

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỘI THẢO QUỐC TẾ VỀ ARB TRONG NGÀNH XÂY DỰNG VIỆT NAM 2023

DZUNGSRT & ASSOCIATES

ADR FOR PREVENTION, MANAGEMENT AND SETTLEMENT OF DISPUTES ON CONSTRUCTION INDUSTRY IN VIETNAM

NGUYEN MANH DZUNG, MCIArb
 Member of ICC Task Force on ADR & Arbitration
 Senior Partner, DZUNGSRT & ASSOCIATES LLC

English Vietnamese interpreting is available throughout the program
 Tài có bản trình bày đều có dịch caption song ngữ tiếng Việt

1

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỘI THẢO QUỐC TẾ VỀ ARB TRONG NGÀNH XÂY DỰNG VIỆT NAM 2023

KEY ISSUES

01 INTRODUCTION

02 PROACTIVE CONFLICT MANAGEMENT

03 ASSISTED CONFLICT MANAGEMENT

04 FACILITATING SETTLEMENT IN ARBITRATION

05 RECOMMENDATIONS

English Vietnamese interpreting is available throughout the program
 Tài có bản trình bày đều có dịch caption song ngữ tiếng Việt

2

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỘI THẢO QUỐC TẾ VỀ ARB TRONG NGÀNH XÂY DỰNG VIỆT NAM 2023

1. INTRODUCTION OF ADR IN CONSTRUCTION INDUSTRY

DISPUTE ADJUDICATION BOARD (DAB)

EXPERT

01 02 03 04

MEDIATION

COMBINED ADR: MED-ARB/ARB-MED-ARB

English Vietnamese interpreting is available throughout the program
 Tài có bản trình bày đều có dịch caption song ngữ tiếng Việt

3

HICAC 2023
 INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỒ TÙNG KHÁNH VÀO XÂY DỰNG QUỐC TẾ THÁNG 2023

2. PROACTIVE CONFLICT MANAGEMENT

1. Internal Company policies and procedures

2. Effective dispute resolution clauses

- i. effective drafting dispute resolution clause
- ii. early-stage pre-action risk assessment

3. Raising awareness and training.

English Vietnamese Interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch caption song ngữ tiếng Việt

4

HICAC 2023
 INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỒ TÙNG KHÁNH VÀO XÂY DỰNG QUỐC TẾ THÁNG 2023

3. ASSISTED CONFLICT MANAGEMENT

01 DISPUTE BOARDS

02 EXPERT PROCEEDINGS

03 MEDIATION

English Vietnamese Interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch caption song ngữ tiếng Việt

5

HICAC 2023
 INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
 HỒ TÙNG KHÁNH VÀO XÂY DỰNG QUỐC TẾ THÁNG 2023

4. ASSISTED CONFLICT MANAGEMENT

DISPUTE BOARD	EXPERT PROCEEDINGS	MEDIATION
<ul style="list-style-type: none"> ❖ encourage the parties to overcome it on their own. ❖ If this is impossible, the dispute board can: <ol style="list-style-type: none"> a. intervene with informal assistance to help the parties resolve the matter by agreement, or b. determine a dispute through a recommendation or a decision issued after a procedure of formal referral. 	<ul style="list-style-type: none"> ❖ Providing a non-binding evaluation to the parties on one or more issues in dispute ❖ Providing a binding expert determination on one or more issues in dispute ❖ Providing an expert opinion for use in arbitration or litigation 	<ul style="list-style-type: none"> ❖ Effective tool in dispute settlement ❖ Recently, be included in multi-step dispute resolution clause ❖ Assist parties to mediate or reach a mediation agreement without arbitration and court's proceedings

English Vietnamese Interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch caption song ngữ tiếng Việt

6

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION COMMISSION
 HỒI THẢO THƯỜNG NIÊN VỀ XÂY DỰNG QUỐC TẾ 2023

5. FACILITATING SETTLEMENT IN ARBITRATION

Case Management Techniques

- ❖ CMC is the ideal time for the tribunal to include steps providing for efficient management of the proceedings as well as facilitate settlement
- ❖ Bifurcation can be used based on case-by-case basis (liability and quantum issues)

Mediation

- ❖ By the parties
 - ✓ Using a multi-tier clause.
 - ✓ Should be made at the contract drafting and negotiation
- ❖ By the arbitral tribunal
 - ✓ Is there an obligation for the tribunal to raise the possibility of a mediation option
- ❖ By the arbitral institution
 - ✓ Should offer both arbitration and mediation services in which they administer a mediation concurrently with the arbitration

English-Vietnamese interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch phiên song ngữ tiếng Việt

7

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION COMMISSION
 HỒI THẢO THƯỜNG NIÊN VỀ XÂY DỰNG QUỐC TẾ 2023

6. RECOMMENDATIONS

01 CONTRACTORS/ INVESTORS	02 EXPERT	03 COUNSEL	04 ARBITRATOR
<ul style="list-style-type: none"> • Involving counsels' participation in the early stage • Apply proactive conflict management such as internal company policies, training, etc. 	<ul style="list-style-type: none"> • Involving experts at early stage could benefit parties when they decide what approach to take to the resolution of the dispute • Avoid the conflict of interest in the arbitration proceeding (be appointed to be an arbitrator) 	<p>Need to improve not only skills in arbitration proceedings but also mediation skills to provide advices at different stage of proceedings.</p>	<p>Should encourage parties to use mediation in CMC</p>

English-Vietnamese interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch phiên song ngữ tiếng Việt

8

HICAC 2023
 HONGKONG INTERNATIONAL CONSTRUCTION ARBITRATION COMMISSION
 HỒI THẢO THƯỜNG NIÊN VỀ XÂY DỰNG QUỐC TẾ 2023

7. REFERENCE

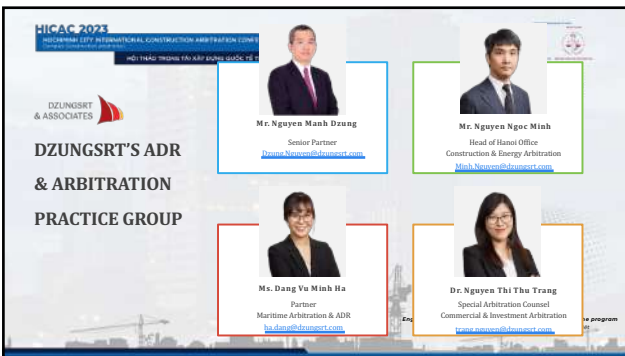
1. ICC Task Force "ADR and Arbitration" Commission Report (to be published by ICC Commission in May)
2. ICC Mediation Guidance Notes, <https://iccwbo.org/content/uploads/sites/3/2014/12/icc-mediation-guidance-notes-english.pdf>
3. Centre for Effective Dispute Resolution (CEDR), "Final Report of CEDR Commission on Settlement in International Arbitration", November 2009, p. 9 -10 accessed at <https://www.cedr.com/wp-content/uploads/2021/04/Arbitration-Commission-Documents-April-2021.pdf>
4. ICC Note to Parties and arbitral tribunals on the conduct of the arbitration under the ICC Rules of arbitration, <https://iccwbo.org/content/uploads/sites/3/2020/12/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021.pdf>
5. The IMI Arbitrator Techniques Report, <https://imimediation.org/2021/05/04/arbitrator-techniques-and-their-direct-or-potential-effect-on-settlement/>

English-Vietnamese interpreting is available throughout the program
 Tất cả bài trình bày đều có dịch phiên song ngữ tiếng Việt

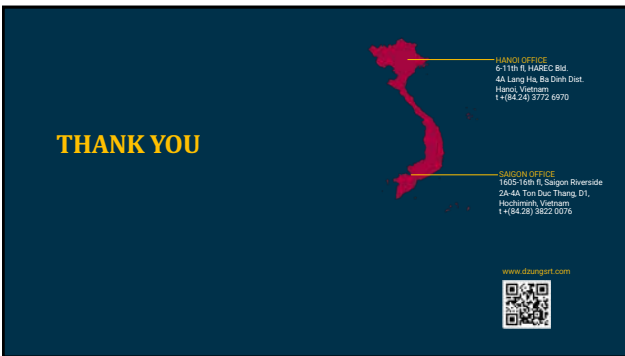
9



10



11



12
