

# 2022 ARBITRATION WEBINARS

## *PRACTICE GUIDANCES WITH NEW FACES*

# SETTING ASIDE ARBITRAL AWARD: THE PRACTICE IN VIETNAM



*Hanoi, 5 August, 2022*

**HÀ MỸ LINH**

Member | Young ICCA

Clerk | ADR Vietnam Chambers LLC

# OUTLINE

- 01 Role of Chamber Clerk
- 02 Setting aside arbitral award: Statistic In Vietnam
- 03 Legal grounds to set aside arbitral award
- 04 The practice in Vietnamese court
- 05 Recommendation





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—INDEPENDENT ARBITRATORS & MEDIATORS—

# ROLE OF CHAMBER CLERK





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# ROLE OF CHAMBER CLERK

## ANALYZE

locating and assembling relevant factual materials from the records as instructed by the arbitral tribunal

## TAKE NOTE

Attending the arbitral tribunal's deliberations and taking notes



## RESEARCH

Research (legal issue, case law, discrete questions relating to factual evidence and witness testimony, etc. )

## SUMMARIZE

Summarize (summaries from case law and publications; summarizing the parties' respective submissions and evidence, etc.)

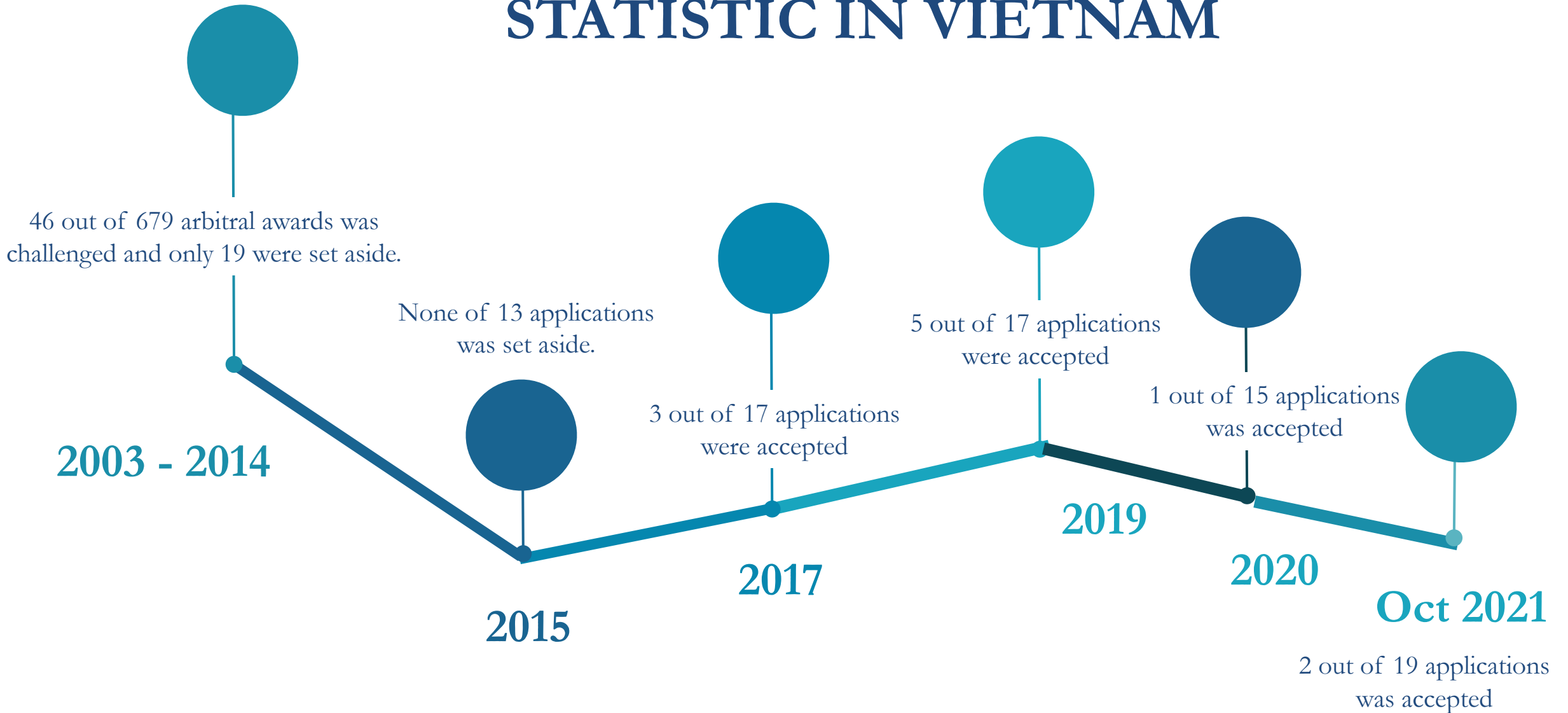
## DRAFT

Draft documents (non-substantive letters for the arbitral tribunal, non-substantive parts of the tribunal's orders, decisions and awards (such as procedural histories and chronologies of events)).



SETTING ASIDE  
ARBITRAL  
AWARD:  
STATISTIC IN  
VIETNAM

# STATISTIC IN VIETNAM



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://dzungsr.com/wp-content/uploads/2016/06/Vietnam-1.pdf>); VIAC, Thống kê hoạt động giải quyết tranh chấp năm 2015, <https://www.viac.vn/thong-ke/thong-ke-boat-dong-giai-quyet-tranh-chap-nam-2015-s35.html>); See also Nguyen Manh Dzong, "An overview of emerging arbitration in Vietnam", VIAC, August 2020, p. 4 assessed at: [https://www.viac.vn/images/Resources/Legal-Research-and-Study/210218\\_Overview\\_arbitration/210218\\_Overview\\_arbitration](https://www.viac.vn/images/Resources/Legal-Research-and-Study/210218_Overview_arbitration/210218_Overview_arbitration)



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# LEGAL GROUNDS TO SET ASIDE ARBITRAL AWARD



# DIFFERENCE BETWEEN DOMESTIC ARBITRAL AWARD AND FOREIGN ARBITRAL AWARD

## Domestic Arbitral Award

- Example: VIAC's Award
- No definition under law.
- Can be indicated from Law and Court's practice

## Foreign Arbitral Award

- Definition: Art. 3 para. 2 of LCA
- Example: SIAC's award



Foreign arbitral  
award whose seat  
in Vietnam

**Can the arbitral award be set aside by the national court ?**

Decision no. 03/2022/QDST-KDTM of People's Court  
of Hanoi City dated 22 February 2022





# LEGAL GROUNDS TO SET ASIDE ARBITRAL AWARD

## Comparison between UNICTRAL Model Law and Vietnamese law

### Art. 34 para. 2 UNCITRAL Model Law

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- (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

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- 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.

# LEGAL GROUNDS TO SET ASIDE ARBITRAL AWARD

Art. 68 para. 2 of Law on Commercial Arbitration (LCA) of Vietnam

There is no arbitration agreement or the arbitration agreement is invalid

1

Arbitral tribunal's composition or procedures of arbitral proceedings are incompliant with the parties' agreement or LCA.

2

The dispute falls beyond the arbitral tribunal's jurisdiction.

3

Counterfeit evidence and corruption affecting the objectivity and impartiality of the award.

4

Violation of the fundamental principles of Vietnamese law

5



## QUICK Q&A:

**Which is the reason that Vietnamese court most relied on to set aside arbitral award?**

- There is no arbitration agreement or the arbitration agreement is invalid
- Arbitral tribunal's composition or procedures of arbitral proceedings are incompliant with the parties' agreement or LCA.
- The dispute falls beyond the arbitral tribunal's jurisdiction.
- Counterfeit evidence and corruption affecting the objectivity and impartiality of the award.
- Violation of the fundamental principles of Vietnamese law

# THE PRACTICE IN VIETNAMESE COURT



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# 1. The arbitration agreement is invalid or there is not an arbitration agreement

## Legal Ground:

Art. 68 para. 2 of LCA

Art. 18 of LCA

Art. 3 of Resolution 01/2014/NQ-HDTP

Request to set aside VIAC's Arbitral award of the case no. 14/16

### APPLICANT

#### Award debtors

F Group, T.V.Q, N.T.B,  
H.T.H, etc.

### Award Creditor

GIA LLC

Decision no.  
02/2018/QD-KDTM of  
People's Court of Hanoi  
city dated 25/01/2018)

“The accommodation bill, which was only signed by Respondents,  
shall not be considered an arbitration agreement”  
=> The Court set aside the arbitral award



## 2.1. Arbitral tribunal's composition is incompliant with the parties' agreement or LCA.

### Legal Ground:

Art. 68 para. 2(b) of LCA

Art. 6 of Resolution no.  
01/2014/NQ-HDTP

Request to set aside VIAC's Arbitral award of the case no. 88/18 HCM

**APPLICANT**  
Award creditor  
A.I.C Company

**Award debtor**  
Meito Company

Decision no.  
163/2020/QĐ-PQTT  
dated 12/02/2020 issued  
by People's Court of  
HCM city

“On 20/02/2019, Mr. Le Tan Vinh rejected the preceding arbitrator appointment. According to Art. 40 para. 3 of LCA, the authority to appoint the president of tribunal shall belong to the president of institution arbitration. Therefore, that Mr. Dang Quang Phuong and Mr. Nguyen Chinh appointed. Mr. Hoang Ngoc Giao on 20/02/2019 was not within their authority”

=> **The Court set aside the arbitral award**



## 2.2. Arbitral tribunal's procedures of arbitral proceedings are incompliant with the parties' agreement or LCA.

Request to set aside VIAC's Arbitral award of the case no. 19/18

**APPLICANT**  
Award debtor  
X JSC.

**Award Creditor**  
S A &E

### Legal Grounds:

Art. 68 para. 2(b) of LCA

Art. 14 of Resolution no.  
01/2014/NQ-HDTP

Decision no.  
07/2019/QĐ-PQT  
dated 18/07/2019 issued  
by People's Court of  
Hanoi city

People's Court of Hanoi city set aside the arbitral award since the arbitral tribunal accepted Claimant's closing submission without parties' agreement upon such procedure.



# 3.1 The dispute falls beyond the arbitral tribunal's jurisdiction

## Legal Ground:

Art. 2 of LCA

Art. 68 para. 2 of LCA

Request to set aside VIAC's award of the case no. 75.17 HCM

**APPLICANT**  
Award debtor  
Do Thi Mai T

**Award Creditor**  
X LLC.

Decision no.  
755/2018/QD-PQTT  
dated 12/06/2018  
People's Court of HCM  
city

In its statement of defence and during the arbitration proceedings, the employee asserted that the NDA was completely separate from and not a part of the employment contract  
=> No ground for non-arbitrability => The arbitral tribunal has the jurisdiction to resolve a dispute.





## 3.2 The arbitral tribunal acts beyond the scope of the agreement on settling the dispute by arbitration.

### Legal Ground:

Art. 68 para. 2 of LCA

Art. 14 para. 2(c) of Resolution no.  
01/2014/NQ-HDTP

Request to set aside QT Arbitration Center's award of the case no.  
82.17 HCM

**APPLICANT**  
Award debtor  
LP LLC.

**Award Creditor**  
CK Group

Decision no.  
1420/2019/QD-PQTT  
dated 16/10/2019,  
People's Court of HCM  
city

The People's Court of Ho Chi Minh city set aside the arbitral award because the scope of the Respondent's requests did not fall within the scope of the arbitration agreement, however the tribunal still dealt with that request.



# 4.1 Counterfeit evidence and corruption affecting the objectivity and impartiality of the award

Request to set aside VIAC's Arbitral award of the case no. 85/16 HCM

**APPLICANT**  
Award debtor  
K Company

**Award Creditor**  
A Company

Decision no.  
08/2019/QD-PQTT  
dated 25/07/2019 of  
People's Court of Hanoi  
city

This is the subjective issue of the case, however, it exists the impartiality since it indicated that the tribunal violates Art. 3 Civil Code 2015 regarding the equal treatment principle and Art. 4 of LCA.

Request to set aside VIAC's Arbitral award of the case no. 03/17 HCM

**APPLICANT**  
Award debtor  
WH JSC.

**Award Creditor**  
Lam Nghiep PKT LLC.

Decision no.  
52/2019/QD-PQTT  
dated 16/01/2019 of  
People's Court of HCM  
city

People's Court of HCM city ruled that this is the subjective issue of the case, therefore the court will not consider under Art. 71 para. 4 of LCA

## 4.2 Application of IBA Rules on the Taking of Evidence in International Arbitration in Vietnam

Request to set aside VIAC's Arbitral award of the case no. 82/17 HCM

**APPLICANT**  
Award debtor  
Quoc te Loc Phat LLC

**Award Creditor**  
CHUNKYUNG  
Group

Decision no.  
1420/2019/QD-PQT  
dated 16/10/2019 of  
People's Court of HCM  
city

Respondent suggested the Tribunal to apply IBA Rule if necessary. Therefore, it did not establish an agreement between Claimant and Respondent regarding the application of IBA Rules. Therefore, that the Tribunal applied Vietnamese law and VIAC's rules is suitable

Request to set aside V Arbitration Center's Arbitral award of the case no. 24/14

**APPLICANT**  
Award debtor  
CPA

**Award Creditor**  
THNT

Decision no.  
11/2019/QD-PQT  
dated 14/11/2019 of  
People's Court of Hanoi  
city

In the process, the Respondent already submitted several evidence, however, the tribunal did not reply on these evidence according to Art. 56 LCA and Art. 25 arbitration rule and just replied on IBA Rules, which restricted the tribunal to examine Respondent's evidence. Consequently, it affected Respondent's rights

# 5.1 Violation of the fundamental principles of vietnamese law

## THE PARTY AUTONOMY PRINCIPLE

Request to set aside VIAC's Arbitral award of the case no. 35/17

### Legal Ground:

Art. 68 para. 2(e) of LCA

Art. 11 para. 1 of LCA

**APPLICANT**  
Award debtor  
Toa Nha Dien VL  
Company.

**Award creditor**  
Tu tao va PTN JSC

Decision no.  
06/2018/QĐ-PQT  
dated 11/09/2018 issued  
by People's Court of  
Hanoi city

“Despite the fact that under the arbitration agreement the law of Lao People's Democratic Republic shall be applied to decide the case, both parties did not provide or submit any evidence or regulation under the law of Lao People's Democratic Republic. Therefore, the application of Vietnamese law to decide the case is suitable under Vietnamese law and arbitration agreement.”

**=> The Court rejected to set aside the arbitral award**

# 5.2 Violation of the fundamental principles of Vietnamese law

## *VIOLATE THE EQUAL TREATMENT PRINCIPLE*

Request to set aside VIAC's Arbitral award of the case no. 19/18

### Legal Ground:

Art. 68 para. 2(e), (b) of LCA

Art. 4 of LCA

Art. 3 of Civil Code

**APPLICANT**  
Award debtor  
X JSC

**Award creditor**  
S A & E

Decision no.  
07/2019/QD-PQTT  
dated 18/07/2019 issued  
by People's Court of  
Hanoi city

“The Tribunal acted impartially since the Tribunal allowed the Claimant to amend the SOC 4 times and accepted the closing submission, however, the Tribunal recognized all documents submitted by Respondent”  
=> **The Court set aside the arbitral award due to the violation of equal treatment**

# 5.3 Violation of the fundamental principles of Vietnamese law

*SAME ISSUES BUT IT WAS HANDLED DIFFERENTLY*

Request to set aside VIAC's Arbitral award of the case no. 36/19

**APPLICANT**  
Award debtor  
B Company

**Award Creditor**  
NC Company

Decision no.  
04/2020/QD-PQTT  
dated 29 May 2020,  
People's Court of Hanoi  
City

People's Court of Hanoi City set aside the arbitral award because that the arbitral tribunal failed to collect documents and evidence at the request of the Claimant affects the right of B Company, therefore violates Art. 46 para.2 of LCA and Art 19 para. 2 of Arbitration Rules

Request to set aside VIAC's Arbitral award of the case no. 62/18

**APPLICANT**  
Award debtor  
H Group

**Award Creditor**  
H JSC., M JSC., N JSC.

Decision No.  
09/2020/QD-PQTT  
dated 18/07/2019 ,  
People's Court of Hanoi  
City

People's Court of Hanoi City found that the matter is the merit of the case, therefore, the court shall not review the content of the case in accordance with Article 71 of LCA

# PRACTICE IN VIETNAMESE COURT



Accepted that the party autonomy principle and the independence & impartiality principle are fundamental principle of Vietnamese laws



*NOT have a uniform application, and could be interpreted and applied arbitrarily by the judges handling the case*

## QUICK Q&A:

**Which is the reason that Vietnamese court most relied on to set aside arbitral award?**

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- The dispute falls beyond the arbitral tribunal's jurisdiction.
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# RECOMMENDATION

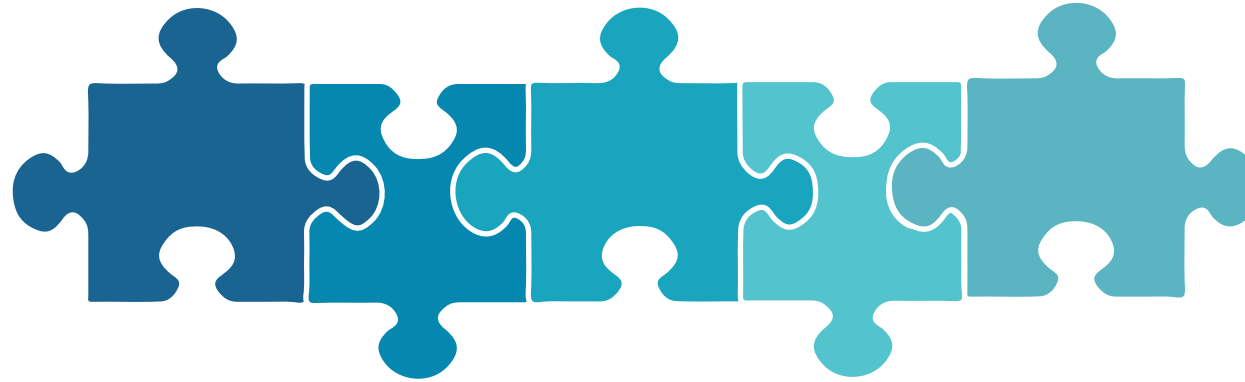


Know your arbitration rules

## **PARTIES TO THE DISPUTE**

Have profound knowledge of arbitration including subjective and procedural matter to ensure the quality of the award and parties' legal right

## **ARBITRAL TRIBUNAL**



## **ARBITRATION INSTITUTION**

As soon as any awards were set aside, the institution should have a meeting with the tribunal to identify the main issues

## **DOMESTIC COURT**

- Provide training for Judges;
- Ensure that the judges will have a uniform application

## **LEGISLATORS**

Amend LCA to make Vietnam be recognized as a country that enacted Model Law

# REFERENCE

1. Decision no. 03/2022/QDST-KDTM of People's Court of Hanoi City dated 22 February 2022
2. Decision no. 163/2020/QĐ-PQTT dated 12/02/2020 issued by People's Court of HCM city
3. Decision no. 04/2020/QĐ-PQTT dated 29 May 2020, People's Court of Hanoi City
4. Decision No. 09/2020/QĐ-PQTT dated 18/07/2019 , People's Court of Hanoi City
5. Decision no. 52/2019/QĐ-PQTT dated 16/01/2019 of People's Court of HCM city
6. Decision no. 07/2019/QĐ-PQTT dated 18/07/2019 issued by People's Court of Hanoi city
7. Decision no. 1420/2019/QĐ-PQTT dated 16/10/2019, People's Court of Ho Chi Minh city
8. Decision no. 08/2019/QĐ-PQTT dated 25/07/2019 of People's Court of Hanoi city
9. Decision no. 11/2019/QĐ-PQTT dated 14/11/2019 of People's Court of Hanoi city
10. Decision no. 06/2018/QĐ-PQTT of People's court of Hanoi city dated 11 September 2018
11. Decision no. 02/2018/QĐ-KDTM of People's Court of Hanoi city dated 25/01/2018



# REFERENCE

1. Nguyen Ngoc Minh, Nguyen Thi Thu Trang and Nguyen Thi Mai Anh, “The Asia-Pacific Arbitration Review 2022: Vietnam”, Global Arbitration Review, June 2021.
2. Nguyen Manh Dzung & Nguyen Thi Thu Trang, “*Countries report on the public policy exception in New York Convention - Vietnam*”, IBA, 5/5/2016, [https://www.academia.edu/36297931/Vietnam\\_Report\\_on\\_the\\_public\\_policy\\_exception\\_in\\_New\\_York\\_Convention](https://www.academia.edu/36297931/Vietnam_Report_on_the_public_policy_exception_in_New_York_Convention)
3. Nguyen Manh Dzung & Nguyen Thi Thu Trang, “Countries report on 2016 Research Project: Comparative Study of ‘Arbitrability’ under the New York Convention – Vietnam”  
[https://www.academia.edu/36296851/Vietnam\\_report\\_on\\_2016\\_Research\\_Project\\_A\\_Comparative\\_Study\\_of\\_Arbitrability\\_under\\_the\\_New\\_York\\_Convention](https://www.academia.edu/36296851/Vietnam_report_on_2016_Research_Project_A_Comparative_Study_of_Arbitrability_under_the_New_York_Convention)
4. Nguyen Manh Dzung, *Enforcement of Arbitral Awards in Asia: Theory and Practice*, [Presentation slide], 22 October 2021
5. The International Law Association (“ILA”), Annex International Law Association recommendations on the application of public policy as a ground for refusing recognition or enforcement of international arbitral awards, *Resolution no. 2/2002 on International Commercial Arbitration*, April 2002.
6. Nigel Blackaby, Constantine Partasides QC, Alan Redfern and Martin Hunter, “Redfern and Hunter on International Arbitration”, sixth edition, Oxford University Press, 2015.



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THANK YOU FOR YOUR ATTENTION