



ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS & MEDIATORS —

PERMANENT COURT OF ARBITRATION

INTERNATIONAL ARBITRATION TRAINING COURSE

THE ARBITRAL AWARD

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VIAC, KCAB, HIAC, SHAC and HKIAC

Former ICC Court Member 2017-2021



2. CONTENT

- ❖ Introduction
- ❖ Categories of award
- ❖ Deliberations and Decisions of the Tribunal
- ❖ Form and Content of Awards
- ❖ Challenge of Arbitral Awards
- ❖ Recognition and Enforcement of Arbitral Awards

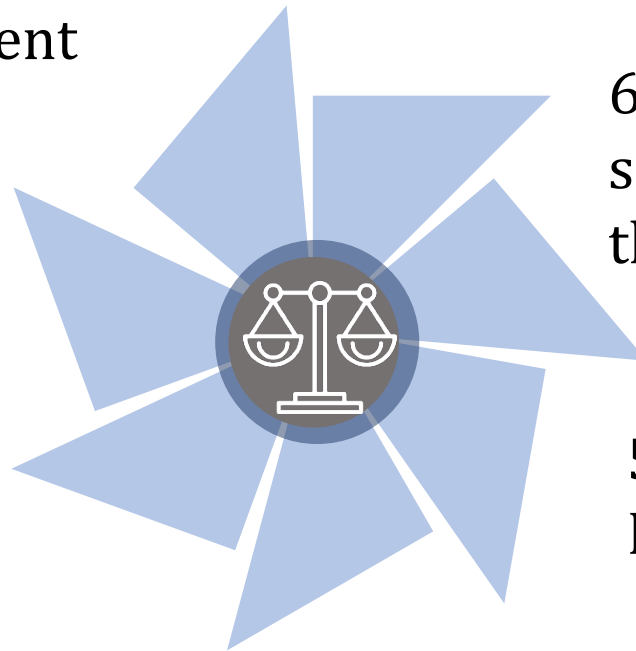
3. FUNDAMENTAL PRINCIPLES OF INTERNATIONAL ARBITRATION

7. Finality

1. severability
arbitration agreement

2. Competence -
competence

3. Party autonomy



6. Supportive and
supervisory roles of
the court

5. Impartial and
Independence

4. Due process



4. DEFINITION OF AN AWARD

Art. I(1) of New York Convention: Foreign arbitral awards are “*arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought*” and arbitral awards which are “*not considered as domestic awards in the State where their recognition and enforcement are sought*”.

Art. 31 UNICTRAL Model Law as well as Art. 34 PCA Rules only provide a general requirement of form and contents of an award



5. AWARD IN COMPARISON WITH DECISIONS AND PROCEDURAL ORDERS

- ❖ Award: a decision affecting the rights between the parties, and which is generally capable of being enforced
- ❖ Decision: a result of any conclusion or resolution reached after consideration (not all are awards)
- ❖ Procedural orders/directions: make arrangements for the proceedings but do not settle a dispute

6. TYPES OF AWARDS

- ❖ **Final (PCA Final award 2015-17 & 45863)**
- ❖ **Partial (Art. 34 (1) PCA Rules 2012) (PCA Partial award 2013-34)**
- ❖ **Interim (PCA Interim award 2013-34)**
- ❖ **Award on agreed terms (consent award)**
- ❖ **Default award**
- ❖ **Additional/corrected award (Art. 39 PCA Rules 2012)**



7. DECISIONS OF THE TRIBUNAL - MAJORITY RULE

❖ Art 33 PCA Rules 2012 and Art. 33 UNCITRAL Arbitration Rules 2021 are similar:

*“1, When there is more than one arbitrators, any award or other decision of the arbitral tribunal **shall be made of a majority of the arbitrators.***

*2, **In the case of the procedure,** when there is no majority or when the arbitral tribunal so authorizes, **the presiding arbitrator may decide alone,** subject to revision, if any, by the arbitral tribunal.”*

=> An exception of majority rule is question of procedure



8. DECISIONS OF THE TRIBUNAL - SEPARATE OPINIONS, DISSENTS

1. DISSENT (PCA Case 2013-34)

Arbitrator disagrees with the result and reasoning of the award
Under PCA Rules, in case where the tribunal decides by majority, the dissenting arbitrator typically signs, adding 'dissenting' next to his name. If the dissenting arbitrator refuses to sign or an arbitrator is otherwise unable to sign, an explanation shall be provided in the award.

2. CONCURRING OPINION

Arbitrator agrees with result but disagrees with reasoning or the way which the award is formulated

9. FORM OF AWARDS

Under Art. 34 UNCITRAL Rules,

- The award shall be in writing,
- The reasons upon which the award is based shall be stated
- The award shall be signed by the arbitrators, and shall contain the date on which and the place where it was made
- Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

Art 34 PCA Arbitration Rules has similar requirements:

- All awards shall be made in writing.
- The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reason are to be given
- An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.



10. CONTENT OF AWARD

- ❖ Tells a story
- ❖ Submissions of parties and evidence
- ❖ Basis for jurisdiction
- ❖ Issues to be determined
- ❖ Relief sought
- ❖ Reasons
- ❖ Award on the merits, decisions on damages, costs, interest



11. ALLOCATION OF COSTS

- ❖ Decisions on costs
- ❖ Arbitration costs: Art. 40 PCA Rules
- ❖ Losing party pays costs

Art. 42 PCA Rules replicates Art. 42 UNCITRAL Rules

“The costs of arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case”

- ❖ Legal costs – separate issue

12. MAKING THE AWARD – TIME LIMIT

❖ Vietnamese Law on Commercial Arbitration 2010

Art. 61 indicates that *“An arbitral award shall be issued right at the hearing or **within 30 days after the end of the last hearing.**”*

❖ PCA Arbitration Rules and UNCITRAL Arbitration Rules

There is no regulation on time limit for the tribunal to issue the arbitral award under PCA Rules

13. REGISTRATION OF AD-HOC ARBITRAL AWARD



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- ❖ Registration is not compulsory requirement for all awards
- ❖ Time limit for Registration is one year
- ❖ Registration procedure is supposed to be simple
- ❖ Time limit for the Court to register the award is 15 days

14. DOMESTIC VS. FOREIGN ARBITRAL AWARD



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DOMESTIC ARBITRAL AWARDS

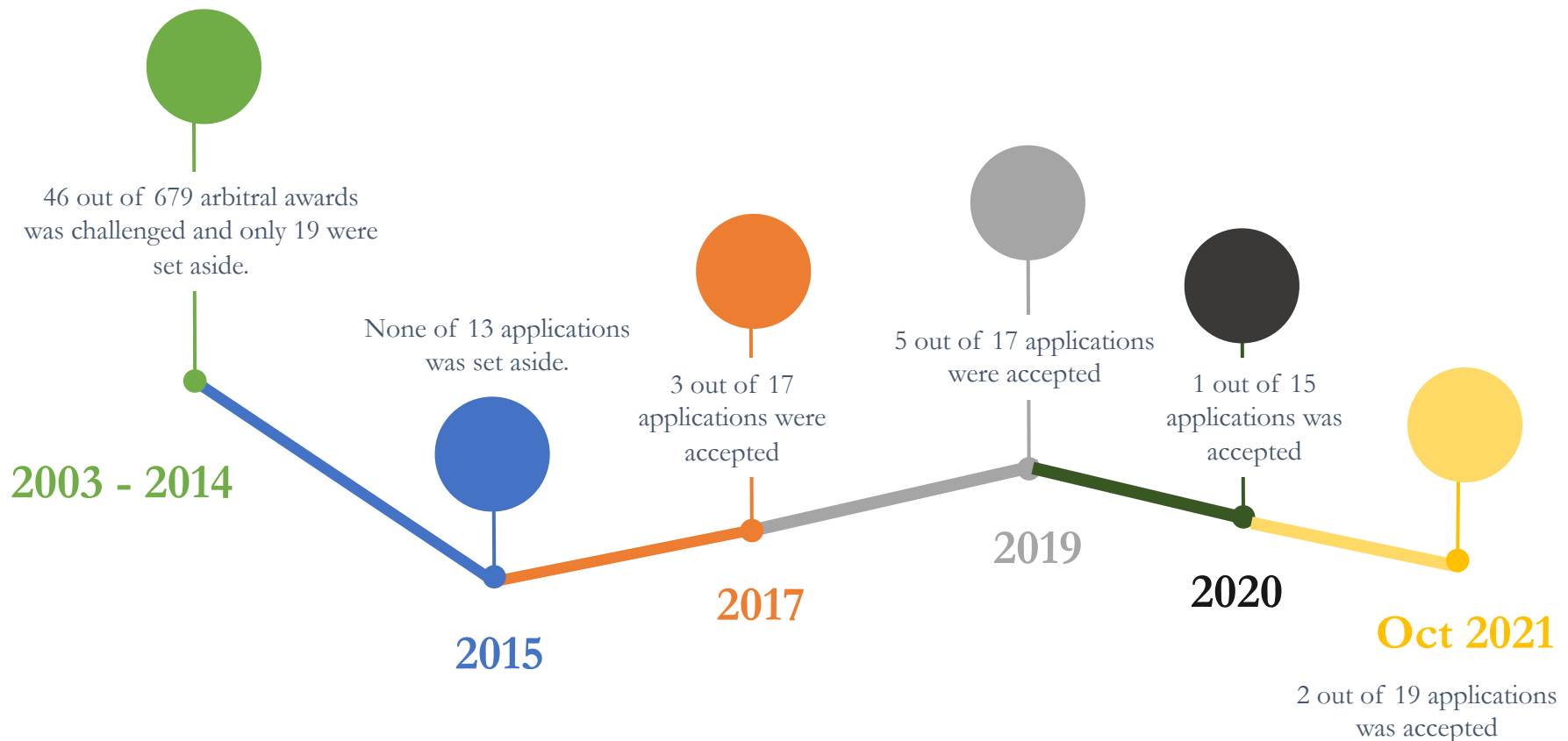
- Procedure: Setting aside
- Legal basis:
 - Law on Commercial Arbitration 2010
 - Law on the Enforcement of Civil Judgements in 2008
- Definition: National law. Law on Commercial Arbitration 2010 does not clearly provide any definition of domestic awards

FOREIGN ARBITRAL AWARDS

- Procedure: Recognition and enforcement
- Legal basis:
 - New York Convention 1958
 - Civil Procedural Code of Vietnam
 - Law on Commercial Arbitration 2010
 - Law on the Enforcement of Civil Judgements in 2008
- Definition: Art. I(1) of New York Convention



15. SETTING ASIDE ARBITRAL AWARD - VIETNAM STATISTIC



Sources: Nguyen Ngoc Minh, Nguyen Thi Thu Trang and Nguyen Thi Mai Anh, "The Asia-Pacific Arbitration Review 2020: Viet Nam", See also *Global Arbitration Review*, June 2019, <https://dazungart.com/wp-content/uploads/2016/06/Vietnam-1.pdf>; VLAC, *Thống kê hoạt động giải quyết tranh chấp năm 2015*, <https://www.viac.vn/thong-ke/thong-ke-hoat-dong-giai-quyet-tranh-chap-nam-2015-s35.html>; See also Nguyen Manh Dzung, "An overview of emerging arbitration in Vietnam", VLAC, August 2020, p. 4 assessed at: https://www.viac.vn/images/Resources/Legal-Research-and-Study/210218_Overview_arbitration/210218_Overview_arbitration



16. LEGAL GROUNDS TO SET ASIDE ARBITRAL AWARD

Art. 34 para. 2 UNCITRAL Model Law

- (i) The invalidity of arbitration agreement
- (ii) The appointment of an arbitrator or the
arbitral proceedings; or
- (iii) The composition of the arbitral tribunal or
the arbitral procedure
- (iv) The arbitrability
- (v) **The public policy of the State**

Art. 68 para. 2 of LCA

- a/ The invalidity of arbitration agreement;
- b/ The arbitral tribunal's composition or
procedures of arbitral proceedings
- c/ The dispute falls beyond the arbitral
tribunal's jurisdiction
- d/ **Counterfeit evidence and corruption
affecting the objectivity and impartiality
of the award.**
- e/ The award violates **the fundamental
principles of Vietnamese law.**



17. LEGAL GROUNDS TO SET ASIDE ARBITRAL AWARD

The grounds for the challenge may be broadly categorized as:

- Grounds that related to the adjudicability of the claim in question *(including issues of incapacity, invalid agreements to arbitrate, a tribunal's excess of powers, or the arbitrability of the subject matter of the dispute)*
- Procedural grounds *(including issues relating to composition of the tribunal, lack of due process)*
- Substantive grounds *(including mistakes of law, mistakes of fact, and public policy)*



18. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARD

- ❖ Legal grounds:
 - New York Convention 1958
 - Other multilateral conventions: Washington 1965
 - Bilateral Conventions
 - National Law
- ❖ Background (general principles, difference between recognition and enforcement , place of recognition and enforcement, time limits)



19. GROUNDS FOR REFUSAL - RECOGNITION AND ENFORCEMENT ARBITRAL AWARD

❖ Enforcement under New York Convention - Grounds for refusal:

Under Art. V(1) NYC:

- Incapacity; invalid arbitration agreement
- No proper notice of appointment of arbitrator or of the proceedings; lack of due process
- Jurisdictional issues
- Composition of tribunal or procedure not in accordance with arbitration agreement or the relevant law
- Award suspended or set aside

Under Art. V(2)

- Subject matter not capable of settlement by arbitration
- Public policy of enforcing state



20. PUBLIC POLICY EXCEPTION INTERNATIONAL FRAMEWORK

Article V(2)(b) of the Convention:

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) [...]

(b) The recognition or enforcement of the award would be contrary to **the public policy** of that country.

- The notion of public policy was not defined in the New York Convention and the UNCITRAL Model Law
- According to General Report of IBA on The Public Policy Exception in the New York Convention, the definitions of public policy generally refer to:
 - **In civil law countries:** the basic principles or values upon which the foundation of society rests, without precisely naming them or
 - **In common law countries:** more precisely identified, yet very broad, values, such as justice, fairness or morality.
 - Public policy is different from domestic mandatory laws

21. RECOGNITION AND ENFORCEMENT ARBITRAL AWARD - VIETNAM STATISTIC



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No	Content	Number of cases	
		Under the CPC 2005	Under the CPC 2015
1	Recognition and Enforcement	28	11
2	Refusal of Recognition and Enforcement	28	5
3	Adjournment	5	7
	Total	84	

Source: Nguyen Thi Thu Trang, 2021, Tham Quyen Ho Tro Tu phap của Toa an Viet Nam doi voi trong tai thuong mai, [published doctor thesis], Vietnam Academy of Social Sciences.



22. FUNDAMENTAL PRINCIPLES OF VIETNAMESE LAW – VIETNAM FRAMEWORK

Art. 459.2 CPC 2015

2. The foreign arbitrator's award shall not be recognized if the Vietnam's Court deems that:

b) The recognition and enforcement in Vietnam of foreign arbitrator's award are **contrary to fundamental principles Vietnamese law.**



23. PUBLIC POLICY EXCEPTION IN NYC - THE FUNDAMENTAL PRINCIPLES OF VIETNAMESE LAW

- ❖ Under Vietnamese laws, there is no definition of term "fundamental principles of Vietnamese laws"
- ❖ The Research of Institution of Judicial Science of Supreme People's Court explain this term:
 - Respect for national independence, sovereignty, territorial integrity, prohibition of the use of force or threat to use force, non-interference in the domestic affairs of each other, equality, mutual benefit and other fundamental principles of international law
 - Conformity with the provisions of the Constitution of the Socialist Republic of Vietnam
 - Conformity with national interests, foreign policy of the Socialist Republic of Vietnam

24. RECOGNITION AND ENFORCEMENT ARBITRAL AWARD - VIETNAM PRACTICE



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- ❖ Arbitral award must be marked as “For Implementing”
- ❖ Time limit: 5 years
- ❖ Application filed with provincial enforcement agency
- ❖ Head of the enforcement agency issues a decision
- ❖ Notify to enforcement debtor
- ❖ Enforcement creditor is under obligation to investigate the financial capacity of the debtor

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