



What Happens When a Business Project Fails and Your Contract is Silent on Costs?

Swipe to discover how Vietnamese arbitration tribunals handle cost disputes in failed projects when contracts don't specify who pays.

Resource: <https://www.viac.vn/thu-tuc-trong-tai/o72-%7C-ap-dung-le-cong-bang-dieu-chinh-hop-dong-a215.html>

The Case: A Failed Business Collaboration

The Setup

A foreign company and Vietnamese company signed a cooperation contract and began project implementation.

The Problem

After the project failed, the Vietnamese company wanted reimbursement for costs incurred during preparatory work.

The Challenge

The contract didn't specify who would bear costs if the project failed, and Vietnamese law offered no clear guidance.

The Legal Gap: When Law and Contracts Are Silent

1

Contract Silence

The agreement outlined tasks but didn't address cost allocation if the project failed.

2

Legal Void

Vietnamese statutory law lacked explicit provisions on cost-sharing in failed commercial projects.

3

The Question

Without contract terms or legal guidance, how should costs be fairly distributed between parties?

Enter Equity: The Fairness Principle

When contracts and laws are silent, Vietnamese arbitration tribunals can apply equity - a principle of fairness and justice - to resolve disputes.

1

No Specific Law

When statutory provisions don't address the situation

2

No Analogous Law

When no similar legal provisions can be applied

3

Apply Equity

Tribunals can use fairness principles to allocate costs justly

Legal Foundation: The 2015 Civil Code

Article 14(2)

Courts and adjudicatory bodies must decide civil disputes even when no specific law exists.

Article 6

Establishes a hierarchy of legal sources, including equity, when statutory law and contracts are silent.

Article 3

Sets fundamental principles of civil law, including fairness, to guide decision-making.

While these provisions primarily apply to courts, the same rationale extends to arbitration tribunals.

Understanding Equity in Vietnamese Law

Although the Civil Code doesn't define "equity," Article 45(3) of the 2015 Civil Procedure Code provides guidance:

1

Socially Recognized Fairness

Decisions should align with commonly accepted notions of what is fair and just.

2

Humanitarian Principles

Resolutions should consider basic human dignity and welfare.

3

Equal Rights and Obligations

Parties should be treated with equal consideration in distributing benefits and burdens.

Practical Lessons for Businesses



Draft Comprehensive Contracts

Explicitly allocate responsibility for costs in case of project failure to avoid equity-based adjudication.



Document Risk Allocation

Proactively negotiate and record how risks will be shared to minimize uncertainty in dispute resolution.



Understand Legal Changes

Stay informed about legislative developments that affect how disputes are resolved when statutory law is silent.

Protect Your Business Interests

This case highlights the critical importance of comprehensive contract drafting in international business ventures, especially in jurisdictions where the law may not provide clear guidance on cost allocation in failed projects.

When contracts are silent, arbitration tribunals may apply equity principles to ensure fairness - which introduces unpredictability into your business relationships.

Don't leave your business outcomes to chance. Share this post with your legal team and business partners to ensure your next contract addresses cost allocation clearly.

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