

Vietnam

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The year 2015 witnessed numerous developments in trade relations between Vietnam and foreign partners. In particular, after a decade of preparation, Vietnam has finally become the 84th member state of the Convention on Contract for International Sale of Goods (CISG)¹ which would bring sale contracts between Vietnamese and foreign parties closer to the international standards. Furthermore, on 4 February 2016, Vietnam, along with other 11 member countries, has signed the Trans-Pacific Partnership (TPP), a high-standard free trade agreement which covers approximately 30 per cent of the global GDP.² Besides, on 2 December 2015, Vietnam and the EU finally declared the completion of negotiation of the EU-Vietnam Free Trade Agreement (EVFTA).³ This treaty marks an important achievement of the 25-year bilateral ties between Vietnam and the EU and is regarded as the beginning of a strategic partnership with unlimited potential between the two partners. By joining these two remarkable treaties, Vietnam has actually adopted the two contentious models of Investor-State Dispute Settlement (ISDS) (ie, the traditional investment arbitration promoted by the United States in the TPP and a brand new system of investment court initiated by the European Commission in the EVFTA).

Apart from the accession to these international treaties, new national legislation has been promulgated in 2015 which is believed to create significant changes to the substantive as well as procedural legal matters in Vietnam. Such legislation, both international and domestic, will definitely bring interesting changes to the arbitration practices in Vietnam. This article aims at introducing an overview on the changes in the legal framework as a result of the promulgation of new legislation in Vietnam and their potential impacts regarding arbitration and ADR.

An overview of arbitration in Vietnam in 2015

In September 2015, the Ministry of Justice of Vietnam (MOJ) issued the Report on 04 years of Implementation of Law on Commercial Arbitration, which was announced in the Conference on the same topic.⁴ According to the report of the MOJ, as of 31 July 2015, arbitration centres in Vietnam have handled 879 cases and issued 586 arbitral awards. In addition, the state enforcement agencies received 325 applications for enforcement of arbitral award with the requested enforcement value of nearly US\$6.88 million and 592 billion dong. Among them, 180 awards were successfully enforced, which accounted for 60 per cent of the applications.

According to the latest information announced by the MOJ, there are now 15 arbitration centres in Vietnam among which Vietnam International Arbitration Center (VIAC) is considered the most prominent. 2015 bore witness to great achievements of the VIAC with a number of impressive figures. In 2015, the VIAC set a new record of 146 new case filings, recognising an 18 per cent increase from 124 new cases filed in 2014.⁵ Among them, 37.1 per cent of the new cases involve foreign elements

with a number of them requiring the application of foreign laws and appointment of foreign arbitrators.⁶

Also, the VIAC has just accredited 10 foreign arbitrators to its panel, which increases the number of foreign arbitrators of VIAC to 27 including Professor Gary Born, honoured President of the Singapore International Arbitration Center.

Additionally, the VIAC initiated the revision of its Arbitration Rules to be in line with the Resolution No.01/2014/NQ-NDTP – Guiding the Implementation of Certain Provisions of the Law on Commercial Arbitration (Resolution No. 01). Remarkably, the procedure for consolidation of the disputes and the expedited procedure have been incorporated into the drafts of the new Rules.

Not only has Vietnam domestic arbitration undergone rapid development in 2015, but foreign arbitration involving Vietnamese parties has also realised significant improvement. Especially, according to the 2015 Annual Report of the Singapore International Arbitration Center (SIAC),⁷ 2015 saw a significant increase in the number of cases involving Vietnamese parties, which makes Vietnam sixth in the top-10 nationalities (excluding Singapore) of parties who submitted their disputes to arbitration at SIAC in 2015 with 29 cases. In addition, Vietnam National Oil and Gas Group (PetroVietnam), a Vietnamese state-owned enterprise, won a US\$100 million tax-related dispute in an arbitration conducted under the Arbitration Rules of the International Chamber of Commerce (ICC).⁸ These figures indicate a new age when Vietnamese parties are no longer against arbitration in foreign institutions.

New legislation governing the recognition and enforcement of foreign arbitral awards

In the latest meeting session in November 2015 the National Assembly of Vietnam approved a number of pieces of new legislation, including the 2015 Civil Procedure Code.⁹

Arbitration laws of Vietnam, though using the UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006 as a baseline, contain a number of local adaptations. One of the most notable deviations is the separation of the recognition and enforcement of foreign arbitral awards from the 2010 Law on Commercial Arbitration (LCA). Instead, this issue is governed by the Civil Procedure Code (CPC). The 2015 CPC, which comes into force on 1 July 2016, dedicating a chapter to the procedure for recognition and enforcement of foreign arbitral awards. This chapter is considered closer to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Award (the New York Convention) and is expected to significantly improve the poor record of recognition and enforcement of foreign arbitral awards in Vietnam.¹⁰ Positive amendments to this chapter shall be briefly introduced below.

Replacing the legal term 'arbitral decision' with 'arbitral award' to be in line with LCA

The LCA makes clear distinction between 'arbitral decision' and 'arbitral award'. Nevertheless, in the old CPC, the term 'arbitral decision' is used in lieu of 'arbitral award' which causes confusion to the practitioners as well as foreign investors. Therefore, in order to get rid of that complexity, the new CPC replaces the term 'arbitral decision' with 'arbitral award' to be in line with the definition in the LCA as well as the New York Convention. It should be noted that under the definition of 'arbitral award', only full and final arbitral awards which were not set aside by the court of the seat of arbitration shall be recognised and enforced in Vietnam and, accordingly, interim awards do not fall within the regime of recognition and enforcement of arbitral awards in Vietnam.

The competent authority handling the recognition and enforcement request

Pursuant to the old CPC, the award creditors have no choice but to submit their application to the MOJ. The dossier is then examined by the MOJ before being passed to the competent court. This process is usually time-consuming and causes delay to the resolution of the application. Therefore, to shorten the proceeding, the new CPC now provides that the award creditors can file their request directly to the competent court unless the mutual legal assistance treaties to which Vietnam is a member explicitly requires the submission of the request to the MOJ.¹¹

Time bar for application for recognition and enforcement of foreign arbitral award in Vietnam

The old CPC is silent on the matter of time limitation for application for recognition and enforcement of foreign arbitral award in Vietnam. Nevertheless, it is shown by precedent that the Court arbitrarily applied the time bar of one year, which is applicable for the general civil cases, to this particular procedure [*Cargill v Dong Quang* (2014), Decision No. 01/2014/QDST-KDTM of the People's Court of Long An province, which is upheld by the Decision No. 08/2015/QDST-KDTM of the Appellate Court of the Supreme People's Court in Ho Chi Minh City]. The new CPC has cured this situation by clearly stating the limitation of three years for the application for recognition and enforcement of foreign arbitral award.¹² This time bar shall start as from the date the foreign arbitral award taking effect.

Burden of proof

One of the drawbacks of the recognition and enforcement of foreign arbitral award in Vietnam is that heavy burden of proof is usually wrongly placed against the award creditors instead of award debtors due to the silence of the old CPC on this issue. The local court often requests the award creditors to provide bunches of documents to prove a number of issues such as the legal capacity to enter into the contract and the arbitration agreement of each contracting party, validity of the arbitration agreement or the legality of the service of arbitral notices.¹³ Understanding that problem, the new CPC, in compliance with article V.1 of the New York Convention, clearly stipulates that the burden of proof shall be borne by the award debtors.¹⁴ This amendment is expected to make a change in the attitude of the local award debtors who often refused to participate in the arbitral proceedings only to later claim against the recognition and enforcement of the arbitral award in Vietnam.

Proof of foreign law

The old CPC does not provide any provision on how contents of foreign law would be pleaded before the Vietnamese courts. Hence, the local judges usually use their subjective understanding and analogical application of Vietnamese law to interpret and apply foreign laws. To fill in such blank, the new CPC has supplemented a new provision on the application of foreign law in which stipulates the obligation to provide the contents of foreign law by the litigants.¹⁵ Notably, the law also implicitly gives an open door for the reference of foreign lawyers' affidavit by allowing the provision of foreign law by individual, organisation or authority specialised in foreign laws.

Judicial review of the appellate decisions on recognition or non-recognition of foreign arbitral awards

The appellate decisions on recognition or non-recognition of foreign arbitral awards of the High Court (previously known as the Appellate Court) used to be final and binding without any higher level of review. Nevertheless, due to the bad record of non-recognition cases, the new CPC now allows the review of the decisions by the Supreme People's Court under cassation or re-opening procedure.¹⁶ Thus, it is supposed that the number of foreign arbitral awards to be refused of recognition and enforcement in Vietnam for wrongful application of law or misinterpretation of facts would decrease under the strict supervision of Supreme People's Court.

These amendments are expected to bring the law governing the procedure for recognition and enforcement of foreign arbitral awards in Vietnam closer to the international standards. Though it may take time to see any actual improvement, it is reasonable to believe in a brighter future for the number of recognised foreign arbitral awards in Vietnam. Nevertheless, 'contrary to fundamental principles of Vietnamese laws' is still listed as a ground for refusal of recognition and enforcement of foreign arbitral award in Vietnam, instead of 'public policy'. The concept of 'fundamental principles of Vietnamese laws' remains a long-standing problem, not only of the recognition and enforcement of foreign arbitral awards, but also of the annulment of domestic arbitral awards. It is hoped that detailed definition or guidance on this term shall be issued in the upcoming time.

Recourse against domestic arbitral awards

According to the report of VIAC, 2015 recognises the highest number of applications for annulment of the arbitral awards with 13 applications. Nevertheless, until the end of 2015, there has yet to be any domestic award set aside by the local court.

Similar to the situation of recognition and enforcement of arbitral award in Vietnam, 'contrary to fundamental principles of Vietnamese laws' is still the most typical ground for the losing parties to challenge the arbitral award. For instance, an award debtor submitted that the arbitral award did not uphold the agreement of parties on acceptance of work, payment and other regulations of Law on Construction could make up a violation of fundamental principles of Vietnamese laws [*Life Style Vietnam Joint Stock Company v Tien Phong Construction and Trade Co., Ltd* (2015) Decision No. 1161/2015/QD-PQTT dated 23 October 2015 of the People's Court of Ho Chi Minh city]. This argument was rejected by the trial panel because it led to a revisit of the merit of the dispute which is not allowed by article 71(4) of the LCA. In another case, the losing party argued that miscalculation of the time bar and failure to clarify on the time of conclusion of the contract and delivery of the goods also resulted in a violation of fundamental principles of Vietnamese laws [*Minh Sang Technical Co., Ltd v Multron System PTE. Ltd* (2015) Decision No. 1172/2015/QD-PQTT dated 26

October 2015 of the People's Court of Ho Chi Minh city]. The trial panel in this case only considered the submission on time bar but still upheld the decision of the arbitral tribunal because the allegation of the award debtor was groundless. Other issues related to the conclusion of the contract and the delivery of the goods are regarded as the substantive matters which had been resolved by the arbitral tribunal and hence not reviewed by the trial panel.

Other grounds raised by the award debtors for challenge against the arbitral award are: the arbitral proceedings are inconsistent with the provisions of laws,¹⁷ violation of the confidentiality of arbitration and not ensure of the impartiality, objectivity and independence of the arbitrators.¹⁸ None of these grounds is justified and all of them are disregarded by the trial panel.

Though there is no new regulation governing the annulment of domestic arbitral award promulgated in 2015, it seems that the guidance of the Supreme People's Court in Resolution No. 01 has been generating a positive effect. These above decisions also reflect the open mind of the local judges with regard to the challenge of domestic arbitral awards in particular and arbitration issues in general.

New dawn of mediation in Vietnam

Though in recent years mediation has been recognised as a method of alternative dispute resolution beside arbitration, there has never been any legislation specifically regulating on commercial mediation. The Decree on Commercial Mediation, which is now under the final review of the Government and is expected to be passed in the middle of 2016, is the first legislation governing the commercial mediation in Vietnam. The Decree is inspired by the UNCITRAL Model Law on International Commercial Conciliation with several local modifications. Furthermore, the promising future of Mediation in Vietnam is also facilitated by chapter 33 of the new CPC on recognition of results of out-of-court mediation. This section will concentrate on introduce highlights of the new framework governing mediation in Vietnam.

Qualification of mediators

According to the Decree on Commercial Mediation, in order to be a mediator in Vietnam, a person must meet specific qualifications that are quite similar to the qualifications of arbitrators set out by the LCA. Notably, there is no explicit restriction on the nationality of the mediator except for the requirement for registration with the Department of Justice in case of ad hoc mediator. That means foreign mediators are free to register and be named in the list of mediators of a mediation centre in Vietnam.

Forms of mediation and procedure for conducting mediation

The Decree on Commercial Mediation promotes both institutional mediation and ad hoc mediation. A mediation centre can be newly established or an arbitration centre registering to conduct mediation service. Furthermore, the Decree also encourages foreign mediation institutions to open their branches or representative offices in Vietnam.

Recognition of mediated settlement agreement

One of the matters contributing to the success of the mediation is the ability of enforcement of the settlement agreement resulted from mediation. For this purpose, firstly the mediated settlement agreement will have binding effect between parties in accordance with the civil law. Furthermore, both the Decree on Commercial Mediation and the new CPC allow one or both parties to request

the court for recognition of the mediated settlement agreement. After being recognised, the mediated settlement agreement shall take immediate effect without being reviewed under appellate procedure and be enforced as court judgment in compliance with the 2008 Law on Enforcement of Civil Judgment amended in 2014.¹⁹ These regulations are in line with the international trend reflecting by the proposed Convention on Recognition of Mediated Settlement Agreement, a convention with similar effect to the New York Convention, which is now a main topic in the working agenda of the Working Group II of the UNCITRAL.²⁰

Regardless of minor deficiencies, these regulations are expected to create a sound legal framework for the solid development of mediation in Vietnam.

ISDS regimes under new FTAs of Vietnam

Vietnam is now member of 11 FTAs and is taking part in the negotiation process of five others.²¹ Among them, the regional Trans-Pacific Partnership (TPP) and the Europe-Vietnam FTA (EVFTA) are attracting special attention from investors as well as legal practitioners not only from Vietnam but also from countries all over the world. Though having not signed the Washington Convention on Settlement of Investment Disputes between States and Nationals of Other States (ICSID), Vietnam was involved in seven investment arbitration cases with foreign investors conducted in compliance with UNCITRAL Arbitration Rules, of which Vietnam successfully settled one case, won two cases and is still in the process of resolving four remaining ones.²²

As ISDS provisions are always the ones with most controversies, this section shall be dedicated to give an overview of the ISDS mechanism under the two modern FTAs that have recently been concluded by Vietnam.

TPP with the traditional investment arbitration model

The ISDS in the TPP is inspired by the 2012 Model Bilateral Investment Treaties (BIT) of the United States with a number of reformations in order to increase the safeguard and transparency of arbitral proceeding but still maintains the 'loosely institutionalized system of one-off arbitration'.²³

Procedure of dispute resolution

Influenced by the traditional investment arbitration, investor-state disputes under the TPP shall be resolved by an arbitral tribunal comprises of three arbitrators appointed by the disputing parties unless otherwise agreed by the parties. Under the TPP, the claimant also has a choice of procedural rules, namely the ICSID Convention, ICSID Additional Facilities, UNCITRAL Arbitration Rules or other rules as agreed by both the claimant and the respondent. It should be noted that almost all members of the TPP are members of ICSID while Vietnam has not shown a clear intention to accede to this convention.

Enforcement of the award

The arbitral tribunal shall render the arbitral award that has binding effect upon disputing parties if it is not subject to revision or annulment under the ICSID Convention, ICSID Additional Facilities or UNCITRAL Arbitration Rules. There is no appeal mechanism under the TPP. Enforcement of the award shall be provided by the national law of the member states and may be sought through ICSID Convention or New York Convention.²⁴

Transparency

One of the innovations of the ISDS under the TPP is the policy

of transparency. Accordingly, all the arbitral documents including inter alia the notice of intent, notice of arbitration, pleading, memorials, minutes of transcript of hearings, orders, awards and decisions of the arbitral tribunal shall be made available to the public subject to a limited number of exceptions as may be raised by the respondent. Furthermore, the hearing shall also be open to public.²⁶ The TPP also requires the member states to provide guidance on the code of conduct as well as guidance on the conflicts of interest for arbitrators serving in ISDS tribunals.²⁷ Being familiar with the confidentiality of investment arbitration conducted under the old UNCITRAL Arbitration Rules, it is high time for Vietnam to get used to the transparency policy under the ISDS mechanism of the TPP and the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, which are incorporated in the new UNCITRAL Arbitration Rules that took effect on 1 April 2014.

In general, ISDS provisions under the TPP is regarding as having 'address the deficiencies and limitations of ISDS provisions in earlier investment treaties'²⁸ and balancing the rights of the investors with the sovereignty of the host country.

New mechanism of ISDS under the EVFTA

Being regarded as 'one of the most ambitious and comprehensive FTA's to date',²⁹ the EVFTA applies a new mechanism of ISDS which was proposed by the European Commission. Particularly, it is announced by the European Commission that the ISDS in section 3, chapter 8 on trade in services, investment and e-commerce of the EVFTA includes key provisions of the new investment court system for EU trade and investment negotiations which the European Commission is also proposing for in the negotiation of the Transatlantic Trade and Investment Partnership (TTIP) with the United States.³⁰ Accordingly, the disputes between an investor and Vietnam or the EU or a member state of the EU shall be resolved by a two-tier tribunal system of which the decision of the tribunal will be subject to appeal by the appellate tribunal. Furthermore, the procedure of dispute resolution as well as the enforcement of the award is also noteworthy.

Investor-state dispute settlement bodies

Instead of the traditional arbitration, the investment disputes under the EVFTA shall be resolved by standing tribunal operating similarly to a permanent court or the Dispute Settlement Body (DSB) of the WTO. Pursuant to article 12(2) of section 3, chapter 8 of the EVFTA, the tribunal shall comprise of nine standing members, three of them shall be nationals of a member state of the EU, three shall be nationals of Vietnam and three shall be nationals of third countries. The members of the tribunal must be qualified for judicial office in their countries or jurists of recognised competence. Public international law expertise is a compulsory requirement and experience of international trade and investment law and dispute resolution is desirable.³¹

Meanwhile the appellate tribunal will consist of six appointees, two of them nationals of Vietnam, two nationals of a member state of the EU and two nationals of third countries.³² They are also required to meet the same qualifications as the members of the tribunal and must be appointed to the highest judicial office in their respective countries.³³

The procedure of dispute resolution

Similar to the TPP, a claim shall only be considered by the tribunal if it meets all the pre-conditions for settlement of dispute such

as amicable settlement, consultations and submission of notice of intent to submit a claim. The claimant can choose to apply either the ICSID Convention; the ICSID Additional Facilities; or the UNCITRAL Arbitration Rules; or any other rules on agreement of the disputing parties with clear intention made in their statement of claim.³⁴

The tribunal hearing a specific case shall be a division of three members from the nine members of the tribunal, one national of a member state of the EU, one a national of Vietnam and chaired by a member who is a national of a third country.³⁵ The division of the tribunal shall decide a dispute upon consensus basis. In case, consensus cannot be reached, the majority method shall be used.³⁶ The decision made by the division of the tribunal shall be regarded as a provisional award and shall be subject to appeal.

Either disputing party may appeal against the provisional award for one of the grounds set out in article 28(1) of section 3, chapter 8 of the EVFTA. The appellate proceedings shall be conducted similarly to the first instance by the division of three members from the appellate tribunal. The award of the appellate tribunal shall be final and binding upon the disputing parties.

The dispute resolution proceedings shall be assisted by the Secretariat of ICSID or the Permanent Court of Arbitration, which will be decided during legal scrubbing before the finalisation of the text of the EVFTA.

Enforcement of the awards

A provisional award issued by the tribunal that is not appealed by any disputing party within 90 days of its issuance and final award of the appellate tribunal shall be binding upon parties and not subject to any appeal, review and annulment of other remedy. Unlike the arbitral award rendered by the arbitral tribunal under the ISDS regime of TPP, the final awards under the EVFTA shall be recognised by the member states of the EVFTA within its territory as a final judgment of the local court.³⁷ Nevertheless, in the first five years after the entry into force of the FTA, the awards, of which Vietnam is a respondent, must be recognised and enforced in Vietnam pursuant to the New York Convention.³⁸

Apart from these significances, the ISDS mechanism under the EVFTA also focuses on the transparency as well as the independence and impartiality of the members of the tribunal or appellate tribunal with the incorporation of UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration as referred in article 20 of section 3 and a Code of Conduct of Members of the Tribunal, Members of the Appellate Tribunal and Mediators attached in Annex II of Chapter 8. Furthermore, there is also a designated mediation procedure mechanism for resolution of investor-state disputes applicable for voluntary mediation between disputing parties.

It is anticipated that the ISDS mechanism under the EVFTA shall be a challenge to Vietnam as the investment disputes will increase along with the growth of trade values. Additionally, it is the first time this new two-tier system is applied and may be supportive evidence of the EU in the negotiation of ISDS provisions in the TTIP.

Conclusion

It is said that opportunities are always accompanied by challenges and Vietnam, for ratification of the new generation FTAs, should be ready to cope with threat of the increase in number of investment arbitration cases. However, the government of Vietnam seems to concentrate more on the trade deals other than paying due attention to the ISDS regime. Particularly, Decision No. 04/2014/

QD-TTg on Promulgation of Regulation on Coordination in Resolution of International Investment Disputes of the Prime Minister of Vietnam dated 14 January 2014 is regarded as a first positive move to basically prepare to participate in the resolution of investment disputes. Accordingly, the MOJ will be the pioneer assisting the government to coordinate with other national agencies and also act as legal representative agency of Vietnamese government in settlement of international investment disputes.

Furthermore, with the amendments of a number of important legislation, Vietnam is showing a positive and friendly attitude toward both arbitration and mediation, being the dispute resolution methods outside the court. This movement is believed to make great contribution to the development of ADR in Vietnam and brings the framework governing arbitration and mediation of Vietnam coming closer to the international standards.

Since these pieces of legislation, both domestic and international, still have not been tested it will be interesting to see what the future may bring and how Vietnam will complete its framework to welcome the opportunities and face the challenges.

Notes

- 1 'Viet Nam accedes to the UN Convention on Contracts for the International Sale of Goods (CISG)' (29 December 2015) www.univie.ac.at/uni/en/pressrels/2015/unisl226.html accessed on 28 March 2016.
- 2 <http://vietnam.usembassy.gov/tpp.html> accessed on 28 March 2016.
- 3 <http://ec.europa.eu/trade/policy/countries-and-regions/countries/vietnam/> accessed on 28 March 2016.
- 4 '04 years of implementation of Law on Commercial Arbitration' (Ministry of Justice Postal, 9 September 2015), <http://moj.gov.vn/qt/fintuc/Pages/hoat-dong-cua-lanh-dao-bo.aspx?ItemID=2367>, (in Vietnamese only) accessed on 28 March 2016.
- 5 2015 Annual Report of VIAC.
- 6 Ibid.
- 7 SIAC Annual Report 2015, www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2015.pdf, accessed on 28 March 2016.
- 8 'PetroVietnam wins in a Production-Sharing Contract Tax Incentive Dispute with an International partner' (Vietnam Energy, 1 June 2015), <http://nangluongvietnam.vn/news/en/oil-and-gas/etrovietnam-wins-in-a-production-sharing-contract-tax-incentive-dispute-with-an-international-partner.html>, accessed on 27 March 2016.
- 9 For the purpose of distinguishing between the legislation, in this article, the 2004 Civil Procedure Code amended in 2011, which is still in force until 1 July 2016, will be referred to as the old CPC and the 2015 Civil Procedure Code will be referred to as the new CPC or the 2015 CPC.
- 10 See Nguyen Manh Dzung & Nguyen Thi Thu Trang, Vietnam chapter in *The Asia-Pacific Arbitration Review 2016* p.100.
- 11 Article 451(1) of the 2015 CPC.
- 12 Ibid.
- 13 *ECOM Agroindustrial Corp Ltd v Hanoi May 19th Textile One Member Company Limited* (2013) Decision No. 08/2013/VKDTM dated 20 May 2013 of the People's Court of Hanoi; *Cargill Cotton, a business unit of Cargill, Incorporated v Son Nam Textile and Garment Joint Stock Company* (2014) Decision No. 20/2014 QDKDTM-ST dated 26 November 2014 of the People's Court of Nam Dinh city.
- 14 Article 459(1) of the 2015 CPC.
- 15 Article 481 of the 2015 CPC.
- 16 Article 462(6) of the 2015 CPC.
- 17 *MS Engineering Co., Ltd v Multron System PTE. Ltd* (2015) Decision No. 1172/2015/QD-PQTT dated 26 October 2015 and *Po Sung MEC Co., Ltd v Daewon E& C* (2015) Decision No. 803/2015/QD-PQTT dated 20 August 2015 of the People's Court of Ho Chi Minh city.
- 18 *Po Sung MEC Co., Ltd v Daewon E&C* (2015) Decision No. 803/2015/QD-PQTT dated 20 August 2015 of the People's Court of Ho Chi Minh city.
- 19 Article 419(9) of the 2015 CPC.
- 20 Agenda of Working Group II of UNCITRAL, www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html accessed on 28 March 2016.
- 21 <https://aric.adb.org/fta-country> accessed on 28 March 2016.
- 22 Nguyen Manh Dzung, MCI Arb & Dang Vu Minh Ha, 'Vietnam – An arbitration-friendly seat' in *Young Arbitration Review Edition 19 – October 2015*.
- 23 Stephan Schill, 'The TTIP Negotiations: US versus EU Leadership in Global Investment Governance' (05 March 2016), <http://kluwerarbitrationblog.com/2016/03/05/the-ttip-negotiations-us-versus-eu-leadership-in-global-investment-governance>, accessed on 28 March 2016.
- 24 Article 9.28 Chapter 9 of the TPP.
- 25 Article 9.23.1 and Article 9.23.4 of the TPP.
- 26 Article 9.23 Chapter 9 of the TPP.
- 27 Article 9.21 Chapter 9 of the TPP.
- 28 Wendy Miles QC, Kenneth Beale & Peter Barnett, 'Investor-state dispute settlement under the recently concluded Trans-Pacific Partnership' *Arbitration News*, Vol 21 No 1 (February 2016).
- 29 'Trade deals: The EU-Vietnam FTA' (March 2016), www.ciarb.org/evaluator/march-2016/trade-deals-the-eu-vietnam-fta, accessed on 28 March 2016.
- 30 Ibid.
- 31 Article 12(4) of Section 3 Chapter 8 of the EVFTA.
- 32 Article 13(2) of Section 3 Chapter 8 of the EVFTA.
- 33 Article 13(7) of Section 3 Chapter 8 of the EVFTA.
- 34 Article 7(2) of Section 3 Chapter 8 of the EVFTA.
- 35 Article 12(6) of Section 3 Chapter 8 of the EVFTA.
- 36 Article 12(12) of Section 3 Chapter 8 of the EVFTA.
- 37 Article 31(2) of Section 3 Chapter 8 of the EVFTA.
- 38 Article 31(3) and (4) of Section 3 Chapter 8 of the EVFTA.



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Mr Dzung obtained LLM degree specialising in international dispute resolution from Queen Mary, University of London and is accredited as a Member of the Chartered Institute of Arbitrators (MCI Arb). He has presented and lectured extensively on ADR and international commercial arbitration at the Judicial Academy of the Ministry of Justice of Vietnam and the Diplomatic Academy of the Ministry of Foreign Affairs of Vietnam.

Mr Dzung was a key contributing editorial member of the Drafting Committee of Arbitration Legislation of Vietnam and has been appointed as local expert and consultant in various legal reform projects and harmonisation working groups. He was also the former Vice President of the Pacific International Arbitration Center (PIAC) in Ho Chi Minh City, Vietnam, and is now a member of the Research Council of the Vietnam International Arbitration Center (VIAC).

Mr Dzung has acted in both domestic and international arbitrations conducted under various arbitration rules, such as those of the ICC, SIAC, JCAA and VIAC. He has also assisted international clients in pursuing enforcement proceedings of a large number of arbitral awards rendered by the ICC, ICA, GAFTA, JCAA, LMAA, SIAC and VIAC in Vietnam.



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Ms Ha obtained her first law degree from Diplomatic Academy of Vietnam (DAV) and was ranked among the top 10 graduates in her class. She got her LLM in International Commercial Law at School of Law, University of Leicester, United Kingdom.

Specialising in International Commercial Law, Ms Ha is involved in drafting legal advice and preparing submissions in both Vietnamese and English and has assisted clients in court and arbitration. She also has experience in handling cargo claims, maritime incidents and charterparties.

Ms Ha is co-authored a number of publications on arbitration such as the Vietnam chapter in the IBA Country Guideline, Young Arbitration Review. She also assists Mr Nguyen Manh Dzung in commenting on the draft Decree on Commercial Mediation and the Bill of the 2015 Civil Procedure Code of Vietnam.



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Dzungsr & Associates LLC has extensive experience and expertise in arbitration and litigation, covering a wide range of matters of different natures. Its lawyers practise to a very high standard and are much familiarised with the intricacies of dispute resolution in Vietnam, thereby well equipped to provide innovative and cost-effective solutions to legal problems. As a testament to its capacity, the firm is recommended by the *Asia Pacific Legal 500 2015* for dispute resolution and is praised as 'very reliable' and 'professional'.

Dzungsr & Associates LLC has first-hand experience in the development of ADR law in Vietnam. Its managing partner, Mr Nguyen Manh Dzung, involved directly in the legislative process of the 2010 Law on Commercial Arbitration. Since the Law's enactment, the firm has further supported the Supreme People's Court and Ministry of Justice of Vietnam in guiding its application.

Since 2012, the firm has acted in high-profile proceedings which highlight the underlying problems of recognition and enforcement of arbitral awards in Vietnam. This has contributed to the numerous efforts to bring local frameworks in line with the 1958 New York Convention, one example of which is Official Correspondence No 246 dated 25 July 2014 of the Supreme People's Court.

Most recently, Mr Dzung has been appointed as an expert to the Supreme People's Court in a project sponsored by the UNDP to improve court-annexed mediation. Also, he has been officially retained by the World Bank as a local consultant on ADR in the drafting of the 2015 Civil Procedure Code.