

At a glance...

On 8 June 2020, Vietnam's National Assembly passed resolutions on the ratification of the EVFTA and the EVIPA.

Please refer to [link 1](#) and [link 2](#) for our previous NewsBriefs on the EVFTA.

While the EVFTA addresses matters relating to cross-border investments between Vietnam and the 28 state members of the European Union (the "Party"/"Parties"), the EVIPA establishes procedures for dispute resolution if the commitments under the EVFTA are not met.

In detail...

The EVIPA and its Investment Tribunal System

The EVIPA aims to focus on protecting investors of a Party (“Investor”) and their investments in the territory of the other Party (as the host country of the investments). Besides commitments on fundamental principles such as fair and equitable treatment applicable to Investors and the covered investment, the EVIPA provides dispute settlement procedures and for the first time introduces its Investment Tribunal System. Key points include:

- Dispute settlement procedures are split into two categories: (A) those for settling disputes between Parties and (B) those for settling disputes between Investors and the host countries.
- Disputes between two Parties can be resolved through consultation, mediation and/or arbitration as usual.
- For disputes between an Investor and a host country, in case they cannot be settled via amicable resolution, consultations and/or mediation, they can be resolved by an independent dispute resolution authority, referred to as the “Tribunal”. The Tribunal will be established under the EVIPA to hear claims submitted by an Investor against a host country in accordance with procedures under the EVIPA.
- Hearings will be handled by a three-member team from the Tribunal, with one member each from the EU, Vietnam and a third country. A claimant can appeal the decision of the Tribunal to a permanent Appeal Tribunal within 90 days. Otherwise, the decision of the Tribunal will be deemed as final.
- The Tribunal itself comprises nine members, being appointed for a four-year term (renewable once), of which the EU and Vietnam will each appoint three members and the remaining three members will be appointed by a third country. The Appeal Tribunal consists of six members, two each from the EU, Vietnam and a third country.

Resolution 103/2020/QH14

The National Assembly issued Resolution 103 dated 8 June 2020 to ratify the EVIPA, which states that Vietnam will directly apply all the regulations of the EVIPA, except paragraphs 2, 3, 4 and 5 of Article 3.57 under Chapter 3 of the agreement.

Although the EVIPA is part of the EVFTA, the ratification procedures of these two agreements are different. The EVFTA will come into effect from 1 August 2020 because all its ratification procedures have been completed. The EVIPA, however, still needs to be ratified by the Parliaments of all 28 EU members to come into effect.

Resolution 113/2020/QH14

The National Assembly has also issued Resolution 113 dated 18 June on recognition and enforcement of final awards of the EVIPA’s dispute resolution system in Vietnam. Resolution 113 states that:

- With respect to disputes between an Investor and a Party, only final awards on financial obligations will be recognised and enforceable in Vietnam.
- For the first five years from effectiveness of the EVIPA, if Vietnam is the defendant in an investment dispute, the Vietnamese courts retains authority to either recognise or not final awards for execution in Vietnam. After five years, Vietnam will recognise the final award as a legally effective judgment of a Vietnamese court.
- When the EVIPA comes into effect, if an EU or EU state member(s) is the defendant, the final award will be recognised by Vietnam and enforced as a legally effective judgment of a Vietnamese court.
- The Supreme People’s Court is to provide further guidelines in this regard.

Contact us

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