

**A STRATEGIC APPROACH TO INTERNATIONAL
ARBITRATION IN KOREA AND VIETNAM:
COMMERCE, INVESTMENT AND INFRASTRUCTURE**

**RECENT DEVELOPMENTS OF
VIETNAM’S ARBITRATION LEGAL
FRAMEWORK**

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CONTENT

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- 2. Recognition and Enforcement in Vietnam of KCAB Arbitral Awards**



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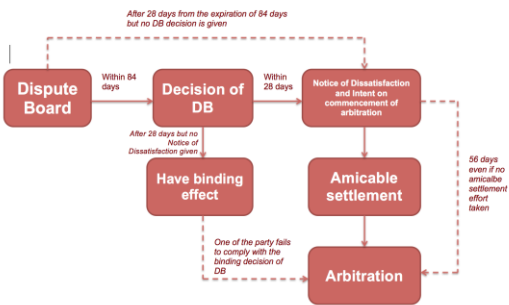
**EFFECT OF DECREE ON COMMERCIAL
MEDIATION ON DOMESTIC ARBITRATION**

Multi-tiered dispute resolution	Pre-condition of arbitration	Time bar
Admissibility of evidence	Effect of the mediated settlement agreement	Mediator acting as Arbitrator



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MULTI-TIERED DISPUTE RESOLUTION UNDER FIDIC CONTRACT



MULTI-TIERED DISPUTE RESOLUTION



- DB and DAB are not governed by the Decree on Commercial Mediation
- No mechanism for enforcement of DB/DAB
- ➔ It is risky to operate the FIDIC model dispute resolution clause in Vietnam.

Recommend → Negotiation – Mediation – Arbitration

PRE-CONDITION OF ARBITRATION

- *Not adopt Article 13 of UNCITRAL Model Law on International Commercial Conciliation*: no provision on stay of proceeding or return the petition in court or arbitration while the dispute is being settled by mediation.
➔ **Mediation is not compulsory**
- *Decision No. 10/2014/QĐ – PQT of the Hanoi court*: setting aside the arbitral award as the **parties did not resolve their dispute by negotiation as agreed in the contract** ➔ violation of fundamental principle of Vietnamese law as “conditions for filing claim were not met”.

➔ Risk of arbitral award being set aside as the parties had not conducted negotiation/mediation as provided by the dispute resolution clause

TIME BAR

- No suspend of time bar in the mediation process
- Substantive issue, not procedural issue (Civil Code and CPC 2015)
- Cannot be extended but can be agreed on the starting of the time bar

Agree on the starting of the time bar at the beginning of mediation



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ADMISSIBILITY OF EVIDENCE

Not adopt Article 10 of UNCITRAL Model Law on International Commercial Conciliation:
documents/evidence in mediation, DB/DAB can be used in arbitration
→ *confidentiality? willingness of parties for mediation?*

Agree on the inadmissibility of evidence used in mediation before arbitration



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EFFECT OF MEDIATED SETTLEMENT AGREEMENT

Binding upon the parties

- Pursuant to Civil Code

Having effect as an enforceable judgment of the court

- After being recognized by the court



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MEDIATOR ACTING AS ARBITRATOR

- Mediator is not allowed to be arbitrator of the same dispute, unless otherwise agreed by the parties in writing or in compliance with the provisions of law.
- Mediator for construction should have qualification as adjudicator (member of DB) as stipulated by the FIDIC Contract:
 - ✓ Fluent in the language for communication defined in the Contract;
 - ✓ A professional experienced in the type of construction involved and with the interpretation of contractual documents.



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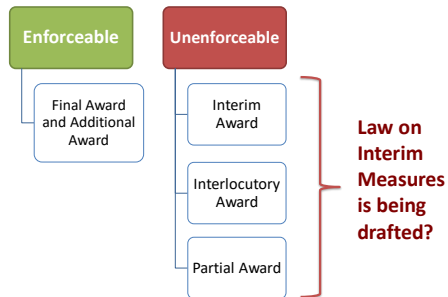
RECOGNITION AND ENFORCEMENT OF KCAB AWARDS IN VIETNAM



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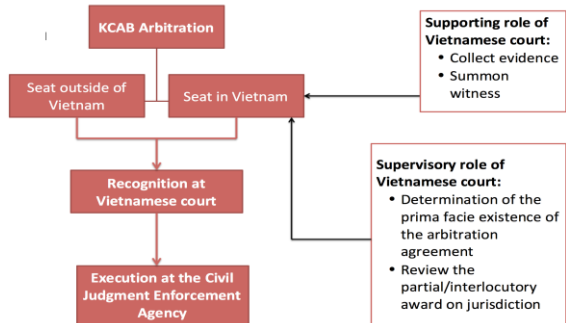
KCAB AWARDS ENFORCEABLE IN VIETNAM



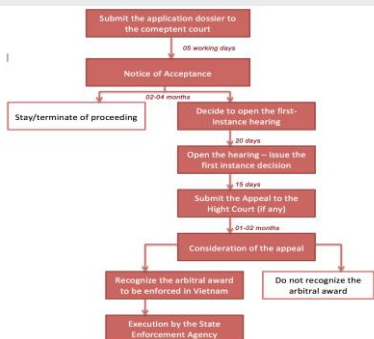
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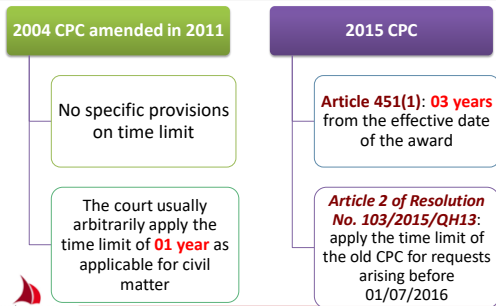
KCAB ARBITRATION SEATED IN VIETNAM



PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF KCAB ARBITRAL AWARD IN VIETNAM



TIME LIMIT TO FILE THE APPLICATION FOR RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS



BURDEN OF PROOF

*“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”*

(Article 459.1 of the 2015 CPC)



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PROOF OF FOREIGN LAW

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



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KOREAN LAWS TO BE APPLIED IN THE PROCEDURE OF RECOGNITION OF KCAB ARBITRAL AWARD IN VIETNAM

- **Signatory capacity of Korean party:**
 - ✓ Korean Commercial Act (part on Companies)
- **Arbitral proceeding in KCAB:**
 - ✓ Korean Arbitration Act
 - ✓ KCAB Arbitration Rules
- **Other issues:**
 - ✓ Korean Contract law
 - ✓ Korean Commercial Act
 - ✓ Korean Civil Act
 - ✓ Other laws



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THANK YOU FOR YOUR KIND ATTENTION!

Q & A

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