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“Commercial” Disputes Under Vietnamese Arbitration Law: Insights From a Recent Vietnamese Court Decision

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A recent decision by the People’s Court of Ho Chi Minh City (“Court”)—[Decision No. 35/2025/QD-PQTT](#), dated 26 February 2025 (“Decision 35”)—offers important insights into what constitutes a “commercial” dispute under Vietnamese arbitration law. In this case, the Court held that the underlying dispute was non-arbitrable as it was of a civil and not commercial nature, and set aside an arbitral award under Article 68.2(c) of the [Law on Commercial Arbitration No. 54/2010/QH12](#) (the “LCA”), which states that an arbitral award can be set aside if the dispute falls outside of the tribunal’s jurisdiction. Crucially, the Court clarified that the existence of an arbitration agreement alone does not render a dispute arbitrable if the subject matter falls outside the scope permitted by the LCA.

Although this decision has not been designated as a precedent by the Council of Justices of the Supreme People’s Court, the ruling—issued by a three-judge panel in one of Vietnam’s most important jurisdictions—is significant because it annulled an arbitral award. It is important to note that in Vietnam, decisions to set aside or uphold arbitral awards are final and binding, as they are not subject to appeal by the parties or challenge by the procuracy in a higher court. As such, this decision carries notable reference value, especially in the absence of other authoritative guidance on the issue.

This case also underscores the narrower conception of arbitrability under Vietnamese law. Vietnam’s arbitration law, the LCA, is influenced by the UNCITRAL Model Law but adopts a unique framework, emphasizing “commercial” in its title and thereby suggesting a narrower scope. Article 2 of the LCA expressly provides that only disputes arising from commercial activities, or those in which at least one party conducts commercial activities, and other legally arbitrable disputes, may be submitted to arbitration. Vietnam’s circumscribed approach to arbitration is also reflected in the fact that when Vietnam acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it made a reservation that the Convention shall be applied only to disputes arising out of commercial relationships.

Commercial Disputes Are Arbitrable Under Vietnamese Arbitration Law

Pursuant to Article 2 of the LCA, arbitral jurisdiction over commercial disputes is formally established as follows:

1. *Disputes among parties which arise from commercial activities.*
2. *Disputes among parties at least one of whom conducts commercial activities.*
3. *Other disputes among parties which are stipulated by law to be settled by arbitration.*

While the LCA does not define commercial activities, guidance can be taken from Article 3.1 of the [Commercial Law 2005](#), which provides that “commercial activities” are defined as profit-generating actions, including the buying and selling of goods, the provision of services, investment, trade promotion, and other activities with the purpose of making a profit. Therefore, the types of disputes that one can expect to fall within the scope of Articles 2.1 and 2.2 of the LCA are disputes arising from contracts for the sale of goods, provision of services, distribution, construction, disputes between companies and their members, and disputes over apartment sale contracts between individuals and companies. As regards Article 2.3 of the LCA, some examples include Article 236.5 of Land Law 2024 of Vietnam, which allows arbitration to resolve land disputes, provided they arise from commercial activities related to land, and Article 194.2 of Law on Housing 2023 of Vietnam, which permits arbitration to resolve housing disputes.

Facts and Procedural History of Decision 35

On 16 December 2015, Company U1, along with Mr. T and Ms. Y, a married couple, signed a contract to participate in a multi-level marketing scheme, under which the couple jointly held distributor code number 41002284. Despite their divorce in 2016, Mr. T and Ms. Y continued to operate under this code. Due to a conflict between Ms. Y and Company U1, on 7 February 2020, Company U1, Mr. T, and Ms. Y signed an agreement to agree to terminate the distributor code 41002284. On the same date, Mr. T and Ms. Y signed an agreement on the distribution of commissions under the multi-level marketing contract No. 0107022020 (“Contract 2020”), whereby Ms. Y agreed to transfer the ownership of distributor code 41002284 to Mr. T so that he could continue operating. In return, Mr. T committed to paying Ms. Y 40% of the commissions arising from the new distributor code 41002584 issued by Company U1. Contract 2020 did not include an arbitration agreement between the parties. Subsequently, Company U1 issued a new distributor code, 41002584, to Mr. T, who inherited the entire distribution network from the previous code 41002284. From 7 February 2020 to 2023, pursuant to the agreement in Contract 2020, Mr. T paid Ms. Y commissions estimated at a total of VND 2,353,331,267. A dispute subsequently arose between Mr. T and Ms. Y, following which they signed an arbitration agreement to resolve their dispute at the Vietnam International Arbitration Centre (“VIAC”).

In the arbitration, Mr. T disputed the validity of Contract 2020 and sought the return of payments previously made to Ms. Y. The arbitral tribunal issued an award rejecting Mr. T’s claim. Notably, during the arbitral proceedings, Mr. T did not raise any objections regarding the tribunal’s jurisdiction. However, after the issuance of the award, Mr. T filed a petition with the Court to annul the arbitral award under Article 68.2(c) of the LCA, arguing that the dispute between Mr. T and Ms. Y concerned the division of marital assets during their marriage, as specified in Article 28.1 of the [Civil Procedure Code 2015](#) (the “CPC”), and therefore fell under the jurisdiction of the Court, not arbitration. Specifically, Mr. T argued that the commission arose from the multi-level sales from the old code 41002284, which is the common property of the couple and therefore concerned the division of marital assets during their marriage.

The Court Found No Commercial Relationship Between Mr. T and Ms. Y, Classifying the Dispute as Civil and Thus Non-Arbitrable

To reach its conclusion, the Court began by analyzing the relationship between Company U1, Mr. T, and Ms. Y. It relied on the legal definition of “multi-level marketing activities” to determine that the relationship among the three parties constituted a commercial one.¹⁾ The payments made by Company U1—such as commissions, bonuses, and other economic benefits—were deemed entitlements arising from the commercial activities under the company’s regulations. Accordingly, the Court stated that if the dispute was between Company U1 and either or both of Mr. T and Ms. Y, the dispute would fall within the realm of a commercial relationship.

The Court then considered Mr. T’s argument that Article 28.1 of the CPC applied on the basis that the dispute involved the division of marital assets during their marriage. It found that Contract 2020 and the disputed payments from Mr. T to Ms. Y concerned the allocation of commissions received under the new code registered in Mr. T’s name. Therefore, the dispute did not concern a division of common property during the marriage period. Accordingly, the Court rejected Mr. T’s argument. In this context, the Court also noted that Mr. T’s argument was inconsistent with Mr. T’s earlier voluntary submission of the dispute to VIAC. However, the Court did not specifically address the fact that Mr. T had not raised any jurisdictional objections during the arbitration.

Although the Court rejected Mr. T’s argument regarding Article 28.1 of the CPC, it nonetheless held that the dispute between Mr. T and Ms. Y was non-arbitrable. The Court determined that the relationship between Mr. T and Ms. Y was always of a civil and not commercial nature: prior to their divorce, they were a married couple; after their divorce, they simply became two independent individuals with no commercial ties between them. Accordingly, the dispute between them was a civil dispute. Pursuant to Article 1 of the CPC, only the Court had the jurisdiction to resolve such a dispute. Therefore, notwithstanding the parties’ agreement to resolve the dispute at the VIAC, the dispute did not arise from “commercial activities” within the scope of Article 2 of the LCA and was therefore non-arbitrable. Consequently, the parties’ arbitration agreement was invalid, and the Court set aside the arbitral award issued by the VIAC arbitral tribunal under Article 68.2(c) of the LCA.

However, one unresolved issue is whether Mr. T’s multi-level marketing activities—as distinct from Company U1’s—qualify as “commercial activities” under Article 3.1 of the Commercial Law 2005. If so, then under Article 2.2 of the LCA, Mr. T would count as one who “conducts commercial activities,” thereby placing the dispute within the scope of arbitration. The Court’s conclusion did not cite a specific clause under Article 2 of the LCA. It appeared to consider the nature of the dispute itself rather than focus on the status of the parties. Therefore, the Court seemed to implicitly view Article 2.2 as also requiring that the dispute be substantively connected to a commercial activity. That is, the dispute need not arise directly from such activity but must at least relate to it to fall within arbitral jurisdiction under Article 2.2.

Key Takeaways

Vietnamese arbitration law shares common ground with the legal frameworks of many

jurisdictions, which exclude certain categories of disputes—namely, non-economic family matters, criminal cases, insolvency, and winding-up—from the scope of arbitration. However, it goes a step further by explicitly prohibiting arbitration in purely civil disputes between individuals that lack a commercial relationship.

Decision 35 is an important reminder that the presence of an arbitration agreement does not, in itself, guarantee that a dispute is arbitrable under Vietnamese law. The Court reaffirmed that the validity of such an agreement is contingent upon the dispute falling within the scope defined by Article 2 of the LCA in the first place. Specifically, only disputes arising from commercial activities or arising among parties at least one of whom conducts commercial activities or those otherwise expressly permitted by law to be resolved by arbitration, are considered arbitrable. If a dispute falls outside those categories, any prior arbitration agreement will be invalid regardless of the parties' prior consent.

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References

Article 3.1 of Decree No. 40/2018/ND-CP, dated 12 March 2018, issued by the Government of Vietnam on the management of multi-level marketing activities, stipulates: “Multi-level marketing **?1** is a business activity that uses a network of participants with multiple levels and branches, where participants receive commissions, bonuses, and other economic benefits from their own business results and the results of others within the network.”

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