



ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS & MEDIATORS —

POSITIONING OF ICC ARBITRATION IN THE ASIAN WORLD WITH A FOCUS ON VIETNAM

Ho Chi Minh City, 20th April 2019

NGUYEN MANH DZUNG

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

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— INDEPENDENT ARBITRATORS & MEDIATORS —


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TRANSPARENCY & DIVERSITY



ADR VIETNAM CHAMBERS LLC
DISPUTE RESOLUTION INSTITUTION



**INTERNATIONAL
CHAMBER
OF COMMERCE**



Case ID	Date	Name	First Name	Nationality	Role	Appointment
718	Apr-2018	Dang	Xuan Hop	Vietnam	Co-arbitrator	Claimant(s)
718	Apr-2018	Nguyen Ngoc	Bich	Vietnam	Co-arbitrator	Respondent(s)

Some items might be hidden. [Include](#) these in your search

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STATISTICS

ORIGIN OF PARTIES



	Hong Kong	PR China	Japan	Singapore	Malaysia	Korea	India
2017	20	49	29	28	10	59	56
2016	25	41	23	23	17	82	60
Past 5 years (2013-2017)	109	274	113	137	61	235	282
Past 10 years (2008-2017)	203	419	214	240	135	386	570

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STATISTICS PLACE OF ARBITRATION

	Hong Kong	PR China	Japan	Singapore	Malaysia	Korea	India
2017	18	0	4	38	2	6	5
2016	8	0	0	26	1	8	7
Past 5 years (2013-2017)	67	1	10	156	8	23	26
Past 10 years (2008-2017)	121	3	29	309	22	32	59

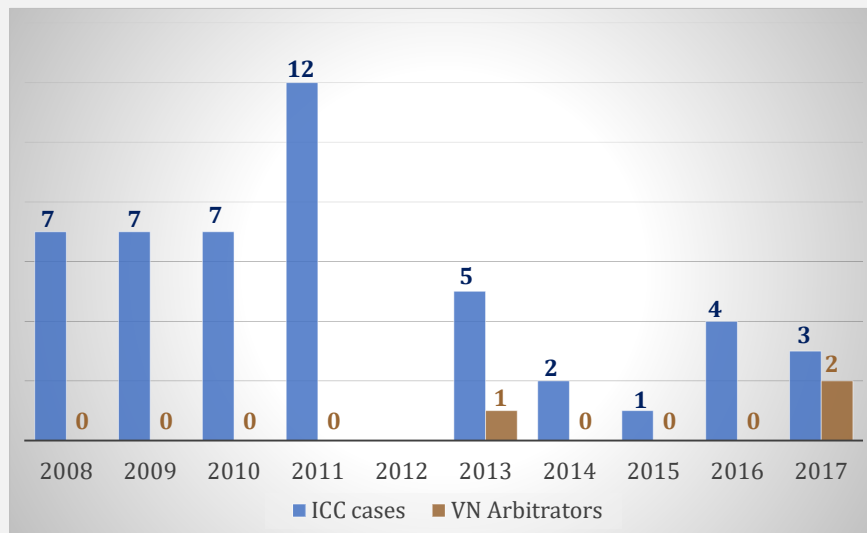
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GENERAL REPORT ON ICC CASE INVOLVING VIETNAM



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STANDARD CLAUSES



ADR VIETNAM CHAMBERS LLC
CHUYÊN NGHIỆP - CHUYÊN NGHIỆP - CHUYÊN NGHIỆP

I. Standard ICC Arbitration Clause

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules

II. An ICC Arbitration in Mainland China

*“All disputes arising out of or in connection with the present contract shall be submitted to **the International Court of Arbitration** of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”*

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FEATURES OF ICC ARBITRATION



ADR VIETNAM CHAMBERS LLC
CHUYÊN NGHIỆP - CHUYÊN NGHIỆP - CHUYÊN NGHIỆP

- *ICC Court*
- *No List of Arbitrators*
- *Term of Reference (TOR)*
- *State Entity*
- *Cost control*

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THE SECRETARIAT, THE COURT AND THE ARBITRAL TRIBUNAL



COURT

(assisted by the Secretariat)

Does not settle disputes, but supervises the work of the arbitral tribunal and procedure:

- Makes important procedural decisions
- Appoints, confirms, decides on challenges or replaces arbitrators
- Controls time limits
- Scrutinizes awards
- Fixes costs of arbitration

ARBITRAL TRIBUNAL

Settles the dispute:

- Drafts the Terms of Reference
- Establishes the calendar of the proceedings
- Declares proceedings closed
- Drafts the award(s)
- Manages the case in consultation with the parties
- Renders interim/partial and final awards

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CONSTITUTING ARBITRAL TRIBUNAL



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- Nominations by parties and confirmed by Secretary General or Court
- Nominations by co-arbitrators (for presidents)
- Appointments by Court upon proposal from ICC National Committee or Group
- Appointments by Court directly

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TERM OF REFERENCE- TOR



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Article 23: Terms of Reference

1. TOR shall include the following items:

- a) Names and contact details of the parties and their counsel*
- b) Method of notifications and communications*
- c) Summary of the parties' claims and the relief sought and the amount in disputes*
- d) List of issues to be determined by the arbitral tribunal*
- e) Names and contact details of arbitrators*
- f) Place of the arbitration*
- g) Applicable procedural rules*

2. The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days of the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties.

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CASES INVOLVING STATES AND STATE ENTITIES



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- Number of Arbitrators
- Appointment of arbitrators
- Scrutiny of draft awards
- Emergency Arbitrator Provisions
- Referral of Jurisdictional decisions to the Court?

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EFFICIENCY



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- Cost consequences for unjustified delays in submitting awards
- The Court has set out clear information as to the costs consequences that derive from unjustified delays in submitting draft arbitration awards to the Court.
 - Tribunals penalized in costs
- Cost sanctions also apply to delays by the ICC Secretariat

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QUESTIONNAIRES



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1. How to build up the Claimant/Respondent's Strategy in a particular case?
2. How to select a candidate for the appointment to be confirmed by the Court and Can a confirmed arbitrator be challenged again?
3. What are differences between a Request for Arbitration and a Statement of Claim or an Answer to the Request and a Statement of Defence?
4. The importance of scope of representative's authority in ICC arbitration proceedings?
5. Etc.

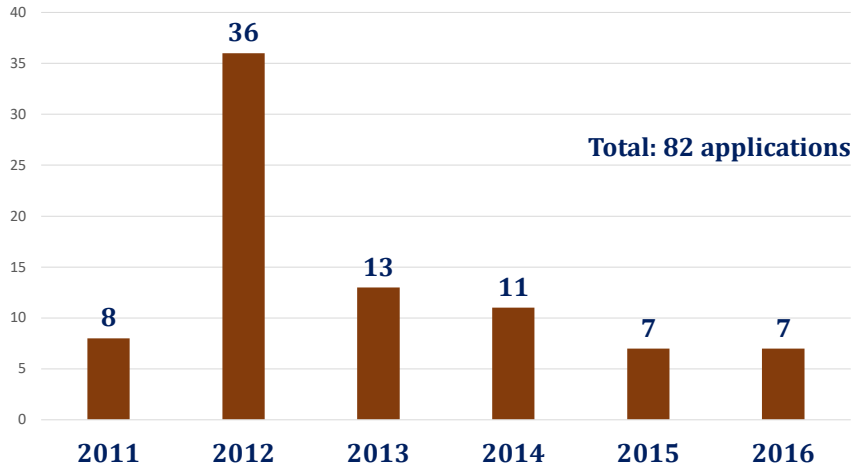
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APPLICATIONS



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**NUMBER OF APPLICATIONS SUBMITTED TO THE
MINISTRY OF JUSTICE
(2011 - 2016)**



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RESOLUTIONS

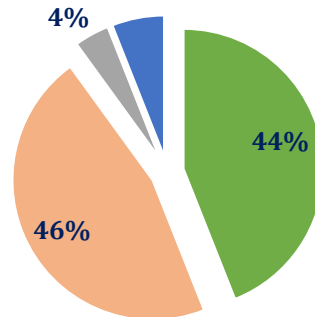


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After the 2015 SPC came into force, local court will report the number of applications to the Supreme People's Court

From the latest report of the Supreme People's Court, 4 new applications were enrolled in 2015, 9 applications in 2016 and 1 application in 2017

**Resolution of applications
2005 - 2014**
Source: Supreme People's Court



- Recognized (23/52)
- Rejected (24/52)
- Terminated (2/52)
- Pending (3/52)

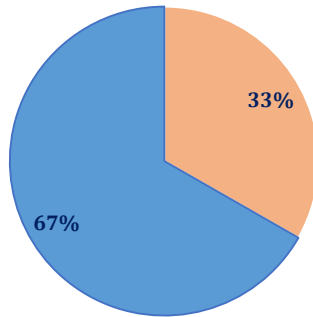
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STATISTICS



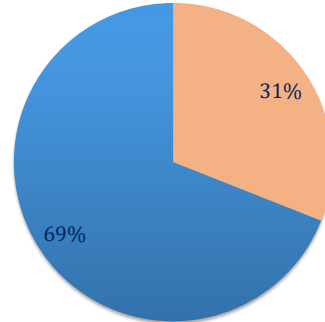
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**Hanoi People's Court
2014 - 2017**



■ Rejected (3/9)
■ Recognized/Terminated/Pending (6/9)

**HCMC People's Court
2011 - 2018**



■ Rejected
■ Recognized/Terminated/Pending

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GROUNDS FOR REFUSAL OF 4 ICC

AWARDS



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1. The arbitration agreement is invalid (2);
2. Incapacity to execute arbitration agreement (2)
3. The award debtor was not promptly and duly informed on the appointment of the arbitrators and the arbitral procedure (1)
4. Arbitral tribunal has no jurisdiction over the dispute or exceeds its jurisdiction (0)
5. Composition of the Tribunal or arbitral procedure is improper (1)
6. Award has not become binding yet, be set aside or suspended (0)
7. Contrary to the fundamental principles of Vietnamese laws (0)

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SIGNATORY INCAPACITY



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ARBITRATION AND MEDIATION IN VIETNAM

- ***Recofi S.A Co Ltd vs. Sunimex (Ben Thanh Corporation)*** – ICC case no. 9677/AC/DB dd 9/3/1999 - Decision No. 51 / KTPT dd 26/10/2001 by Court of Appeal in HCMC;
- ***Comess JSC vs. Mechel Metal Supply ltd*** – ICC award No.12784 dd 18/10/2004 - Decision No. 142/2005/QDPT dd 12/07/2005 by Court of Appeal in Hanoi.
- ***Mechel Metal Supply ltd vs. Thien Phu Trading Construction Production Co., Ltd*** -ICC award No.12790 dd 30/6/2004 -Decision No. 211/QD-KCNQĐTT dd 1/8/2005 by HCMC Court
- **Under Vietnamese Law:**
 - Signatory capacity of the legal representative in contracting stage and in arbitral Proceedings?
 - Different legal status of legal representative and legal counsel in ICC Arbitral Proceedings?
 - Legal nature of Term of Reference – extended arbitration agreement?

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TRIBUNAL COMPOSITION AND PROCEEDINGS



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ARBITRATION AND MEDIATION IN VIETNAM

SA Metal Group vs. Sen Vang

- ICC award No.17323 dd 18/10/2011 – Decision dd 17/09/2012 by Hanoi Court

Under ICC Rules of Arbitration:

- Appointment of arbitrator?
- Different legal status of legal representative and legal counsel in ICC Arbitral Proceedings?

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RECOMENDATIONS!



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1. Proof of scope of authority of legal counsel in ICC Arbitral Proceedings;
2. Careful selection of candidates for ICC confirmation of arbitrators;
3. Double – check signatory capacity of TOR;
4. Pay attention to the law of the possible enforcement country in the conduct of the ICC arbitration.

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REFERENCE



ADR VIETNAM CHAMBERS LLC
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1. The ICC International Court of Arbitration and its Secretariat on 11/05/2018;
2. **Cases Involving States and State Entities:** How are they different?
by Gustavo Scheffer da Silveira, Counsel;
3. ICC Practice Note: <https://iccwbo.org/dispute-resolution-services/arbitration/practice-notes-forms-checklists/>
4. ICC Commission's publications:
<https://iccwbo.org/dispute-resolution-services/commission-on-arbitration-and-adr/>

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THANK YOU FOR YOUR ATTENTION!



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