

JURISDICTION OF COMMERCIAL ARBITRATION IN DISPUTES OVER NON- DISCLOSURE AGREEMENTS

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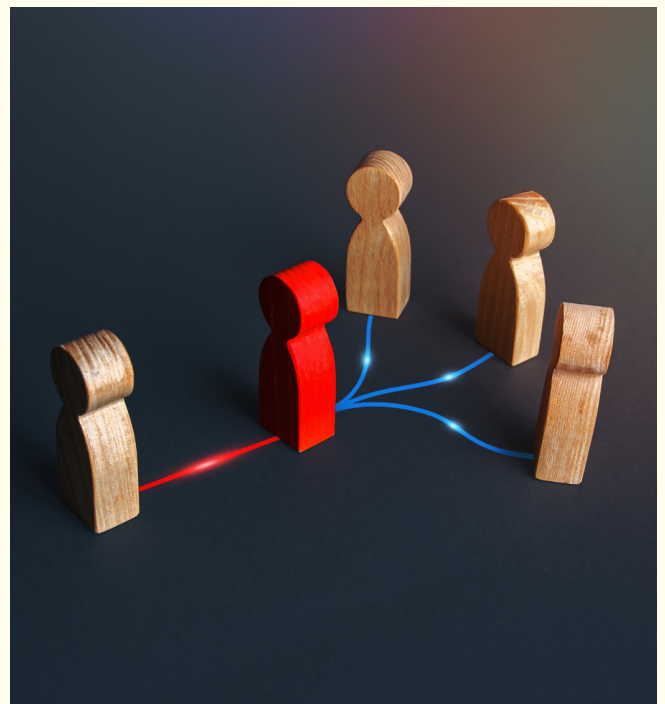
On October 1, 2023, the Supreme People's Court announced 7 new precedents according to Decision No. 364/QĐ-CA of the Chief Justice of the Supreme People's Court. These precedents will be applied in trials starting from November 1, 2023. Among them, Precedent No. 69/2023/AL (**Precedent 69**) regarding the jurisdiction of commercial arbitration in disputes over non-disclosure agreements (**NDA**) is a noteworthy one.

Precedent 69 is formulated based on Decision No. 755/2018/QĐ-PQTT of the People's Court of Ho Chi Minh City dated June 12, 2018, regarding the civil case titled "Request for annulment of arbitral award" with Ms. Do Thi Mai T as the requester and the entity with related interests, obligations being R Company Limited (**Company R**). According to the dispute contents, Company R filed a lawsuit against Ms. T at the Vietnam International Arbitration Center (**VIAC**), seeking compensation because Ms. T violated the provisions of the NDA by working for another company in the same field immediately after unilaterally terminating the labor contract with Company R. Company R's request was accepted by the Arbitration Council; however, Ms. T disagreed with the arbitral award and filed a lawsuit at the People's Court of Ho Chi Minh City requesting a review and annulment of the entire content of the arbitral award. One of her grounds was that *the dispute was beyond the jurisdiction of the Arbitration Council*.

The Application Review Council under the People's Court of Ho Chi Minh City rejects the arguments and requests of Ms. T and provides specific legal grounds and determinations for the rejection. According to clause 2, Article 2, Law on Commercial Arbitration 2010, "*Arbitration's jurisdiction to settle disputes: Disputes among parties at least one of whom conducts commercial activities*". Company R is a trader, registered for business, and engaged in commercial activities under Commercial Law 2005. Therefore, the Application Review Council determines that the

arbitration agreement is subject to the jurisdiction of VIAC and complies with relevant legal provisions. Additionally, the Application Review Council also refers to clause 4 Article 35 Law on Commercial Arbitration 2010, which specifies that "*When the defendant assumes that the dispute falls beyond the jurisdiction of arbitration, or there is no arbitration agreement, or the arbitration agreement is invalid or unrealizable, the defendant should indicate the same in the self-defense statement*". However, in the Self-Defense Statement as well as throughout the arbitration proceedings, Ms. T did not raise any objections to the jurisdiction of the arbitrators but continued her involvement in the arbitration proceedings and engaged in dispute resolution sessions. Therefore, Ms. T waived the right to object to the jurisdiction of the Arbitration Council under Article 13 Law on Commercial Arbitration 2010 and its guidelines in Article 6 Resolution 01/2014/NQ-HĐTP.

Furthermore, the Application Review Council also rejects Ms. T's assertion that the dispute between the parties is a labor dispute subject to the Court's jurisdiction, as the NDA is an integral part of the labor contract between Ms. T and Company R. Specifically, in paragraph 11 of the Legal Argument dated January 18, 2018 by the lawyer defending Ms. T's legal rights and interests at VIAC, and at the final meeting, Ms. T's lawyer reaffirmed that the NDA was completely independent of the labor contracts between Company R and Ms. T. Therefore, the Application Review Council determines that the NDA is an independent agreement, and in the event of a dispute, it falls under the jurisdiction of arbitration as selected by the parties at the time of signing.



Comments and recommendations

The Labor Code 2012 and the Labor Code 2019 do not confer the jurisdiction to arbitrators to resolve individual “labor disputes”. This competence is exclusively vested in labor conciliators, labor arbitration councils, and the People’s Court. Therefore, before the issuance of Precedent 69, there were various opinions and interpretations regarding the jurisdiction for NDA dispute resolution. Some believe that NDA disputes are a type of conflict arising from relationships directly related to labor relations, and since labor laws only prescribe three methods of dispute resolution, the parties cannot choose other dispute resolution methods including commercial arbitration. In contrast, proponents of the view that NDA disputes fall under the jurisdiction of arbitrators contend that employers are entities engaged in commercial activities and following clause 2 Article 2 Law on Commercial Arbitration 2010, arbitrators have jurisdiction to resolve disputes if at least one party is engaged in commercial activities. Consequently, Precedent 69 has established a consistent guidance and application to the jurisdiction in dispute resolution, determining that NDAs are independent of labor contracts, which means that NDA disputes are not limited by the three methods of dispute resolution as prescribed in labor laws.

Enterprises should study and stay updated on the Court’s opinions in precedents issued under Decision No. 364/QĐ-CA to ensure the protection of their legal rights and interests and minimize the occurrence of unnecessary legal risks.