

**APEC WORKSHOP ON UNCITRAL
INSTRUMENTS AND THE EASE OF DOING
BUSINESS INITIATIVE**

**UNCITRAL INSTRUMENTS ON ADR
AND
ENFORCING CONTRACT REFORM IN VIET NAM**

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The Philippines – 03rd February 2015



HỘI NGŨ CHUYÊN NGHIỆP VÀ LIÊN MỐI VIỆT NAM
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**THE DOING BUSINESS 2015
REPORT**

- **Enforcing Contract Rankings: 47**
- **EODB Rankings: 78**



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ARBITRATION & LITIGATION (1)


	Arbitration	Domestic Litigation
Expertise of Decision Makers	International Professors, Legal Practitioners, Experts etc.	Domestic Judges
Neutrality	Independent International Institution	Subject to local complications
Confidentiality	Yes	No
Enforceability	New York Convention 1958 (154 members)	Limited enforceability subject to mutual treaty



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ARBITRATION & LITIGATION (2)

	Arbitration	Domestic Litigation
Flexibility	More flexible Int'l procedure (UNCITRAL Rules & UNCITRAL Notes, etc.)	Rigid Domestic Procedure
Speed	6 – 8 months (VIAC Procedures)	400 days (Doing Business Rankings)
Costs	Generally higher but recoverable	29% of claims (Doing Business Rankings)




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5. *Remaining Tasks*
6. *Conclusions*




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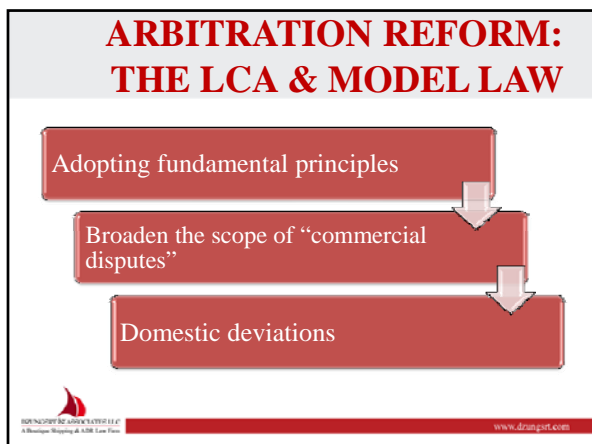
LEGAL FRAMEWORK

- Member of the 1958 New York Convention since 1995
- 2010 Law on Commercial Arbitration - LCA (strongly influenced by UNCITRAL Model Law 2006)
- 2004 Civil Procedure Code – CPC (Domestic Adoption of the 1958 New York Convention)
- Investor-state disputes: UNCITRAL RULES
- Future Legislation on Commercial Mediation (inspired by the UNCITRAL Model Law on Commercial Conciliation)



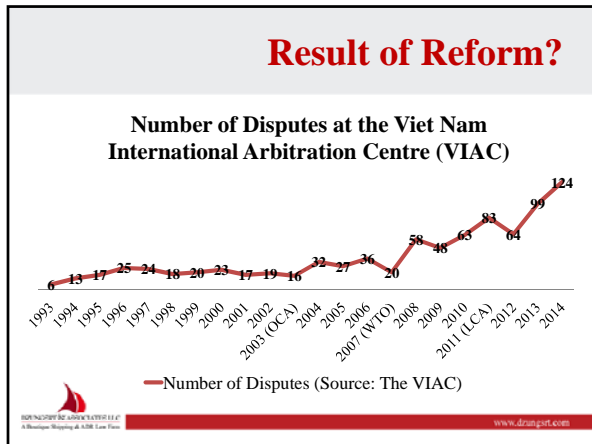
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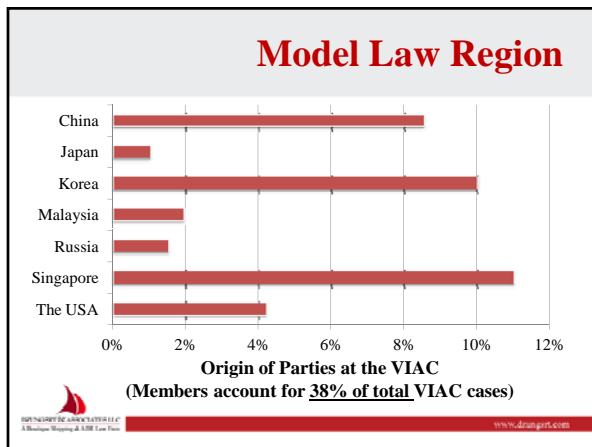
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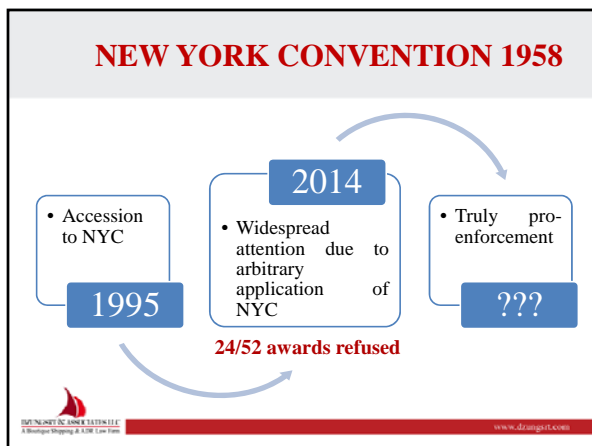


- ### Fundamental Principles
- Legitimacy of a valid arbitration agreement
 - Party autonomy
 - Fundamental due process
 - Limited court involvement
 - Finality of the arbitral award
- DISCOUNTING THE LAWYER FEE
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- ### Deviations
- “Refer to arbitration as long as there is an arbitration agreement” (*balancing between the CPC and LCA*)
 - Powers of arbitral tribunals to issue interim measures, summon witnesses & collect evidence (*arbitration & domestic litigation*)
 - Qualifications of arbitrators (*quality of arbitration*)
- DISCOUNTING THE LAWYER FEE
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IMPROVEMENT

<p>Foreign Business Communities:</p> <ul style="list-style-type: none"> - Report to the Vietnamese government to ensure fair treatment - Report to foreign governments for diplomatic channel 	<p>Ministry of Justice:</p> <ul style="list-style-type: none"> -Oversee the NYC implementation - Prevent investor-state disputes - Prepare to join UNCITRAL
<p>REFORM?</p>	
<p>Supreme People's Courts:</p> <ul style="list-style-type: none"> - Internal Guidance No. 246 - IFC workshops for local judges 	<p>Arbitration Practitioners:</p> <ul style="list-style-type: none"> - Improve the "image" of arbitration in Viet Nam - Call for a common understanding of UNCITRAL and NYC 1958

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MEDIATION INITIATIVE

Latest draft of the Decree on Mediation dated 5th Jan 2015: influenced by the UNCITRAL Model Law on International Commercial Conciliation.

- Party autonomy
- Confidentiality
- Flexibility

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REMAINING TASKS

- Accede to the UN Convention on Contracts for the International Sale of Goods (CISG)
- Promote consistency and accuracy in applying the LCA and fundamental principles of arbitration under the Model Law
- Ensure enforceability of arbitral awards under the 1958 New York Convention

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CONCLUSION

- Get the basics right:
Harmonizing fundamental principles or adopting full-text instruments?
- International co-operation & Peer-Pressure
- Post-promulgation Education and training:
Focus on the actors (parties, institutions, governments, courts etc.) as much as the script (i.e. the instruments)



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THANK YOU FOR YOUR KIND ATTENTION!

Q & A

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