

Divergence Between Vietnamese Law and International Best Practices in Limiting the Transfer of Commercial Cases

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ABSTRACT: The transfer of commercial cases is essential to ensuring fairness and efficiency in Vietnam's judiciary. Under the Civil Procedure Code 2015, transfers may occur due to a lack of jurisdiction, concerns about impartiality, party agreement, higher court directives, or practical circumstances. However, implementation reveals shortcomings: errors in jurisdiction, no clear mechanism to resolve conflicts between courts, and procedural abuse for delay. These issues weaken dispute resolution and judicial credibility. The article analyses legal grounds, regulatory gaps, and comparative experience, and proposes reforms to clarify jurisdiction, prevent abuse, and establish transparent procedures that strengthen consistency and trust in adjudication.

KEYWORDS: Case transfer, Commercial litigation, Civil Procedure Code, Jurisdiction, Legal certainty.

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Introduction

As Vietnam deepens its integration into global trade and investment networks, the need for a transparent, predictable, and efficient judicial system has become increasingly pressing. Within this context, the mechanism for transferring commercial cases between courts serves as an essential procedural safeguard, ensuring that complex disputes involving cross-border elements and significant financial interests are heard by the competent forum. However, despite its importance, the regulatory framework under the Civil Procedure Code 2015 remains inadequate, characterised by vague statutory provisions, inconsistent judicial application, and limited institutional oversight.

These shortcomings not only compromise litigants' rights but also hinder Vietnam's broader efforts to modernise its legal system and enhance the business environment. Existing scholarly research has documented several of these challenges, though often only within the context of broader discussions of civil procedure. Specifically, (Giang H. T., 2025), (Ho, 2023) and (Doan, 2023) highlight that ambiguities in jurisdictional rules frequently result in repeated and unnecessary case transfers, thereby straining judicial resources. The fact that it has been made, coupled with insufficient accountability mechanisms, can facilitate forum shopping and lead to inconsistencies in judicial decisions.

Drawing on comparative insights from jurisdictions such as the United States, the United Kingdom, and selected European civil law systems where clearer criteria, proactive case management, and judicial accountability enhance procedural efficiency (Grossi, 2010), (Verkerk, 2010). This article fills that gap by providing a comprehensive doctrinal, empirical, and comparative analysis. It clarifies the legal nature of the transfer mechanism, identifies structural weaknesses in Vietnam's current framework, and proposes concrete legislative and institutional reforms to strengthen consistency, fairness, and efficiency in first-instance commercial proceedings.

Research Aim

This study aims to provide a comprehensive analysis of the transfer of commercial cases in Vietnam by integrating legal positivism, legal realism, and comparative functionalism. It seeks to evaluate the current legal framework, examine its practical shortcomings, and draw on international models to propose reforms that enhance transparency, accountability, and efficiency in commercial litigation.

Research Questions

1. What deficiencies exist in Vietnam's legal framework on the transfer of commercial cases, particularly regarding jurisdictional clarity and procedural efficiency under the 2015 Civil Procedure Code?
2. How do Vietnam's mechanisms for resolving jurisdictional conflicts and ensuring judicial accountability in case transfers compare with international models, and what lessons can be drawn for reform?
3. What legislative and institutional reforms are needed to improve transparency, judicial accountability, and the overall effectiveness of commercial case transfer mechanisms in Vietnam?

Results and Discussion

The "transfer of commercial cases" refers to the procedural mechanism by which a court, after receiving a case, may reassign it to another court with proper jurisdiction or greater competence. This mechanism is essential to ensure procedural legality, judicial economy, and litigants' right to an impartial tribunal. Although Articles 39-41 of the Civil Procedure Code 2015 regulate jurisdiction and case transfer, they lack a clear theoretical foundation and uniform criteria for application (National Assembly, 2015). To address this gap, this study adopts

international legal theory and comparative jurisprudence to propose a normative framework grounded in jurisdiction theory, forum selection, and judicial efficiency. In both common law and civil law systems, transfer mechanisms safeguard against improper forums, judicial congestion, and forum shopping. Yet, despite the Code's provisions, Vietnam still faces shortcomings in practice, undermining efficiency, judicial credibility, and legal certainty in commercial dispute resolution.

Firstly, Frequent Errors in Jurisdictional Determination

Errors in determining jurisdiction constitute one of the most serious procedural defects in commercial litigation, as they directly affect the validity of proceedings and the protection of the parties' lawful rights and interests. Such errors may stem from misidentifying the subject matter of the dispute. For example, in disputes concerning deposit contracts related to land use rights, pursuant to Point c, Clause 1, Article 39 of the Civil Procedure Code 2015 (National Assembly, 2015), the case must be heard by the court where the disputed real estate is located, as land is a territorial asset, and jurisdiction over land-related disputes is typically based on the location of the property.

Jurisdictional mistakes may also arise when counterclaims or independent claims alter the level of adjudicatory competence. Under Clause 3, Article 35 of the 2015 Civil Procedure Code (National Assembly, 2015), if a defendant in a district-level commercial case raises a counterclaim involving foreign elements, jurisdiction shifts to the provincial-level People's Court. Similarly, misidentifying the procedural status or legal standing of litigants may fundamentally affect the court's competence. When a court lacking jurisdiction accepts and adjudicates a case, appellate annulment often follows, leading to significant delays, increased litigation costs, and unnecessary expenditure of judicial resources (Nguyen Le Hoai and Phung Hong Thanh, 2021).

A notable illustration is the electricity sale contract dispute between Thanh Danh Trading and Manufacturing Co., Ltd., Van Phat Green Energy Co., Ltd., Central Power Corporation (EVNCPC), and Gia Lai Power Company. The People's Court of Pleiku City wrongly assumed jurisdiction, resulting in the appellate court annulling the first-instance judgment. The trial court both misidentified the proper defendant, treating an authorized entity as bearing independent liability and misapplied territorial jurisdiction rules under Article 40 of the 2015 Code, as the competent courts should have been those where the principal defendant was headquartered or where the contract was performed (Dispute over Electricity Sale Contract, 2023).

Comparatively, other jurisdictions adopt mechanisms to prevent such inefficiencies at an early stage. The doctrine of *forum non conveniens* in the United States allows courts to decline jurisdiction when a more appropriate forum exists, thereby minimising unnecessary transfers. Likewise, in the United Kingdom, active judicial case management enables higher courts to designate the proper forum early in the proceedings, reducing jurisdictional uncertainty and promoting procedural economy. These approaches highlight the importance of early and accurate jurisdictional screening in safeguarding both efficiency and fairness in commercial adjudication (Born, 2021).

Secondly, Lack of Effective Mechanisms for Resolving Jurisdictional Conflicts

While Article 38 of the Civil Procedure Code (National Assembly, 2015) vests the authority to resolve jurisdictional conflicts between lower-level courts in the Chief Justice of the immediately superior court, the practical application of this provision has revealed significant procedural inadequacies and inconsistencies. In many instances, courts of equal rank render contradictory determinations regarding jurisdiction, thereby facilitating forum shopping and contributing to delays caused by repetitive case transfers (Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460, 1987).

A representative example can be found in a case handled by the Gia Lai Provincial People's Court. Initially, the superior court directed the case to be transferred to the People's Court of Pleiku City. However, it was

subsequently concluded that the latter also lacked jurisdiction, necessitating a second transfer. This series of jurisdictional missteps significantly prolonged the adjudicative process and disrupted the continuity of legal proceedings (Dispute over Electricity Sale Contract, 2023).

From a comparative perspective, many foreign jurisdictions have developed effective mechanisms to resolve jurisdictional conflicts at an early stage. In the United States, federal rules permit the transfer of cases between district courts under 28 U.S.C. § 1404(a), thereby promoting efficiency and reducing the risk of contradictory rulings (William H. Becker & W. B. Morton Jr., Wright & Miller, 1970). In the European Union, the Brussels I Recast Regulation (Regulation No. 1215/2012) establishes clear *lis pendens* rules by prioritising the court first seised, which effectively minimises conflicts of jurisdiction among Member States (Ojiegbe, 2016). Similarly, in civil law systems such as Germany and Poland, hierarchical control and mandatory judicial coordination play a crucial role in preventing forum duplication and inconsistent judgments (Kramer, Xandra E. and Kramer, Xandra E., 2017). Taken together, these comparative experiences highlight the necessity of standardised coordination mechanisms and judicial oversight structures. Absent such instruments, Vietnam may continue to face procedural inefficiencies, diminished legal predictability, and erosion of public trust in the justice system.

Thirdly, Lack of Accountability and Oversight in Case Transfers

The current Vietnamese legal framework lacks clear provisions to ensure the accountability of judges or judicial bodies when erroneous or repetitive case transfers occur. In practice, the absence of statutory sanctions or disciplinary mechanisms has created a culture of procedural impunity, where mistakes in jurisdictional determinations are rarely addressed (Penelope (Pip) Nicholson & Nguyen H. Quang, 2005). This gap not only diminishes judicial efficiency but also erodes litigants' confidence in the impartiality and professionalism of the courts (Giang, 2025). Empirical assessments of Vietnamese civil procedure reveal that procedural errors, including those related to jurisdiction, evidence, and application of law, are a primary cause of cases being remanded or overturned on appeal, leading to significant delays such weaknesses disproportionately burden small and medium-sized enterprises (SMEs) and resource-constrained litigants, who lack the capacity to endure protracted litigation ((OECD), 2018). The problem reflects a broader challenge of judicial discretion and capacity in Vietnam, where the lack of a robust, transparent mechanism for reviewing procedural fairness can lead to inconsistencies and undermine the rule of law.

Comparative experiences underscore the central role of judicial accountability in ensuring effective civil procedure. In the United States, appellate review and the possibility of sanctions under Federal Rule of Civil Procedure 11 help deter procedural abuses. In the European Union, the European Commission emphasises that judicial performance evaluation and accountability frameworks are essential to upholding rule-of-law standards. Commonwealth systems such as the UK and Canada adopt Judicial Councils and Ombudsman models to provide independent oversight of judicial conduct and complaints. Without adopting comparable mechanisms, Vietnam risks perpetuating procedural inefficiencies and undermining its ambition to build a transparent and predictable business environment.

Fourthly, the legal systems of many jurisdictions have established mechanisms to restrict unnecessary case transfers in order to ensure adjudicative efficiency.

The legal systems of many jurisdictions have established mechanisms to restrict unnecessary case transfers to ensure adjudicative efficiency, a principle that aligns with the broader goal of minimising enforcement costs and procedural delays. These mechanisms function as procedural presumptions or rules that promote predictability and conserve judicial resources, which are essential for maintaining the legitimacy of the legal system (Dent, 2020).

Vietnam's legal framework governing the transfer of cases remains relatively detached from these comparative international doctrines. Notably, in common-law jurisdictions such as the United States, the doctrine of *forum non conveniens* empowers courts to decline jurisdiction when another forum is deemed more appropriate, thereby preventing unnecessary litigation and promoting judicial economy (*Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432, 2007). Similarly, the Civil Procedure Rules of the United Kingdom grant courts broad case management powers, enabling judges to proactively resolve jurisdictional uncertainties and mitigate procedural delays to ensure litigation commences in the most appropriate forum (UK, 1998). This approach is consistent with a global trend toward empowering judges with active case management roles to control the flow and timing of litigation (Oscar G. Chase and Helen Hershkoff, eds., , 2017).

The lack of analogous, well-defined doctrines or procedural instruments in Vietnamese law highlights a significant shortfall in aligning domestic procedural rules with established international best practices. This gap limits the judicial system's adaptability and represents a missed opportunity for legal modernisation. Without such mechanisms, Vietnam risks perpetuating procedural inefficiencies that undermine the principles of predictability and effective enforcement that underpin a robust competition law and commercial litigation framework. This is particularly critical for fostering a business environment conducive to investment, where predictable and efficient dispute resolution is a key determinant (World Bank, 2020).

Recommendations for Legal Reform

In light of the identified shortcomings, it is imperative to revise both the substantive and procedural aspects of Vietnam's legal framework on the transfer of commercial cases. Effective reform must aim not only to clarify jurisdictional rules but also to enhance judicial accountability, procedural transparency, and institutional coordination. Drawing on both domestic legal practice and comparative international experience, the following recommendations are proposed:

First, Clarification and Codification of Jurisdictional Rules

Legislative reform should prioritise clarifying and codifying jurisdictional boundaries under the Civil Procedure Code, particularly in disputes involving foreign elements, multiple parties, or overlapping claims, where the current framework remains vague and inconsistently applied (World Bank and Ministry of Justice of Vietnam, 2021). Vietnam should consider adopting a modified doctrine of *forum non conveniens*, empowering courts to decline jurisdiction when a more appropriate forum exists, thereby reducing forum shopping and enhancing procedural efficiency (Ronald A. Brand and Scott R. Jablonski, 2007). To further reduce judicial discretion and improve predictability, detailed procedural criteria should be introduced for concurrent or ambiguous jurisdiction (Dent, 2020). Clear rules would deter strategic manipulation, safeguard fairness, and reinforce judicial integrity, thereby upholding the rule of law.

Strengthening Judicial Accountability and Oversight

Effective reform must also incorporate robust accountability mechanisms to address improper or repetitive case transfers. Judges or judicial bodies issuing unlawful or unreasonable transfer decisions—particularly those causing undue delay—should be subject to oversight by competent authorities, such as the Judicial Council or the Supreme People's Court Inspectorate, in line with international standards on judicial quality and transparency. Depending on the gravity of the violation, disciplinary measures may include warnings, administrative sanctions, temporary suspension, or, in cases of gross negligence or abuse of discretion, civil liability for damages (Tanzilulloh, M. Ilham, Hartiwiningsih Hartiwiningsih, and Muhammad Rustamaji, 2024), (Dent, 2020). Institutionalising such oversight would deter procedural misconduct, ensure corrective accountability, and strengthen public confidence in the principle that judicial power must be exercised lawfully and responsibly (World Justice Project, 2023).

Second, Enhancing Transparency and Procedural Safeguards

To protect procedural integrity and due process, every decision to transfer a commercial case should be issued as a written, reasoned judicial order, disclosed to all parties, and subject to appellate or supervisory review. This requirement enhances transparency, ensures fairness, and provides a safeguard against arbitrary or unjustified transfers, consistent with the fair trial standards of international human rights law.

In addition, the Supreme People's Court should be vested with the authority to promulgate detailed procedural guidelines akin to practice directions in common law jurisdictions governing the initiation and handling of case transfers. These guidelines should articulate clear timelines, documentary requirements, evidentiary thresholds, and procedural steps to be followed by lower courts. The use of such detailed procedural instruments is a recognised best practice for managing complex litigation and ensuring uniform application of procedural rules (American Law Institute, 2006).

The codification of such procedural standards would contribute significantly to the unification of judicial practice across courts of different levels and geographic regions. It would also serve to minimise inconsistencies in the application of transfer procedures, thereby enhancing legal certainty, predictability, and public confidence in the administration of justice (World Justice Project, 2023). As emphasised by international bodies, clear and public procedural rules are essential for reducing opportunities for discriminatory or arbitrary application of the law and are a cornerstone of a rules-based business environment (World Bank Group, 2017).

Third, Adoption of Technological Tools for Monitoring Case Transfers

To modernize judicial administration and improve oversight of procedural activities, Vietnam should prioritize the development and implementation of a centralized digital case management platform capable of facilitating real-time monitoring of transferred cases across all levels of the court system, such a system would significantly enhance procedural transparency for litigants and their legal representatives, reduce administrative errors, and strengthen supervisory capacity for judicial authorities (Nhung, 2021).

The digital platform should be equipped with the following key features:

Automated notifications to relevant parties and court personnel upon the issuance or modification of transfer decisions, ensuring immediate compliance with due process requirements;

Electronic documentation of jurisdictional determinations, including judicial reasoning and statutory basis, creating an auditable trail for accountability and review;

Data analytics dashboards for tracking systemic delays, identifying irregular transfer patterns, and supporting evidence-based judicial reform, transforming raw data into actionable intelligence for court administrators and policymakers.

The integration of technological tools into the case transfer process would not only foster greater transparency and procedural predictability but also contribute to judicial efficiency, institutional accountability, and the reinforcement of public confidence in the justice system. Such reforms align with international trends in e-justice and reflect a commitment to building a modern, responsive, and credible judiciary.

Fourth, Comparative Legal Study and Harmonisation

As part of a broader strategy for procedural reform, Vietnam should undertake a comprehensive and systematic comparative legal study of international best practices in the determination of jurisdiction and the regulation of case transfers. Particular emphasis should be placed on civil law jurisdictions with analogous procedural traditions such as France and Germany as well as on common law systems such as the United Kingdom and the United States, which have pioneered a range of procedural innovations (Chase, Oscar G. and Hershkoff,

Helen and Silberman, Linda and Sorabji, John and Stürner, Rolf and Taniguchi, Yasuhei and Varano, Vincenzo, 2017).

The selective adaptation of foreign legal doctrines, including but not limited to the doctrine of *forum non conveniens*, structured judicial case management, and pre-trial adjudication of jurisdictional objections, could enrich Vietnam's procedural framework and enhance judicial efficiency, consistency, and fairness. The success of such legal transplants, however, depends critically on their careful modification to fit the local institutional and cultural context.

Legislative and institutional reforms should be grounded not only in comparative legal analysis but also in empirical data concerning the prevalence, causes, and legal consequences of case transfers within the Vietnamese court system. Such a dual approach would ensure that reforms are both contextually appropriate and evidence-based, thereby facilitating the harmonisation of Vietnam's civil procedure laws with internationally recognised standards of judicial administration and strengthening its integration into the global legal order.

Conclusion

Although designed as a procedural safeguard to ensure fairness and efficiency, the transfer of commercial cases in Vietnam continues to reveal notable theoretical and practical shortcomings. Despite the framework established by the Civil Procedure Code 2015, vague provisions and inconsistent judicial application have led to jurisdictional errors, procedural delays, and weakened public confidence, while repeated or improper transfers undermine litigants' right to timely adjudication. Comparative experiences from the United States, the United Kingdom, and European civil law systems demonstrate that clear jurisdictional rules, proactive case management, judicial accountability, and digital oversight mechanisms are essential to preventing inefficiencies and forum shopping. By analysing case transfer as an independent subject through doctrinal, empirical, and comparative approaches, this study identifies structural limitations in Vietnam's current system and proposes reforms aligned with international best practices, emphasising clearer jurisdictional boundaries, stronger accountability, and technological integration to enhance procedural predictability, efficiency, and credibility in the context of deepening global integration.

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