

**MINISTRY OF EDUCATION AND TRAINING
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PHD THESIS SUMMARY

**COMMERCIAL SERVICE CONTRACT AND
RESOLUTION DISPUTE ON
COMMERCIAL SERVICE CONTRACT IN VIETNAM**

Major : Business

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INTRODUCTION

1. The necessity of the research

In the current era, along with the process of global economic integration, Vietnam trade in service has strongly developed. As the report of General Statistics Office, although GDP only grew 5.42% in 2013, the figure of trade in service increased by 6.56% (General Statistics Office, 2014). This shows that trade in service is keeping a significantly important role in the national economy. In order to meet the requirements of the users, the service contracts have been signed to create the legal basis for the regulation of the rights and obligations among parties. When the services develop, people's demands as well as the requirements of the quality of services, prices and methods of exchanging services become more and more diverse and complex. From the perception that services belong to civil field, commercial value of services has grown, leading to the new acknowledgement of the purpose of services: services for commercial purpose. Along with tangible goods, services with the meaning of intangible goods have been exchanged in the market for profit. The establishment and development of trade in service has created basis for enterprises to diversify their business forms and methods. To manage their services business activities, enterprises have used commercial service contracts as an effective facility to expand their market, develop their brands and meet the customers' requirements.

However, the increase of the number of commercial service contracts leads to the diversity and complexity of disputes arising from this contract types. This has put Vietnam enterprises at risk of a range of disputes related to construction contracts, transportation contracts and logistics contracts with the new circumstances in both content and legal aspect. These are the causes of great damages in enterprises due to the payment for consultants and attorneys' fees and especially the costs for the lack of acknowledgement and negligence when signing commercial service contracts. With commercial service contracts having high economic value, the loser in the disputes has negatively affected their business activities or even lead to the bankruptcy of Vietnam enterprises. Besides, the lack of human resources which have skills in choosing good contracts, resolving disputes, preventing risks from the breach of contracts means that the enterprises are losing their reputation and brand in the market. For example, Vinashin and Vinalines Group have lost trillions because they

did not focus on signing and implementing their contracts and resolving arising disputes. Therefore, in this era, in order to develop commercial activities in general and manage their owned business, Vietnam enterprises have to understand the resolution of disputes related to commercial service contracts.

In fact, many Vietnam enterprises could not clearly understand the characteristic of commercial service contracts; therefore, they do not have measures to prevent and successful resolve disputes on customer service contract. Moreover, many of them have not known the role of resolving disputes in commercial service contracts in their business result. The question is that which features the resolution dispute on commercial service contracts has. Therefore, this issue needs to be carefully research to get the answer for this question. This is the reason for research student choosing the issue: **“Commercial service contract and dispute resolution on commercial service contract in Vietnam”** for this PhD thesis in business administration field.

2. Research status

2.1. Foreign research status

In many countries around the world, there are some researches, articles which refer to individual issue about commercial services, commercial service contracts and methods of resolving disputes in commercial services. The following works are the typical ones. In 2003, Takatoshi Ito and Anne O. Krueger published the work *“Trade in services in the Asia-Pacific region”* which analyzes the shift of commodity economy to service economy in the world. In 2008, Anuj Saxna published the book *“Enterprise contract management – A practical Guide to successfully implementing an ECM Solution”* which raises an issue that the ineffective contracts management will lead to the losses of enterprises and the increase of risks in business. After that, in 2010, Richard Griffiths analyzes the business administration skills for managers when they involve in the relationships related to services or commercial services in his work *“Service Offerings and Agreements: A Guide for Exam Candidates”*.

Besides, in 2004, Alan Redfern, Martin Hunter, Nigel Blackaby and Constantine Partasides published their book named *“Dissenting Opinions in International Commercial Arbitration: Arbitration International”*. In this book, after clarifying the concept of commercial contracts, these authors explained the reasons why enterprises usually prefer arbitration to court when resolving their disputes. In 2009, Gary L

Kaplan published the book “*Executive Guide to Managing Disputes*” about the challenged that enterprises might face with when arising disputes in contracts.

The above analysis indicates that there are plenty of researches, articles which refer to commercial services, services contracts, settling dispute in service contracts as well as the relation between the business activities and dispute settlement. However, the issue of resolving disputes in commercial service contracts in Vietnam has not been analyzed in any works in the world. Nevertheless, these mentioned documents are the important references to this thesis.

2.2. Research status in Vietnam

In Vietnam, there are plenty of works mentioned commercial services, commercial service contract and dispute resolution in business activities of enterprises. Among these, some typical works are:

In 2004, Author Nguyen Thi Mo had a scientific study published in monograph book named: “*Choosing steps and solutions for Vietnam to open in commercial services*”, in which she analyzed the chance to open nationally service market in Vietnam under the international treaty. In 2010, Vietnam Chamber of Commerce and Industry published a book named: “*Handbook of commercial contract*” which provides an overview of some main Commercial service contracts in Vietnam and all over the world. In 2002, an economic PhD thesis of the author, Bui Ngoc Son, (defended in 2002 at Foreign Trade University) named “*The relationship between international trading disputes settlement and business performance of import-export companies in Vietnam*”. This thesis has shown the relationship and the two-way interaction between business operation of enterprises and resolving disputes arising from or related to export and import activities of Vietnam.

2.3. General assessment of research status

2.3.1. Solved problems

- The mentioned domestic and foreign researches have analyzed and clarified the concepts of contract, service and commercial service;
- There have been certain analysis of commercial contract, commercial service contract;

- There have been many analyses of remedies to resolve disputes in commerce such as: arbitration, court, tribunal, etc

- There have been a number of analyses of commercial contracts regarding to business operation of enterprises. For instant, if enterprises do not focus on choosing contract skills, they might be put at risk of breaching contract and could not protect their rights and interests because of lacking protection provisions in the contract.

2.3.2. Unsolved problems

However, the above researches have not been analyzed commercial service contract and dispute settlement of commercial service contracts in detail. Therefore, these researches have not solved the following problems:

- The concept and characteristics of commercial service contracts;
- The important points of dispute settlement of commercial service contracts and the relation of it with the disputes resolving of commercial contracts.
- The effects and relationship among disputes settlement of commercial service contracts, business operation of enterprises and business administration of enterprise.

In conclusion, research student thinks that there is no research analyzing specially, intensively in both theoretical and practical aspects for three fields of administration, economics and law, which related to dispute settlement of commercial service contract in Vietnam. We might say that this is the first PhD thesis which research comprehensively the problems of commercial service contracts and disputes settlement of commercial service contract in Vietnam.

3. Objective and mission of research

3.1. Objective of research

On the basis of clarifying theoretical and practical matters of commercial service contracts, contract dispute resolution and impacts of resolving contract disputes on enterprises' operation, the research proposes solutions and recommendations to Vietnamese enterprises so that they can successfully resolve contract disputes, thereby reduce risks and damage in their business administration activities.

3.2. Missions:

In order to achieve the above objective, the thesis has to fulfill the following tasks:

- Clarify the concept, characteristics of commercial service contracts and commercial service contract disputes.
- Analyse the impact of resolving commercial service contract dispute on the development of doing business of enterprises.
- Analyse the strength and weakness of each of dispute resolution methods on commercial service contracts to help enterprises choose the suitable methods to resolve the disputes arising from commercial service contracts that involve doing business of enterprises.
- Evaluate the situation of resolving commercial service contract disputes in Vietnam, in which highlight advantages, disadvantages, inadequacies, the origins of inadequacies in settling commercial service contract disputes in Vietnam in recently and the impacts of resolving commercial service contract disputes on enterprises' business operation.
- Analyse typical circumstances, dispute case and dispute resolution on commercial service contracts in order to draw experience lessons in avoiding, reducing the risk and improving competitiveness of Vietnamese enterprises in the market economy.
- Propose solutions and recommendations to Vietnamese enterprises so that they can successfully resolve the commercial service contract disputes, thereby improve their competitiveness in the market.

4. Subject matter and scope of research

4.1. Subject matters

The subject of research is the matters of commercial service contract, commercial service contract disputes and dispute resolution on commercial service contract. The subject also includes regulation of Vietnam law, international law and other countries law of methods of resolving commercial service contract.

Since the thesis business administration, the subject of the research also includes matters about the impacts of commercial service contract dispute resolution on the operation of enterprises, especially on the operation of Vietnamese enterprises in the context of a fact that Vietnam has been implementing international commitment about opening trade in service market.

4.2. Scope of research

- *Substantive aspect of the Thesis:* In the frame of a PhD thesis, when analysing commercial service contracts, the author focus on analysing general commercial

service contracts, not a particular commercial service contract. Besides, because of the fact that commercial service contract disputes resolution conclude contents such as dispute resolution on signing commercial service contract, dispute resolution on the content of commercial service contract, dispute resolution by the methods regulated in law... in the scope of a PhD thesis, the author will only focus on analysing the dispute resolution methods on commercial service contract, not on analysing resolution dispute on signing or performing the commercial service contract. Analysis some particular cases of commercial service contract disputes which only purpose highlight the characteristic of service contract, service contract dispute and service contract dispute settlement in general.

When studying the methods of service contract dispute settlement, the author analyse all four methods: negotiation, conciliation, court and arbitration then point out the pros and cons of each method so that the enterprises can have suitable choices to settle service contract dispute in recent years

-Spatial aspect of the Thesis: When researching and analysing the actual status of the commercial service contracts and dispute resolution on commercial service contract, the thesis limits space in Vietnam, the author mentions methods of resolving commercial service contract dispute overseas only emphasizes the methods currently being used in Vietnam.

- Scope of time: When analysing the status of dispute resolution on commercial service contract in Vietnam, the thesis gathers information from 2005, the year in which Commercial Law was amended, up to now. The thesis proposed solutions and recommendations from now to 2015, and further, the 2020s.

5.2. Methodology

5.1 Methodology of research

The methodologies of research are Marxism-Leninism about dialectical materialism and historical materialism, Ho Chi Minh ideology and the views of Communist Party of Vietnam and the State on the market economy, trade in services and business administration.

5.2. Specific methods of research:

– To carry out the thesis, the author use synthetic methods, such as analysis, statistic, systematisation, interpretation and comparison.

– Beside, the research also use other research methods, such as scenario analysis, sociological survey, specialist interview to clarify the role of commercial service contract and dispute resolution on commercial service contract to draw lessons, recommendations, solutions for Vietnamese enterprises.

6. Scientific contributions of the Thesis

- The thesis systemizes some theoretical matters that involve commercial service contract and dispute resolution on commercial service contract. Especially, the thesis clearly defines the concept of commercial service contract: *“Commercial service contract is an agreement between parties, based on regulations of legal system, to establish, change or terminate rights and duties in trading, supplying, exchanging service with the purpose for creating profit”*.

-The thesis analyses the impacts (positive and negative impacts) of dispute resolution on commercial service contract to enterprises’ operation in general and business administration in particular.

- The thesis analyses the status of dispute resolution on commercial service contract from 2005 up to now in Vietnam through specific methods of resolving disputes which are negotiation, mediation, arbitration and court.

- The thesis proposes four groups of solutions for Vietnamese enterprises and recommendations to Vietnamese enterprises so that they can successfully resolve commercial service contract disputes in order to reduce the risks and damage in their business activities in the future.

7. Structure of the thesis

Apart from the introduction, conclusion, references, appendixes, the thesis structure consists of 03 chapters as follows:

Chapter 1: Theoretical ground of commercial service contract and dispute resolution on commercial service contract.

Chapter 2: The actual status of signing, performing commercial service contract and resolving dispute on commercial service contract in Vietnam.

Chapter 3: Solutions and recommendations for Vietnamese enterprises to successfully resolve commercial service contract disputes.

Chapter 1: THEORETICAL GROUND OF COMMERCIAL SERVICE CONTRACTS AND DISPUTE RESOLUTION ON COMMERCIAL SERVICE CONTRACT.

1.1. Several theoretical issues of commercial service contract and dispute resolution on commercial service contract.

1.1.1. Commercial service contract

1.1.1.1. Definition of service

Up to now, there are much definition about service but not totally the same. Besides, the awareness of service in other periods is different because of depending on the development of society in those periods. It is up to the different access, service is defined following to others sight. The author agrees with the opinion of Nguyen Thi Mo: “Service is the activities of human, is crystallized into many kinds of intangible products and can not touch, can bring civil nature or commercial nature. Service bringing commercial nature if it is in purchase, exchanged on market with the purpose for creating profit”. (Nguyen Thi Mo 2004, page. 7).

1.1.1.2. Characteristics of service

Compared to tangible goods, service that with the meaning is intangible goods has some characteristics following:

- Firstly, service is intangible product and the criteria which have quantitative nature such as weight, color, taste....are not totally suitable for determining characteristics of service.
- Secondly, the quality of service depends on situation, skill condition, experience of supplier.
- Thirdly, the process of producing service and consuming service often occur simultaneous.
- Fourthly, service can't be stored. (Carolina, L.2006, page 3)

However, it is necessary to be aware that there will be not an absolute distinction. For example, some kinds of service, when ending the process of supplying, will create products which are form of material such as photocopy writing. (as photocopy service)

1.1.1.3. Definition of contract

Vietnamese current legal system does not show any definitions about commercial service contract, only shows definition of civil contract, 388 article of civil law prescribe: “civil contract is the agreement of parties about establishing, changing or

terminating civil rights, civil duties”. The lack of fixing definition of commercial contract shows inadequacies of Vietnamese legal system. So, it is essential to bring out a definition of commercial contract.

1.1.1.4. Definition of commercial service contract

From the analysis about contract or civil contract, we can expose the preliminary definition of commercial contract: “Commercial contract is the agreement of parties, bases on regulations of legal system, assigns rights and duties in performing commercial activity”. Commercial activity, as defined at 3.1 article of Commercial Law 2005, is that: “Commercial activity is an activity which aims at increasing profit, includes trading in goods, supplying service, investing, promoting in trade and other activities for creating profit”.

Commercial service contract is the service supplying contract with the aim at creating profit. The purpose for creating profit is the criterion to distinguish between service supplying contract with the purpose for civil and service supplying contract with the purpose for commerce.

From the above analyses, the author, can bring out the definition of commercial service contract: “*Commercial service contract is an agreement between parties, based on regulations of legal system, to establish, change or terminate rights and duties in trading, supplying, exchanging service with the purpose for creating profit*”.

1.1.1.5. Characteristics of commercial service contract

Firstly, subject of contract is service, is intangible goods.

Secondly, there is no regulation of transferring ownership in commercial service contract.

Thirdly, about the form of commercial service contract: law often assigns that many kinds of commercial service contract must be set up by written.

Fourthly, the nature of kinds of duties of the service supplying participant in commercial service contract is divided into two kinds: duty according to the result of work and duty according to highest ability attempt.

Fifthly, commercial service contract is under adjustment of specific laws.

1.1.1.6. Classification of commercial service contract.

Basing on other criteria, commercial service contract is divided into many different kinds:

- Base on impact scope of contract: International commercial service contract and domestic commercial service contract.

- Base on content: Commercial service contract according to branch and service branch division.

- Base on duties of service supplying parties: Commercial service contract according to the result of work and commercial service contract according to highest ability attempt.

1.1.1.7. The role of commercial service contract in business activities of enterprises.

- Commercial service contract is important legal ground for enterprises to define concrete rights and duties when supplying commercial service.

- Commercial service contract is the important tool for enterprises to enhance competitive position on market, especially on market of sale of goods and service.

- Commercial service contract is the basis for business to join in product supplying chain, extend partner relations and extend domestic market.

- Commercial service contract is the effective mean for Vietnamese enterprises to penetrate international service commercial market.

1.1.2. Dispute on commercial service contract

1.1.2.1. Definition of dispute on commercial service contract

Dispute is a definition which is comprehended according to different meanings depending on the different accesses. Enterprises perform business contract through commercial contract. So, dispute on commerce often arises from or involves in commercial contract. There are dispute on commercial service contract among dispute over commercial contract. From above analyses, the author thinks that: dispute over commercial service contract are contradictions, divergences, conflict of rights and interests of participants who signed commercial service contract, involve in the process from signing to performing commercial service contract.

1.1.2.2. Characteristics of dispute on commercial service contract

Compared to dispute on commerce in general and dispute on commercial contract in particular, dispute on commercial service contract has characteristics following:

Firstly, parties joined in dispute on commercial service contract are often merchants in field of action about trade in service.

Secondly, dispute on commercial service contract is often complicated about the nature and has big value about scale. Therefore, period of dispute resolution is often lengthened more.

Thirdly, to solve dispute on commercial service contract, the trial often bases on many documents about specific law.

1.1.2.3. Reasons of dispute on commercial service contract

Objective reasons:

- The effect of politics-law factor.
- The effect of science, engineering, technology.
- The effect of culture-society factor.
- Exemption situation
- The recession about economy.

Subjective reasons:

- Contract is not close.
- The lack of knowledge of law of parties.
- The level of knowledge of the person, who has the jurisdiction of signing, is limited.
- Enterprises do not prepare well for the process of negotiating commercial service contract.

1.1.2.4. Classify dispute on commercial service contract

Dispute on commercial service contract has many other kinds, depending on basis to classify them. Especially:

- Base on scope of dispute: Dispute on domestic commercial service contract and commercial service contract bringing international factor.
- Base on the process of signing commercial service contract: Dispute involving in breaking optional principle of contract, dispute on the subject signed commercial service contract, dispute on the form of commercial service contract.
- Base on the content of commercial service contract: dispute by service selling parties, dispute by service buying parties.

1.2 Resolving Disputes about contracts of commercial services:

1.2.1 Methods for resolving disputes on commercial service contracts:

In order to resolve disputes about commercial contracts, the disputants can choose among several methods, each of which has its own pros and cons.

1.2.1.1. Negotiation

Negotiation is a method of resolving disputes that does not require the participation of a third party. The disputants together discuss, bargain, compromise and settle so as to reach an agreement (Nguyen Thi Mo, 2009, pg. 214. In many countries, Vietnam included, the law encourages the disputants to resolve their disputes through negotiation. Other methods are resorted to only if this fails.

1.2.1.2. Conciliation

Conciliation is the process in which two parties negotiate with the help of a neutral third party (the conciliator) (Goldberg, S. 1992, page 103). There are two forms of mediation: in-court conciliation and out-of-court conciliation. There is no specific procedure for a conciliation procedure. Conciliation is a negotiating method with high confidentiality. However, it has certain drawbacks. Since there is no binding to both parties, it is possible that one or both parties do not actively contribute to the negotiation, being dishonest or intentionally wasting time. This may lead to delayed suing time or lost opportunity cost.

Besides negotiation and conciliation, there are other alternatives for resolving disputes, such as Mediation, Mini Trial or Summary Jury Trial, which are also widely used by firms. These methods are currently not included in Vietnamese law nor used by Vietnamese firms. Even though, the author still mention them since there will be many Vietnamese firms participating in international commercial service contracts and it is very likely that these methods will be used by foreign firms.

1.2.1.3. Selling disputes by the mediation, mini trial and summary jury trial

The mediation is defined as a variant of conciliation because dispute resolution endeavour is also executed by the third party – the mediator – who examines complaint of the parties and helps them negotiate so as to settle disputes (UNCTAD 2001, page 69).

Mini trial is “a adversarial procedure outside the court, therefore, a legal dispute is transfered from being decided by the court to the contending parties themselves” (Jame F.Davis and Lynne J.Omlie 1985, page 531).

Summary jury trial is a popular dispute settlement method of substitution in America, developed by the US. Judge Thomas Lambros. It relates to a legal procedure managed by the court which takes place after the case is received but not judged.

1.2.1.4. Dispute resolving at court

Court is justice organ of a country, established for judging internal disputes arising among legal parties. It is also a dispute settling agency in commercial service contracts.

- *About jurisdiction:* The court has no ex officio competence to resolve disputes on commercial service contracts. There are a lot of regulations relating to the jurisdiction of the court. To be specific: (i) *Jurisdiction following levels:* Countries in the world generally classify the courts into different levels, which brings to jurisdiction following levels (ii) *Territorial jurisdiction:* Article 35 of Procedure Civil Code 2004 defines that the first – instance jurisdiction over business cases belongs to the courts of the areas where defendant lives, works or has office space. The courts of the areas where exists immovable shall have the jurisdiction to settle disputes over such immovable.

- *About the two-level adjudication of the court:* ... there are two levels of adjudication in courts of all countries in the world: first-instance court and appeal court.

- *About principle of adjudication:* Court resolves disputes according to principle of public trials, except some special cases judged behind closed doors.

However, dispute resolution at court has 3 disadvantages as below: the procedural time limit shall last long; partnership might be broken into pieces; the recognizing and enforcing the awards of foreign courts shall be difficult in being accepted and applied.

1.2.1.5. Commercial Arbitration

Commercial arbitration is a method of resolving disputes in which arbitrators – non-governmental organization – conduct the trials according to legal proceedings prescribed in the Commercial Arbitration Law. Resolving dispute by commercial arbitration to commercial contracts in general and commercial service contracts in particular requires the enterprises to notice the competence and judgement of the arbitration as well as the enforcement.

Commercial arbitration has some strong points compared to the court, such as: The decision of the arbitrator is final to the parties concerned; the dispute resolving process is not public; the arbitration is more flexible, bendy, active and easily adaptable than

the court; saving time; it is a friendly method of resolving disputes so as to preserve partnership; it is more popular than the court with the foreign firms in some international commercial service contract.

1.2.2 Factors affecting to the enterprises into dispute resolution on commercial service contracts.

When confronted by a commercial service contract dispute, the enterprises have to choose among available resolving methods. In order to select a suitable one, the firm has to take into account these following factors: business culture, the firm's position during the contract signing process, budget, time, confidential issues, the contract's value and the ability to fulfill the settlement.

1.3. Evaluate impacts of resolving dispute on commercial service contracts on business activities of the enterprise

1.3.1. Positive impacts:

- Successful resolution of disputes on commercial service contracts improves the enterprise competitiveness.
- Quick and successful resolution of disputes on commercial service contracts asserts the enterprise reputation in the market.
- Timely dispute resolution of arising disputes from contracts positively affects the business result and helps the enterprise learn necessary lessons of its business contracts.
- Successful resolution of disputes on commercial service contracts helps the leaders be aware of the role, the necessity of building a risk preventing strategy, which includes preventing risks that the enterprise might face when joining in the dispute.
- Successful dispute resolution contributes to improving the enterprise employees' awareness and skills of conducting commercial service contracts.
- Successful dispute resolution on commercial service contracts helps the enterprise develop negotiating capacity and be more confident in adversary at the court and arbitration.

1.3.2. Negative impacts

Negative impacts will be significant if the enterprise does not succeed in resolving disputes in commercial service contract, or if they delay the resolution. Those impacts are:

- The delay of dispute resolution badly affects business results of the enterprise.
- Unsuccessful dispute resolution on commercial service contracts badly affects the reputation and the brand of the enterprise in the society.
- Extended time of dispute resolution on commercial service contract will affect to the psychology and health of manager so that will affect to “the health” of enterprise.
- Unsuccessful dispute resolution badly affects on the internal relation of the enterprise, which indirectly has impacts on its business contracts.

Chapter2. THE ACTUAL STATUS OF SIGNING, PERFORMING COMMERCIAL SERVICE CONTRACT AND RESOLVING DISPUTES ON COMMERCIAL SERVICE CONTRACT IN VIETNAM

2.1. The situation of signing, performing commercial service contracts in Vietnam

2.1.1. The number of commercial service contracts is increasing

To conclude, the writer bases on 3 following criteria:

- The first criterion is the increasing scale of commercial services in Vietnam.
- The second criterion is the increasing quantity of enterprises providing services.
- The third criterion is the increase in disputes of commercial service contracts.

2.1.2. International commercial service contracts increase both in quantity and value

A report of the Ministry of Industry and Trading showed the continuous increase in the import and export value of Vietnam services. Although there is no specific statistic number of international commercial service contracts as well as those values, the continuous increase in the result of the import and export situation from 2005 to 2013 can lead to the conclusion of the increase in the quantity and value of the contracts.

2.1.3. A large number of complicated commercial service contracts were signed and performed

2.1.3.1. Environment and tourism contracts

2.1.3.2. Culture and entertainment contracts

2.1.3.3. Transportation service contracts

2.1.3.4. Commercial service contracts of construction field

2.1.3.5. Commercial service contracts of insurance field

2.1.3.5. Commercial service contracts of banking field

2.2. The situation of resolving disputes on commercial service contracts in Vietnam

2.2.1. The situation of resolving disputes on commercial service contracts by negotiation and conciliation

2.2.1.1 The situation of regulations in Vietnam laws on dispute resolution by negotiation and conciliation

- Vietnam laws recognize negotiation and conciliation as dispute resolving methods in business and trading;
- International treaties which Vietnam involves regulates on negotiation and conciliation as dispute resolving methods.
- Conciliation procedure also is regulated in Procedure Civil Code 2005
- Laws on arbitration also regulates on negotiation and conciliation: Arbitration Law 2010 has some regulations on conciliation.
- The non - government commercial arbitration organization in Vietnam also regulated about conciliation

In contrast, laws have inadequacies. They are:

- Instructing regulations on negotiation and conciliation are incomplete.
- There are few specialized law texts on commercial services regulating on negotiation and conciliation.

2.2.1.2. The situation of dispute resolution on commercial service contracts by negotiation and conciliation

The dispute resolution by negotiation and conciliation in Vietnam recently has following advantages:

- Vietnam enterprises have used negotiation and conciliation as resolving methods of arising disputes on commercial service contracts.
- The enterprises knows how to uses conciliation regulations to perform conciliation.
- Companies providing trade negotiation and conciliation services appeared.
- Courts have concentrated on performing conciliation well in dispute resolution process, hence leading to speed up the dispute resolution process.

- The number of disputed conciliated by VIAC increases.
- The conciliation was performed in several forms.

However, there are still inadequacies. They are:

- The enterprises still make fundamental mistakes when joining in negotiation.
- Only a small number of enterprises trusts the agreement achieved in negotiation or conciliation process.
- There are still mistakes in conciliation procedures.

Those inadequacies results by some reason:

Firstly, Vietnam regulations on negotiation and conciliation are sketchy, especially negotiation and conciliation of trade disputes.

Secondly, the ability to protect the enforcement of those negotiation and conciliation results is weak.

Thirdly, there is a lack of professional conciliation organizations in Vietnam.

2.2.2. The situation of dispute resolution on commercial service contracts at courts

2.2.2.1. The situation of Vietnam regulations on dispute resolution at courts

- Vietnam has legal framework of dispute resolving procedures at courts.
- The Supreme Court continuously enacts texts detailing proceeding procedures at courts to instruct how to apply uniformly in the country.

Besides, there are still inadequacies:

- There are no regulations on the concept of commercial service contract.
- The statute of limitations is scattered in several texts.
- There is no international multilateral treaty on recognizing and enforcing the awards of foreign courts.

2.2.2.2. Resolve the disputes on commercial service contracts at courts

Recently, the resolution of disputes on commercial service contracts at courts has following advantages:

- The structure of economic courts in the People's courts is improving in order to meet the need of dispute resolution in general and especially disputes on commercial service contracts.

- The number of disputes on commercial service contracts was handled and resolved by economic courts is increasing at all levels.

- The number of disputes resolved by appellate courts or cassation is few, which shows the satisfaction of parties with the dispute resolution results of trial courts and they do not appeal.

- The number of disputes on commercial service contracts of constructions and banking – finance field resolved by appellate courts is highest.

Besides, the resolution of disputes on commercial service contracts at courts has inadequacies:

- The number of disputes on commercial service contracts unresolved at courts is high.

- There is still violation of courts in award leading to the number of cassation increases.

- There are still wrong awards, affecting the judging quality of courts.

- Defining as proceedings is sometimes wrong.

- There are still cases which other courts' awards are not uniform.

- Courts do not evaluate the exact nature of the case from the beginning whether it is civil or commercial, especially specialized commercial service contracts.

Those inadequacies results from many results which are:

- The judgment of disputes on commercial service contracts at trial economic courts has not been specialized.

- The competence to resolve disputes of courts has not been distributed suitably.

- Some judges and jurors lack in capacities, levels and professions.

- There is still lack of cooperation among disputed parties and courts in dispute resolving process.

2.2.3. Resolving disputes on commercial services contracts by commercial arbitration

2.2.3.1. The situation of regulation of Vietnam laws on dispute resolution by commercial arbitration

Some advantages:

- Legal framework for commercial arbitration has been completed gradually.

- Law on enforcement of civil judgments 2008 is the basis for enterprises to put their faith in commercial arbitration

- Commercial arbitration centers have built their own regulations of procedure to guide claimants about arbitration proceedings.

- VN has joined the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) in order that verdicts of VN Commercial Arbitration can be enforced favorably in foreign countries.

2.2.3.2. The situation of commercial contract dispute resolution by commercial arbitration in Vietnam

The resolution of commercial contract dispute through commercial arbitration has gained some results:

The dispute resolution on commercial contract disputes by commercial arbitration centres generally take place quite smoothly. Each year there is an increase in the number of cases processed and resolved as well as quality. In 2012, The Ministry of Justice licensed to establish 2 arbitration centers that are particular expertise in financial analysis. This makes the demand for resolving of commercial contract dispute through commercial arbitration specialized in financial sector increased.

The resolution of commercial contract dispute through commercial arbitration has encountered difficulties and inadequacies:

- There are few Vietnam enterprises choosing arbitration to resolve disputes on commercial service contracts in the country.

- Some arbitration agreements stipulated by parties in services trade contract were declared invalid by court.

- Many verdicts of commercial arbitration were declared invalid by court because of violation of arbitral proceedings.

- The losing party does not voluntarily execute the verdict of commercial arbitration that makes effect of the arbitration award reduced.

The cause of the difficulties and inadequacies because:

- Arbitration costs are higher than the costs of court

- The lack of close coordination, regular and promptly between courts and arbitration in enforcing arbitral awards
- The propagation of commercial arbitration in Vietnam is limited

2.3. Assessing the situation of signing, implementing commercial service contract and resolving dispute on commercial service contract in Vietnam

2.3.1. Advantages and results:

2.3.1.1. Vietnam enterprises have to be more cautious when entering the commercial service contract

2.3.1.2. Commercial services contract is mostly signed in written form that contribute to providing legal basis as evidence for the dispute to be resolved in court, commercial arbitration

2.3.1.3. Vietnam enterprises have built commercial service contract form to save time for negotiation and had plans for training human resources for the implementation of commercial service contract.

2.3.1.4. The providing commercial services enterprises have identified issues that need special attention to when disputes appearance

2.3.1.5. A few commercial service companies concentrate into risk management

2.3.2. The difficulties, inadequacies and causes:

2.3.2.1. The provisions of law on commercial service contract is still inadequate, cause difficulties for businesses to signing, implementing commercial service contract, is the cause of dispute.

2.3.2.2. Many Vietnamese enterprises are not well prepared when negotiating for signing the commercial service contract.

2.3.2.3. Vietnam enterprises have not yet seen the specific characteristics of the contractual disputes about trade in services

2.3.3. Analyzing a number of disputes case about commercial service contract

2.3.3.1. Disputes on architectural design service contract case

2.3.3.2. Disputes on consultant service contract case

2.3.3.3. Disputes on credit service contract case

Chapter 3. SOLUTIONS AND RECOMMENDATIONS FOR VIETNAMESE ENTERPRISES TO SUCCESSFULLY RESOLVE COMMERCIAL SERVICE CONTRACT DISPUTES

3.1. Forecasting the increase in disputes over commercial service contract in Vietnam in the coming time

3.1.1. Basis of forecast

3.1.1.1. The more comprehensive integration of Vietnam into the world economy creates opportunities for Vietnam enterprises to sign commercial service contracts but also increases disputes on commercial service contracts.

3.1.1.2 The foreign companies are interested in the Vietnam trade in service market so many commercial service contracts signed while many Vietnam enterprises are weak in experiences and skills to perform the contract, leading to the dispute will increase

3.1.1.3. The lack of professionalism in signing and implementation commercial service contracts of Vietnam businesses also increases dispute during contract implementation

3.1.1.4. Crisis situation of the world economy and Vietnam's economy under the impact of the world economic crisis from 2008 also contributes to increasing disputes on commercial service contracts.

3.1.2. Forecast data

In recent years, Vietnam trade in services has achieved impressive results when exports and imports of services increased steadily from 2005 to 2013.

For the Gross domestic product, trade in service retains an important position to account for 40% of GDP. According to the target VN-economic development forecast to 2015, this rate will increase from 43-45% GDP and the development of trade in service forecast to 2020 has shown future development of VN Service Trading.

One of the basis for forecasting that the number of Vietnam commercial service contracts will increase in the future when VN planned goals in each of its specific areas trade in service are growing.

3.2. Solutions for enterprises

3.2.1. Solutions related to commercial contracting services signing

3.2.1.1. Enterprises should proactively research to improve knowledge and understanding of commercial service contract law.

3.2.1.2. Enterprises need to establish specialized department of research on each specific types of services provided by their business.

3.2.1.3. Enhance skill at services trade contracting.

3.2.1.4. Form of a written contract includes amendment and modification writing

3.2.1.5. Build the form of commercial service contract

3.3.2. Solutions related to commercial services contract performance

3.3.2.1. Enterprises should strengthen the management of commercial service contracts signed, performed.

3.3.2.2. Improve the professional knowledge and skills of staffs that provide and use services

3.3.2.3. Improve staff awareness of the relationship between the benefits of business and implementing commercial service contract signed.

3.2.3. Solutions related to dispute resolution on commercial service contract

3.2.3.1. Careful research into the dispute resolution methods to select an appropriate method for their business sector

3.2.3.2. Always have appropriate solutions to resolve disputes arising from commercial service contracts signed, performed

3.2.4. Other solutions

3.2.4.1. Improving awareness and responsibility in business activities in general and in the implementation of commercial service contract in particular.

3.2.4.2. Actively update information and participate in the legal aid program, business support of government, non-governmental organizations

3.3. Some recommendations

3.3.1. For the State

3.3.1.1 Complete the provisions of the law on commercial service contracts and dispute resolution on commercial service contracts

3.3.1.2. Strengthen dissemination and propagation of law on commerce, commercial service contract to enterprises

3.3.1.3. Set out specific tasks for the management agencies of commercial service contract.

3.3.1.4. Establish a network of commerce mediation center

3.3.1.5. Ministry of Justice continues to review and rearrange the commercial arbitration centers operating inefficiently

3.3.1.6. Enhance the role of lawyers and experts in directing enterprises on appropriate methods to resolve dispute

3.3.2. For the Economic Court

- Court need to innovate organizational structure oriented judicial reform
- Shorten the trial procedures
- Strengthen support for commercial arbitration
- Publish the verdict, the decision of the Court on the Court's website page for enterprises to refer to gain experiences when signing, performing services trade contract.

3.3.3. For the Commercial arbitration center

On the application of the Law on Commercial Arbitration 2010, arbitration centers must closely guide arbitrators to apply the Law on Commercial Arbitration 2010.

Changing the rules of commercial arbitration Center in accordance with the Law on Commercial arbitration 2010 is a method to help the Law on commercial arbitration 2010 more close to the people.

Further improve arbitrators in both quantity and quality

CONCLUSION

The number of commercial service contracts is increasing which has brought many successes for enterprises as well as Vietnam trade in services. However, besides the successes, many enterprises are entangled in disputes on commercial service contracts

which can lead to the bankruptcy of business because of the contract at great value. The intangible characteristic of service has made commercial service contracts become more complex, difficult to concretize the intangible. The research on this type of contract is essential to enterprises. Determining the problems that may occur the dispute so that proposing solutions that minimize disputes related to this contract is significant. Through researching the topic, the Phd candidate realizes:

1. Commercial service contract is complex because the object of this type of contract is intangible. So enterprises that participate contracting cannot predict all risks, disputes brought by this type of contract. Besides, because commercial service contracts is adjusted by more legal documents than sale of good contract and there are many inadequacies in Vietnam legislation so the signing, contract performance and dispute resolution on commercial service contracts are more complex.
2. The survey results of over 600 enterprises and more than 30 typical disputes of commercial service contracts show that enterprises participating contracting and contract performance lack of legal knowledge, customer information and lead to such basic mistakes: do not check the status of the service provider, do not check the competence of the signatory, do not research into the legal requirements for providing services,...
3. Vietnam has joined WTO is an opportunity to develop trade in service sector and increase in number and value of commercial service contracts signed. However, Statistics from dispute resolution agencies and service providers show that commercial service contracts disputes will also increase in number and value.
4. To minimize commercial service contracts disputes and resolve commercial service contracts disputes requires combined solutions from the macro policies of the State, improving dispute resolution process at dispute resolution agencies as court, commercial arbitration and in specially from the enterprises. Enterprises should build a contracting, contract performance process that includes the cooperation of service experts, legal experts; supervision, coordination with their customers to ensure that services are provided right with the requirements set out; researching appropriate methods to resolve disputes to reduce the risks, damage they suffered, and enhance the prestige of the businesses.

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