

Dispute Regarding the Existence of Foreign Elements in Contractual Relationships

This document examines a legal case involving a dispute between two companies in Vietnam over whether their contractual relationship involved foreign elements. The case explores the criteria for determining foreign elements in contracts and the implications for applicable law and dispute resolution.

Resource: <https://www.viac.vn/thu-tuc-trong-tai/075-%7C-xac-dinh-yeu-to-nuoc-ngoai-trong-quan-he-hop-dong-%C2%A0-a218.html>

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Case Facts

Company B, a 100% foreign-invested entity, was registered and operated in Vietnam. It entered into two contracts with Company L, a domestic company, both of which were signed by Mr. D, a foreign national acting as Company B's representative. The contracts were executed and performed entirely in Vietnam. When a dispute arose, Company B argued that the presence of foreign investment and a foreign representative classified the relationship as having foreign elements, allowing the parties to potentially choose foreign law. Company L contended the contracts were purely domestic, and thus Vietnamese law should apply.

The Arbitration Tribunal was asked to determine whether the contractual relationship between the two companies involved foreign elements, which would influence the applicable legal framework for resolving the dispute.



Legal Issue

Issue: Is the mere presence of foreign capital or the participation of a foreign national in contract execution sufficient to classify a dispute as one involving foreign elements, thus allowing the parties to select foreign law or non-Vietnamese arbitration rules for dispute resolution?

Holding

No, the mere presence of foreign capital or the fact that a foreign national signs the contract does not automatically classify the dispute as one involving foreign elements. In this case, the contracts were between two entities registered and operating in Vietnam, and the contracts were executed and performed in Vietnam. As such, the Arbitration Tribunal determined that the contractual relationship did not involve foreign elements, and thus Vietnamese law was applied to resolve the dispute.

Reasoning

1. Company's Registration and Operation: The Tribunal emphasized that Company B was registered under Vietnamese law and operated within the country. Foreign ownership alone does not create foreign elements in the legal relationship.
2. Role of the Foreign Representative: Mr. D's role as a representative did not change the status of Company B as the contracting party. The legal standing of the contract remained domestic, as the foreign individual acted on behalf of a Vietnamese-registered entity.
3. Execution and Performance of Contracts: Both contracts were executed and performed entirely in Vietnam. Under Clause 1, Article 14 of the Law on Commercial Arbitration 2010, domestic contracts without foreign elements must be governed by Vietnamese law.
4. Foreign Element Criteria in the Civil Code: The Tribunal referenced the criteria in the 2005 and 2015 Civil Codes for foreign elements, noting that none applied in this case as neither the parties nor the contract subject matter involved foreign jurisdictions or entities.

Legal Principles

- Law on Commercial Arbitration 2010, Article 14: This law distinguishes between disputes with and without foreign elements. For disputes without foreign elements, Vietnamese law must be applied. If foreign elements exist, the parties may choose applicable law, including foreign law.
- Civil Code 2005, Article 758 & Civil Code 2015, Article 663: These provisions define civil relationships with foreign elements and specify the circumstances under which a relationship may be considered as having foreign elements. The relevant criteria include the nationality of the parties, the location of the relationship, and the subject matter.

Lessons for Practice

1

Foreign Ownership and Legal Classification

The presence of foreign capital in a Vietnamese enterprise does not automatically create foreign elements in legal disputes. Companies with foreign investors registered in Vietnam are subject to Vietnamese law for domestic transactions. This highlights the importance of understanding the legal status of a company based on its registration rather than its ownership structure.

2

Role of Representatives

Even if a foreign national signs contracts on behalf of a company, the nationality of the individual does not affect the classification of the dispute. The key consideration is the legal entity that is party to the contract. Legal practitioners must ensure clarity when foreign representatives are involved in domestic contracts to avoid misinterpretation of the legal framework governing the contract.

3

Contractual Clarity on Applicable Law

In cases where parties wish to invoke foreign law, it is essential to include explicit provisions in the contract to this effect. Otherwise, if the relationship is domestic and lacks foreign elements, Vietnamese law will apply by default, as illustrated by this case.

4

Regulatory Awareness

Understanding the criteria set forth in the Civil Code for determining foreign elements is crucial for businesses involved in international transactions. Legal counsel must carefully evaluate the details of each relationship, including the parties, location of contract performance, and assets, to determine the appropriate legal framework.

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