



# The Asia-Pacific Arbitration Review 2020

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# The Asia-Pacific Arbitration Review 2020

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A Global Arbitration Review Special Report

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**Nguyen Ngoc Minh, Nguyen Thi Thu Trang and Nguyen Thi Mai Anh**

Dzungsr & Associates LLC

Welcome to *The Asia-Pacific Arbitration Review 2020*, a *Global Arbitration Review* special report. *Global Arbitration Review* is the online home for international arbitration specialists, telling them all they need to know about everything that matters.

Throughout the year, GAR delivers pitch-perfect daily news, surveys and features, organises the liveliest events (under our GAR Live banner) and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that go deeper into developments in each region than our journalistic output is able to. *The Asia-Pacific Arbitration Review*, which you are reading, is part of that series. It contains insight and thought-leadership inspired by recent events, written by pre-eminent practitioners from around Asia.

Across 16 chapters spanning 128 pages, this edition provides an invaluable retrospective, executed by 34 leading figures. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, our contributors capture and interpret the most substantial recent international arbitration events of the year just gone, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular country as a seat.

This edition covers Australia, China, Hong Kong, India, Japan, Korea, Malaysia, the Philippines, Singapore and Vietnam, has overviews of developments in energy arbitration, investment treaty arbitration, and enforcement, and includes a discussion of the pros and cons of discounted cash-flow as a method of valuing a growth business.

Among the nuggets it contains:

- a description of how China has extended its reporting system – whereby lower courts must notify the Supreme People's Court before taking decisions that may affect awards or arbitrations – to include domestic cases;
- statistics showing a boom in arbitration in Vietnam, plus a review of the most recent cases on annulment and enforcement;
- a full review of all the significant court decisions from India in the past year;
- how Malaysia has made it easier for foreign counsel to appear in international arbitrations there; and
- remarkable statistics from Korea showing the growth of international cases at the Korean Commercial Arbitration Board and the extent of the government's development plans.

The review also looks to answer speculative questions facing arbitration in the Asia-Pacific. The retrospective on the Hong Kong International Arbitration Centre on the occasion of the HKIAC's 35th birthday answers 'will Hong Kong will be seen as neutral territory vis-à-vis the mainland in the future?', while 'DCF – gold standard or fool's gold?' questions how arbitrators might attempt to value Spotify Technology were it expropriated by Sweden.

If you have any suggestions for future editions, or want to take part in this annual project, my colleague and I would love to hear from you. Please write to [insight@globalarbitrationreview.com](mailto:insight@globalarbitrationreview.com).

**David Samuels**

Publisher  
May 2019

# Vietnam

**Nguyen Ngoc Minh, Nguyen Thi Thu Trang and Nguyen Thi Mai Anh**

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Following the development of dispute resolution in the Asia-Pacific area in particular and the world in general, alternative dispute resolution (ADR) is becoming a favoured option for settling disputes not only between Vietnamese parties and their foreign partners but also among themselves. Since 2017, the Vietnamese government has announced new regulations that facilitate the usage of ADR in Vietnam, especially concerning commercial arbitration and mediation. Accordingly, there was an increase in both the quantity and quality of dispute resolution in 2018, which is demonstrated through the remarkable numbers of arbitration institutions, arbitrators and disputes involved in ADR. This year also witnessed a change in the attitude of the Vietnamese courts toward commercial arbitration and welcomed a pilot programme of court-annexed mediation, which is expected to bring a more efficient and expeditious procedure for disputing parties.

## **Commercial arbitration in Vietnam: remarkable numbers**

General statistics about commercial arbitration

The development of commercial arbitration in Vietnam in 2018 is, firstly, demonstrated through remarkable figures. More arbitration centres have been established to meet the growing demand of the business community. Notably, on 6 January 2018, Ho Chi Minh City Commercial Arbitration Association (HCCAA) – the first professional association of commercial arbitrators in Vietnam – was established.<sup>1</sup> With more than 100 members, the HCCAA is expected to shape the standard values for Vietnamese arbitrators, as well as to promote international cooperation in the field of commercial arbitration.<sup>2</sup>

As a leading arbitration centre in Vietnam, the Vietnam International Arbitration Centre (VIAC) enrolled 180 new requests for arbitration in 2018, the highest number since its establishment in 1993, with the total value of disputes being over US\$400 million.<sup>3</sup> Significantly, the VIAC has also administered a number of US\$100 million arbitrations. Previously, disputes resolved by arbitration in Vietnam mainly involved foreign parties, especially from Singapore, South Korea and China, as at that time commercial arbitration was not well-known to domestic enterprises. However, over the past 10 years with significant efforts of the VIAC and relevant authorities in helping Vietnamese enterprises understand and opt for arbitration, the portion of domestic disputes (in the sense that there is no involvement of foreign parties) being settled at the VIAC has rose rapidly. According to the VIAC's latest report, domestic and international disputes in 2018 account for almost equivalent percentages, with 49 per cent for the former and 51 per cent for the latter.<sup>4</sup>

## **Legislative changes**

In terms of legislation, on 19 September 2018, the government of Vietnam approved Decree No. 124/2018/ND-CP to amend some provisions of Decree No. 63/2011/ND-CP on detailing and guiding some articles of the 2010 Law on Commercial

Arbitration. The objective of the new decree is to simplify the registration procedures for arbitration centres and their branches, as well as representative offices and branches of foreign arbitration centres in Vietnam.

Another recent legislative change that could have a positive impact on the development of commercial arbitration is the publication of court judgments and decisions and the recognition of precedents as a source of law. In principle, within 30 days since the date of effectiveness, the court judgments and decisions will have to be publicised on the court's portal. In addition, pursuant to the 2015 Civil Code, for the first time, precedents have been officially regarded as one of the sources of law that the judges as well as the arbitrators can refer to when other sources have been exhausted.<sup>5</sup> It should be noted that, unlike the system in other traditional common law countries, only judgments and decisions that are selected and announced by the Judge Council of the Supreme People's Court would have a binding effect on subsequent courts. Until now, a number of court judgments and decisions relating to arbitration have been made public, although none of them has been selected to have precedent value. However, it is expected that this new mechanism will facilitate transparency and quality in general court proceedings and in arbitration-related cases.

## **Significant court decisions on annulment of arbitral awards in 2018**

The development of arbitration in Vietnam in 2018 is not only presented through the remarkable statistics and legislative changes mentioned above, but also through the support of Vietnamese courts toward the enforceability of the arbitral awards. Overall, the statistics show that annulment was sought against only a limited number of arbitral awards. According to a report of the VIAC published in a conference on annulment of arbitral awards, from 2003 to 2014, 46 out of 679 arbitral awards were challenged and only 19 were set aside.<sup>6</sup> Recently, in 2017, there were 17 applications for annulment of the VIAC's arbitral awards and only three of them were set aside by the courts.

Notably, a number of recently rendered court decisions in 2018 show a gradual move towards the pro-arbitration approach of Vietnamese courts in interpreting and applying the grounds for setting aside arbitral awards. To be specific, under article 68(2) of the Law on Commercial Arbitration, there are five grounds for challenging an arbitral award that are further explained and guided by article 14 of Resolution 01/2014/NQ-HDTP of the Judge Council of the Supreme People's Court. Accordingly, the arbitral award shall be annulled if it falls within one of these following cases:

- there is no arbitration agreement, or the arbitration agreement is null and void or incapable of being performed;
- the composition of the arbitral tribunal or the arbitration proceedings was inconsistent with the agreement of the parties or contrary to the Law on Commercial Arbitration;

- the dispute falls outside the jurisdiction of the arbitral tribunal;
- the evidence supplied by the parties on which the arbitral tribunal relied to issue the award is forged, or an arbitrator receives money, assets or some other material benefits from one of the parties in dispute, which affects the objectivity and impartiality of the arbitral award; or
- the arbitral award is contrary to the fundamental principles of the law of Vietnam.

#### Limited ground to annul arbitral awards

In Decision No. 01/2018/QĐ-PQTT, dated 4 January 2018, the Hanoi People's Court affirmed that statute of limitations is not regarded as a ground to annul an arbitral award. In this case, a dispute arose from a construction contract between a Korean contractor and Chinese sub-contractors. The Chinese sub-contractors initiated an arbitration at the VIAC to claim for outstanding payment. During the arbitration proceedings, the Korean contractor as respondent asserted that the Chinese sub-contractors' claim had already been time-barred, pursuant to the Law on Commercial Arbitration. However, the tribunal relied on article 162 of the 2005 Civil Code, which allows for the recommencement of statute of limitations and therefore decided that the claim was still admissible.

Consequently, the Korean contractor sought to set aside the arbitral award at the Hanoi People's Court. They argued that the arbitral tribunal decided the statute of limitations not in conformity with the Law on Commercial Arbitration, which violated the arbitral procedures and the fundamental principles of Vietnamese law pursuant to article 68(2)(b) and (e) of the Law on Commercial Arbitration. In its decision No. 01/2018/QĐ-PQTT, the Hanoi People's Court held that the rule on recommencement of time limit under the 2005 Civil Code is applicable in this case and thus, the tribunal was correct when relying on this provision to decide the matter. In addition, the court also found that statute of limitations is not a ground for annulment of arbitral awards and, accordingly, dismissed the request of the Korean contractor. In a way, the court again confirmed that statute of limitations is a matter of substantive, but not procedural nature.

#### Arbitrability of dispute arising from non-disclosure agreements

In another case, a dispute arose out of an employment relationship between a Vietnamese employer and an employee.<sup>7</sup> As widely accepted, labour disputes are not arbitrable. However, in this case, the employer and the employee signed an employment contract and a non-disclosure agreement (NDA). Pursuant to the NDA, the employee commits to not work for any competing company for 12 months after the termination of their employment contract. The employer then found that the employee violated this provision of the NDA and thus sued the employee to the VIAC. An award in favour of the employer was issued and then challenged by the employee at the Ho Chi Minh City People's Court. During the annulment proceeding, the employee raised that, as this dispute about the NDA was a labour dispute, it was non-arbitrable and belonged to the court's jurisdiction.

The Ho Chi Minh City People's Court held that, pursuant to article 2(2) of the Law on Commercial Arbitration, the arbitral tribunal would have jurisdiction to resolve a dispute if it involves at least one party engaging in commercial activities. In this case, this requirement was satisfied as the employer is a company pursuant to the Law on Commerce. In addition, the court further held that in its statement of defence, as well as during the arbitration proceedings, the employee asserted that the NDA was

completely separate from and not a part of the employment contract. Therefore, the court found no ground to consider the NDA as non-arbitrable. In other words, the Ho Chi Minh City People's Court decided that a dispute about non-disclosure agreement may be arbitrable if it is separated from the employment contract.

#### Waiver of the right to object

In Decision No. 04/2018/QĐ-PQTT, dated 24 July 2018, the Hanoi People's Court, based on the provision of waiver of right to object, affirmed that:

- because the respondent in the arbitration case did not request the court to decide on the tribunal's decision on jurisdiction, they lost the right to raise the jurisdiction issue as a ground to annul the award; and
- a party is not allowed to raise the forgery of evidence as a ground to annul the award if they previously accepted its authenticity.

To be specific, a Korean seller, being the claimant, brought a dispute arising from two sale agreements and one mortgage agreement against a Vietnamese buyer to the VIAC and was granted a favourable award. In the arbitration proceedings, the Vietnamese buyer made objections to the tribunal's jurisdiction. However, when the tribunal rendered a decision affirming its jurisdiction, the Vietnamese respondent did not challenge this decision to the competent court. Consequently, the Hanoi People's Court held that the Vietnamese respondent lost its right to now request for annulment of the award.

The Vietnamese respondent opined that the signatures on the sale contracts of the person representing the Korean claimant were forged and thus, pursuant to article 68(2)(d) of the Law on Commercial Arbitration, the award should be set aside. The court, however, found that when concluding the mortgage agreement, the parties confirmed the validity of the two sale agreements and did not object to the authenticity of the signatures.

As a result, the respondent was not allowed to later raise the forgery of the agreements as a ground to challenge the arbitral award.

#### Recognition and enforcement of foreign arbitral awards in Vietnam

General statistics on recognition and enforcement of foreign arbitral awards in Vietnam

In contrast to the challenge against domestic arbitral awards, the situation of foreign arbitral awards has long been a critical issue, creating a negative impression of the Vietnamese judicial system. According to information provided by a representative of the Supreme People's Court in a conference held by the Ministry of Justice, from 2005 to 2014, 24 out of 52 applications for recognition and enforcement of foreign arbitral awards in Vietnam were dismissed, accounting for 46.2 per cent of all applications.<sup>8</sup>

As reported in our article in *The Asia-Pacific Arbitration Review 2017*, the newly adopted 2015 Civil Procedure Code made significant changes to the recognition and enforcement of foreign arbitral awards in Vietnam. Since then, a number of training workshops for local judges have been held by the Supreme People's Court and the Ministry of Justice with assistance from international organisations. As a result, the recognition and enforcement of foreign arbitral awards have witnessed some positive changes. For instance, according to an unofficial report of the Supreme People's Court, the dismissal ratio dropped to 33 per cent at the Hanoi People's Court during 2014–2017 and to 31 per cent at the

Ho Chi Minh City People's Court during 2011–2018. Although compared to other countries in the region, the rejection ratio of foreign arbitral awards in Vietnam is still exceptionally high,<sup>9</sup> it is hoped to be continually improved in the short run.

#### Recognition and enforcement of foreign arbitral awards in 2018: double *exequatur*?

It is noted that in 2018, two court decisions were rendered in relation to the verification of foreign arbitral awards as a requirement for recognition and enforcement.

Pursuant to article 459(1)(e) of the 2015 Civil Procedure Code, which is a local adoption of article V(1)(e) of the New York Convention to which Vietnam is a member, a foreign arbitral award may not be recognised if it is proved that the award has not become binding on the parties. Neither the convention nor the code define the term 'binding'. Generally, it is accepted that the award creditor does not need to obtain the consular recognition or the decision allowing them to do so by the court of the country where the award was issued, or of the country whose law is applied to issue the award.<sup>10</sup> This abrogation of the 'double *exequatur*' has been recognised as one of the innovations of the New York Convention compared to the 1927 Geneva Convention on the execution of foreign arbitral awards. In fact, this verification requirement for the recognition and enforcement of foreign arbitral awards is not often invoked by the Vietnamese award debtor and most Vietnamese courts do not require the arbitral award to be verified for its validity and enforceability by competent authorities of the seat. However, some recent court decisions show a different view of local courts.

#### *Institutional arbitral awards*

In a recent decision No. 25/2018/QDKDTM-PT, dated 28 June 2018, the High People's Court in Ho Chi Minh City decided not to recognise a foreign arbitral award based on, among others, the fact that there was no verification on the validity and enforceability of the award by competent authorities in the seat.

In this case, the claimant was a Singapore energy company that had concluded a contract with a Vietnamese buyer, the respondent. When the dispute arose, the Singapore seller initiated an arbitration at the Swiss Chambers' Arbitration Institution. On 8 December 2016, an award was issued by a sole arbitrator, deciding in favour of the Singapore seller. The award, however, was refused recognition and enforcement in Vietnam by the first instance court. This rejection decision was then upheld by the appellate court, the High People's Court in Ho Chi Minh City. One of the grounds for rejection that was invoked by the Vietnamese debtor was that the award had not become binding on the parties because there had not been any verification on the validity or enforceability of the award by competent Swiss authorities, such as the Swiss courts.

As a general principle, the court should presume the enforceability of the arbitral award unless the opposing party can prove the opposite. It is unclear about whether the High People's Court requested the debtor to provide proof for their objection such as Swiss laws, Vietnamese laws or applicable rules that require verification of the award. It appears that the court only relied on the mere objection of the award debtor to question the enforceability of the award. Even if the court did require so and found that the arbitral award was being reviewed by the competent authority, the court should have issued a decision to suspend the consideration of the application in accordance with article 457(2)(a) of the 2015 Civil Procedure Code to wait for the final decision of the Swiss competent authority.

#### *Ad hoc arbitral awards*

It should also be noted that under the Law on Commercial Arbitration, domestic *ad hoc* arbitral awards must be registered at the competent court to be enforced by the enforcement agency. Therefore, under their mindset of Vietnamese laws, local courts may request that the foreign *ad hoc* awards must also be registered or verified by the competent authority in the rendering state. In fact, the High People's Court in Ho Chi Minh City as an appellate court issued Decision No. 27/2015/QDPT-KDTM, dated 19 August 2015, requiring a Singapore *ad hoc* arbitral award to be verified. Unfortunately, in its Notice No. 131/TB-TANDTC-VGDKTII, the Supreme People's Court refused to conduct judicial review against the decision, holding that the procedural law applicable at the material time (the 2004 Civil Procedure Code as amended in 2011) did not grant the Supreme People's Court jurisdiction to review an appellate court's decision relating to the recognition and enforcement of foreign awards.

This case involved a demurrage claim of Singapore shipowner towards a Vietnamese charterer under a voyage charterparty. An *ad hoc* arbitral award was issued in Singapore in favour of the Singapore shipowner. When the award was not honoured, an application was made in Vietnam for recognition and enforcement. The Ho Chi Minh City People's Court, as a first instance court, made a favourable judgment allowing enforcement, but this was subsequently overturned by the High People's Court in Ho Chi Minh City as an appellate court.

One of the objections that the Vietnamese charterer raised was that under article 12(5) of Singapore International Arbitration Act: the award must be verified by the competent Singapore court for its enforcement. The award debtor also submitted the wordings of such provision (Chapter 143A) translated by Law Soft JSC. Nevertheless, the first instance court disregarded the document on the grounds that the document had not been authenticated or certified by any competent authority of Vietnam or Singapore. Conversely, the appellate court decided that, pursuant to article 365 of the 2005 Civil Procedure Code as amended in 2011, the award creditor should bear the burden of proof that the arbitral award is enforceable and satisfies all requirements for enforcement. As a result, it was held to be not reasonable for the first instance court to disregard the document submitted by the Vietnamese charterer. The appellate court finally decided to reverse the first instance decision and refused to recognise such arbitral award.

Still, as discussed in our article in *The Asia-Pacific Arbitration Review 2017*, pursuant to the new 2015 Civil Procedure Code, the burden of proof shall be borne by the award debtors. The new Civil Procedure Code also supplements the provision on how the contents of foreign law shall be provided, which implicitly allows the use of foreign lawyers' affidavits.<sup>11</sup> These new amendments are expected to improve the quality of adjudication in Vietnamese courts in relation to this matter.

#### **Investment treaty arbitration**

According to unofficial information from the Ministry of Justice, the number of disputes brought by foreign investors against the Vietnamese government is on the rise, although very limited information is disclosed about the initiated claims. As per the public database, in 2017 and 2018, Vietnam has become the respondent in at least two pending investment treaty arbitrations: *ConocoPhillips and Perenco v Vietnam* and *Shin Dong Baig v Vietnam*. In *ConocoPhillips and Perenco v Vietnam*, the claim was brought based on the UK–Vietnam bilateral investment treaty (BIT) (2002) and under the UNCITRAL Arbitration Rules, and

regarded a dispute arising out of the Vietnamese government's intended imposition of a US\$179 million capital gains tax in respect of a 2012 transaction whereby ConocoPhillips sold its business in Vietnam to Perenco.<sup>12</sup> In *Shin Dong Baig v Vietnam*, the claimant brought a claim about its real estate project in Vietnam under the Republic of Korea–Vietnam BIT (1993) pursuant to ICSID Additional Facility Rules.<sup>13</sup>

Besides the existing treaties, Vietnam has recently concluded or been negotiating several new free trade agreements or investment agreements that also provide for investor–state arbitration mechanisms. The two most remarkable treaties include the EU–Vietnam Free Trade Agreement and the Comprehensive and Progressive Agreement for Trans–Pacific Partnership (CPTPP).

As regards the trade deal with the European Union, although the agreement has been concluded since 2 December 2015, it has not been ratified yet. In the light of the European Court of Justice's ruling, the issues involving investor–state disputes are not covered in the EU's shared decision–making powers in the sense that the European Union could not ratify a trade deal involving investor–state dispute resolution issues without the acceptance of all member states. As a result, the original EU–Vietnam Free Trade Agreement was proposed to be split into two agreements: the EU–Vietnam Free Trade Agreement (EVFTA) and the EU–Vietnam Investment Protection Agreement (EVIPA).<sup>14</sup> The EVFTA needs to be approved by the European Council and ratified by the European Parliament, while the EVIPA must be additionally ratified by the parliament of each EU member state and thus is expected to take longer to come into force. Under the EVIPA, the regulation on resolution of disputes between a foreign investor and a state is laid down under section (b) of Chapter 3.<sup>15</sup> Accordingly, in case a dispute cannot be resolved amicably, an investor is allowed to bring it to the permanent tribunal, which will be comprised of nine members: three nationals each appointed from the European Union and Vietnam and three nationals appointed from third countries. The case shall be decided by a division of the tribunal comprising of three members or one member selected by the president of the tribunal. If disagreement occurs regarding the tribunal's provisional award, each party may appeal it to the appeal tribunal, which would be comprised of six members: two nationals each appointed from the European Union and Vietnam and two nationals from third countries. The decision of the appeal tribunal shall be final and binding.

As regards the CPTPP, on 14 January 2019, it has officially come into effect in Vietnam. In case a dispute cannot be resolved through consultations, an investor may bring a claim to arbitration under either the ICSID Arbitration Rules, the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules or other arbitration rules. Whether the rendered awards are subject to appellate mechanism may be discussed at a later stage.<sup>16</sup>

Another recently concluded treaty is the Association of Southeast Asian Nations–Hong Kong Investment Agreement, signed on 12 November 2017.<sup>17</sup> However, the provisions on the investor–state dispute resolution component have not been finished yet and are reserved for later discussion.<sup>18</sup> Vietnam is also in negotiations with the four countries in the European Free Trade Association group (Switzerland, Norway, Iceland, and Liechtenstein). Talk with the Regional Comprehensive Economic Partnership (RCEP) led by China is also underway for the drafting of the investor–state dispute resolution provisions.

With the increasing number of both investment treaty claims and newly signed investment treaties, the enforceability of investment treaty awards once rendered would soon have to be under

deliberation. According to Vietnamese law, a foreign arbitral award shall be subject to recognition and enforcement:

- if the rendering state and Vietnam are members of an international treaty on recognition and enforcement of foreign arbitral awards; or
- on the basis of reciprocity principle.

While the EVIPA and CPTPP, being the treaties of a new generation, specifically regulate that the awards issued under these treaties shall be treated as awards relating to claims arising out of commercial relationships under the New York Convention and thus subject to the recognition and enforcement procedures as laid down in the convention and domestic law, most existing BITs of Vietnam are silent in this matter. Meanwhile, the act of Vietnam joining the ICSID Convention, which also covers the recognition and enforcement of the ICSID awards, may still take years to be realised. Therefore, there remains a risk that Vietnamese courts may not treat investment treaty awards rendered under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules, as regulated in most existing BITs, as foreign arbitral awards qualified for recognition and enforcement under the New York Convention and domestic law. As a matter of fact, no request for enforcement of investment treaty award has been reported to be brought to the Vietnamese courts so far, therefore their view in this matter would remain to be seen.

#### Facilitation of commercial mediation and court-annexed mediation

Apart from commercial arbitration, as reported in our article in *The Asia-Pacific Arbitration Review 2018*, over the past few years, the legislation for mediation has gradually been finalised, including

- the 2015 Civil Procedure Code, which enables the recognition of out-of-court mediated agreements, effectively granting mediated agreements the force of ordinary court judgments; and
- Decree No. 22/2017/ND-CP on Commercial Mediation, which came into force on 15 April 2017.

With these regulations, Vietnam took the first step toward following the international trend on promoting mediation to settle business disputes.

Following these foundations, last year should be regarded as a prominent year for mediation in Vietnam. On 29 May 2018, the VIAC officially launched the Vietnam Mediation Centre (VMC), the first centre to provide a professional service of commercial mediation in Vietnam, and released the Rules of Mediation, which came into force on 1 July 2018. Furthermore, in order to enhance the quality of mediation and skills of mediators, a number of training and accreditation courses have been held by the Chamber of Effective Dispute Resolution, in cooperation with the VMC, with the sponsorship of the International Financial Corporation of the World Bank Group.

Notably, apart from the new legislation on commercial mediation, a pilot programme on court-annexed mediation has been launched in 16 main localities throughout Vietnam. Under the pilot programme, court-annexed mediation centres have been established to conduct mediation before a dispute can be enrolled in ordinary proceedings. Accordingly, whenever a claim is submitted to the court, it shall be first transferred to and resolved at a mediation centre. The mediators would mainly be retired judges, prosecutors and lawyers who are experienced in resolving disputes at courts. This new mechanism is expected to help lower the high

workload of the courts and facilitate the dispute resolution process in general. The pilot programme is projected to pave way to a new law on court-annexed mediation and dialogue.

### Conclusion

Recently on 1 January 2019, the Vietnamese government issued Resolution 02/NQ-CP on the ongoing implementation of major duties and measures to improve the business environment and enhance national competitiveness from 2019 to 2021. Accordingly, Vietnamese government aims to raise Vietnam's international rank in the Contract Dispute Settlement Index, which will require the country to complete the legal regime to be closer to international laws and improve the quality of dispute resolution by courts, mediation and arbitration proceedings. The Resolution on Judicial Reform Strategy to 2020 of Vietnam also underscores Vietnam's encouragement of settling disputes via negotiation, reconciliation and arbitration.

In addition, remarkably right before the end of 2018, Vietnam became a member of UNCITRAL.<sup>19</sup> This is the first time Vietnam was elected for this position and its tenure will be from 2019 until 2025. Over the past several years, Vietnam has participated in the UNCITRAL's affairs as an observer and actively contributed to the meetings and discussions of some UNCITRAL's working groups, especially the Working Group 2 on Dispute Settlement and Working Group 3 on Investor-State Dispute Settlement Reform. By becoming a member of the UNCITRAL, Vietnam will have more opportunities as well as pressures in reforming its laws and regulations on commerce, foreign investment and dispute resolution to be in line with international standards.

For that purpose, more changes and innovations to improve the dispute resolution mechanism are expected to be on the way. Considering the great progress that Vietnam has achieved in recent years, it is verily expected that Vietnam would soon become a new hub for the dispute resolution in the South-east Asia in near future.

### Notes

- 1 Launching Ceremony of the Ho Chi Minh City Commercial Arbitration Association, Phap Luat Thanh Pho Ho Chi Minh, 06 January 2018, available at <http://plo.vn/phap-luat/ra-mat-hoi-trong-tai-thuong-mai-tphcm-749321.html> (in Vietnamese), accessed on 20 February 2019.
- 2 <https://homnay.com.vn/ho-chi-minh-commercial-arbitration-association-hccaa/>, accessed on 20 February 2019.
- 3 2018 Annual Report of the VIAC.
- 4 Ibid.
- 5 2015 Civil Code, Article 6; 2015 Civil Procedure Code, Article 45.
- 6 Nguyen Manh Dzung & Nguyen Thi Thu Trang, 'Vietnam' in *Global Arbitration Review: The Asia Pacific Arbitration Review 2016*, Law Business Research, p 100.

- 7 Decision No. 755/2018/QĐ-PQT dated 12 June 2018 of the Ho Chi Minh City People's Court.
- 8 Conference on 'Summary of 20 Years of Implementation of 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Award' held by the Ministry of Justice in Hanoi on 21 November 2014.
- 9 For example, in China, from 2011 to 2015, the courts only rejected around 15 per cent of the applications for recognition and enforcement of foreign arbitral awards. In Hong Kong, during the 2004–2011 period, 140 applications for recognition and enforcement were submitted to the courts but only three were refused (Source: <http://hkiac.org/index.php/en/hkiac-statistics/enforcement-of-awards>, accessed on 20 February 2019).
- 10 UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations 2016, available at [http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/2016\\_Guide\\_on\\_the\\_Convention.pdf](http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/2016_Guide_on_the_Convention.pdf).
- 11 Nguyen Manh Dzung & Dang Vu Minh Ha, 'Vietnam' in *Global Arbitration Review: The Asia Pacific Arbitration Review 2017*, Law Business Research.
- 12 Conoco and Perenco team up against Vietnam, 20 August 2018, *Global Arbitration Review*, available at <https://globalarbitrationreview.com/article/1173270/conoco-and-perenco-team-up-against-vietnam>, accessed on 01 March 2019.
- 13 Information on *Shin Dong Baig v Socialist Republic of Vietnam* is available at [https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB\(AF\)/18/2](https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB(AF)/18/2), accessed on 01 March 2019.
- 14 Europe, Vietnam reach towards major trade deal, 01 February 2019, *Asia Times*, available at <https://www.asiatimes.com/2019/02/article/europe-vietnam-reach-towards-major-trade-deal/>, accessed on 01 March 2019.
- 15 The text of the EVIPA is available at <http://www.trungtamwto.vn/upload/files/fta/196-chua-ky-ket/199-viet-nam---eu-evfta/248-noi-dung-hiep-dinh/CHAPTER%203%20Dispute%20Settlement.pdf>.
- 16 The text of Chapter 9 Investment in the CPTPP is available at <https://investmentpolicyhub.unctad.org/Download/TreatyFile/5673>.
- 17 The Signing of the ASEAN–Hong Kong, China Free Trade Agreement and ASEAN–Hong Kong, China Investment Agreement, 12 November 2017, available at <https://asean.org/the-signing-of-the-asean-hongkong-china-free-trade-agreement-and-asean-hongkong-china-investment-agreement/>, accessed on 01 March 2019.
- 18 The text of the ASEAN–Hong Kong Investment Agreement is available at <https://www.tid.gov.hk/english/ita/fta/hkasean/files/IPPAASEAN.pdf>. For more information: [https://www.tid.gov.hk/english/ita/fta/hkasean/files/AHKFTA\\_FAQ.pdf](https://www.tid.gov.hk/english/ita/fta/hkasean/files/AHKFTA_FAQ.pdf).
- 19 <http://baoquocte.vn/them-mot-diem-sang-trong-ngoai-giao-da-phuong-viet-nam-83949.html> (in Vietnamese); <https://vietnamnews.vn/society/482271/viet-nam-wins-vote-for-uncitral-membership.html#RZDUZ2DhY4blmYUT.97>, accessed on 01 March 2019.



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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. The firm has been involved in various arbitrations and court proceedings to resolve high-profile cases in sale of goods, construction, insurance, banking and finance, share purchase, joint venture, real estate, among others. A number of such matters are in connection with foreign investors' treaty claims and against companies backed by regional state authorities, thereby making them highly contentious. The firm has often been sought out by both international counsel and corporations mainly in banking, shipping, construction, insurance, and retailer industries.

Dzungsr & Associates LLC has a vast pool of talented lawyers who have been well-trained abroad, practise to a very high standard and are familiar with the intricacies of dispute resolution in Vietnam. The firm has also been involved directly in the legislative process of the Vietnamese laws and guiding by-laws regulating arbitration thereby well-equipped to provide practical and efficient solutions to legal problems.

As a testament to its capacity, Dzungsr & Associates LLC has consistently been accredited as a top-tier law firm in both dispute resolution and shipping practices by *The Asia Pacific Legal 500* and is recognised as 'one of the best' in domestic commercial arbitration heard under Vietnam International Arbitration Centre rules and also is active in international arbitration.



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