

YOUNG ICCA CONFERENCE ON ARBITRATION IN VIETNAM

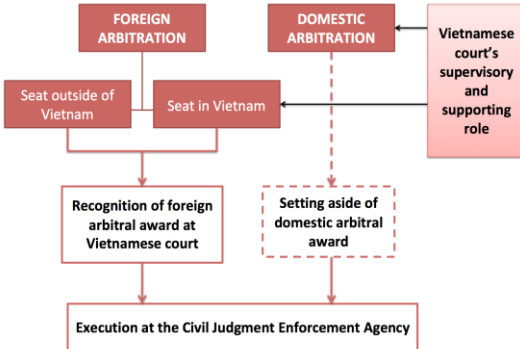
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

Nguyen Manh Dzung, MCI Arb
Dzungst & Associates LLC

Ho Chi Minh City, 30th September 2016



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PROCEEDING DURATION

Table with 3 columns: STAGE, CPC, PRACTICE. Rows include First-instance, Appeal, and Protest with corresponding durations.

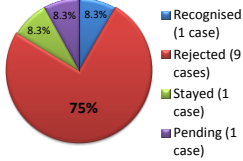


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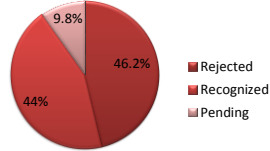
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## RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

Report of 07 Provincial Courts (from 2013 to 3/2014)



Report of the Supreme People's Court (from 2005 to 2014)



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## APPLICATION FILE

- **Jurisdiction:** Competent Court **or** MOJ
- **Format:** Duly legalized and notarized;
- **Documents:**
  - Application (Article 452 of 2015 CPC)
  - Arbitration Agreement (Contract) and Arbitral Awards (Article 453 of 2015 CPC)



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## BURDEN OF PROOF

- **Award creditor?**
  - ✓ Arbitral award
  - ✓ Arbitration agreement
- **Award debtor?**

*“Court shall not recognize a foreign arbitral award when deeming that the evidences provided by the **award debtor** to the Court for protesting against the application for recognition are well-grounded, legal and the arbitral award falls within one of the following cases”*



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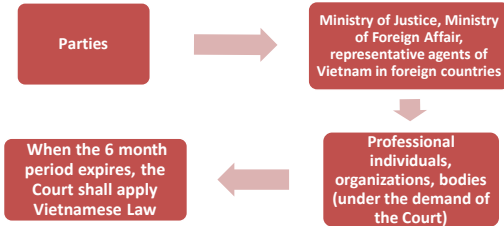
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## PROOF OF FOREIGN LAW

*Identifying and providing foreign law*  
(Article 481 of CPC 2015)



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## GROUNDS FOR REJECTING RECOGNITION AND ENFORCEMENT

1. Incapacity to execute arbitration agreement (2)
2. Invalid arbitration agreement (3)
3. The award debtor was not promptly and validly informed on the appointment of the arbitrators and the arbitral procedure (5)
4. Arbitral Tribunal acts beyond its authority
5. Composition of the Tribunal or arbitral procedure is improper
6. Award has not become binding yet, be set aside or suspended
7. Inarbitrability of the dispute
8. Contrary to the fundamental principles of Vietnamese laws (5)



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## SIGNATORY CAPACITY

### Under Vietnamese Law:

- Applicability of the Corporate Charter and Resolutions of Management Board to the third parties?
- Signatory capacity of the legal representative
- Monetary value of the arbitration agreement?

### Under Foreign Law:

- The validity of the Registration certificate of a foreign company?
- Authorization for signing the contract?
- Proof of signatory capacity



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## VALIDITY OF ARBITRATION AGREEMENT

- The invalidity of the contract causes the arbitration agreement null and void?
- Incapacity of the representative executing the arbitration agreement?

### Issues

### Solutions

- Separability
- Law applicable to the arbitration agreement



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## SERVICE OF ARBITRAL NOTICES IN EX-PARTE PROCEEDINGS

Award debtor insists on not receiving the arbitral notices



- Applicable rules of arbitration
- Procedural law of the Seat
- Explanation of arbitration institution
- Confirmation of delivery company (FedEx, DHL...)



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## FUNDAMENTAL PRINCIPLES OF LAWS

- Public Policy vs. Fundamental Principles of Vietnamese Laws
- Resolution No. 01/2014/NQ-HDTP  
*“Arbitral awards contrary to the basic principles of Vietnamese laws” mean the awards those violate the basic principles of conduct with overwhelming forces on the development and implementation of Vietnamese laws. ”*



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## PARALLEL PROCEEDINGS

**Example 1:** Arbitration seat in Vietnam  
Arbitral Tribunal: confirm jurisdiction  
Vietnamese court: reject the jurisdiction of  
arbitral tribunal.

Considering moving seat out  
of Vietnam

**Example 2:** Arbitration seat outside of Vietnam  
Arbitral Tribunal: confirm jurisdiction  
Vietnamese court: hold the arbitration  
agreement null and void and reject jurisdiction  
of the arbitral tribunal.

Article 6 of LCA  
Article 2 of Resolution  
No.01  
→ **Kompetence –  
Kompetence**

**Example 3:** Hybrid arbitration agreement  
provides for dispute to be resolved by (i)  
domestic arbitration and/or (ii) foreign  
arbitration.

Domestic arbitral tribunal  
rendered award in favor of local  
party.  
Foreign arbitral tribunal  
rendered award in favor of  
foreign party.

**ENFORCEMENT IN VIETNAM**  
Violation of fundamental principles  
of Vietnamese law?  
Inarbitrability of the arbitration?

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**THANK YOU FOR YOUR KIND ATTENTION!**

## Q & A

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