



A COMPARISON GUIDE FOR BUSINESSES

ARBITRATION OR COURT FOR RESOLVING COMMERCIAL DISPUTES?

11 criteria compared · Based on the Law on Commercial Arbitration 2010 and the Civil Procedure Code

Why the dispute resolution clause matters

In most commercial contracts, the “dispute resolution” clause sits at the end and receives little attention. Yet when a dispute arises, it is precisely this clause that determines whether the matter is resolved by commercial arbitration or by the court, two forums with different procedures in terms of time, cost, confidentiality, levels of adjudication, and enforceability.

Under current law, a dispute is resolved by arbitration where the parties have an arbitration agreement. The arbitration agreement may be made before or after the dispute arises (Article 5, Law on Commercial Arbitration 2010). If there is no arbitration agreement, or the agreement is invalid or incapable of being performed, the court is the default forum.

“A dispute may be brought to arbitration only where the parties have an arbitration agreement. If there is no arbitration agreement, or the agreement is invalid or incapable of being performed, the court is the default forum.”

Legal basis: Articles 5 and 6, Law on Commercial Arbitration 2010 (Law No. 54/2010/QH12).

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
1. Condition to take jurisdiction	An arbitration agreement is mandatory (Articles 5, 16). Where one exists, the court declines jurisdiction (Article 6).	Default jurisdiction over business and commercial disputes (Article 30, CPC); no agreement required.	<i>A core difference: arbitration rests on the parties' agreement, while the court has default jurisdiction. Whether or not an arbitration agreement exists determines which path the dispute takes.</i>
2. Scope of disputes	Disputes between parties arising from commercial activity. Or Disputes between parties where at least one party engages in commercial activity. (Article 2).	Broad jurisdiction: civil, business and commercial, labor, marriage and family... (Article 30, CPC).	<i>The court has broader jurisdiction covering many types of disputes, while arbitration is limited to commercial disputes under Article 2.</i>

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
3. Who decides the case	Arbitrators are chosen by THE PARTIES (Articles 3.5, 20); specialists in the relevant field may be selected.	Judges are assigned by the court (Article 36, CPC); the parties cannot choose them.	<i>Arbitration lets the parties actively choose a decision-maker with relevant expertise, while the court assigns judges by law. This is a difference in the parties' right to choose.</i>
4. Levels of adjudication	ONE level; the award is final and binding and takes effect immediately (Articles 4.5, 61.5).	TWO levels: first-instance and appellate (Articles 17, 35, 37).	<i>Arbitration's single level is faster and conclusive, while the court's two levels allow the merits to be reviewed. The difference reflects a trade-off between speed and the possibility of appeal.</i>

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
5. Openness / confidentiality	Hearings are NOT public (Articles 4.4, 55.1).	Hearings are PUBLIC, except in special cases (Article 15.2, CPC).	<i>Arbitration is heard privately while the court is heard publicly. This difference directly affects how confidential the dispute information remains.</i>
6. Venue & language	The parties agree on the venue (including abroad, Article 11) and the language (Article 10).	Held at the seat of the competent court; the language of proceedings is Vietnamese.	<i>Arbitration is flexible on venue and language by agreement, while the court is fixed at its seat and uses Vietnamese. The difference is pronounced for disputes with a foreign element.</i>

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
7. Governing law	For disputes with a foreign element, the parties may choose the governing law (Article 14).	Applied according to Vietnam's conflict-of-laws rules.	<i>For disputes with a foreign element, arbitration lets the parties choose the governing law, while the court applies Vietnam's conflict-of-laws rules.</i>
8. Limitation period	02 years from when the lawful rights and interests are infringed (Article 33).	02 years for commercial disputes (Article 319, Commercial Law 2005).	<i>The limitation period is essentially the same for both methods (02 years), so this is not a distinguishing factor.</i>

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
9. Costs	Arbitration fees are set by the arbitration center (Article 34); generally higher.	Court fees and charges under Resolution 326/2016/UBTVQH14; generally lower.	<i>Arbitration fees are usually higher than court fees in nominal terms, while arbitration's resolution time is usually shorter.</i>
10. Risk of set-aside / review	May be set aside on the 5 grounds in Clause 2, Article 68; the court does not review the merits (Article 71.4).	May be appealed or protested for review under the appellate procedure.	<i>The final review mechanism differs: an arbitral award may only be set aside on the grounds in Article 68 and its merits are not reviewed, while a court judgment may be reviewed through appeal, cassation, and reopening.</i>

ARBITRATION vs. COURT: A COMPARISON

Criterion	COMMERCIAL ARBITRATION	COURT	Notes
11. Enforcement abroad	Enforceable across borders under the 1958 New York Convention (over 170 countries); Article 424, CPC.	A Vietnamese court judgment is hard to enforce abroad (requires a mutual legal assistance treaty).	<i>A major difference in international enforceability: an arbitral award is enforced across borders under the 1958 New York Convention, while a Vietnamese court judgment depends on a mutual legal assistance treaty.</i>

Sources: Law on Commercial Arbitration 2010 (Law No. 54/2010/QH12); Civil Procedure Code (consolidated); Commercial Law 2005 (Law No. 36/2005/QH11); Resolution 01/2014/NQ-HĐTP; 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Which method should a business choose?

PREFER ARBITRATION WHEN

- The contract has a foreign element, or the counterparty or assets are abroad.
- High confidentiality is needed (trade secrets, reputation, partner relationships).
- A specialized dispute requires a decision-maker with deep expertise.
- A fast, conclusive outcome is desired (single level, final and binding).

CONSIDER THE COURT WHEN

- The contract has no arbitration agreement, or the agreement risks being invalid or incapable of performance.
- Two levels of adjudication are desired to reduce the risk of errors on the merits.
- The dispute involves multiple parties, including a third party outside the contract.
- Low nominal cost is a priority and all parties are domestic.

What businesses should do

- 1 Decide the dispute resolution method RIGHT when drafting the contract, not after a dispute arises.
- 2 If choosing arbitration: specify the arbitration center, procedural rules, number of arbitrators, venue, language, and governing law.
- 3 Review the arbitration agreement so it does not fall within the invalidity grounds in Article 18, Law on Commercial Arbitration 2010.
- 4 For transactions with a foreign element: consider where the counterparty's assets are to choose the most enforceable method.

SUGGESTED STRUCTURE OF AN ARBITRATION CLAUSE

"Any dispute arising out of or in connection with this contract shall be finally resolved by arbitration at [name of arbitration center], under the Rules of Arbitration of [that center]; the number of arbitrators shall be [...]; the seat shall be [...]; the language shall be [...]; the governing law shall be [...]."

This document provides general information and does not replace advice tailored to a specific case.

Contact Us

DEDICA's team of lawyers and legal experts is always ready to help. Contact us now for in-depth legal advice and services.

Corporate & Investment
Criminal Law

Retainer Legal Services
Mergers & Acquisitions (M&A)

Dispute Resolution
Trademarks & Copyright



Address

11th Floor, A&T Building, 171 Hai Ba Trung,
Xuan Hoa Ward, Ho Chi Minh City



Phone

+84 39 969 0012



Email

david@dedica-law.com



Website

www.dedica-law.com



Call us now or leave a message for a consultation.