, the VIAC has in fact the competence to resolve all domestically-arising economic disputes.

However, under the 1989 Ordinance on Procedures for Settlement of Economic Cases, Decree No.116/CP dated 5 September 1994 and implementing documents, domestic economic disputes are understood to include the following relations:

- Disputes over economic contracts between legal persons, and between legal persons and individuals with business registration;
- Disputes between a company and its members; disputes between members of the companies over the establishment, operation and dissolution of the company;
- Disputes over sales and purchases of shares and bonds; and
- Other economic disputes as may be prescribed by the law.

Subject to these provisions, the VIAC will have a competence to resolve such economic disputes as listed above only.

In the following cases, a disputes may deem to arise from international economic relations:

- One party is a foreign natural person or a foreign legal person;
- If before and after the occurrence of an dispute, the parties concerned have agreed to refer their dispute to the VIAC for its settlement; and
- The parties concerned are bound to refer their dispute, if any to the VIAC as required under an international treaty.

In respect of domestic economic disputes, only an agreement between the parties concerned to refer the dispute to the VIAC is needed.

**Practice of operations of the VIAC**

The VIAC was established in 1993 (very late in comparison with arbitration of the same type in other countries). However, since its commencement of operation, the

VIAC has recorded a very good performance.

Between 1993 and 1997, according to the final report on the operations of the Centre in the first term, the Centre has registered 83 cases and resolved 74 cases of which, 53 cases were resolved by arbitral awards, 7 cases were resolved through successful conciliations and subsequent decisions recognising the parties' mutual agreement, and 14 cases were completed by explaining and persuading the disputing parties to engage in self-negotiations. These figures show that the number of resolved cases accounts for a high percentage (89.3%) while this indicator was only between 60-63% in the economic courts.

The above-mentioned results highline the important role of the VIAC in today economic life in Vietnam. In reality, the VIAC has been helping to revitalise economic relations and bolster economic development.

**Procedures for dispute settlement**

***Claims and counter-claims***

***Claims***

Article 5 of the Procedural Rules requires that the claim [or petition] must specify:

- Full names and addresses of the plaintiff and the defendant;
- Requests of the plaintiff and supporting evidence;
- Briefing the development of facts which result to the disputes;
- Value of the case;
- Full name of the arbitrator who is selected by the plaintiff from the list of arbitrators of the centre or proposal for the chairman of the centre to appoint an arbitrator.

A claim must be made in Vietnamese or a popular foreign language. The claim and related documents must be submitted in on original version and a number of duplicate versions to be forwarded to the plaintiff and the Centre.

Upon his/her submission of the claim, the plaintiff must pay in advance all arbitration fees as required under the "Arbitration Fee Tariffs". The receipt of the advance payment of arbitration fees should be enclosed to the claim otherwise such a

claim may not be registered.

Immediately after the registration of the claim, the secretary of the Centre will notify the defendant of the claim enclosed by a copy of the claim and relevant documents and the list of arbitrators of the Centre. At the same time, the secretary must also request the defendant to submit to the Centre a pleading and evidence certifying their interests and obligations within 30 days from the date of receipt of the notice thereof. Such a time limit may be extended to 2 months at the request of the defendant.

***Counter-claims***

A counter claim may be lodged after the submission of a plaintiff's claim – or the original claim if the defendant believes that his/her interests are violated by the plaintiff.

The counter-claim must be filed with the Centre before the opening of the arbitration session. The counter-claim must be made in the same manners as the original claim and may be resolved together with the original claim.

The counter-claim will be notified to the plaintiff and the plaintiff is obliged to submit his/her reply to the Centre within 30 days from the date of receipt of the notice of the counter-claim.

Comparing provisions on a claim between the UNCITRAL Arbitration Rules and Proceeding Rules of the domestic economic arbitration centres (under Decree No. 116/CP) we may realise that these provisions are basically similar:

***Selection and appointment of arbitrator***

The procedural rules permit the parties concerned to select their own arbitrators to participate in the settlement of the dispute. This provision represents the freedom to choose and the right to self-determination of the parties. In case such a choice is not realisable, the parties concerned may request the chairman of the Centre to appoint an arbitrator in their favour.

Stipulations of the procedural rules which govern the selection and appointment of arbitrators are basically suitable to the UNCITRAL Arbitration Rules and are as follows:

- Parties concerned may themselves select the single arbitrator or an arbitration committee for the settlement of the dispute.
- In the event where the relevant parties agree to choose a single arbitrator

to resolve the dispute, such an arbitrator must be selected from the list of arbitrators. If the parties fail to reach such an agreement, the chairman of the Centre will appoint the single arbitrator.

- In the event where the relevant parties agree to choose an arbitrator committee to resolve the dispute, each party will select one arbitrator or request the Centre to appoint the arbitrator in. After the selection or appointment, the two arbitrators will elect another arbitrator to preside the arbitration committee. If the two arbitrators fail to agree on the appointment of a third arbitrator, the chairman of the Centre will appoint the third arbitrator to chair the arbitration committee within 15 days from the date on which the second arbitrator is selected.

**2. Hearing procedures**

After the preparation for hearing, either the chairman of the arbitration committee or the single arbitrator will fix a date for hearing marking the end of the preparatory period and the beginning of a hearing period.

The hearing period is provided as follows:

- The hearing will be conducted in Hanoi. Parties concerned will be convened to attend the hearing session by a writ serviced by the secretary of the centre which specifies the place where and time when the hearing will take place. The writ [subpoena] will be sent at least 30 days before the date on which the hearing takes place. However, the parties concerned may agree to request the chairman of the arbitration committee to hold the arbitration hearing earlier or later or in a place other than Hanoi. Such a request will be considered and decided by the chairman of the arbitration committee.

At the hearing session, the disputing parties may directly participate or authorise other persons to represent their interest in participating in the session. Such an authorisation must be made in writing. The authorised representatives may be Vietnamese citizens or foreigners who legally enter Vietnam.

The parties may also request lawyers to protect their interests.

The arbitration committee will make all decisions by a majority vote. The minority's opinions will be recorded in a minutes. In case where a majority vote could not be obtained, the chairman of the arbitration committee will make decision is if

he/she was the single arbitrator.

The parties may be entitled to learn to know the contents of the minutes. Changes or additions to the minutes at the request of the parties or of one party only will be subject to the arbitration committee's decision.

***End of the hearing***

The arbitration hearing will be ended by an **arbitral award or a decision of the arbitration committee.**

The arbitral award represents the results of the hearing process which is carried out at one or more arbitration sessions by the arbitration committee or the single arbitrator.

The arbitral award constitutes a decision ending a case. After the arbitral award is rendered, the parties concerned will be obliged to comply with the provisions of the award and applicable laws.

An arbitral award will contain the following detail and particulars:

- The name of the VIAC;
- The date on which and the place where the award is rendered;
- The full names of the arbitrators (or the single owner) who resolved the dispute;
- The names of the relevant parties;
- The subject matter and development of the case;
- Decision on the case, arbitration fees and other costs;
- Bases of the decision made therein; and
- Signatures of arbitrators (or the single arbitrator) and the secretary of the session.

The arbitration committee may decide to end the case under the following circumstances:

+ The plaintiff withdraws his/her claim;
+ The parties reach a direct agreement without the hearing session by the arbitration committee;
+ Conditions for consideration and settlement of the case, including the fact that the plaintiff has not worked on the case for 6 months.

The withdrawal of a petition may take place before the issue of a decision to

bring the case to a hearing but before the first arbitration hearing session or even at the hearing session.

"A direct agreement" means an agreement reached before the creation of an arbitration committee or at the first and subsequent hearing sessions.

In case the parties concerned reach an agreement before the creation of an arbitration committee, these parties may request the chairman of the Centre to recognise the agreement in writing. This document will be of equal validity as an arbitral award.

Grounds for the issue of a decision to terminate the case must be specified in the decision.

**3. Execution of arbitral awards or arbitral decisions**

The execution and enforcement of awards, judgments or decisions rendered by an economic dispute settlement body are found of vital importance to all forms of economic dispute settlement. Any efforts by the economic dispute settlement body will obviously become senseless if the initial decisions are not enforced.

Under the civil and economic procedural laws, execution of judgments constitutes the last stage of the proceedings. Relevant provisions on execution of judgments are provided in a comprehensive, detailed and consistent manners in the Ordinance on the Execution of Civil Judgments dated 17 April 1993. A judgement may be subject to a forcible execution by the judgment enforcement body.

In the meantime, the execution of arbitral awards or decisions issued by non-governmental arbitration bodies in general and the VIAC in particular are not properly prescribed by the law. In other words, an appropriate mechanism has not yet been worked out to ensure a complete execution of these awards or decisions, instead such an execution is entirely dependent on the self-awareness and volition of the parties concerned. Therefore, many arbitral awards or decisions have not been enforced.

Recognition and enforcement in Vietnam and under the laws of Vietnam of foreign arbitral awards

As regards this matter, apart from international treaties in which the Government of Vietnam is a signatory or a participant (especially the 1958 New York Convention), the Ordinance on the Recognition and Enforcement in Vietnam of Foreign Arbitral Awards is proven the most important piece of legislation.

The Ordinance plays a significant role in securing the effectiveness of arbitral awards which are rendered by foreign arbitration bodies as may be selected by the

parties concerned. By that means, the Ordinance helps to promote the external economic relations between Vietnam and other countries.

The Ordinance determines various principles of recognition and enforcement of foreign arbitral awards namely:

- Reciprocity under a treaty-basis or a non-treaty basis;
- Adoptability of court's judgements; and
- Similarity to enforcement of civil judgements.

The principle of reciprocity is normally pursued in different areas of international co-operation, especially in dealing with foreign natural persons and legal persons. By its virtue, the reciprocity in recognition and enforcement of foreign arbitral awards may be understood as the application of reciprocity to treatment of foreign individuals and foreign legal persons in the area of civil procedures in its broader term.

The principle whereby foreign arbitral awards or decisions are recognised and enforced in Vietnam under Vietnamese procedural laws is a principle widely introduced in the recognition and enforcement of foreign arbitral awards as well as foreign court judgements. The rationale of this principle lies in the fact that in procedural areas, non-application of foreign laws is currently observed in many countries.

In ensuring an effective recognition and enforcement of foreign arbitral awards, the Ordinance covers a wide range of issues such as right to request for the recognition and enforcement, jurisdiction to hear this kind of requests, appeals and protests against a decision of the competent court, recognition and non-recognition of foreign arbitral awards.

Article 3 of the Ordinance states: "The winning organisations or individuals[5] of their legal representatives shall have the right to request the court to recognise and enforce in Vietnam a foreign arbitral award, if the losing organisations have their head offices in Vietnam or the losing individual resides and works in Vietnam, or the property relating to such an enforcement is situated in Vietnam at the time of the request". Thus the recognition and enforcement of foreign arbitral awards may be applicable to both Vietnamese individuals and Vietnamese legal entities and foreign individuals and legal entities. The courts that have the jurisdiction to examine the request for recognition and enforcement in Vietnam of foreign arbitral awards will be the courts of the provinces or

[5] i.e. the organisations or individuals in whose favour the arbitral awards are to be enforced.

cities under central authority where the losing organisations have their head offices or the losing individuals reside or work, or where the property relating to such an enforcement is situated.

However, more specific provisions are needed as regard this aspect. For example, which court will have a competence to deal with the request in case where the properties relating to the enforcement are located in different areas. The next question arises in relation to whether the disputed property or a property owned by the losing organisations or individuals is related to the enforcement of the arbitral awards. It is also unclear as to whether the court will recognise and enforce foreign arbitral awards which are related to the measures required to be taken to secure the enforcement of a foreign arbitral award (including freezing the disputed assets). The fact shows that the parties concerned may disperse their properties or otherwise hamper the recognition and enforcement of an foreign arbitral award.

Article 6 of the Ordinance provides on ways to secure the legal effects of the court decisions on recognition and enforcement in Vietnam of foreign arbitral awards under which: "a foreign arbitration award recognised and permitted to be enforced in Vietnam by the court shall have the same legal effect as a legally effective judgement of a Vietnamese court". This provision is indispensable to ensuring the recognition and enforcement in Vietnam of a foreign arbitral award. It may be deduced from this provision that if the losing organisation or individual fails to voluntarily enforce the awards, Vietnamese competent authorities will take forcible measures. On the other hand, the provision also helps to securing the enforcement of Vietnamese arbitral awards in foreign countries.

The procedures for recognition and enforcement in Vietnam of a foreign arbitral award starts by a submission of a written request to Vietnam's Ministry of Justice for the recognition and enforcement in Vietnam of a foreign arbitral award. Such a request should include the following detail and particulars:

- The full names and addresses of the head offices of the winning and losing organisation or the names, places of residence and places of work of the winning individuals. In the event where the losing organisation has no head office in Vietnam or the losing individual has no place of residence (or place of work) in Vietnam, the location where the property related to the enforcement of the award must be clearly described.
- Demands of the winning organisation or individual.

Under the Ordinance, a number of necessary documents must be enclosed to the request for the competent court of Vietnam to examine the request. These supporting documents provided for in the international treaties in which the Government of Vietnam is a signatory or a participant (clause 1 of Article 11). If the international treaties do not provide for documents to be enclosed to the request or if there is no such an international treaty, the following documents must be enclosed with the request:

- The original or duplicate copy of the foreign arbitral award that has been certified in accordance with the law of Vietnam;
- The original or duplicate copy of the arbitration agreement that has been certified in accordance with the law of Vietnam;

In addition, these documents must be accompanied by a Vietnamese translated version which is duly certified in accordance with the law of Vietnam.

It is very important that the original or duplicate copy of the foreign arbitral award will be enclosed with the award since this document serves as a key basis and evidence for the Vietnamese competent body to consider for recognition and enforcement of the arbitral award.

Based on this award, the Vietnamese competent body will determine which foreign arbitration body rendered such an award before deciding whether this award may be recognised and enforced in Vietnam. Also based on this award, the Vietnamese competent body may determine whether the request of the winning party is suitable (if it is considered for recognition and enforcement in Vietnam).

**Right to appeal and protest**

During the process of recognising and enforcing a foreign arbitral award, the losing party has the right to appeal against the court's decision on the recognition and enforcement of a foreign arbitral award on the ground that the parties concerned had no arbitration agreement or such an agreement was illegal. For that reason, the consideration of the arbitration agreement by the parties is indispensable to the recognition and enforcement of a foreign arbitral award.

**Securing the enforceability of a decision**

The Ordinance affirms a principle whereby a request will be examined. Under this principle, "the hearing panel shall not re-try the disputes which have been resolved by a foreign arbitration body but shall only verify and compare the foreign arbitral award and the enclosed documents..." This principle which is also adopted in the arbitration practices in many countries and is recognised in international treaties is aimed at preserving the outstanding advantages of an arbitration settlement of a dispute.

One of the most important issues relating to the recognition and enforcement of an arbitral award is concerned with non- recognition and enforcement of an arbitral award.

Under the Ordinance, a foreign arbitral award will not be recognised under the following circumstances:

1. The arbitration agreement is found null and void;
2. The procedural rights of the losing party are not secured;
3. The award is rendered not in relation to the dispute which is agreed to be settled by the parties;
4. Composition of arbitrators and the arbitration procedures are not in compliance with the arbitration agreement;
5. The arbitral award has not yet been available; and
6. The foreign arbitral award is abolished or suspended by a competent body in the respective foreign country.

All cases mentioned above where a foreign arbitral award may not be recognised or enforced are determined under the international law and practices relating to arbitration and the law of the country where the arbitral award is rendered or where the arbitration body is established and active. These are legal bases whereby a foreign arbitral award may deem to be ineffective in all countries which pursue the same legal standards and international practices relating to arbitration (including the country where the award is rendered).

From a comprehensive analysis of the entire current system of legal documents in Vietnam, we may come into the following conclusions:

- The existing laws still lack specific provisions concerning the recognition and enforcement of foreign arbitral awards in Vietnam.
- Many of the existing provisions must be revised, amended and

supplemented to bring into full play the recognition and enforcement of foreign arbitral awards in Vietnam (as mentioned in Chapter I).

- Detailed provisions on the above described issues such as rights and interests of the parties concerned in case where the losing party is dissolved, bankrupt or dies must be...) must be soon promulgated.
- Provisions concerning the court's supports such as the application of temporarily emergency measures to protect the interests of the claimants, or subpoenaing the witnesses and collecting evidences... are still absent.

## IX. PROCEDURES FOR SETTLEMENT OF BUSINESS BANKRUPTCY

On 30 December 1993, the National Assembly of the Socialist Republic of Vietnam enacted the Law on Business Bankruptcy. In addition to this major legislation, business bankruptcy is also stipulated in other corporate laws such as the 1995 Law on the State Owned Enterprises or the 1998 Law on Enterprises (Article 113).

### 1. Procedures for settlement of bankruptcy petitions

**Registration of bankruptcy petitions**

Like in other countries, the settlement of a business bankruptcy in Vietnam is carried out in the following order:

- Filing and registering a bankruptcy petition;
- Opening a procedure for settlement of the bankruptcy petition; and
- Allocation and payment of debts.

In Vietnam, the settlement of a business bankruptcy by the court will only be conducted at the request of the relevant parties. Therefore, the request for settlement of a business bankruptcy petition which serves as a legal basis for the court registration of the case will lay the first grounds for the settlement of a business bankruptcy petition.

In accordance with Article 7 of the Law on Business Bankruptcy, if, after 30 days from the date of serving an invoice, a debtor has not settled a debt, an unsecured or partly secured creditor shall have the right to file a petition at the court where the

debtor's head office is located requesting the court to settle the business bankruptcy. Thus the right to request for a settlement of the business bankruptcy petition will not arise immediately after the expiry of the time limit of making the debt payment. In filing a business bankruptcy petition, the creditor is required to enclose documentary evidence to support his/her claim such as a copy of the invoice of the due debt, documents relating to the settlement of disputes over the debts, as well as other documents certifying or proving the unpaid amount of due debts.

Upon the submission of a business bankruptcy petition, other relevant documents to be accompanied include: the list of creditors and the corresponding amount owed; a report on the financial situation of the business for 6 months prior to it becoming unable to pay its debts; finalisation report and detailed explanation of the financial situation in the latest two years; report on the responsibilities of members of the Board of Management and the director in respect of the business becoming unable to repay its debts; and copies of accounting books and other relevant documents.

The settlement of a business bankruptcy petition will be conducted by the economic tribunal of the people's court of the province or city under central authority where the debtor has its head office. After the petitioner has submitted a full set of duly prepared documents as mentioned above, and made a deposit of the court fees, the competent court will receive the petition, record in the registrar and issue a receipt certifying the submission of the set of application documents.

In starting procedures for the settlement of a business bankruptcy petition, the court will, after its registration of the case, examine the petition and the accompanied documents. The main objective of this period is to examine the ability of the business in repaying its due debts based on the documents available. Depending on the legitimacy and adequacy of the evidence, within 30 days from the date of registration of the case, the chief justice of the economic court which has registered the case may issue a decision to proceed with a hearing for the business bankruptcy proceeding. Any decision to dismiss the petition must specify the reasons and be forwarded to the petitioner and the debtor. Such a decision may be appealed by the parties concerned to the chief justice of the provincial people's court.

***Opening a hearing for the settlement of a business bankruptcy petition***

After a decision for opening a hearing for the settlement of a business bankruptcy petition is issued, the competent judge should request the owner of the

business or his/her legal representative to prepare a conciliation plan and a proposal of reorganisation solutions. The conciliation plan and the proposal of reorganisation solutions must be prepared by the business in writing and signed by the legal representative of the business, and forwarded to the competent judge within 60 days from the date on which the judge made such a request. The conciliation may mainly take the forms of rescheduling, reducing, buying back and guaranteeing the debts and other measures to remedy the loss of the business's ability to repay due debts. The duration, amount and method of repaying debts must be undertaken by the debtor. In the mean time, reorganisation of the business activities of the debtor include financial measures, reorganisation or rearrangement of the labour force, renovation of the management, improvement and renovation of technology, and other solutions aimed at recovering the debtor's ability in repaying the debts.

In order to be repaid, the creditors must be named in the list of the creditors. To be included in that list, within 60 days from the first date of the publication in local and central daily newspapers of the court's decision to proceed with a business bankruptcy petition, all creditors must submit to the court notices requesting payment of debts. The list of creditors and the corresponding amounts of debts will be prepared by the trustee committee within 15 days from the date of expiry for submitting notice and proof of debt. Within 10 days from the date on which the list of creditors is publicly posted at the provincial court, and the head office and the branches of the business, if there is no complaint to the judge from the relevant parties, the trustee committee will close the list of creditors.

Although conciliation proposal and reorganisation solutions will be put forward by the debtor, they will only take effect once approved by creditors who were named in the list of creditors. The consideration and approval of the conciliation proposal and reorganisation solutions will take place in the creditors' meeting.

Within 30 days from the date on which the list of creditors is closed, the assigned judge will convene and chair the creditors' meeting. A creditors' meeting will only be valid if more than half of the number of creditors representing at least two third of the unsecured debts are present at the meetings. Only unsecured and partially secured creditors may have the right to vote in the creditors' meeting. Resolutions of the creditors' meeting will only be valid if they are approved by more than half of the number of creditors representing at least two third of the unsecured debts. A creditors' meeting may be adjourned once if:

(i) there is less than half of the number of creditors representing at least two third of the unsecured debts present at the meeting; and

(ii) a majority of the creditors present at the meeting vote in favour of the adjournment.

Within 30 days from the date on which the creditors' meting is adjourned, the judge must reconvene and preside over a new creditors' meeting. Where a creditors' meeting is not valid due to the attendance of less than half of the number of creditors representing at least two third of the unsecured debts the judge will issue a decision to suspend the bankruptcy proceeding. Any refusal to attend the creditors' meeting may deem to be a waiver of the right the request for a settlement of a business bankruptcy petition as seen from a legal point of view. In the reconvened creditors' meeting, all resolution will only be valid if they are approved by creditors representing at least two third of the unsecured debts.

The owner or the legal representative of the business must be present at the creditors' meeting in order to present to the participants the conciliation proposal and solutions to restructure the business operations and to answer any questions raised during the meeting.

The conciliation proposal and solutions to restructure the business operations of the debtor may be approved or may not be approved at the creditors' meeting. In the event where the conciliation proposal is not approved at the creditors' meeting, the curt may make a declaration of bankruptcy and proceed with the liquidation of the debtor's assets. By the contrary, if the conciliation proposal and solutions to restructure the business operations are approved at the creditors' meeting, the judge will make a decision to recognise the minutes of successful conciliation and temporarily suspend the settlement of the business bankruptcy petition.

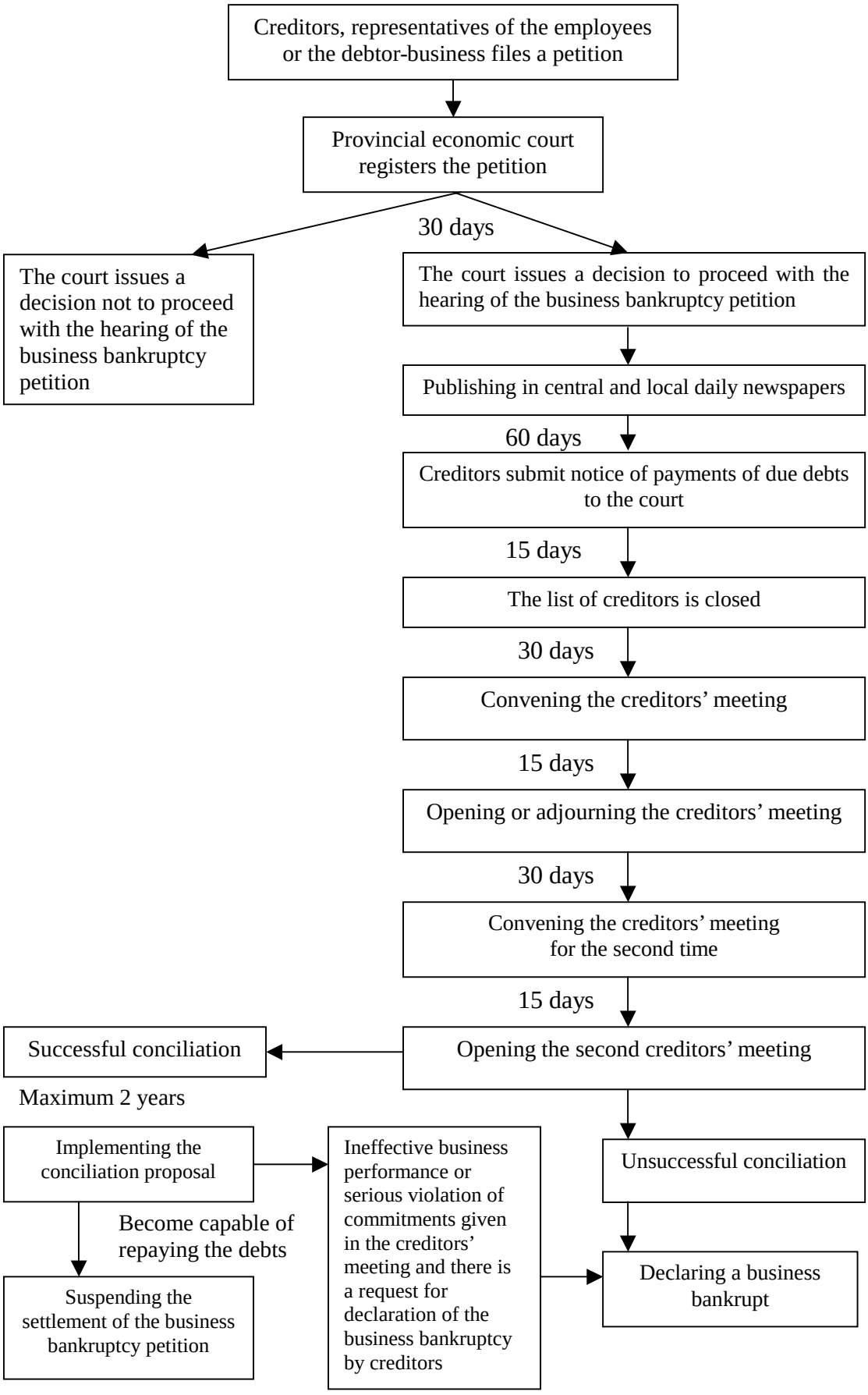
In the process of resolving a business bankruptcy petition, much interest has been given on the administration of assets and repayment of debts during the restructure of the debtor's business operations.

In accordance with clause 1 of Article 18 of the Law on Business Bankruptcy, during the settlement of a business bankruptcy petition, all business activities of the business must continue as usual but must be subject to the supervision and inspection of the judge and the trustee committee. Such a responsibility of the judge and the trustee committee for supervising and examining will arise from the date on which the business

receives a decision to proceed with the hearing of the business bankruptcy petition until the date when the court issues a decision on a temporary suspension or suspension of the settlement of the business bankruptcy petition or until the date when the court issues a decision declaring the business bankrupt.

As regards the administration of the debtor's assets, the Law on Business Bankruptcy make a clear distinction between two types of debts namely, debts incurred before and debts incurred after the date of issue of a decision to proceed with the hearing of the business bankruptcy petition. In principle, debts which are incurred after the issue of a decision to proceed with the hearing of the business bankruptcy petition will be given priority in the order of debt repayment in comparison with debts which are incurred before the issue of a decision to proceed with the hearing of the business bankruptcy petition. The debt repayments are made under the supervision of the judge.

(The process of filing, registering and resolving a business bankruptcy petition may be summarised by the chart below).


Creditors, representatives of the employees or the debtor-business files a petition
Provincial economic court registers the petition
30 days
The court issues a decision not to proceed with the hearing of the business bankruptcy petition
The court issues a decision to proceed with the hearing of the business bankruptcy petition
Publishing in central and local daily newspapers
60 days
Creditors submit notice of payments of due debts to the court
15 days
The list of creditors is closed
30 days
Convening the creditors' meeting
15 days
Opening or adjourning the creditors' meeting
30 days
Convening the creditors' meeting for the second time
15 days
Successful conciliation
Opening the second creditors' meeting
Maximum 2 years
Implementing the conciliation proposal
Become capable of repaying the debts
Suspending the settlement of the business bankruptcy petition
Ineffective business performance or serious violation of commitments given in the creditors' meeting and there is a request for declaration of the business bankruptcy by creditors
Unsuccessful conciliation
Declaring a business bankrupt

## X. PROCEDURES FOR PROTECTION OF INDUSTRIAL PROPERTY

### 1. Concept of industrial property under the law of Vietnam

Industrial property may be understood as ownership to products of creativity in the areas of technology, industry, trade etc. In accordance with clause 3 of Article 1 of the 1883 Paris Convention on Protection of Industrial Property of which Vietnam is a participant, the term "industrial property" may be applied to industry, trade, and even agriculture, mining and all natural products such as alcohol, wheat, tobacco, fruits, livestock, beers, flowers etc. Article 780 of the Civil Code states: "Industrial property is the ownership of individuals and legal persons of inventions, utility solutions, industrial designs, trade marks, and the right to the use of names of origin of goods and other objects which may be provided by law".

Comparing with the objects of industrial property which are protected under the Paris Convention points out that the laws of Vietnam have not yet covered trading secrets or combating against unfair trade practices and so on. It is reported that these objects are currently considered to be included in some draft legislation which are to be promulgated in the coming time.

### 2. Vietnam's legal documents governing industrial property

The Civil Code which adopted on 28 October 1995 and took effect as of 1 July 1996 classifies the system of protected titles of industrial property into two categories, namely,

(i) titles which were issued under the Ordinance on the Protection of the Industrial Property (i.e. before the passage of the Civil Code); and

(ii) titles which were issued under the Civil Code.

Such a classification results into the following legal consequences: In respect of applications for protection of industrial property which were filed before 1 July 1996 or in respect of protected titles which were issued or extended under the Ordinance on Protection of Industrial Property, the following pieces of legislation will be applied:

- The Ordinance on Protection of Industrial Property and Regulations on

Inventions, Utility Solutions, Industrial Designs and Trademarks which are accordingly amended under Decree No 84/HDBT;

- Implementing circulars providing guideline on the implementation of the above-mentioned document issued by the Ministry of Science, Technology and Environment.

In respect of applications for protection of industrial property which were filed before 1 July 1996, the following pieces of legislation will be applied:

- Part 6 of the Civil Code concerning "Industrial Property and Technology Transfer".
- Decree No. 63/CP of the Government dated 24 October 1996 making detailed provisions on industrial property;
- Decree No. 12/CP of the Government dated 6 March 1999 making provisions on dealing with administrative breaches in the area of industrial property;
- Circular No. 3055/TT-SHCN of the Ministry of Science, Technology and Transfer dated 31 December 1996 providing guidance on procedures for the creation of the industrial property and some other procedures stipulated in Decree No. 63/CP of the Government dated 24 October 1996 making detailed provisions on industrial property;
- Decree No. 54/2000/ND-CP of the Government dated 31 December 2000 concerning the protection of industrial property in respect of trading secrets, geographic instructions, trade names and protection of the right to anti- unfair competition relating to industrial property;
- Circular No. 23 TC/TCT dated 9 May 1997 providing guidance on the collection, payment and management of industrial property fees and charges;
- Decision No. 308 of the Industrial Property Office dated 11 June 1997 on the form and contents of various types of applications relating to industrial property; and
- Regulation 231/TTTL of the Industrial Property Office dated 9 May 1997 on publicizing industrial property-related information.

Industrial property disputes are generally handled under administrative and civil formalities. However, the court system is not involved in the settlement if disputes

over the right to file applications for the creation of industrial property. In other words, disputes over the creation of industrial property are dealt with by administrative [or executive] bodies with the participation of the administrative court at may be requested by the relevant parties.

Apart from the court system, the role and functions of the administrative bodies (such as market management agencies, customs offices...) in dealing with breaches of industrial property law have been enhanced and provided in more detail with a view to improving the efficiency of the industrial property protection system, and effectively safeguarding the legitimate rights and interests of manufacturers, and businessmen in industrial property activities.

In addition to legal documents which directly govern the protection of industrial property, industrial property provisions may also be found in a number of existing relevant legislation such as Articles 170 and 171 of the 1999 Criminal Code or other documents regulating other areas of civil relations.

Since breaches of industrial property are treated as administrative breaches, in addition to the application of Decree No. 12/CP of the Government on dealing with administrative breaches in the area of industrial property, the Ordinance on Dealing with Administrative Breaches - the legislation of highest supremacy in the system of legal documents governing administrative breaches may also be referred to. This Ordinance sets forth provisions on the competence of relevant State bodies, forms of dealing with breaches, formalities for the implementation by these bodies during the process of dealing with administrative breaches as well as rights to complaints, denunciation by individuals and organisations during the handling of administrative breaches.

### 3. International treaties in which Vietnam is a signatory

Under the Civil Code, provisions of the international treaties (in which Vietnam is a participant) will prevail in case there is an consistency between the provisions of these treaties and other relevant provisions of the law of Vietnam (such as the right to file application in respect of trade marks or assignment of the right to protected trade marks under the Madrid Agreement). Currently, Vietnam is a member of the following international treaties:

- The Paris Convention on the Protection of Industrial Property;
- The Madrid Agreement on Registration of Trade Marks; and
- The Patent Co-operation Treaty.

***Right to file an application***

In order to benefit from an industrial property right, the author or owner of objects of industrial property must file an application for the issue of a protected title of industrial property.

Applications may be filed with the Industrial Property Office or at any places designated by the Industrial Property Office to receive the applications. The applications may also be sent by post to the aforesaid places.

The applicant will take self responsibility and secure the honesty of information relating to the right to file applications, the applicant and author stated in the applications. In all cases event where the protected title has been granted, information mentioned in the application may also be re-considered upon the occurrence of complaints or disputes provided that certain evidence are reasonably submitted.

The application for the issue of a protected title or the application for registration of the industrial property will be handled before the title is granted subject to appraisal of their formality and contents. Such an examination is obligatory prior to the issue of a decision to grant a protected title. In accordance with Circular No. 3055 - TT/SHCN, an application for registration of industrial property represents the request of the applicant in seeking the State recognition of the object described in the application for registration.

The Industrial Property Office - an affiliate of the Ministry of Science, Technology and Environment is the designated State body which is competent to carry out procedures for the creation of industrial property.

After its receipt, an application for the issue of a protected title will first examined in term of its formality to verify whether the application meets statutory requirements or not. These requirement include the legitimacy of the request, date of due submission of the application, proper number of the application, or date or priority in case where additional document is needed due to formal errors. The Industrial Property Office will forward the results of its examination to the applicant and fix a specific time limit within which the application may be amended or rectified. The time limit for such a *formal examination* is 3 months from the date on which the application reaches the Industrial Property Office based on the post stamp or 3 months in respect of additional documents starting from the date on which the document is submitted in full.

After examining the formality of the application, the Industrial Property Office

will notify the applicant. Each accepted application will be published by the Industrial Property Office in the Official Gazette of Industrial Property within the time limit prescribed by the law.

After the completion of its formal examination, the substance of the application will be evaluated by the Industrial Property Office as regard all kinds of applications for issue of protected title of trade marks, industrial designs, and name of origin of goods of the application is found duly prepared and the applicant has paid a fee for the substantive examination. Furthermore, a substantive examination in respect of inventions, utility solutions (including application which is filed by a foreign applicant and a request for substantive examination has been submitted to the Industrial Property Office) must be completed within 42 months from the date of priority of the invention-related applications and 36 months from the date of priority of the utility solution related application. (The applicant for a substantive examination must pay a fee as provided for by the law). The purpose of substantive examination is to appraise the possibility that an object mentioned in the application may be protected under protection standards, and determine the corresponding scope of protection.

The time limit for a substantive examination of the application for issue of a protected title is:

(i) 18 months in respect of invention-related applications;

(ii) 9 months in respect of utility solution - related applications starting from the date on which a request for substantive examination is lodged, if the request is made after the making public of the application or from the date on which the application is made public;

(iii) 9 months in respect applications relating to industrial designs and trade marks starting from the date on which a notice of acceptance of the application's legitimacy is signed; or

(iv) 6 months in respect of application relating to the name of origin of goods starting from the date on which a notice of acceptance of the application's legitimacy is signed.

Results of the substantive examination of an application will be notified to the applicant. During the examination, the applicant may himself/herself or at the request of the Industrial Property Office amend or supplement documents enclosed with the application. Such amendments of and additions to should not alter the nature of the

object in question nor expand the scope of protection as mentioned in the application.

On the average, the time length spanning from the submission of an application to the issue of the protected title is:

(i) 18 months in respect of inventions as prescribed by the law. In fact however, this time limit is normally extended to 40 months;

(ii) 12 months in respect of inventions as prescribed by the law. In fact however, this time limit is normally extended to 14 months;

**4. Procedures for determining infringements of industrial property**

In accordance with Articles 801 and 803 of the Civil Code and Article 50 of Decree No. 63/CP, the use of objects of industrial property in the following events will not be considered infringements of industrial property of the owner of a protected title:

- Using objects of industrial property not for profit-making purpose;
- Circulating and using objects of industrial property which are marketed by the owner of protected title, persons having right to first use, and transferees of the right to use;
- Rights of the first users: Persons who have already used the inventions, utility solutions, or industrial designs before the publicising of application for issue of a protected title may be entitled to continue their use of the objects, provided that the quantity and scope of such use will not be increased or the right to use the objects will not be transferred to any other persons;
- Using the objects of industrial property by foreign transportation means which travel by transit through or temporarily enter into the territory of Vietnam provided that the use of the objects is only for maintaining the activities of such transportation means.

**5. Complains by the owner of a protected title or by the Industrial Property Office dealing with infringements**

***Administrative procedures and administrative sanctions***

Subjects of the industrial property may supervise and uncover infringements,

file complaints and provide evidence of the infringements to the competent State body.

A written complaint must, from case to case, contain the following detail and particulars:

- The complainant and his/her relation with the objects of industrial property in question (i.e. owner of the protected title, sole licensees, or their representatives);
- The protected objects of industrial property;
- Parties which infringe the industrial property: head offices, places of production and distribution;
- Specific acts which are allegedly committed by the complained; objects which deem to fall within the scope of protection of the relevant objects of industrial property which have been allegedly used by the complained etc.

Specific requests lodged by the complainant to competent authorities may be varied. Pursuant to Article 12 of the Civil Code, these requests may include:

- Compelling a termination of the violations;
- Compelling a public apology and/or rectification;
- Compelling the fulfillment of civil obligations;
- Compelling indemnification for damages; and
- Imposing a fine.

Additionally, a complaint must be enclosed by the following documents:

- The effective protected title;
- Certificate of sole licensing (if the complainant is a sole licensee);
- Document of the Industrial Property Office certifying the validity of the protected title as regard the alleged infringement (if any);
- Power of attorney to a representative (if the complaint is filed by a service provider acting as an industrial property representative); and
- Evidence of the alleged infringements of the industrial property.

Evidence include documents and objects which may be used to determine, prove or clarify issues relating to the complaints (especially materials showing the committed infringements). Provision of adequate and reasonable evidence serves as an

important condition for the competent authorities to effectively deal with the infringements. In respect of infringements of monopoly, attention must be given to matters which may arise after the collection and verification of evidence.

## XI. CONCILIATORY PROCEDURES

### Background

Under the existing laws and regulations, conciliation at the grass-root level may be defined as a process of guiding, assisting and persuading disputing parties to reach an amicable and voluntary settlement of violations of law and minor disputes with a view to preserving unity among the population, strengthening and bringing into full play good traditions of families and the community, preventing and restricting possible violations of law, and securing social stability and public policy.

The right to conciliation by parties concerned and responsibility of the courts in facilitating the parties to conduct conciliation in economic, civil, administrative, and labour proceedings constitutes an important principle of handling economic, civil, administrative, and labour cases. For example, Article 2 of the Ordinance on Procedures for Settlement of Civil Cases, Article 2 of the Ordinance on Procedures for Settlement of Economic Cases, and clause 2 of Article 1 of the Ordinance on Procedures for Settlement of Labour Cases provide that the initiator of a lawsuit may withdraw his/her petition, change the subject-matter of the case, or the parties concerned may engage in a conciliation between themselves. These legislation also require that during the settlement of economic, civil, administrative and labour cases, the courts will be obliged to conduct conciliation to enable the relevant parties to reach an agreement on the settlement of the case, except of cases which should not be settled through conciliation or which have been unsuccessfully conciliated. In case of a successful conciliation, the courts will resolve the case in conformity with the agreed will of the parties without resorting to a court session. This is of great importance not only to the saving on time and money of the State and the people but also to enhancing the reputation of the judiciary bodies and solidifying the unity among the population. Therefore, conciliation becomes a proceeding procedure which is indispensable to the settlement of economic, civil, labour and administrative cases. Conciliation is obligatory not only at the first-instance court sessions but also at any point of time

during he settlement of these types of cases, is conciliation is very likely to be successful. For examples, conciliation may be conducted at the first instance court sessions (in accordance with Article 52 of the Ordinance on Procedures for Settlement of Civil Cases) and appellate court sessions (in accordance with Article 65 of the Ordinance).

In conducting a conciliation, the court must satisfy the following requirements:

- There must be a volition and self-determination of the relevant parties in reaching an agreement on the settlement of the case;
- The contents of the agreement reached between the parties concerned must not be contradictory to the applicable laws; and
- The conciliation must be conducted in a n active and perseverant manners.
- The court conducting a conciliation must be competent to do so. In this respect, the competence of the court include those classified by levels of hearing and on case-by-case basis.
- In conducting a conciliation and making a decision to recognise that conciliation successful or unsuccessful, the courts must make sure whether the agreement is reached conciliation between the parties concerned themselves or with the involvement of the court as a mediator; and
- In conducting a conciliation, the court must ensure that the rights and obligations of the conciliation participants are actually respected.

As regard conciliation under the judiciary procedures in Vietnam, more attention must be given to the distinction between procedures to be followed in the case of successful conciliation and that in the case of unsuccessful conciliation.

**Features and practice of conciliation in economic proceedings**

Although conciliation has been recognised in Vietnam as a method of resolving disputes among the population, so far conciliation is mainly applied to civil, marriage and family disputes while more experience and institutional supports are needed to reaffirm and bring into full play the role of conciliation in resolving economic disputes.

As far as economic proceedings are concerned, the State has issued the Ordinance on Procedures for Settlement of Economic Cased dated 16 March 1994, Decree No.116/CP dated 5 September 1994 on non-governmental arbitration and

Circular No. 02/PLDSKT of the Ministry of Justice providing guidance on the implementation of Decree No.116/CP. Pursuant to State provisions, conciliation is obligatory during the settlement of economic cases by economic courts. Furthermore, provisions concerning conciliation under arbitration procedures are too simple. However, so far, due to various reasons, the above-mentioned economic dispute settlement bodies still fail to draft conciliatory rules to regulate the conciliation of economic disputes. Conciliation is mainly conducted on the basis of the hearing practices and experience of conciliators. Nevertheless, conciliations still account for a relatively high proportion among economic dispute settlements. According to the final report on the trial of economic cases, in 1995 alone, a total of 427 cases were handled in the entire sub-system of the economic courts, of which successful conciliations made up 49.6%. In 1996, courts of first instance dealt with 496 cases, of which successful conciliations made up 38.3%. In 1997, economic courts handled with 518 cases, of which 243 cases were ended through successful conciliations (or nearly 50%). In 1998, economic courts resolved 1,078 cases, of which successful conciliations amounted to 545 cases (representing more than 43%). In 1999, local courts resolved 1,010 of the total number of 1280 cases registered (accounting for 78.9%), of which successful conciliations amounted to 552 cases (equal to 54.6% of the total cases resolved). About 20.1% of the resolved cases have been settled through court sessions. A survey of preferred dispute settlement alternatives conducted by the Hanoi Department of Justice in 1994 among 300 businessmen (including both State owned enterprises and private enterprises) show that upon the occurrence of economic disputes, 72% of the surveyed businessmen consider tend to rely on self-conciliation between disputing parties. Some 68.8% of the said businessmen chose economic arbitration as a way of resolving their economic disputes while only 33.3% sought to settle their economic disputes by the economic courts. These results indicate a powerful vitality and value of the present settlement of economic disputes through conciliation.

**Procedures for conciliation at the economic courts**

Under the Ordinance on Procedures for Settlement of Economic Disputes dated 16 March 1994, conciliation constitutes an obligatory step during the economic proceedings. Conciliation will be conducted once before the opening of the court session. However, to date both the government and the courts have not yet promulgated any specific guidance on conciliatory procedures during judiciary process including

economic proceedings. In reality, a conciliatory process consists of the following steps:

- After filing a petition with the economic court and making advanced payment of the court fees, the plaintiff may be explained by the court as regard the likelihood of conciliation. Disputing parties will be encouraged to engage in conciliation.
- If the two parties fail to conciliate for the withdrawal of a petition, they will be summoned by the court to present their views. At the court, after (and only when) all necessary documents and information have been collected, the court will conduct the conciliation of the dispute between the parties. This conciliatory meeting will (as in the case of a civil conciliation) be chaired by one judge only. That judge will first hear presentations of the parties and encourage them to conciliate without expressing his/her own view.
- In case of a successful conciliation, the court will prepare a minutes of successful conciliation and suspend the case. The court's decision to recognise successful conciliation will be of equal validity as a judgement to be observed by the parties concerned.

Above is a number of analyses relating to conciliation as a crucial method of resolving economic disputes.

**Features and practice of conciliation in civil proceedings**

The Ordinance on Procedures for the Settlement of Civil Cases and implementing regulations issued by the Government and the Supreme Court set forth relatively sufficient provisions on procedures for the settlement of civil cases including conciliatory process and hence create solid legal foundations for the courts to accomplish their settlement of civil disputes.

According to statistics released by the Supreme Court in recent years, the conduct of conciliations within the court system has produced the following outcomes:

- The number of cases registered by courts of first instance and courts of appeal in 1992 was 42,366, of which 8.245 cases were settled through successful conciliations at the courts of first instance (accounting for 19.46%) and 2,136 cases were settled through successful conciliations at the courts of appeal (accounting for 5.04%). Also in 1992, courts at

reviewing level registered 3,404 cases, of which successful conciliations made up 9.3% or 318 cases.

- In 1993, the courts of first instance registered 44,585 cases, of which 9,346 cases were ended by a successful conciliation (21%). In the meantime, the courts of appeal conducted successful conciliations of 4,363 cases (or 9.8%). At reviewing level, of 4,863 cases registered, there were 245 cases of successful conciliation (representing 5%).
- In 1994, the courts of first instance registered 50,239 cases, of which 3,705 cases (or 7.4%) were ended by a successful conciliation (21%). At reviewing level, the court registered 4,572 cases and conducted successful conciliation or 467 cases (representing 10%).
- In 1995, the courts of first instance registered 38,065 cases, of which successful conciliations accounted for 42%. In the meantime, the courts of appeal conducted successful conciliations of 6,900 cases (or 42%) of the total 9,808 cases registered.

In 1999, courts have strictly complied with procedures and principles of conciliation in all civil, family and marriage cases, respected the agreements and choices of the parties concerned if these agreements are not contrary to the law. Based on the principles of and procedures for conciliation, courts at all levels have been perseverant in conciliating, educating and persuading the parties concerned to reach an agreement on the settlement of the dispute. In this spirit, successful conciliation play a significant role in shortening the settlement of the cases and securing unity among the population. Many serious and tense disputes which were initially brought to the court have finally been successfully conciliated by the courts. According to the 1999 final report of the Supreme Court, courts at all levels have conducted successful conciliations of 27,519 civil, family and marriage cases of which, 3,295 divorce cases were successfully conciliated by the courts resulting to withdrawal of the petitions for divorces by the parties. These tremendous efforts helped to secure prompt and timely settlement of disagreements among the population, prevent the occurrence of hot spots or even crimes which are originated from civil, marriage and family disputes. However, courts at all levels are expected to accelerate their education and awareness-raising campaigns for the relevant parties to understand and reach mutual agreements of the disputes. To be perseverant in conciliation, education and persuasion must become a

working philosophy of the court system.

In addition, the success of conciliatory efforts are much dependent on the experience, capacity and sense of responsibility of judges who are assigned to handle the cases. The practice shows that where qualified judges are found and principles and procedures for the conduct of a conciliation, there are a high proportion of successful conciliations and a sharp reduction in the number of cases which should have otherwise been put into trials.

In addition to direct conciliations of civil cases by the court, a considerable number of cases were effectively handled in co-operation with social organisations, trade unions, and locally based conciliatory boards by the court judges based on the Ordinance on the Organisation of Conciliation at the Grass-root Levels dated 25 December 1998 and other relevant legislation. This is a meaningful activity since it helps to enable a prompt settlement of the cases and bring into full play the strength of social organisations in supporting hearing activities of the courts. Initial results achieved through such a co-laboration proves that in the present context, the consolidation and expansion of grass-root conciliatory boards is a must and requires further attention.

**Chart outlining the conciliatory procedures during judiciary proceedings**