

**INTERNATIONAL ARBITRATION AND RULE OF LAW FOR SUSTAINABLE MARKET**

**INTERNATIONAL ARBITRATION AND JUSTICE REFORM IN VIETNAM**

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Member of Research Council of VIAC

HANOI, 4<sup>th</sup> August 2017



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**CONTENT**

- 1. Law on Commercial Arbitration in 2010 (LCA 2010) and Civil Procedure Code 2015 (CPC 2015)**
- 2. New York Convention 1958 and Uncitral Model Law on Commercial Arbitration 2006**
- 3. International Investment Agreements: TPP, EVFTA, RCEP, BITs & FTAs**



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**1. COURT LITIGATION OVER COMMERCIAL ARBITRATION**

<b>Law Review NA Judicial Committee</b>	<b>LCA 2010 Chapter VII Interim Measures</b>	<b>CPC 2015 Chapter XXXIV NYC</b>
<b>SPC Guidance Resolution no. 01/2014</b>	<b>Immunity of Arbitrators is not accepted as national judges</b>	<b>Practice Services of arbitral notices Inquisitorial model</b>



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## 2. ARBITRATION REFORM: LCA & MODEL LAW

Adopting Fundamental Principles:

- Legitimacy of Valid Arbitration Agreement (separability and kompetenz-kompetenz)
- Party Autonomy
- Fundamental Due Process (procedural justice and impartiality & independence)
- Limited Court Involvement
- Finality of the Arbitral Award



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## 3. ARBITRATION REFORM: LCA & MODEL LAW

Deviations from Model Law due to local characteristics:

- “Refer to arbitration as long as there is an arbitration agreement” (*balance the CPC and LCA*)
- Discretion of Tribunal to issue interim measure, summon witness & collect evidence (*arbitration & domestic litigation*)
- Qualifications of Arbitrators (*quality of arbitration*)
- Public Policy = Fundamental Principles of Vietnamese Law



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## 4. LATEST REFORMS



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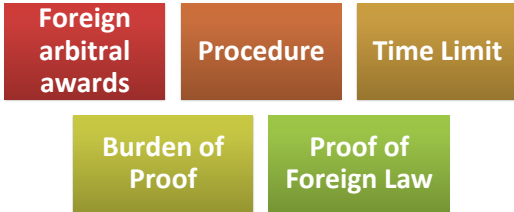
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## 5. RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS IN VIETNAM



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## 6. INVESTMENT ARBITRATION IN TPP

- Signed 4 February 2016, not in force: Section B, Chapter 9
- ICSID
- ICSID Additional Facility
- UNCITRAL
- New York Convention



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## 7. PERMANENT INVESTMENT TRIBUNAL IN EVFTA

- Concluded on 2<sup>nd</sup> December 2015 and published on 1<sup>st</sup> February 2016;
- A two-tier settlement mechanism with the first instance Tribunal (3/9) and Appeal Tribunal (3/6);
- ICSID Convention; ICSID Additional Facilities; or the UNCITRAL Arbitration Rules or any other rules;
- New York Convention for 5 years then become domestic court judgment.



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## 8. MEDIATION

- **Commercial Mediation:**  
Governmental Decree No. 22/2017 dated 24th February 2017
- **Investment Mediation:** Article 5 of Sub-Section 2, Section 3 and Annex 1 of Section 3 on *Mediation Mechanism for Investment Dispute of EV FTA*



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## 9. PROPOSAL FOR ARBITRATION STRATEGY

- Soft Infrastructures: training and education for human resources in legal profession, research and accreditation system for arbitrators and mediators, capacity buildings for arbitration and mediation institutions, facilities, etc.
- Legal frameworks: legislation and soft law
- International donors: IFC of WB, USAid, KOICA, JICA, etc.
- International organisations: CIArb, IBA, ICCA, ICC, ICSID, PCA, etc.



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**THANK YOU FOR YOUR KIND ATTENTION!**

## Q & A

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