


**ENFORCEMENT OF
ARBITRAL AWARDS
AND OTHER ASPECTS
OF INTERNATIONAL
ARBITRATION IN
VIETNAM**

Seoul, 6th December 2018

DZUNG MANH NGUYEN

- MEMBER | ICC INTERNATIONAL COURT OF ARBITRATION
- INTERNATIONAL ARBITRATOR | KCAB INTERNATIONAL
- DIRECTOR | ADR VIETNAM CHAMBERS LLC

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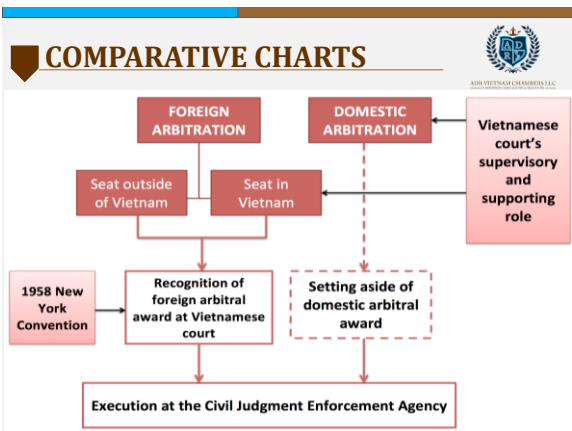
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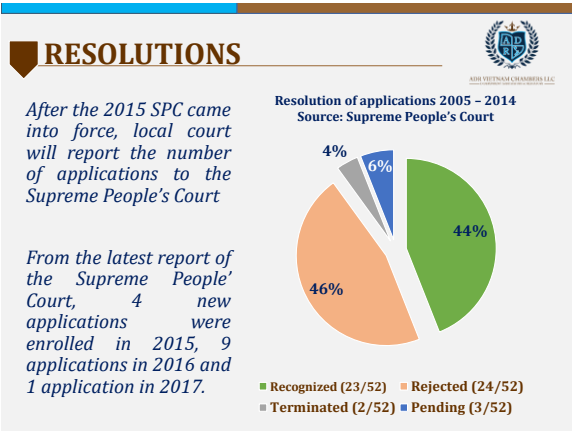
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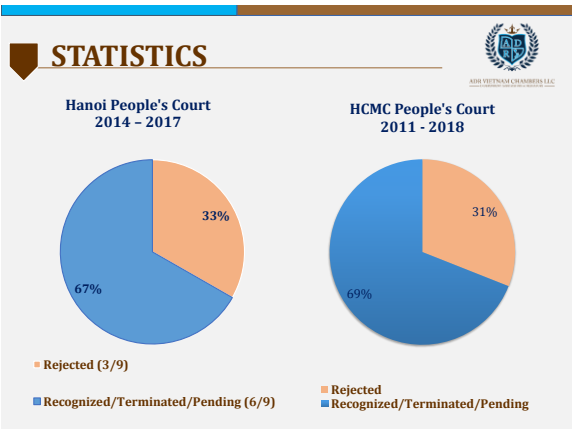
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GROUNDS FOR REFUSAL



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1. The arbitration agreement is invalid (*5 cases*)
2. Incapacity to execute arbitration agreement (*16 cases*)
3. The award debtor was not promptly and duly informed on the appointment of the arbitrators and the arbitral procedure (*14 cases*)
4. Arbitral tribunal has no jurisdiction over the dispute or exceeds its jurisdiction (*1 case*)
5. Composition of the Tribunal or arbitral procedure is improper (*2 cases*)
6. Award has not become binding yet, be set aside or suspended
7. Contrary to the fundamental principles of Vietnamese laws (*6 cases*)

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INVALIDITY OF ARBITRATION AGREEMENT



ASI VIETNAM CHAMBERS LLC

- **Allenberg vs. Son Nam - ICA award**
The sales contract containing the arbitration agreement was not signed by the award debtor
→ refused
- **Issues**
The invalidity of the contract causes the arbitration agreement null and void?
- **Solutions**
Separability
Law applicable to the arbitration agreement

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SIGNATORY INCAPACITY



ASI VIETNAM CHAMBERS LLC

- **Ecom (Switzerland) vs. Thien Nam/Vinatex - ICA awards**
- **Under Vietnamese Law:**
 - Signatory capacity of the legal representative?
 - Applicability of the Corporate Charter and Resolutions of Management Board to the third parties?
 - Monetary value of the arbitration agreement!
- **Ecom (Switzerland) vs. Dai Cuong - ICA award**
- **Under Foreign Law:**
 - The validity of the Registration certificate of a foreign company?
 - Authorization for signing the contract?
 - Proof of signatory capacity

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**SERVICE OF ARBITRAL NOTICES
IN EX-PARTE PROCEEDINGS**



• **Issue:** Award debtor insists on not receiving the arbitral notices


Wisdom vs. Hao Hung - adhoc arbitration in Hong Kong
Ecom vs. Viet Thang - ICA award

• **Solutions:**

- Applicable rules of arbitration
- Procedural law of the Seat
- Explanation of arbitration institution
- Confirmation of delivery company (FedEx, DHL...)
- Service of Document through local bailiffs

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**TRIBUNAL LACKS JURISDICTION
OR EXCEEDS POWER**



• **Starglobe vs. Tien Len Co. Ltd. (adhoc arbitration in Switzerland)**

- The Tribunal decided on the matter of the L/C?
- The Tribunal determined the damage resulting from the interim measures issued by the court?

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**TRIBUNAL COMPOSITION AND
PROCEEDINGS**



• **SA Metal Group vs. Sen Vang - ICC award**
Appointment of arbitrator under ICC Rules

• **Xinde (China) vs. Hapro - CIETAC award**
Legal capacity of the parties to participate in the arbitral proceeding

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THE AWARD IS NOT YET BINDING




• Award annulled at the place of arbitration (the seat)?

- CPC 2015 Art 459 “The Court **shall** refuse to recognize if...”
- New York Convention “Recognition and enforcement of the award **may** be refused...”

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FUNDAMENTAL PRINCIPLES OF VIETNAMESE LAWS



- Public Policy vs. Fundamental Principles of Vietnamese Laws
- Resolution No. 01/2014/NQ-HDTP
“Arbitral awards contrary to the basic principles of Vietnamese laws “mean the awards those violate the basic principles of conduct with overwhelming forces on the development and implementation of Vietnamese laws.”
- Toepfer vs. Sao Mai Co. (GAFTA award): actual damage
- Allenberg vs. Son Nam (ICA award): party autonomy

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SOLUTIONS




- Judicial Manual on Arbitration and Mediation of the Supreme Court
- Guidelines of the Ministry of Justice on the 1958 New York Convention
- Transparency: VIAC Collection of cases, SPC's database

Potential

- Report Mechanism (lessons from China)
- More training for the Judges on the New York Convention by KOICA

Recent



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PRACTICAL TIPS!



1. Seat is an important factor for negotiation and drafting of an arbitration agreement.
2. Insert a communication clause in the contract.
3. Consider using commercial mediation in a multi-tier dispute resolution clause.
4. Do not commence an arbitration proceedings without a company search against the debtor.
5. Pay attention to the law of the possible enforcement country in the conduct of the arbitration.

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THANK YOU FOR YOUR ATTENTION!




ADR VIETNAM CHAMBERS LLC
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