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# Arbitration in Vietnam

## An Overview

Corinne NGUYEN & Anh DUONG VU\*

*Vietnam has undertaken many efforts over the years to promote and strengthen the role of arbitration in the settlement of the parties' international commercial disputes. These include the role of arbitration centres in Vietnam and the adoption of a certain number of laws and resolutions on arbitration. This article examines the overall achievements of the objectives fixed by Vietnamese authorities to consolidate the practice of arbitration in the country and to meet the needs and the expectations of foreign firms operating in Vietnam.*

### 1 INTRODUCTION

If interests and investments merit attention in emerging markets as reported at the 2014 ICCA Congress,<sup>1</sup> Vietnam deserves attention in this respect due to the ongoing efforts of the authorities and the arbitrations centres, such as the Vietnam International Arbitration Centre, to promote the use of arbitration.<sup>2</sup>

This article aims at providing a brief outline of the current practice and legislation on arbitration in Vietnam with the view to assessing their impact on the development of arbitration in the country.

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<sup>1</sup> Adriana Riviere-Badell, *ICCA 2014. Linklaters Kicks off Breakfast Seminar with a Survey of Emerging Markets* (9 Apr. 2014) available at <http://kluwerarbitrationblog.com/blog/2014/04/09/icca-2014-linklaters-kicks-off-breakfast-seminar-with-a-survey-of-emerging-markets/> (accessed 30 Jun. 2014).

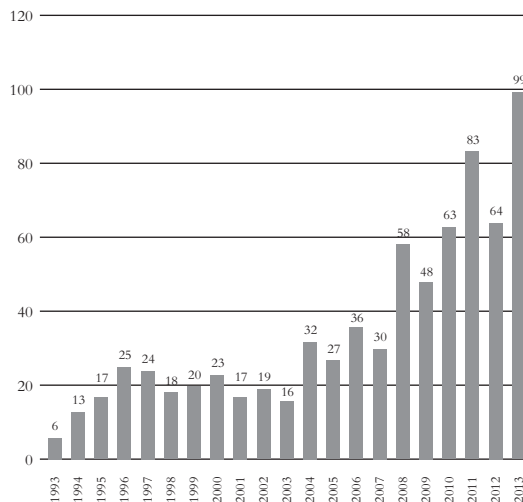
<sup>2</sup> More generally, see Justin D'Agostino, *Arbitration in Asia at full gallop* (10 Feb. 2014) available at <http://kluwerarbitrationblog.com/blog/2014/02/10/arbitration-in-asia-at-full-gallop/> (accessed 30 Jun. 2014).

## 2 ARBITRATION CENTRES, AN ILLUSTRATION: THE VIAC, 2013 STATISTICAL REPORT

There are currently eight arbitration centres<sup>3</sup> in Vietnam, the most well-known of which is the Vietnam International Arbitration Centre (VIAC)<sup>4</sup> in Hanoi with three offices in Da Nang, Can Tho and Ho Chi Minh City. Established in 1993 following the merging of the Foreign Trade Arbitration Committee (1963) and the Marine Arbitration Committee (1964), the VIAC, unlike its predecessors, is a non-governmental organization which operates in accordance with its own governance and Rules of Arbitration.

The 2013 statistical report<sup>5</sup> testifies to the continuing expansion of VIAC arbitration: six cases in 1993, sixteen cases in 2003 and ninety-nine cases in 2013, 52% of which involved foreign parties (see Figure 1).

*Figure 1 VIAC Arbitration Cases 1993–2013*



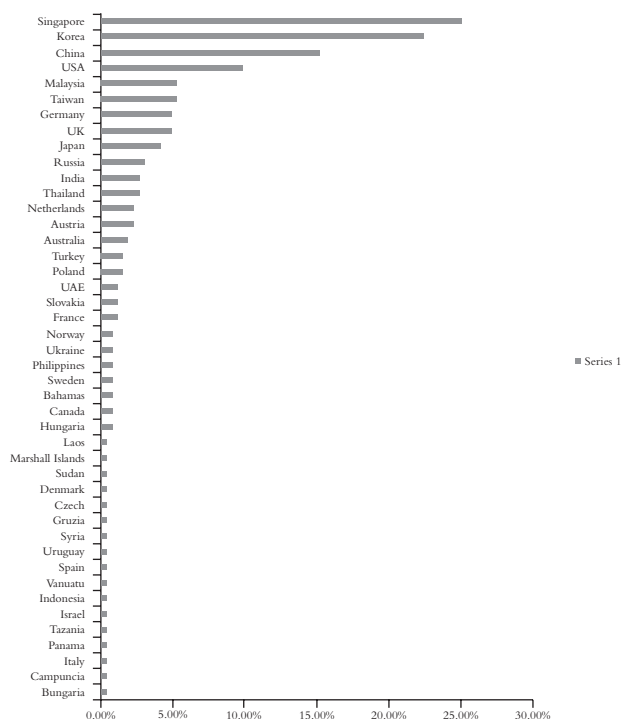
<sup>3</sup> Can Tho Commercial Arbitration Centre (CCAC); Ho Chi Minh City Commercial Arbitration Centre (TRACENT); Financial Commercial Arbitration Centre (FCCA); ASEAN International Arbitration Centre (ACIAC); Pacific International Arbitration Centre (PIAC); Vietnam Financial Banking Arbitration Centre (VIFIBAR); Indochina Trade Arbitration Centre (ITAC); and Vietnam International Arbitration Centre (VIAC).

<sup>4</sup> See Anh Duong Vu, *Role of Institutional Arbitration in Vietnam: The VIAC Perspectives*, APRAG 2014 – 10th Anniversary Conference, Melbourne, 26–28 Mar. 2014; see also Thi Hai Chi Nguyen, *The Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC)*, 2013.

<sup>5</sup> See <http://viac.org.vn>.

Parties were from over fifty countries and territories, mostly from Asia (Singapore (25%), Korea, China, Malaysia, Taiwan) followed by the United States (10%) and Europe (Germany (5%) and the United Kingdom (5%)) (see Figure 2).

Figure 2 Parties to VIAC Arbitration



VIAC arbitral tribunals were constituted in accordance with the principle of party autonomy, either with three arbitrators or one sole arbitrator (10%). Arbitrators were chosen from or outside the VIAC's List of Arbitrators which comprises 139 arbitrators, sixteen of which are foreign arbitrators with appropriate experience. The top nationalities were France, Japan, the United States, United Kingdom, Singapore, Malaysia, Korea and China.

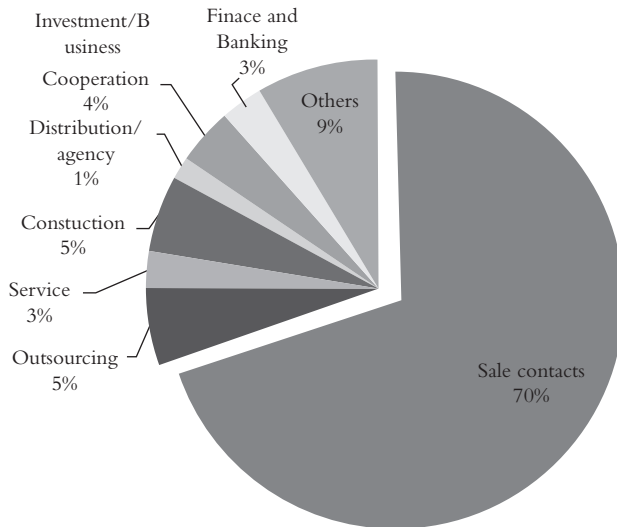
The parties very often did not include a choice-of-law clause in the contracts.

Places of arbitration were usually agreed between the parties, mostly inside Vietnam. Hanoi and Ho Chi Minh City were the top cities selected in 2013.

Language of arbitration was also often agreed by the parties. Vietnamese was the most popular language (78%) followed by English (20%).

The most frequent kinds of disputes were related to sales contracts (70%), constructions (8%), outsourcing (5%), investment/business cooperation (4%) and finance and banking (3%).

*Figure 3 Types of Dispute in VIAC Arbitration*



The value of the disputes ranged from less than (US Dollars) USD 1 million to about USD 44 million in 2013.

In 2013, about 80% of the final awards (including awards by consent) were issued by the arbitral tribunals within a short period of time, between five and six months generally.

The growth of VIAC arbitration highlights the Centre's ongoing efforts to promote arbitration in recent years. First, VIAC's amendments of its Rules of Arbitration in January 2012, together with the publication of its Guidelines on Arbitral Proceedings, which are inspired by the UNCITRAL Model Law and Notes on Organizing Arbitral Proceedings, have contributed to the success of VIAC arbitration as they take into account existing standards in international arbitration (e.g., principle of party autonomy, separability of arbitration agreement, independence and impartiality of arbitral tribunal, freedom of arbitral tribunal in the conduct of arbitration proceedings, interim measures, and final and binding character of awards).

Second, the Centre's decision to add a limited number of foreign arbitrators to the VIAC List of Arbitrators from which the parties may choose is another

positive sign to assess the flexibility of the VIAC Rules of Arbitration and more generally arbitration in Vietnam.

Third, the Centre's participation in the work of the Advisory Council, Editing and Drafting Committees of the Arbitration Law contributes to the harmonization and development of the legal framework, including but not limited to the Civil Code, commercial law, investment law, law on enforcement of civil judgments and the Commercial Mediation Decree.

Finally, VIAC Legal Research Council activities, including the Centre's continuous support for courses, publications,<sup>6</sup> and conferences on arbitration throughout the world, are additional resources for the promotion of arbitration.

This being said, the development of the Centre's activities would be meaningless if they are not embedded in a pro-arbitration legal regime.

### 3 GOVERNING LEGISLATION

As of today, arbitration in Vietnam is governed by the following:

- Law no. 54/2010/QH12/NQ dated 17 June 2010 ('2010 Law on Commercial Arbitration' or '2010 LCA');
- Decree no. 63/2011/ND-CP dated 28 July 2011 on the implementation of the 2010 LCA ('Decree 2011');
- Law no. 26/2008/QH12 dated 14 November 2008 on the enforcement of civil judgments ('2008 LECJ');
- Code of Civil Procedure of 2004 ('2004 CCP'),<sup>7</sup> amended in 2011<sup>8</sup> and more recently;
- Resolution no. 01/2014/NQ-HĐTP dated 20 March 2014 Guiding the Implementation of Certain Provisions of the Law on Commercial Arbitration ('2014 Resolution').

Vietnam seeks to offer a friendly environment which accords with international arbitration standards:

- (1) the 2010 LCA is applicable to domestic and international arbitration proceedings taking place in Vietnam;
- (2) Chapter XXVI of the 2004 CCP deals with the recognition and enforcement in Vietnam of foreign arbitral awards;
- (3) specific procedures for enforcement of awards are further governed by the 2008 LECJ;

<sup>6</sup> See, e.g., VIAC collection of international arbitral awards, <http://viac.org.vn>.

<sup>7</sup> See Law No. 24/2004/QH11 dated 15 Jun. 2004.

<sup>8</sup> See Law No. 65/2011/QH12 Amending and Supplementing a Number of Articles of the Code of Civil Procedure dated 29 Mar. 2011 which took effect on 1 Jan. 2012.



- (4) awards are final and binding and may be challenged only in some limited circumstances.

Vietnam has signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ('New York Convention') on 12 September 1995<sup>9</sup> and is party to over fifty BITs<sup>10</sup> and seven multilateral treaties, including the World Trade Organization. Vietnam is not, however, yet party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 ('Washington Convention' or 'ICSID Convention').

This being observed, imperfections remain and further improvements are needed. One current issue is the enforcement of foreign awards, although the New York Convention is applicable. While domestic awards (awards that are rendered by arbitral tribunals of arbitration institutions and ad hoc arbitral tribunals constituted under the LCA 2010) can be enforced directly without enforcement procedures,<sup>11</sup> foreign awards – ('awards that are rendered outside the territory of Vietnam or within the territory by foreign arbitration agreed by the parties concerned to resolve disputes arising from legal business, commercial or labour relations')<sup>12</sup> are not enforceable in Vietnam until they have been recognized by the competent local Provincial People's Court, the decision of which can be appealed.

Not only is the procedure slow and complex but the result is also uncertain.<sup>13</sup> Courts appear to be reluctant to enforce foreign awards and often adopt a narrow interpretation of Vietnamese law. Recognition of a foreign award can be refused for violation of the 'fundamental principles of Vietnamese law', the meaning or standards of which could be better clarified.

This may explain why only a very few foreign awards have been submitted to date to the Ministry of Justice and the local courts for enforcement. As recently

<sup>9</sup> With the following reservations: (a) awards must be issued by a member territory to the New York Convention; (b) where awards are issued in the territory of non-members, the Convention will be applied only on a reciprocal basis; (c) Vietnam will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law. *More generally, see* [www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html).

<sup>10</sup> See [http://unctad.org/Sections/dite\\_pccb/docs/bits\\_vietnam.pdf](http://unctad.org/Sections/dite_pccb/docs/bits_vietnam.pdf). and <http://www.kluwerarbitration.com/CommonUI/BITS.aspx?country=Vietnam>.

<sup>11</sup> See 2008 LECJ, Ch. III.

<sup>12</sup> See Code of Civil Procedure, Art. 342(2); *see also* 2010 LCA, Art. 3(11): '11. Foreign arbitration means institutional arbitration or an ad hoc arbitration selected by the parties; and established and operating in accordance with foreign law or foreign arbitration procedural rules'; *see in addition* Civil Code, Art. 758, which provides that disputes with a 'foreign element' must meet at least one of the following conditions: (i) foreign subject(s); (ii) legal events for establishing, altering or terminating those relations arising overseas; (iii) assets related to such relations are located overseas.

<sup>13</sup> Bernadette Fahy & Tran Trong Binh, *Obstacles to Recognition and Enforcement of Arbitral Awards in Vietnam*, VCCI- MOJ-VIAC Conference, Hanoi, 18 Oct. 2013.

reported, 'only 3 out of 14 applications for recognition and enforcement in 2011–2012 . . . have been successful'.<sup>14</sup> This may also explain why Vietnam is not yet as popular a place of arbitration in Asia as Singapore, which is ranked among the top ten selected cities after Paris, London, Geneva, Zurich, and before New York, Vienna, Mexico, Frankfurt and Hong Kong.<sup>15</sup>

These difficulties can seem insurmountable, but they are not. On 20 March 2014, the Vietnamese Supreme Court issued the much anticipated Resolution, which had been expected by practitioners since 2013. The 2014 Resolution, which entered into force on 2 July 2014, is intended to provide guidance on the implementation of certain provisions of the 2010 LCA, the powers and the procedures of the court over arbitration and the registration of ad hoc arbitral awards.

Although its effects remain to be seen in practice, it is important to note that the Resolution seeks to narrow the scope of annulment of arbitral awards while providing a certain number of clarifications. Article 14(2)(dd) of the Resolution<sup>16</sup> provides, for example, that an arbitral award shall be considered as contrary to the fundamental principles of the law of Vietnam when it violates the 'basic principles on conduct, whose effects are most overriding in respect of the development and implementation of Vietnamese law'.

In considering the application to set aside the award, the court will have to determine that the award violates one or more fundamental principles of the law of Vietnam and that such principle(s) is/are relevant to the dispute which is resolved by arbitration. The annulment of the award is therefore conditioned upon the existence of serious violations of one or more fundamental principles of Vietnamese law as provided in the commercial law or in the Civil Code, and also the violation of the interests of the state and/or the legitimate rights and interests of the parties or third parties.

#### 4 CONCLUSION

Arbitration in Vietnam is young and still progressing. Efforts are being undertaken to bring the arbitration regime in line with international standards so as to enable these developments to bear fruit.

VIAC's introduction of the 2012 Arbitration Rules has been seen to be working in practice. Modernization of Vietnam's arbitration law in 2010 after its

<sup>14</sup> Manh Dzung Nguyen & Quang Hung Le, *Arbitration in Vietnam in the Next 10 Years: The Foundation to Flourish*, APRAG 2014 – 10th Anniversary Conference, Melbourne, 26–28 Mar. 2014.

<sup>15</sup> See, e.g., ICC 2012 Statistical Report, ICC International Court of Arbitration Bulletin 2013 Vol. 14/No. 1 p. 5; Singaporean arbitrators are also ranked among the top fifteen nationalities (33), ahead of Malaysia (9), China (7), Philippines (5) China Taipei (4), Japan (2), Thailand (1) and Vietnam (1).

<sup>16</sup> 2014 Resolution, Art. 14 relates to the 2010 LCA, Art. 68 on the grounds to set aside arbitral awards.

ratification of the New York Convention is a positive sign that Vietnam is committed to providing a quick and cost-effective process of cross-border dispute resolution.

Backed by arbitral institutions such as the VIAC, and by the existing legislation, including the 2014 Resolution (the effects of which remain to be evaluated in practice as mentioned above), Vietnam still needs to convince that its arbitration regime is also backed by an efficient national court system with an arbitration-friendly attitude in order to promote Vietnam's attractiveness as an arbitration venue. Local courts must ensure quality and consistency in their judgments so as to reflect understanding and support for the arbitral process, during and after the proceedings.

Inspiration and lessons can be drawn in this respect from the experience of leading arbitration institutions in the world, such as the ICC International Court of Arbitration, and from countries such as France, Switzerland, the United Kingdom and the United States, in order to ensure that Vietnam is seen to be a truly reliable forum for arbitration which is on par with its counterparts in the world.

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Since its 1984 launch, the Journal of International Arbitration has established itself as a thought provoking, ground breaking journal aimed at the specific requirements of those involved in international arbitration. Each issue contains in depth investigations of the most important current issues in international arbitration, focusing on business, investment, and economic disputes between private corporations, State controlled entities, and States. The new Notes and Current Developments sections contain concise and critical commentary on new developments. The journal's worldwide coverage and bimonthly circulation give it even more immediacy as a forum for original thinking, penetrating analysis and lively discussion of international arbitration issues from around the globe.

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