



**DISCUSSION FORUM
FACILITATING THE PROCEEDINGS
OF SETTLING DISPUTES BY
ARBITRATION IN VIETNAM**

ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS & MEDIATORS —

CASE MANAGEMENT ISSUES

Ho Chi Minh city, 14/04/2023

NGUYEN MANH DZUNG, MCIArb
Vice Chairman, Council of Legal Science of VIAC


1



2. CONTENT

- I. What International scholars talk about case management?**
- II. International Arbitration Law on case management**
- III. Arbitration institutional rules and practice notes**
- IV. Vietnamese law and regulations on case management**
- V. Case management tools**
- VI. Case management issue and Evidential issue**

2



ADR VIETNAM CHAMBERS LLC
CORPORATE DISPUTE RESOLUTION

3. CASE MANAGEMENT FROM TWO PERSPECTIVES

| ARBITRATION INSTITUTION'S PERSPECTIVE | TRIBUNAL'S PERSPECTIVE |
|---|---|
| <p><i>“Case management, which includes liaising with arbitrators, parties and their authorized representatives on proper delivery of notices, monitoring schedules and timelines for submissions, arranging hearing facilities and all other matters which facilitate the smooth conduct of the arbitration”</i></p> <p>SIAC Practice note, Art 4</p> | <p><i>“In order to ensure effective case management, the arbitral tribunal, after consulting the parties, shall adopt the procedural measures that it considers appropriate, provided that they are not contrary to any agreement of the parties (Article 22(2)).”</i></p> <p>ICC Practice Note 2021, Art. 93</p> |

3



ADR VIETNAM CHAMBERS LLC
CORPORATE DISPUTE RESOLUTION

4. REDFERN AND HUNTER ON INTERNATIONAL ARBITRATION

“Preliminary meetings at a very early stage of a dispute process are not customary in some countries. Nevertheless, especially where the parties and their representatives come from different legal systems or different cultural backgrounds, it is sensible for the tribunal to convene a meeting with the parties as early as possible in the proceedings. This ensures that the arbitral tribunal and the parties have a common understanding of how the arbitration is to be conducted and enables a carefully designed framework for the conduct of the arbitration to be established. In modern times, it is common practice for preliminary meetings to be conducted by teleconference or video conference.”

Alan Redfern, Martin Hunter, Nigel Blackaby, Constantine Partasides QC, “Redfern and Hunter on International Arbitration”, sixth edition, Oxford University Press, 2015 para. 6.41 – 6.64, p. 366 – p. 372

4

5. UNICTRAL MODEL LAW (amended in 2006)



ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS IN VIETNAM —

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

5

6. VIETNAM LAW ON COMMERCIAL ARBITRATION



ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS IN VIETNAM —

Article 4. Principles of dispute settlement by arbitration

“1. Arbitrators must respect the parties agreement if such agreement neither breaches prohibitions nor contravenes social ethics.”

Article 12. Sending of notices and order of sending

“Unless otherwise agreed by the parties or provided by the arbitration center's rules of proceedings, the mode and order of sending notices in arbitral proceedings specified as follows: ...”

6

7. ICC RULES, ARTICLE 24: CASE MANAGEMENT CONFERENCE AND PROCEDURAL TIMETABLE



1) When drawing up the Terms of Reference or as soon as possible thereafter, the **arbitral tribunal shall hold a case management conference to consult the parties on procedural measures** that may be adopted pursuant to Article 22(2).

2) During such conference, or as soon as possible thereafter, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the efficient conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.

3) To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.

7

8. ICC, Note To Parties and Arbitral Tribunals on The Conduct of The Arbitration Under The ICC Rules of Arbitration 2021

“Expeditious and Efficient Conduct of the Arbitration

92. The arbitral tribunal and the parties must conduct the arbitration **in an expeditious and cost-effective manner**, having regard to the complexity and value of the dispute (Article 22(1)).

93. In order to ensure effective case management, the arbitral tribunal, after consulting the parties, **shall adopt the procedural measures that it considers appropriate**, provided that they are not contrary to any agreement of the parties (Article 22(2)). **Such measures may include one or more of the case management techniques referred to in Appendix IV to the Rules.** In particular, the arbitral tribunal may encourage the parties to consider settling all or part of their disputes, either by negotiation or through any form of amicable dispute resolution method, such as mediation under the ICC Mediation Rules.”



8



ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRAL CENTRE IN HO CHI MINH CITY

9. SIAC RULES

Rule 19.3

As soon as practicable after the constitution of the Tribunal, **the Tribunal shall conduct a preliminary meeting with the parties**, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.

Rule 19.7

The President may, **at any stage of the proceedings, request the parties and the Tribunal to convene a meeting to discuss the procedures that will be most appropriate and efficient for the case.** Such meeting may be conducted in person or by any other means.

9



ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRAL CENTRE IN HO CHI MINH CITY

10. VIAC RULES


Article 22. Place of arbitration

2. Unless otherwise agreed by the parties, the Arbitral Tribunal may conduct hearings at any location it considers appropriate. **The Arbitral Tribunal may hold meetings by any means and at any location it considers appropriate.**

Article 38. General provisions

5. In all matters not expressly provided for in these Rules, the Centre and the Arbitral Tribunal shall act in the spirit of these Rules **and make all efforts for the dispute to be resolved in a fair and efficient manner.**


10




ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRATORS IN ASIA

11. VIAC GUIDE FOR ARBITRATORS


Assist the tribunal in consulting opinions of parties regarding procedural issues that need to be resolved, submission deadlines for evidence, and working methods.



**1, Procedure No. 5:
ORGANIZATION OF
CASE
MANAGEMENT
CONFERENCE (CMC)**




**2, ANNEX 7:
PROCEDURAL
TIMETABLE**



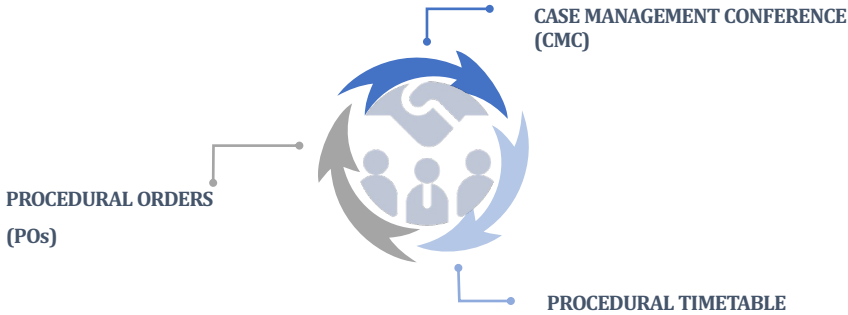
**3, ANNEX 8:
PROCEDURAL
ORDER NO. 1**

11



ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRATORS IN ASIA

12. CASE MANAGEMENT TOOLS



12

ADR VIETNAM CHAMBERS LLC
ARBITRATION AND MEDIATION CENTER

13. CASE MANAGEMENT CONFERENCE (CMC)

1. Preliminary issues – jurisdiction objections, interim relief applications, and/or bifurcation
2. Procedural issues – applicable law, language, seat of arbitration
3. Written submissions – number of rounds, timing, structure, accompanied by documentary and witness evidence
4. Document production
5. Witnesses – number, timing of submission of witness statements or expert reports, tribunal-appointed experts
6. Other procedural and administrative matters – means of communication, appointment of an arbitral secretary


13

ADR VIETNAM CHAMBERS LLC
ARBITRATION AND MEDIATION CENTER

14. PROCEDURAL ORDERS (PO)

1. Applicable law and seat of arbitration
2. Language of arbitration
3. Constitution of Arbitral tribunal/ challenges to jurisdiction
4. Expedited procedure
5. Interim Measure
6. Communication
7. Bifurcation
8. Written submissions
9. Witness Statement
10. Witness Experts


14



15. PROCEDURAL TIMETABLE

- ❖ Timetable detailing the key dates for the subsequent procedural steps to be taken by parties
- ❖ Time limit for submission
- ❖ Parties will be expected to comply with the procedural timetable

15



16. CASE MANAGEMENT TOOLS' ROLE IN SUBMISSIONS OF EVIDENCE

| CASE MANAGEMENT CONFERENCE | PROCEDURAL ORDERS | PROCEDURAL TIMETABLE |
|--|---|---|
| <ul style="list-style-type: none"> ❖ By the Tribunal Consider whether parties need to submit addition evidence. ❖ By Counsels Request the tribunal to Summon witness | <ul style="list-style-type: none"> ❖ Procedural orders will direct issues related to the submissions evidence, namely, <ol style="list-style-type: none"> 1. Due Date of submission evidence, witness statement, expert witness 2. Language of documentary evidence 3. Format of evidence. (hard copies or soft copies, whether the witness statement need an affirmation of truth of the statement, the signature of witness, etc.) | <ul style="list-style-type: none"> ❖ Remind parties and the tribunal the due dates of submission of evidence |

16



17. DISCUSSION

1. How the VIAC Tribunals apply case management tools?
2. What the Vietnamese arbitration counsel's attitude should be changed?
3. What kind of sanction by the VIAC Tribunals to parties and counsel
4. For Arbitration Centers in Vietnam to amend Arbitration Rules?
5. Amend LCA in line with UNCITRAL MODEL LAW 2006?

17



18. ICC ARBITRATION RULE, APPENDIX IV

Appendix IV – Case Management Techniques

The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

- a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.
 - b) Identifying issues that can be resolved by agreement between the parties or their experts.
 - c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.
 - d) Production of documentary evidence:
 - (i) requiring the parties to produce with their submissions the documents on which they rely;
 - (ii) avoiding requests for document production when appropriate in order to control time and cost;
 - (iii) in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
 - (iv) establishing reasonable time limits for the production of documents;
 - (v) using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.
 - e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.
 - f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.
 - g) Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.
 - h) Settlement of disputes:
 - (i) encouraging the parties to consider settlement of all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, for example, mediation under the ICC Mediation Rules;
 - (ii) where agreed between the parties and the arbitral tribunal, the arbitral tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.
- Additional techniques are described in the ICC publication entitled "Controlling Time and Costs in Arbitration".

18

19. REFERENCE



ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRATORS IN VIETNAM

1. Alan Redfern, Martin Hunter, Nigel Blackaby, Constantine Partasides QC, *Redfern and Hunter on International Arbitration*, sixth edition, Oxford University Press, para. 6.41 – 6.64, p. 366 – p. 372
2. UNCITRAL Notes on Organizing Arbitral Proceedings (2016), https://uncitral.un.org/en/texts/arbitration/explanatorytexts/organizing_arbitral_proceedings
3. The ICCA Reports No. 2: ICCA Drafting Sourcebook for Logistical Matters in Procedural Orders, <https://www.arbitration-icca.org/icca-reports-no-2-icca-drafting-sourcebook-logistical-matters-procedural-orders>
4. CIARB Guideline: Managing Arbitrations and Procedural Orders, <https://www.ciarb.org/media/4198/guideline-6-managing-arbitrations-and-procedural-orders-2015.pdf>

19

20. REFERENCE



ADR VIETNAM CHAMBERS LLC
INDEPENDENT ARBITRATORS IN VIETNAM

5. ICC Practice Notes, <https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021.pdf>
6. SIAC Practice Notes, https://siac.org.sg/wp-content/uploads/2022/06/Practice_Note_for_Administered_Cases_PN-01-14_2-January-2014.pdf
7. ICC Appendix IV: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/>
8. Nguyễn Mạnh Dũng, QUẢN LÝ VỤ VIỆC TRONG TỔ TỤNG TRỌNG TÀI (CMC-TOR-PO1), https://www.academia.edu/45673637/QUẢN_LÝ_VỤ_KIỆN_TRONG_TỔ_TỤNG_TRỌNG_TÀI_CMC_TOR_PO1
9. Nguyễn Mạnh Dũng, Management of Arbitral Proceedings: ICC Experiences!, https://www.academia.edu/39778114/TỔ_CHỨC_VÀ_QUẢN LÝ TỔ TỤNG TRỌNG TÀI_Kinh_nghiệm_của_ICC_Organisation_and_Management_of_Arbitral_Proceedings_ICC_Experiences_

20

THANK YOU



ADR VIETNAM CHAMBERS LLC
— INDEPENDENT ARBITRATORS & MEDIATORS —

CÔNG TY TNHH PHÒNG ADR VIỆT NAM (ADR Vietnam Chambers LLC)

Địa chỉ: Lầu 46, Tòa tháp tài chính Bitexco, Số. 2 Hải Triều,
Phường Bến Nghé, Quận 1, Thành phố Hồ Chí Minh City, Việt Nam

ĐT: 0903 807 376

Email: dzung.nguyen@adr.com.vn

Web: www.adr.com.vn