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## 1. Standard form contracts and consumers' right to select dispute resolution forum

In commercial agreements, if the parties have agreed to a certain form of dispute resolution (e.g., litigation or arbitration), they are bound by it and must resolve the dispute at the forum so agreed upon. However, in a standard form contract<sup>1</sup> for the provision of goods or services (or contracts referencing general trading conditions<sup>2</sup>) where one or more parties is a consumer, things are different.

The terms surrounding standard form contracts and general trading conditions can apply to all kinds of contracts between a services/goods provider and a consumer. For such disputes, if the provider has included an arbitration clause in its standard form contract or general trading conditions on the supply of such goods and services, and the consumer has not separately consented to such arbitration clause, the consumer still has the right to select arbitration or litigation, at its discretion, to resolve the dispute.<sup>3</sup> To make an arbitration clause binding on the consumer, the provider must notify the consumer of the arbitration clause prior to executing the contract, and the consumer must consent to such arbitration clause.

In addition, the Law on Consumer Rights Protection also stipulates that a trader must provide notification of an arbitration clause prior to executing a contract, and the consumer must consent to such arbitration clause. If a trader inserts an arbitration clause in its standard form contract or general trading conditions and a dispute arises, an individual consumer has the right to select some other dispute resolution method.<sup>4</sup>

## 2. Relevant precedent

In 2018, the People's Court of Nha Trang City resolved a dispute relating to a service contract wherein the buyers purchased the right to occupy a unit of real estate over a specified period. The buyers were two individuals and the seller was a tourism company. The service contract was a standard form drafted by the seller in which the Singapore International Arbitration Center (SIAC) was selected as the dispute resolution forum. Nonetheless, the buyers submitted the dispute to a court for resolution and the court accepted the buyer's petition. The court reasoned that the service contract was a standard form contract containing an arbitration clause and that the buyers had not consented to the arbitration clause. Thus, the buyers had the

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<sup>1</sup> "Standard form contract" means a contract drafted by a trader for transactions with consumers. Article 3.5 of Law on Consumer Rights Protection.

<sup>2</sup> "General trading conditions" means rules and regulations on sale and supply of services that are announced by a trader and applicable to consumers. Article 3.6 of Law on Consumer Rights Protection.

<sup>3</sup> Article 17 of Law on Commercial Arbitration; Article 4.5 of Resolution 01/2014/NQ-HDTP.

<sup>4</sup> Article 38 of Law on Consumer Rights Protection.


right to submit the dispute to the court for resolution. Later, the resolution was selected and declared by the Judges' Committee of the People's Supreme Court as a precedent case (Precedent Case No. 42/2021/AL). The Judges' Committee opined that:

*The Contract is classified as a standard form contract drafted by the service provider with an arbitration agreement. Given the consumer (who is also the Claimant) disagrees to resolve the dispute by arbitrators and requests that it is resolved by the Court, this request is compliant with Article 38 of Law on Consumer Rights Protection, Article 17 of Law on Commercial Arbitration and Article 4.5 of Resolution 01/2014/NQ-HDTP. Hence, action of the People's Supreme Court of Nha Trang City in accepting and resolving the case is compliant with laws.*

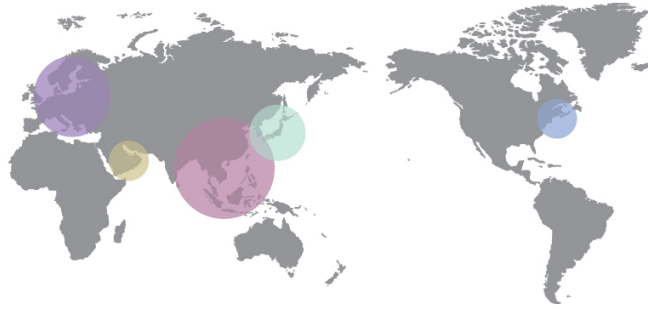
Upon the above declaration, the precedent case has been applied consistently among courts to resolve the same type of matters in practice.

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