

DISPUTE RESOLUTION

Legal Validity Of A Dispute Resolution Clause Choosing Both **Court Litigation** And **Arbitration**

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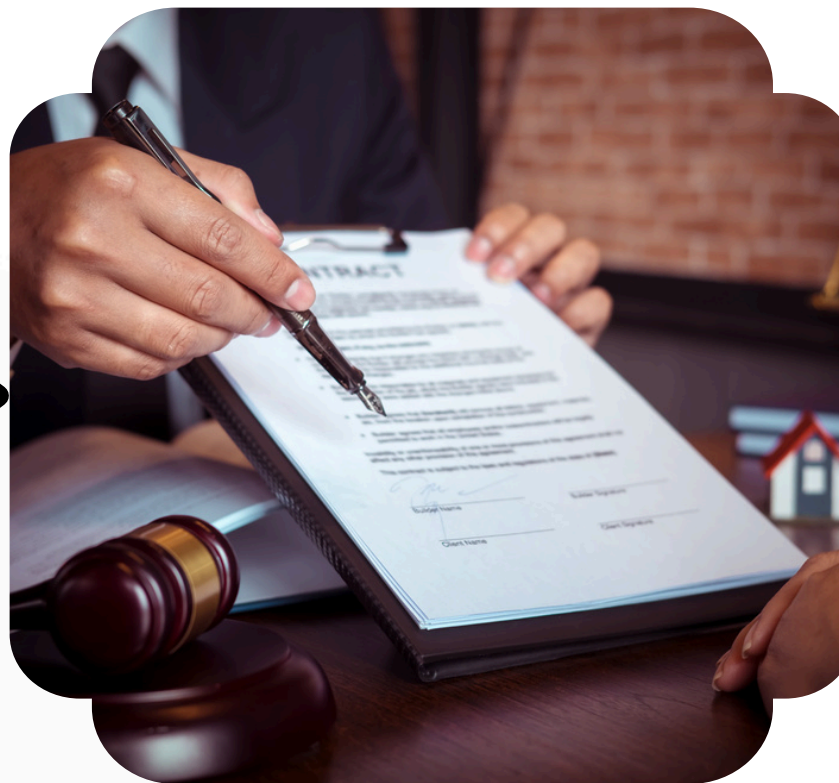
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LEGAL BACKGROUND

In commercial dispute resolution, the two most common mechanisms are **Court Litigation** (state adjudication) and **Arbitration** (private adjudication).

So, if a contract between the parties includes a dispute resolution clause that provides for both Court litigation and Arbitration, is it **legally valid**?

Court
Litigation



Arbitration

CAN A DISPUTE RESOLUTION CLAUSE CHOOSE BOTH COURT LITIGATION AND ARBITRATION?

CLAUSE 4,
ARTICLE 2 OF
RESOLUTION
01/2014/NQ-
HDTP



if a dispute
resolution clause
includes both
court and
arbitration,
jurisdiction is
determined based
on **which is**
approached first



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The competent authority to resolve the dispute is determined based on the principle of first-come, first-served—whichever forum is approached first will have jurisdiction, thereby excluding the other.

If arbitration is initiated first, the court must refuse or dismiss the case.

If a lawsuit is filed in court, the court must verify whether arbitration has been initiated. If so, the case is returned; otherwise, the court may proceed.

**FIRST-COME,
FIRST-SERVED**

PRACTICAL APPLICATION OF LEGAL PROVISIONS

The Arbitration Center X resolved a land lease dispute between C&N VINA (Claimant) and Kim Thành (Respondent). The contract contained conflicting dispute resolution clauses

Article 9 allowed either party to file a lawsuit in Court.



Article 13 required disputes to go through Arbitration if negotiations failed.



PRACTICAL APPLICATION OF LEGAL PROVISIONS

When the dispute arose, the claimant brought it to **Arbitration**, but the respondent objected, arguing that no clear agreement on the forum existed. Kim Thành filed a Court complaint, but the **Court** ruled that Arbitration Center X had jurisdiction.

CONCLUSION

This ruling aligned with Clause 4, Article 2 of Resolution 01/2014/NQ-HĐTP, which states that **if arbitration is initiated before the Court accepts the case, the Court must decline jurisdiction.**

WHY DO SUCH AGREEMENTS EXIST?

Enhancing Flexibility:

In business activities, disputes vary in nature and complexity. Allowing parties to choose between **Courts** and **Arbitration** ensures they can adopt the most suitable dispute resolution mechanism.

This is especially beneficial in international transactions, where flexibility can facilitate smoother negotiations.



Ensuring Enforcement Effectiveness

If a dispute is resolved by a **Court**, the judgment is enforced with the authority of the State, ensuring compliance, particularly for domestic assets.

If **Arbitration** is chosen, it offers confidentiality advantages, and its awards are widely enforceable under the 1958 New York Convention. Currently, **172 countries** are signatories, including **169 out of 193 UN member states**, making arbitration awards highly enforceable worldwide.



LEGAL RISKS OF CHOOSING BOTH COURT AND ARBITRATION FOR DISPUTE RESOLUTION

Jurisdictional Conflict

If one party files a lawsuit in court while the other initiates arbitration, jurisdictional disputes may arise, delaying the resolution process.

Risk of Invalid Dispute Resolution Clause

If the contract's dispute resolution clause is unclear or contradictory, the court may declare it invalid and require the parties to renegotiate. If no new agreement is reached, the court will have jurisdiction.

Risk of Refusal of Recognition and Enforcement in Other Jurisdictions

An arbitral award may not be recognized under the laws of certain countries if the arbitration clause is unclear or lacks exclusivity, leading to uncertainty over the arbitral tribunal's jurisdiction.

Therefore, an arbitral award based on a dispute resolution clause that provides for both arbitration and court litigation may still face the risk of being denied recognition and enforcement.

A dispute resolution clause that selects both Arbitration and Court is valid and enforceable.

This combination can give the parties more flexibility in resolving disputes. However, it also brings legal complexity. To make sure the clause works well, it should be drafted clearly and carefully, with advice from lawyers who have experience in international dispute resolution.

✉ For further discussion on the content of this article and to receive tailored advice based on your specific situation, please contact us at:

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“NO MUD, NO LOTUS”