



**TO IMPROVE THE EXECUTION OF DECISION MADE BY TRADE ARBITRATION  
IN ASEAN COUNTRIES .**

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With many advantages the trade arbitration is a way of solving the disputes which becomes the most popular and widely used in over the World. Advantages of arbitration are to respect maximally the will of free negotiation made by disputed sides, procedural procedure is flexible, arbitrator has deep professional knowledge, dispute is kept confidentially, decision of arbitration is final judgment. Besides, for the dispute which has foreign factor, the decision made by arbitration will have higher execution effect than other due to arbitration's judgment effects in wider scale in over the World.

The international arbitration supplies a network of international treaties, assuring the mechanism to execute arbitration decision. Within 4 tens of years of splendid existence with 140 member countries, the New Work Convention 1958 ( here after called Convention) of UN on recognizing and executing the decision made by arbitration proved arbitration is a modernization tool for recognizing and executing the commercial duties with effect and success better than any other tools in this field.

This is the most important international convention in the field of international arbitration. Its coming out has been evaluated as the most important event, basically eliminating previous existing problems of the mechanism of recognizing and executing the decision made by foreign arbitrator. The convention has been signed in New Work in June 10. 1958 and in effect by June 7. 1959. The convention has been improved in the conference 1958 under protection of the Economic and Social Committee of UN.

It is optimistic when looking the below table where 9 from 11 Asean countries are official members of the New Work Convention:

|   | Country    | New Work Convention 1958 |
|---|------------|--------------------------|
| 1 | Brunei     | x                        |
| 2 | Campuchia  | x                        |
| 3 | East Timor |                          |



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|    |            |   |
|----|------------|---|
| 4  | Indonesia  | x |
| 5  | Malaysia   | x |
| 6  | Myanmar    |   |
| 7  | Lao PDR    | x |
| 8  | Philippine | x |
| 9  | Thailand   | x |
| 10 | Singapore  | x |
| 11 | Viet Nam   | x |

In Viet Nam there is incentive policy of Government for development of the trade arbitration by the efforts to continuously improve legal system of arbitration, especially by updating the law and practice of international arbitration. In international scale Viet Nam has taken part in the New York Convention by 1958, signed many international bilateral and multilateral treaties, in which there is encouragement of enterprises to solve disputes by arbitration. Viet Nam also promulgated the Ordinance on Trade Arbitration in 2003 with basic regulations in conformity with the laws and practices of trade arbitration. Recently, in order to meet new circumstances Viet Nam is drafting the Law on Trade Arbitration, in which accepted the most of regulations of the Trade Arbitration Law- specimen made by UNCITRAL ( the United Nation Committee on the International Trade Arbitration Law ). There is also plan for ratification of the Arbitration Law by the National Assembly in 2010 when Viet Nam will have an arbitration legal system basically in conformity with international one.

For the purpose of unification of executing the trade arbitration decisions in Asean countries there is a need of improvement of local arbitration law system in each country to meet international standard, especially the Specimen Laws made by UNCITRAL dated June 21st 1985.

The Specimen Law promulgated to recommend countries in the world to apply it to assure the unification on the international trade arbitration. UN Security Council by resolution No. 40/72 dated December 11 , 1985 has recommended “ *countries have to carefully consider the Specimen Law on the International Trade Arbitration under view of*



*willing to unify the arbitration procedural procedure in the national law system and the practical need of the international trade arbitration”.*

The Specimen Law is considered as “gold standard” for trade arbitration. The Specimen Law has regulations to assure the harmonization a improvement of national law system. It regulates the stages of the arbitration process starting from arbitration agreement to recognition and execution of arbitration’s decision, reflecting the consensus in over the world on basic principles of the international arbitration practice. The regulations assure the feasible application of countries having different legal or economic system in over the world.

UNCITRAL also recommends countries to ratify or transfer the regulations of the Specimen Law in the maximal scale if possible, it will meet the willing to harmonize and bring benefit maximally for whom who use the international arbitration. Up to now there are 50 countries and territories in over the world have promulgated the arbitration law based on the standards and regulations of the Specimen Law.

Looking at the below list we can see only few of member countries in ASEAN have promulgated Arbitration Law based on the Specimen Law of UNCITRAL.

*List of countries having promulgated the Arbitration Law based on the Specimen Law*

| No. | Country    | Specimen Law of UNCITRAL |
|-----|------------|--------------------------|
| 1   | Brunei     |                          |
| 2   | Campuchia  | x                        |
| 3   | East Timor |                          |
| 4   | Indonesia  |                          |
| 5   | Malaysia   |                          |
| 6   | Myanmar    |                          |
| 7   | Lao        |                          |
| 8   | Philippine | x                        |
| 9   | Thailand   | x                        |



|    |           |   |
|----|-----------|---|
| 10 | Singapore | x |
| 11 | Viet Nam  |   |

In the process of globalization there is requirement for each country to improve the arbitration law system to be in conformity with international one. Only by this way the assurance can be created for stability and security of international trade transaction. All single efforts of a country in promoting local arbitration by issuing the regulations that seem to be attracting in local law system without considering harmonization with global institution will not be effective. Adversely, it can create confrontation in regulations of international arbitration, gradually eliminates the unification of arbitration method which is considered as a most accepted method to solve international trade dispute.

The success of international arbitration depends mostly on the question whether arbitration decision is executed or not. It is very clear that nothing makes business sides disappointed more than compared to the big losses of money and power to get a decision of arbitration but such decision is not be recognized and executed. No business side chooses an arbitration when cannot trust its decision will be recognized and executed. Oppositely, trade transaction will be more smooth if business men sure that their disputes, if arise will be solved effectively. The feasibility of arbitration decision impacts on business men's decision on choosing arbitration or court to solve their disputes, including choosing arbitrator from where, because in some case leading to important option if they can have partnership with a country where legislation does not support or has no assurance to execute the arbitration's decision. Therefore, if all ASEAN countries participate in the New Work Convention will create the trust for enterprises when they choose arbitration to solve their disputes.

Beside that the countries which have no arbitration law system yet should actively promulgate arbitration law based on the regulations of the Specimen Laws of UNCITRAL. The execution of arbitration's decision will be most effective only when exists the unification of decisions on arbitration of member countries.

For Viet Nam, when drafting the Proposed Trade Arbitration Law, beside efforts to assure the compatibility of institutions on competence of arbitration, arbitration agreement, applicable law, competence on application of temporary emergency measures ( which has not been regulated in Ordinance on Trade Arbitration issued in 2003) etc. with equivalent institutions of the Specimen Law and legislations of other countries, we highly



focused on the institutions of regulations on arbitration judgment and execution of arbitration judgment.

For the purpose of serious execution of arbitration judgment and creation of trust for disputed sides, in the draft is regulation on the tasks of the Courts, the execution Agencies and state organs, organizations and individuals relating to the arbitration procedural.

Beside that, the Proposed Law also affirmed that the recognition and allowance of the judgment of foreign arbitration in Viet Nam must seriously be in conformity with the international treaties in which Viet Nam is participant.