

Author:

[E-mail✉ Isamu Imaizumi](#)

[E-mail✉ Vu Le Bang](#)

[E-mail✉ Nguyen Van Trang](#)

Vietnam is a member of the New York Convention 1958 on Recognition and Enforcement of Foreign Arbitral Awards(NYC), and there is legal framework therefor under the Civil Procedure Code of Vietnam (**CPC**). Under the CPC, a foreign arbitral award may be refused to enforce in Vietnam if its enforcement constitutes “violation of fundamental principles of the laws of Vietnam”.

## 1. Legal Framework

For now, there is no official detailed guidance regarding the case where the enforcement of a foreign arbitration constitutes “violation of fundamental principles of the laws of Vietnam”.

(1) However, the procedure for the recognition and enforcement is also necessary for the enforcement of domestic arbitration awards, and it is rejected for the enforcement if its enforcement constitutes “violation of fundamental principles of the laws of Vietnam”. Resolution 01/2014/NQ-HDTP (**Resolution 01**) in respect of domestic arbitration award defines the fundamental principles of the laws of Vietnam as the effective basic rules for the formulation and implementation of Vietnamese law, which may be used as a reference. Resolution 01 regulates that the court considering the petition for the recognition and enforcement of arbitral awards must determine whether the award violates any basic rules, and how those rules would have affected the outcome of the dispute. The courts only hold to refuse the recognition and enforcement of an arbitral award when the arbitral tribunal has not considered such rules, and the award seriously infringes on the interests of the State, legitimate rights and interests of the parties or a third person.

Resolution 01 takes two examples about violations of fundamental principles of the laws of Vietnam:

Example 1: The parties have voluntarily agreed on dispute resolution and the agreement is not contrary to the law or social morality but the arbitral tribunal did not acknowledge such agreement between the parties in the arbitral award. In this case, the arbitral award violates the principle of free and voluntary commitment in the field of commerce as provided in article 11 of the Commercial Law and article 7 of the Civil Code. The court shall consider and decide to set aside the arbitral award because the award is contrary to the fundamental principles of Vietnamese law as provided in the Commercial Law and the Civil Code.

Example 2: One disputing party provides evidence showing that the arbitral award was made based on coercion, fraud, threat or bribery. In this case, the arbitral award has violated the principle provided in article 4.2 of the Law on Commercial Arbitration that “the arbitrator must be independent, objective and impartial”.

However, it is worth noting that technical speaking, the courts shall not be obliged to apply Resolution 01 to interpret *fundamental principles of the laws of Vietnam* when considering the petition for recognition and enforcement of foreign arbitral awards.

- (2) In 2019, a draft resolution by the Council of Judges of the Supreme People’s Court aiming to clarify procedures of recognition and enforcement of foreign arbitral awards was circulated for public comments.<sup>1</sup> Under the draft, the court may base on *violation of fundamental principles of the laws of Vietnam* as a ground to refuse to recognize and enforce a foreign arbitral award in one of the three circumstances: (1) recognition of the award infringes upon the sovereignty, national security, social order and safety, social ethics and community health; (2) the award is granted on the basis of coercion, deception, threat or bribery; and (3) the award does not record the voluntary agreement of the parties on method of settling the dispute. However, there has been no further action taken the Supreme People’s Court to finalize and enact the above draft.

## 2. Relevant Cases

Given there is no effectively binding guidance for *fundamental principles of the laws of Vietnam* stipulated in CPC, the courts will have discretion to interpret the term on a case by case basis.

There have been cases where Vietnamese courts refused to recognize and enforce certain foreign arbitral awards due to the reason that the awards violated the fundamental principles of the laws of Vietnam.

### Non-conformity with substantive law

- (1) In a case where the foreign award was denied for recognition and enforcement by the Appellate Court of Supreme People’s Court in Hanoi, two parties entered into contracts of sales of soybean extract that incorporated Contract No. 100 of the Grain and Feed Trade Association (“GAFTA”) as applicable general terms and conditions and was governed by English law.

GAFTA arbitral tribunal delivered an award where the damages was evaluated per Contract No. 100 of GAFTA, under which the compensation amounts were calculated by the difference between the contract price and the defaulting price (the offering price by a third party) rather than actual damages. Upon handling the case, the Court adjudicated as follows:

*“[...] As per fundamental principles of Vietnamese civil laws, the liability to compensate for physical damage is the responsibility to make up for those actual physical losses caused by the party in breach which is able to be calculated in terms of money, comprising loss of property, reasonable expenses to prevent, mitigate or restore damage, and the actual loss or reduction of income (Article 307 of Civil Code 2005) [...] and such liability must be determined based on assessment of fault element<sup>2</sup> [...]. In this case, the claimant has not provided any proof for its actual losses to support the claim, but merely estimated the damages based on the contract price and offering price (which is not actual); GAFTA’s award also did not evaluate the damages based on principle of compensatory damages but based on*

<sup>1</sup> The draft Resolution (“**Draft Resolution**”) can be found on the Supreme People’s Court’s website: <https://vbpq.toaan.gov.vn/webcenter/portal/htvb/chi-tiet-vbdt?dDocName=TAND076705> (in Vietnamese only).

<sup>2</sup> We note that “fault element” is no longer required in Civil Code 2015 (which replaced Civil Code 2005), please see more in Article 351.1 of Civil Code 2015.

*the difference between the contract price and the default price (offering price). [...] GAFTA's award contradicts principles of damage determination of Vietnam".<sup>3</sup>*

This case was handled in 2010 based on CPC 2004 (as amended). Provisions of CPC 2004 (as amended) are not materially different from those set forth in CPC 2015 concerning *fundamental principles of the laws of Vietnam*, thus, we think it is eligible to view this Decision as a case study on how Vietnamese Courts interpret the law.

- (2) In a case handled by the Provincial People's Court of Hanoi, the Court refused to recognize and enforce two awards pronounced by SIAC. Hanoi Court ruled that, along with other arguments, the awards had violated fundamental principles of Vietnamese law since the arbitral tribunals did not examine in detail the parties' voluntary agreements in the contracts (which violated Article 4 of Civil Code 2005 concerning principles of freedom and voluntariness to enter into agreements) and did not apply any specific legal documents of Vietnam when pronouncing the award (which violated Article 11 of Civil Code 2005 concerning principle of compliance with law).<sup>4</sup>

Non-conformity with procedural law

- (3) In 2017, a Singaporean company failed to have the award enforced in Vietnam due to rejection by the Provincial People's Court of Can Tho.

The Court pointed out that: (1) the signatory of the party against whom the award was invoked did not have the capacity to sign the arbitral agreement; (2) the party against whom the award was invoked had not been notified in a timely and proper manner; and (3) the tribunal did not have the authority over the case. These grounds for refusal may be those under Articles 459.1(a), (c) and (dd) of CPC. Nonetheless, the Court arbitrarily determined that those three violations should be deemed as violation of fundamental principles of the law of Vietnam, and thereby reject to recognize and enforce the award.

- (4) In 2014, the Appellate Court of Ho Chi Minh City challenged a foreign arbitral award issued by the International Cotton Association (ICA) due to violation of fundamental principles of the laws of Vietnam.

In its decision, the Court concludes that Company E (a Swiss company) violated fundamental principles of the laws of Vietnam, based on Article 73 of CPC 2004 (as amended), due to the reasons: (i) Company E did not furnish its charter to empower its representatives to sign the petition to recognize and enforce the foreign award; and (ii) Company E let both of its representatives sign on the petition.

**3. Comments**

Apparently, based on the courts' practice, any disparity between a foreign law and the Vietnamese law may be alleged to violate fundamental principles of Vietnamese law. In the absence of an official guidance on how to


<sup>3</sup> Tuong Duy Luong (formerly the Deputy Chief Justice of the Supreme People's Court), "Commentaries on the Civil Procedure Code and Law on Commercial Arbitration, and adjudication practice" (Judicial Publishing House, 2016), pages 437-474.

<sup>4</sup> The case is reported in the Ministry of Justice's database on recognition and enforcement of court judgments and arbitral awards in Vietnam: [https://moj.gov.vn/tttp/Pages/dlcn-va-th-tai-Viet-Nam.aspx?fbclid=IwAR1wTsvb5Sl\\_61pjUiNMLqyP3XoWsNlzAi\\_GgZCsp1D44t0a8RI5eF4pqAM](https://moj.gov.vn/tttp/Pages/dlcn-va-th-tai-Viet-Nam.aspx?fbclid=IwAR1wTsvb5Sl_61pjUiNMLqyP3XoWsNlzAi_GgZCsp1D44t0a8RI5eF4pqAM) ("Database") (in Vietnamese only).

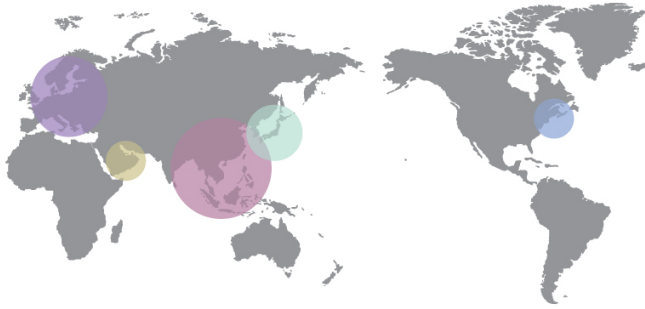
interpret “*violation of fundamental principles of the laws of Vietnam*” like the Draft Resolution, the recognition and enforcement of a foreign arbitral award in Vietnam are still facing some uncertainties if the award is rendered in the light of a foreign law and there is any disparity between the laws of Vietnam and the foreign law relating to the matter(s) resolved under such award.

In order to respond to the business needs of our clients, we publish newsletters on a variety of timely topics. Back numbers can be found [here](#). If you would like to subscribe to the N&A Newsletter, please fill out [the N&A Newsletter subscription form](#).

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

**Public Relations Section, Nishimura & Asahi** [E-mail](#) 

**Nishimura & Asahi has 18 offices throughout Japan and in the markets that matter, with Asia as the starting point.**



## New York

Nishimura & Asahi NY LLP  
 Tel +1-212-830-1600  
 E-mail [info\\_ny@nishimura.com](mailto:info_ny@nishimura.com)  
 Managing Partner/Chair (New York) Katsuyuki Yamaguchi  
 Vice Chair (New York) Megumi Shimizu  
 Partner Stephen D. Bohrer  
 NY LLP Partners Kaoru Tatsumi  
 Yusuke Urano  
 Masaru Umeda

## Dubai

Tel +971-4-386-3456  
 E-mail [info\\_dubai@nishimura.com](mailto:info_dubai@nishimura.com)  
 Partner Masao Morishita

## Tokyo

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo 100-8124 Japan  
 Tel +81-3-6250-6200 +81-3-6250-7210 (Nishimura & Asahi LPC Principal Office)

## Nagoya

Tel +81-52-533-2590  
 LPC Partner Hiroki Fujii

## Osaka

Tel +81-6-6366-3013  
 LPC Partners Taisuke Igaki  
 Yuichiro Hirota  
 Hiromune Usuki  
 Masanori Ban  
 Satoshi Niki

## Fukuoka

Tel +81-92-717-7300  
 LPC Partners Tsuneyasu Ozaki  
 Kengo Takaki  
 Yoshinobu Nakagawa

## Frankfurt (main office)

Nishimura & Asahi Europe  
 Rechtsanwaltsgesellschaft mbH  
 Tel +49-(0)69-257-298-800

## Düsseldorf (branch office)

Nishimura & Asahi Europe  
 Rechtsanwaltsgesellschaft mbH  
 Tel +49-(0)211-5403-9512

E-mail [info\\_europe@eml.nishimura.com](mailto:info_europe@eml.nishimura.com)  
 Co-representatives Noriya Ishikawa  
 Dominik Kruse

## Bangkok

Tel +66-2-126-9100  
 E-mail [info\\_bangkok@nishimura.com](mailto:info_bangkok@nishimura.com)  
 Co-representatives Chavalit Uttasart  
 Hideshi Obara  
 Jirapong Sriwat

## Beijing

Tel +86-10-8588-8600  
 E-mail [info\\_beijing@nishimura.com](mailto:info_beijing@nishimura.com)  
 Chief Representative Azusa Nakashima  
 Representative Masashi Shiga

## Shanghai

Tel +86-21-5280-3700  
 E-mail [info\\_shanghai@nishimura.com](mailto:info_shanghai@nishimura.com)  
 Chief Representative Takashi Nomura  
 Representatives Seita Kinoshita  
 Satoshi Tojo

## Singapore

Tel +65-6922-7670  
 E-mail [info\\_singapore@nishimura.com](mailto:info_singapore@nishimura.com)  
 Co-representatives Masato Yamanaka  
 Shintaro Uno  
 Partners Masataka Sato  
 Yuji Senda  
 Ikang Dharyanto

Note: We are in formal law alliance with Bayfront Law LLC, a Singapore law practice, under name of Nishimura & Asahi-Bayfront Law Alliance.

## Okada Law Firm (Hong Kong)<sup>\*2</sup>

Tel +852-2336-8586  
 E-mail [s.okada@nishimura.com](mailto:s.okada@nishimura.com)  
 Representative Saori Okada

## Jakarta<sup>\*1</sup>

Walalangi & Partners  
 Tel +62-21-5080-8600  
 E-mail [info@wplaws.com](mailto:info@wplaws.com)  
 Representative Luky Walalangi  
 Rosetini & Partners Law Firm  
 Tel +62-21-2933-3617  
 E-mail [info\\_jakarta@nishimura.com](mailto:info_jakarta@nishimura.com)  
 Partner Noriaki Machida

## Yangon

Tel +95-1-8382632  
 E-mail [info\\_yangon@nishimura.com](mailto:info_yangon@nishimura.com)  
 Representative Yusuke Yukawa  
 Vice Representative Isamu Imaizumi

## Hanoi

Tel +84-24-3946-0870  
 E-mail [info\\_vietnam@nishimura.com](mailto:info_vietnam@nishimura.com)  
 Representative Akira Hiramatsu

## Ho Chi Minh City

Tel +84-28-3821-4432  
 E-mail [info\\_vietnam@nishimura.com](mailto:info_vietnam@nishimura.com)  
 Co-Representatives Isamu Imaizumi  
 Vu Le Bang  
 Ha Hoang Loc  
 Partner Kazuhide Ohya

## Taipei

Nishimura & Asahi Taiwan  
 Tel +886-2-8729-7900  
 E-mail [info\\_taipei@nishimura.com](mailto:info_taipei@nishimura.com)  
 Co-Representatives Ing-Chian Sun  
 Sheng-Chieh Chang

\*1 Associate office \*2 Affiliate office

Last updated: 2022.7