

## INTERNATIONAL BEST PRACTICES SURVEY

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# VIETNAM

### **Responses submitted by:**

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### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Vietnam is a civil-law country. The main principles and rules are provided for in legal documents.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

We could say that the method of *adjudication* in Vietnam is an inquisitorial system. However, under the current adjudication procedure in Vietnam, judges are mainly involved in questioning and argument sessions. The courts do not actively collect the evidence.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

In Vietnam, judges must have Vietnamese citizenship, have been engaged in legal work for at least 5 years, possess a bachelor or higher degree in law and have been professionally trained in adjudication. More importantly, judges must have clean political records of being loyal to the Communist Party. In addition, the judge may be selected and appointed after having passed a judge selection examination.

The initial term of office of judges is 5 years. For judges who are reappointed or appointed to another judge rank, the subsequent term of office is 10 years.

In general, Vietnamese judges have to fully meet the criteria prescribed in the Law on organization of people's Courts.

Vietnam has no jury system. However, except for trials conducted by summary procedure, lay (non lawyer) people's jurors shall participate in first-instance trials by court in accordance with the procedural law. For example, in the criminal procedure, the presence of people's jurors is compulsory only at first-instance court hearings. At appellate court hearings, people's jurors would be present only when necessary. In the civil procedure, people's jurors only attend first-instance court hearings, while appellate court hearings are conducted by judges only.

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

The organization of people's courts includes the Supreme People's Court; Court of provinces and centrally run cities; Courts of rural districts, urban districts, towns, provincial cities, and the equivalent and Military courts.

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In each level, the courts are divided into specialized courts, including civil courts, economic courts, labour courts, administrative courts, and criminal courts. Each of these specialized courts shall be competent to judge the cases in its specialized field. Although there are 5 (five) specialized courts as aforesaid, the laws provide for only 3 (three) types of procedures, namely civil procedures, administrative procedures, and criminal procedures. Among which, the civil procedures, stipulated under the Civil Procedure Code of Vietnam, shall be applied to the resolution of all of the civil, commercial, and economic and employment cases. Apart from these procedures, there is no special one applicable to specialized courts.

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Yes, arbitration is an option for commercial disputes. The most reliable arbitration centre in Vietnam is Vietnam International Arbitration Centre. In some cases, foreign arbitration is also allowed under Vietnamese laws. Please note, Vietnam is a member of New York Convention 1958 for recognition of foreign arbitral awards.

Arbitration can be an option for dispute resolution if parties reach a written arbitration agreement which conforms to Vietnamese law. The arbitration agreement may be in a document separate from the underlying contract or be one clause of the underlying contract. The arbitration agreement may be made either prior to or after a dispute arises.

However, arbitration would only be an option if the relevant disputes are of the types capable of being arbitrated, including: (i) disputes between parties arising from commercial activities, (ii) disputes arising between parties at least one of whom is engaged in commercial activities, and (iii) other disputes which the law clearly stipulates may be resolved by arbitration.

### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

Yes, they will. According to the Law on Commercial Arbitration 2010 of Vietnam, where the parties in dispute already have an arbitration agreement, but one of them initiates court proceedings, the court must refuse to accept jurisdiction unless the arbitration is void or incapable of being performed.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

Most litigation cases in Vietnam court, except for those provided by Article 181 of the Civil Procedure Code of Vietnam, must be conciliated in the trial preparations. If the parties can reach an agreement on the solution of the dispute at the conciliation session, the court will acknowledge the agreement and issue the decision on acknowledgement of the parties' successful agreement. If not, the court will open the court session and decide the case.

Depending on the nature of the disputes, such as certain labour disputes and disputes involving the use of land, pre-court conciliation or mediation is required. In addition, in some cases, if the parties agreed on any pre-action procedures, they must comply with the same before commencing the proceedings in court. For most of the civil cases, there are no pre-action procedures and the civil proceedings start when a competent court accepts the petition of a plaintiff.

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### **8. What is the process for pre-hearing fact discovery (if any)?**

*(a) Are there provisions for mandatory document disclosures?*

Under the Civil Procedure Code, during the process of resolution of civil cases by courts, the involved parties have the rights and obligations to hand over evidences to the courts to prove that their requests are well grounded and lawful. They are not forced to disclose relevant documents to the court but must bear the consequences thereof due to failing to hand over the evidences or failing to hand over all evidences, except otherwise stipulated by laws. A party is not required to directly disclose the evidence to the other parties. However, all concerned parties have the right to read, take notes, copy documents and/or evidence submitted to the court by the other parties.

In the cases where the evidence is under the custody of a third party (individual, body or organization) and the concerned party has taken necessary measures to gather such evidence but fails, such party may request the court to adduce evidence to ensure the proper resolution of the case. Upon such request, the Court may request directly or in writing the individual, body or organization which is holding or controlling the evidence to provide the same. The individual, body or organization which is holding or controlling the evidence shall be responsible for providing fully and timely the evidence at the request of the Court within 15 (fifteen) days from the date of receipt of the request.

In Court proceedings, every item of evidence shall be publicly and equally disclosed and used, except for certain cases specified under the Civil Procedure Code of Vietnam.

*(b) Is there provision for oral examinations of the parties or others?*

According to the Civil Procedure Code of Vietnam, the judge may take the testimony of a concerned party to collect the evidence for resolution of the case if such concerned party has not yet given a testimony or the contents of his or her testimony are incomplete or unclear. In addition, the judge, as requested by a litigant or where necessary, shall take the testimony of a witness at or outside the head office of the Court.

Upon the request of a concerned party or where the testimony of concerned parties or witnesses is considered inconsistent, the judge may arrange cross-examination between various concerned parties or between a concerned party and a witness or between various witnesses.

*(c) Are there limits on the length of oral examinations?*

None

*(d) Are witness statements or summaries to be provided before the hearing?*

There is no requirement that witness statements or summaries must be provided before the hearing. In practice, the witness statements or summaries could be submitted at the hearing.

### **9. What is the process for pre-hearing expert disclosure (if any)?**

Not applicable.

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(a) *Are expert reports or written summaries required to be exchanged?*

There is no requirement that expert reports or written summaries must be exchanged between the parties. However, if one party submits the expert reports or written summaries to the Court, the Court will inform the other party and allow such party to make a copy of those submissions.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Not applicable.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Not applicable.

**10. Are there other notable discovery rules?**

None.

**11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

None.

**12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

No.

**13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

No.

**14. What is the standard for admissibility of expert evidence?**

There is no particular standard. Expert-witnesses can be selected under the agreement reached between the involved parties or called by courts to provide expertise in the fields in question as requested by one or more involved parties.

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**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

Yes. In some cases, if it is necessary, the court may appoint a qualified expert in relation to a specific issue. An expert may be a judicial expert appointed by the judge to give opinion upon the examination of evidence or an expert invited to participate in the Valuation Council for the property valuation and/or property price appraisal.

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Not all privileges are protected from disclosure.

There is no rule on privileged documents which requires the involved parties, such as the plaintiff, the defendant and the parties with related interests and obligations, not to disclose certain documents to courts. The parties shall have the right to provide all documents which could prove that their requests are well grounded and lawful.

However, a witness shall have the right to refuse to make declarations if their declarations are related to professional secrets, business secrets, personal secrets or such declarations adversely affect or harm the involved parties being their close relatives.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

Yes.

In special criminal cases where State secrets should be kept or the fine national customs and practices should be preserved or the involved parties' secrets must be kept at their legitimate requests, courts shall conduct the trials behind closed doors but must announce the judgments publicly.

In special commercial cases where it is necessary to protect occupational secrets, trade secrets and privacy of individuals upon the request of a concerned party, the Council of Adjudicators shall not disclose documents in the case file.

**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The trial panel will determine to disclose the case documents or not.

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### **19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

No. However, according to civil laws of Vietnam, after the court session commences, the presiding judge shall question the involved parties about any change, supplementation or withdrawal of their claims.

(b) *What is the order of presentation of witnesses?*

Where there are several witnesses, each witness shall be questioned separately. However, there is no particular set of rules or guidelines regarding the order of the witness presentation.

Under the Civil Procedure Code of Vietnam, the order of questioning witnesses shall be as follows:

Before questioning a witness, the presiding judge must ask clearly about the relationship between the witness and the concerned parties; where the witness is a minor, the presiding judge may request his or her parents, guardian or teacher to assist in the questioning.

The presiding judge shall request the witness to present clearly details of the matter which he or she knows. After the witness completes his or her presentation, he or she shall be questioned only about matters which he or she has presented unclearly or insufficiently, or which are contrary to each other or to his or her prior testimony or to the presentation of the concerned parties or of the persons protecting the lawful rights and obligations of such persons.

After completing his or her presentation, the witness shall stay in the courtroom for further questioning.

Where it is necessary to secure the safety of a witness and his or her relatives, the Council of Adjudicators shall decide not to disclose information on their personal identities and keep them from being seen by attendants in the trial.

(c) *Who conducts examination and in what order?*

The examination shall be conducted by the Council of Adjudicators. The questioning of each person about each matter shall be carried out in the order by which the presiding judge shall have the first priority, followed by the people's juror, and after, the persons protecting the lawful rights and interests of the concerned parties and other persons participating in the proceedings; where a prosecutor takes part in the trial, the prosecutor shall carry out the questioning after the concerned parties.

(d) *What is the process for closing submissions?*

In a civil case, at the end of the inquiring process and examining exhibits, the Trial Panels shall move on to the arguments at court sessions. The persons participating in the arguments must base their decision on documents and evidences that have been collected, examined, and verified at court sessions as well as results of the inquiring process at court sessions and they may respond to the opinions of others.

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**20. Please identify any other notable trial procedures.**

None.

**21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

In civil cases, generally, the party claiming damages shall bear the burden of proof of liability, causation, and damages. A party which protests against the claim made by another against such party must substantiate that there are grounds for its protest and provide evidence to substantiate those grounds.

Under civil and commercial claims, the liability for compensation for damages shall only be constituted if all the following elements have been satisfied:

- There is a violation of the law or a breach of the contract;
- There is material loss;
- The act of violation or the act of breaching the contract is the direct cause of the loss.

**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

Both compensatory damages and pre-judgment interest are recoverable in all civil cases.

Under the laws of Vietnam, only losses which are actual, direct, and material could be recoverable. The value of the damages covers the value of the material and direct loss suffered by the aggrieved party due to the breach of the breaching party and the direct profit which the aggrieved party would have earned if such breach had not been committed. As such, punitive damages are not available under the laws of Vietnam.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Not available.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

The time limit for bringing a civil claim is two years from the date of the breach of a legitimate right or interest (for civil disputes), and one year from the date of the claim rising (for civil issues), unless such claim relates to: (i) conflicts on inheritance: the time limit is 10 years from the date of death; (ii) the invalidity of a civil transaction: the time limit is two

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years from the date of the transaction in certain circumstances; (iii) movable or immovable assets: the time limit is 10 years (for movable assets) or 30 years (for immovable assets), from the date on which a person first took possession of such assets; or (iv) labor disputes: the time limit is six months, one year or three years depending on the type of dispute.

Within five working days from the date of receipt of the application, the Court shall consider and make a decision to accept the case or transfer the application or return the application. Where an application does not contain all contents stipulated by the laws, the Court shall notify the applicant to enable the applicant to make amendments and additions within a time-limit set by the Court, but such time-limit shall not exceed thirty days; in special cases, the Court may extend such time-limit but the extension shall not exceed 15 days.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

In general, jurisdiction over a foreign defendant is established. Under Vietnamese laws, a foreign defendant cannot decline Vietnamese court's jurisdiction on the basis that there is a more convenient forum. For example, according to the civil procedure code, if the involved parties being the foreigners who do not permanently reside, do business, study or work in Vietnam and are or are not present in Vietnam at the time the court accepts the civil case or involved parties being foreigners who permanently reside, do business, study or work in Vietnam and are not present in Vietnam at the time the court accepts the civil case, the people's court at the provincial level has jurisdiction to resolve disputes. If the involved parties being foreigners, who permanently reside, do business, study or work in Vietnam and are present in Vietnam at the time the court accepts the civil case, the court of rural districts level has jurisdiction to resolve disputes.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

Yes. In civil proceedings, a defendant can request to the court to add a party which should be part of the proceedings and known as the persons with related interests and/or obligations. They are neither initiating lawsuits nor being sued, but the resolution of the civil cases is related to their interests and/or obligations and, therefore they themselves request or other involved parties (both plaintiff and defendant) request to include them in the proceedings in the capacity as the persons with related interests and/or obligations and such requests are accepted by courts.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Under the law, the party who lost must pay the court fees. Where a party's request is partially accepted, the party shall bear the court fee in proportion to the parts of their claims unaccepted by courts. The other party shall bear the court fee in proportion to the court-accepted parts of the counterparty's claims toward them.



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Under the Ordinance on Court costs and fees, the amount of the court cost/fee shall depend on the value of the dispute. Accordingly, the court cost/fee applicable to cases involving business or commercial disputes shall be calculated as follows:

- First-instance court cost/fee levels applicable to cases involving business or commercial disputes:

Value of dispute	Court cost level
a/ VND 40,000,000 (approx. US\$ 1,900) or less	VND 2,000,000 (approx. US\$ 95)
b/ Between over VND 40,000,000 (approx. US\$ 1,900) and VND 400,000,000 (approx. US\$ 19,000)	5% of the value of disputed property
c/ Between over VND 400,000,000 (approx. US\$ 19,000) and VND 800,000,000 (approx. US\$ 38,000)	VND 20,000,000 (approx. US\$ 950) + 4% of the value of disputed property exceeding VND 400,000,000 (approx. US\$ 19,000)
d/ Between over VND 800,000,000 (approx. US\$ 38,000) and VND 2,000,000,000 (approx. US\$ 95,000)	VND 36,000,000 (approx. US\$ 1,710) + 3% of the value of disputed property exceeding VND 800,000,000 (approx. US\$ 38,000)
e/ Between over VND 2,000,000,000 (approx. US\$ 95,000) and 4,000,000,000 (approx. US\$ 190,000)	VND 72,000,000 (approx. US\$ 3,420)+ 2% of the value of disputed property exceeding VND 2,000,000,000 (approx. US\$ 95,000)
f/ Over VND 4,000,000,000 (approx. US\$ 190,000)	VND 112,000,000 (approx. US\$ 5,320) + 0.1% of the value of disputed property exceeding VND 4,000,000,000 (approx. US\$ 190,000)

- Appellate court cost/fee: VND 200,000 (approx. US\$ 9.5).

It should be noted that legal fees and costs (for example expenses for lawyers) are not made up for the winning party. Expenses for an interpreter or lawyer shall be borne by the person who has made the request in accordance with the agreement between the concerned party and such interpreter or lawyer.

### **28. Are contingency fees allowed?**

Such arrangements depend on the legal service contracts between lawyers and clients on a case to case basis. The laws do not prohibit such arrangements.

The lawyers are banned from requesting additional fees or bonus from the clients, which has not been agreed under the legal service contracts, after the success of the case. Nevertheless, if the client voluntarily rewards lawyers when finishing the services, such reward is permitted.

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For criminal cases where lawyers participate in legal proceedings, remuneration levels shall not exceed the ceiling level set by the Government.

### **29. Is third party funding of claims permitted? Under what circumstances?**

Such form of legal financing has not existed both in laws and practice in Vietnam.

### **30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Yes. Vietnamese laws do not provide a separate regime or rules on class action. In practice, if more than one plaintiff initiates a lawsuit against one defendant for disputes arising from one legal relation, the competent court still accepts and solves the case according to the common procedures in one case. Similarly, if one plaintiff initiates a lawsuit against more than one defendant for disputes arising from one legal relation, the court will accept and resolve the case according to the common procedures in one case.

In civil law, many individuals, agencies or organizations may jointly initiate a lawsuit against another individual, agency or organization regarding one legal relation or many interrelated legal relations for settlement in the same case. In this case, they may elect a representative to act on their behalf in the proceedings to protect their legitimate rights and interests.

### **31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

Yes. For example, according to the Law on protection of consumer's rights, social organizations can take the lawsuit in civil cases for the protection of consumers' interests. Moreover, some organizations also have the right to institute civil cases to protect legitimate rights and interests of other persons, public interests and/or the State's interests such as:

- The population, family and children agencies, and the Women's Union shall, within the scope of their tasks and powers, have the right to institute marriage and family-related cases if it is so stipulated by the Law on Marriage and Family.
- Superior Trade Unions of the grassroots Trade Unions shall have the right to institute labor cases where it is necessary to protect the legitimate rights and interests of the labor collective as prescribed by law.
- Agencies and organizations shall, within the scope of their respective tasks and powers, have the right to institute civil cases to request courts to protect the public interests and/or the State's interests in the domains under their respective charge.

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**32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

After the acceptance of the petition, the time limits for preparation for trial of cases shall be from 2 to 6 months. And within one month from the date of issuing the decision to bring the case to trial, the court shall open a trial session. In case of plausible reasons, this time limit shall be two months. Therefore, on average, to get the trial/final hearing, it would take from 6 to 8 months.

Objective obstacles such as disaster, sabotages, combat needs, combat service, and the complication of the cases are the factors that affect the time to get the cases to the trial/final hearing.

**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

A party has the right to appeal against the final judgment of the first-instance court for re-settlement according to the appeal procedures. There is no statutory provision on grounds for a party to appeal. Therefore, a party can appeal just because they do not agree with the first-instance judgment. The application for appeal must be submitted by the appealing party to the first-instance court within 15 days after the date of judgment declaration. The immediate superior courts will conduct the re-trials according to the appellate procedures. The judges in the Courts of Appeal review and adjudicate appeals from the trial courts.

As mentioned above, the Vietnamese judges have to fully meet the criteria prescribed in the Law on organization of People's Courts.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

No.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Evidences are gathered from the following sources: Readable, audible or visible materials; Exhibits; Involved parties' testimonies; Witnesses' testimonies; Expert conclusions; On-site appraisal minutes; Practices; Property evaluation results.

Therefore, graphics, computer animation, power point shall be considered as evidences.

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- 36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

There is no separation of legal profession in Vietnam. A licensed lawyer can do both litigation work and non-litigation work.

- 37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

When a plaintiff is also at fault in causing the damage, the person who causes the damage shall have to pay only the compensation corresponding to his/her fault; if the plaintiff is totally at fault, the person who causes the damage shall not have to compensate.

- 38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?**

Vietnam is not a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965. Therefore, it is not permitted by informal means. The service of a complaint outside Vietnam must be conducted according to the bilateral agreement on legal assistance between such relevant country and Vietnam. If there is no such bilateral agreement, the service shall be considered following the principle of reciprocity which, however, do not contravene Vietnamese law, and conform to international law and practice.

- 39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

No.

- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

None.

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**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

No.

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Yes, judicial reform is gaining momentum. The laws relating to litigation such as civil and criminal procedures have already been under revision, debate, and getting feedback from legal experts.