

2.8.2 Economic Contracts

Gap: Incomplete Body of Commercial Law.
Source: John Gillespie, "Foreign Investment in SR Vietnam Revisited", *International Business Lawyer*.
Date: October 1990.
Details:

Using arbitration to resolve disputes has its drawbacks, namely "the fact that there is no substantive body of commercial law in Vietnam against which an adjudicator of a dispute may assess the acceptable standard of behaviour of the parties" (p.417).

In addition, most investors feel that arbitrators are not sufficiently trained in non-socialist legal and commercial principles to resolve disputes effectively.

New Commercial Laws are expected to be drafted and promulgated in late 1993 or 1994.

Deficiency: Conflicting Dispute Resolution Legislation.
Source: David Howell, Baker & McKenzie (Singapore), "A Realistic Look at Vietnam: Can Disputes Be Resolved and Awards Enforced?", in *East Asian Executive Reports*.
Date: March 1992. Comments apply today under Decree 18.
Details:

Recall from the Inventory that Dispute Resolution is addressed in Decree 18 and in the Ordinance on Economic Arbitration.

Under Decree 18, disputes between the parties of a JV or BCC may be referred to an agreed-upon arbitration body. According to the Ordinance on Economic Arbitration, however, all disputes that arise out of economic contracts - which include JV contracts and BCCs - must be referred to Vietnamese economic arbitration. It appears that the Ordinance clears the way for Vietnamese economic arbitrators to assume jurisdiction over an internal dispute, notwithstanding the expressed choice of the parties involved to use a different forum.

It is worth noting that the dispute resolution provisions in Decree 18 do not explicitly repeal the provisions in the Ordinance.

Deficiency: Inability to Enforce Vietnamese Economic Arbitration Awards.
Source: David Howell, Baker & McKenzie (Singapore), "A Realistic Look at Vietnam: Can Disputes Be Resolved and Awards Enforced?", in *East Asian Executive Reports*.
Date: March 1992.
Details:

Recall that the system of economic arbitration introduced by the Ordinance on Economic Arbitration was developed to address the issue of enforcement without involving the ineffective People's Court. Under the new system, however, enforcement has not been improved.

Arbitrators have the power to "request" the banking sector to deduct monies from the defaulting party's account. The banks, however, are not legally obligated to comply. Arbitrators also have the power to compile property for auction, but there is no mechanism in place for implementing this power.

Reports suggest that arbitrators have sent matters to the People's Courts - the very agencies the Ordinance sought to avoid - to have awards enforced. The Courts have returned awards unexecuted.