

워크숍 문서 | WORKSHOP MATERIALS

베트남에서의 해외 건설 분쟁 클레임 및 분쟁 해결을 위한 실무적 대응 방안

하노이, 베트남 | 2023. 10. 06.(금)

INTERNATIONAL CONSTRUCTION DISPUTES IN VIETNAM

Practical tips on claims and disputes

Hanoi, Vietnam | 06 Oct 2023 (Friday)



워크숍 일정표
베트남에서의 해외 건설 분쟁
클레임 및 분쟁 해결을 위한 실무적 대응 방안
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WORKSHOP ON
INTERNATIONAL CONSTRUCTION DISPUTES
IN VIETNAM: Practical tips on claims and disputes
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시간 (AM) Time (AM)	내용 Content
8.00 - 8.20	등록, 접수 Registration
8.20 - 8.40	개회사 Opening remark Vu Anh Duong - 베트남 국제중재센터(VIAC) 상임부회장 겸 사무총장 Mr. Vu Anh Duong - Permanent Vice President cum Secretary General of VIAC 홍선 - 주베트남 한국상공인연합회(KOCHAM) 의장 Mr. Hong Sun - Chairman of Korea Chamber of Business in Vietnam (KOCHAM)
세션 01: 개요 및 실무 토론 - 베트남에서의 건설 분쟁에 대한 경험/전략 Session 01: Overview & Substantive Discussions - Experience/strategies in construction disputes in Vietnam	
8.40 - 9.00	건설 계약에 대한 간략한 규제 개요 및 해외 계약자를 위한 주요 참고 사항 Brief regulatory overview of construction contracts & some key notes for foreign contractors Nguyen Bac Thuy - 베트남 건설부 건설경제과 투자 및 건설 계약 경제성 담당, VIAC 위촉 중재인 Mr. Nguyen Bac Thuy - Head of Economics of Investment and Construction Contracts - Department of Construction Economics - Ministry of Construction, VIAC Listed Arbitrator
9.00 - 9.30	계약자를 위한 국제건설중재 관련 실용적인 팁 및 안내 Practical tips and notes for contractors in handling international construction arbitration 구현양 - 법무법인(유) 광장 파트너 변호사 Ms. Hyunyang Koo - Partner at Lee & Ko
9.30 - 10.00	토론 Discussion 진행자: Vu Anh Duong - 베트남 국제중재센터(VIAC) 상임부회장 겸 사무총장 Moderator: Mr. Vu Anh Duong - Permanent Vice President cum Secretary General of VIAC
10.00 - 10.15	티 타임 Tea break
세션 02: 국제건설계약에서 비롯되는 분쟁 - 효과적인 대응책 살펴보기 Session 02: Disputes arising from international construction contracts - Looking at effective countermeasures	
10.15 - 10.35	국제건설계약에서 단계적 분쟁 해결 조항: 올바른 접근 방식인가? Tiered dispute resolution clauses in International Construction Contracts: the right approach? Le Ba Thanh Chung - 박사 과정 재학, Construction Law Vietnam Counsellors (CLVN) 대표 파트너, VIAC 위촉 중재인 Mr. Le Ba Thanh Chung - PhD Candidate, Managing Partner at Construction Law Vietnam Counsellors (CLVN), VIAC Listed Arbitrator
10.35 - 10.55	베트남에서의 건설 분쟁에 대한 국제중재 절차 International arbitration proceedings for construction disputes in Vietnam Vu Thi Hang - VIAC 사무국 부국장 Ms. Vu Thi Hang - Deputy Director of VIAC Secretariat

시간 (AM) Time (AM)	내용 Content
10.55 - 11.45	<p style="text-align: center;">토론 Discussion</p> <p><u>진행자:</u> Vu Anh Duong – 베트남 국제중재센터(VIAC) 상임부회장 겸 사무총장 <u>Moderator:</u> Mr. Vu Anh Duong – Permanent Vice President cum Secretary General of VIAC</p>
11.45	<p style="text-align: center;">폐회사 Closing remark</p> <p>Ông Woongryol Baek Luật sư thành viên, Giám đốc Lee&Ko Việt Nam 백응렬 파트너 변호사, 베트남 법인장 Mr. Woongryol Baek Partner at Lee & Ko</p>



Nguyen Bac Thuy – 베트남 건설부 건설경제과 투자 및 건설 계약 경제성 담당,
VIAC 위촉 중재인, 베트남 건설법학회 집행위원회 위원(SCLVN)

Mr. Nguyen Bac Thuy – Head of Economics of Investment and Construction
Contracts - Department of Construction Economics - Ministry of Construction,
VIAC Listed Arbitrator

Nguyen Bac Thuy 는 베트남 건설 및 건설투자 분야에서 20년 이상의 경력을 보유하고 있습니다. 베트남 정부의 건설부 건설경제국의 투자 및 건설 계약 경제성 담당자로 근무하기 전에는 글로벌 합작회사인 비나코넥스-타이세이(비나타) 주식회사, 베트남항공의 공항건설공사, 베트남 국영은행 등 다수의 건설 기업에서 중요한 직책을 맡았습니다. 그는 경력 전반에 걸쳐 건설 투자 계약, 건설 입찰, 건설 금융 및 건설 계약에 대한 심도 있는 지식과 전문성을 쌓았습니다.

Thuy는 건설 프로젝트 경험 외에도 건설 경제, 도시 경제 관리, 건설 계약, 건설 비용 관리 방법, 건설 건적 계산과 관련된 정부 기관에 대한 정책 제안을 연구하였고 입법과정에도 참여했습니다. 또한 2014년 건설법, 2014년 공공투자법, 2013년 공공입찰법, 2020년 민관협력법, 2023년 공공입찰법 등 수 많은 법령들의 입법을 지원하는 위원회들의 일원이었습니다.

Thuy는 건설에 대한 전문 지식과 실무 경험을 바탕으로 입법가로서의 주요 경력을 쌓았습니다. 또한 그는 법원에서 감정인으로 활동하며, 베트남 국제중재센터(VIAC) 소관 건설 분쟁에서 중재인으로 참여하기도 합니다.

Mr. Nguyen Bac Thuy has more than 20 years of experience in construction and has been proactively involved in legal aspects of construction investment in Vietnam. Prior to being the Head of Economics of Investment and Construction Contracts at Department of Construction Economics – Ministry of Construction, Mr. Thuy held certain positions in construction companies of corporations such as the International Joint Venture VINACONEX – TAISEI (VINATA) Co., Ltd., the Airport Construction Corporation of Vietnam Airlines, Bank Construction Company – State Bank of Vietnam. Throughout his career, he has gained profound knowledge and expertise in construction investment regulations, construction bidding, finance in construction, and construction contracts.

Besides his experiences in construction projects, Mr. Thuy also engaged in research and drafting policy proposals to governmental entities relating to construction economics and urban economics management and construction contracts, methods of managing construction cost, and calculating construction estimates to integrate into the region and the world economy. He was also a member of several Editorial Teams and Drafting Boards and took part in certain legislation projects, such as the 2014 Law on Construction, the 2014 Law on Public Investment, the 2013 Law on Bidding, the 2020 Law on Public Private Partnership, the 2023 Law on Bidding, etc.

According to his knowledge and practices in construction, while pursuing his main career as a legislator, he also acted as an assessor in judicial court and sat on several arbitral tribunals in construction disputes at the Vietnam International Arbitration Centre (VIAC).



건설 계약 관련 규제적 관점에서의 검토 및 해외 시공자들이 유념해야 할 주요 사항

Mr. NGUYEN BAC THUY

Head of Economics of Investment and Construction Contracts
- Department of Construction Economics - Ministry of Construction
Member of the Executive Committee, Society of Construction Law - Vietnam (SCLVN)
Listed Arbitrator, Vietnam International Arbitration Centre (VIAC)



차례



계약에 대한 규제



건설 계약 관련 유념해야 할 주요 사항



01 계약에 대한 규제

계약에 대한 규제

1. 법 및 법규

- 민법 no. 91/2015/QH13 (2015. 11. 14.);
- 건설법 no. 50/2014/QH13 (2014. 6. 18.);
- 건설법 no. 62/2020/QH14 (2020. 6. 17.);
- 입찰에 관한 법 no. 22/2023/QH13 (2013. 11. 26.);
- 상법 2005

2. 법령

- 건설 계약 규제 관련 법령 no. 37/2015/NĐ-CP (2015. 4. 22.);
- 시공사 선정 관련 입찰 관련 법령 no. 63/2014/NĐ-CP (2014. 6. 26.);
- 법령 No. 37/2015/NĐ-CP 을 수정 및 보완하는 내용의 법령 no. 50/2021/NĐ-CP(2021. 4. 21.).

3. 부령

- 건설 계약 내용에 대한 가이드라인 관련 부령 no. 02/2023/TT-BXD (2023. 3. 3.).
- 공공 procurement network 입찰 및 시공사 선정 공고에 대한 상세 내용 관련 Circular no. 11/2022/TT-BKHĐT (2022. 5. 31.)

계약에 대한 규제

1. 민법 2015

민법 no. 91/2015/QH13은 385조부터 429조까지 계약의 정의, 건설 계약에 포함될 내용, 성립, 계약 수정 과정, 계약의 무효, 계약의 예시, 계약의 해석, 계약의 집행 등을 포함한 계약에 대해 규제함.

2. 상법 2005

상법은 계약의 성립, 당사자의 의무와 책임, 상법상 계약의 형식, 계약의 종류 등에 대한 규제함

3. 건설법

건설법은 138조부터 147조까지 건설 계약의 집행, 계약의 언어, 계약의 유효성 및 법적 집행, 계약의 종류, 건설 계약의 내용, 계약을 구성하는 서류, 계약의 수정, 지급, 중단 및 계약의 해지, 보너스, 계약 위반시 손해배상, 계약 이행의 종료 등 건설 계약상 내용에 대한 기초적인 법리에 대해 규제함

4. 입찰법

관련 조항은 64조에서 70조까지이며, 내용은 건설법과 대체적으로 유사함



02

건설 계약 관련 유념해야 할 사항



건설 계약 관리와 관련하여 어떠한 문제가 발생하는가?



01 계약의 문언이 정확하지 않음



02 계약의 이행에 대한 관리가 제대로 되지 않음



03 관련 법규 및 기타 사항들과의 컨플릭트



계약의 작성 및 계약의 체결

01

당사자들은 계약의 준거법이 계약의 법적 기초를 이룬다는 점을 이해가 필요가 있음

02

당사자들은 입찰/계약 조건이 계약의 상세 조건을 구성한다는 점을 이해할 필요가 있음



1. 알아두어야 할 규제

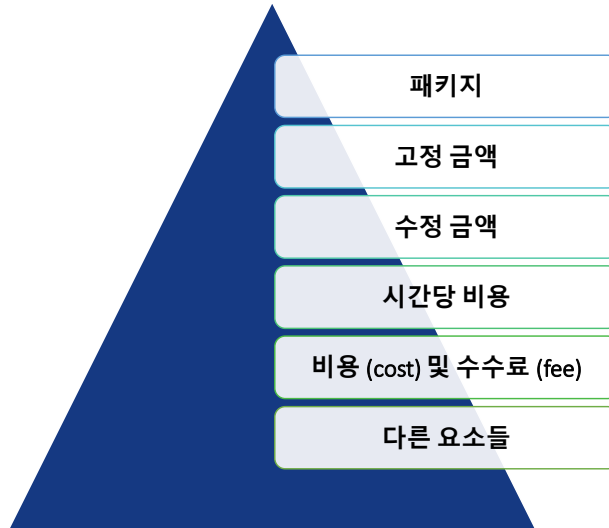
1. 자금 관련 입찰 패키지/계약 조건은 무엇인지? 공공 투자, foreign state 투자, PPP, 기타 자금 지원.
2. 계약 체결 조건은 무엇인지?
3. 계약 금액 종류 및 잠재적 리스크는 무엇인지?
4. Advance payment와 contract payment의 조건은 무엇인지?
5. Technical 조건 및 quality 조건은 무엇인지?
6. Progress 조건은 무엇인지?
7. 당사자들의 의무와 책임은 무엇인지?
8. 계약은 어떻게 수정해야 하는지?
9. 계약 조건의 이행 가능성을 위한 조건은 무엇인지?



7. 계약 체결 조건



2. 계약 금액과 관련 조건; ADVANCE PAYMENT, CONTRACT PAYMENT 그리고 FINAL SETTLEMENT



3. 계약 금액 적용 관련 조건

패키지 계약

- Volume과 unit price를 결정하기 위한 충분한 근거가 있는 경우
- EC/PC/EPC/turnkey 계약에서 volume과 unit price를 결정하지는 못하였으나, 당사자들이 이를 산출하기 위한 충분한 경험과 능력을 갖춘 경우

고정 unit price 계약

- unit price를 결정하기 위한 충분한 근거가 있는 경우
- 해당 금액은 금액 변동, contingency fee 등 계약 금액 관련 리스크를 반영해야 함

수정 unit price 계약

- volume, unit price, 계약 금액 관련 리스크를 결정하기 위한 근거가 불충분한 경우

시간당 비용 계약

컨설팅 업무가 포함된 건설 계약에 적용되는 경우가 있음

비용 및 수수료 (cost plus fee) 계약

계약을 체결 시 당사자들이 계약 범위 및 필요성을 결정하기 위한 근거가 불충분한 경우

계약 관리 비용, 전반적인 비용 및 수익 결정 필요

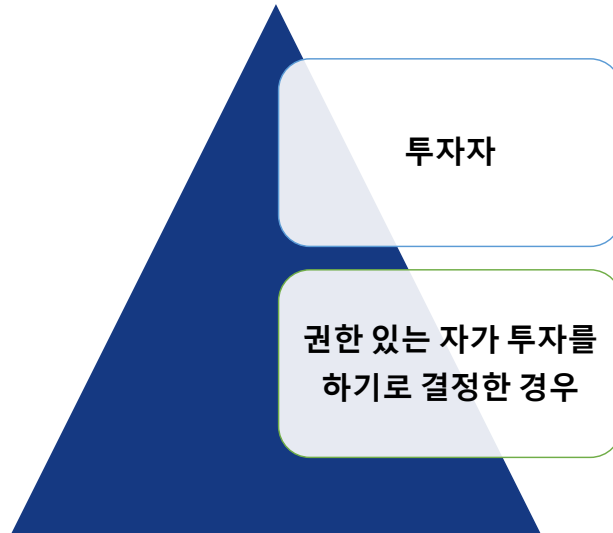
4. 계약 수정

- 당사자들이 계약을 언제 수정할 수 있는지?
- 계약 수정을 결정할 수 있는 권한을 가진 자는 누구인지?
- 계약 수정에 있어 사업자들의 권한은?
- 규제의 적용 범위는?

5. 당사자들이 계약을 수정할 수 있는 경우는?

- 계약상 계약 수정을 할 수 있는 상황이 명시된 경우
- 정부의 정책 변경
- 프로젝트 변경
- 불가항력
- 이행불능

6. 계약을 수정할 권한



7. 국가 예산을 사용하는 계약 상 Unit Price 조정이 적용되는 경우는?





8. Unit Price의 조정 방법

직접 보상

- 당사자들과의 친밀성
- 유관 기업들에 대한 불공정성
- 계산의 복잡성
- 각 역할, 유형 별 계산 필요
- 계산 방법의 다양성 및 비일관성

조정 요소

- 유관 기업들에 대한 공정성
- 단순한 계산
- 모든 계약의 조정에 사용 가능
- 한 번의 계산
- 전 세계적 사용



9. 계약별 공사 범위의 관리

패키지 계약의 경우?

Unit-price 계약의 경우?

시간 기준 계약의 경우?

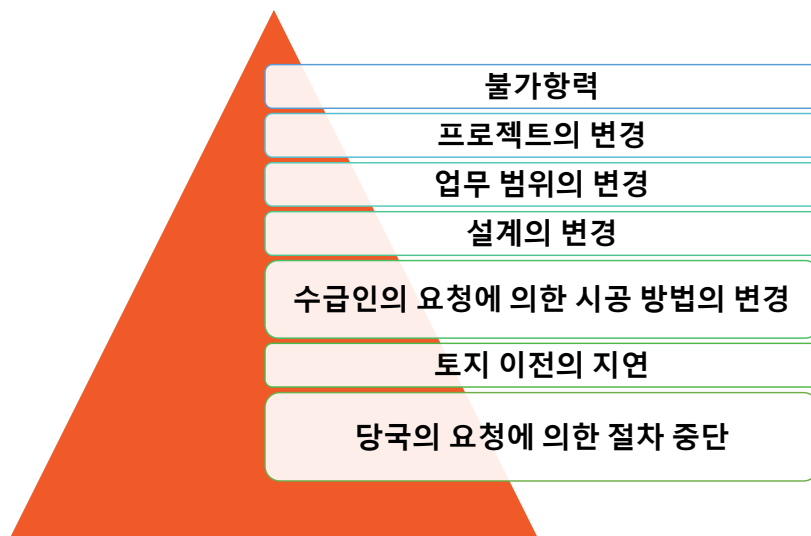
실비정산(cost-plus-fee) 계약의 경우?

계약 범위 외에서 발생하는 공사 범위

10. 계약의 진행

- 계약 이행의 진척도는 어떠한가?
- 계약상 의무 이행의 완료 시점은 언제인가?
- 언제 조정되었는가?
- 계약 수정의 결정권자는 누구인가?
- 계약의 진행 진척도와 계약 대금의 상관 관계는 무엇인가?

11. 계약 이행 진척도의 변경을 야기하는 사안들





12. 계약 당사자들의 의무

- 자문(Consulting)
- 건설
- 부품, 자재 및 장비 등의 조달
- 자문 비용 (Consultation fee)
- 혼합



Lee
& KO

VIAC
VETWORK & TRAINING ASSOCIATION CENTER

KOCHAM
KOREA CHAMBER OF COMMERCE & INDUSTRY

감사합니다!



BRIEF REGULATORY OVERVIEW OF CONSTRUCTION CONTRACTS & SOME KEY NOTES FOR FOREIGN CONTRACTORS

Mr. NGUYEN BAC THUY

Head of Economics of Investment and Construction Contracts
- Department of Construction Economics - Ministry of Construction
Member of the Executive Committee, Society of Construction Law - Vietnam (SCLVN)
Listed Arbitrator, Vietnam International Arbitration Centre (VIAC)



CONTENT



Regulatory framework
on contract



Some key notes on
construction contract



01

REGULATORY FRAMEWORK ON CONTRACT

REGULATORY FRAMEWORK ON CONTRACT

1. CODES AND LAWS

- Civil Code no. 91/2015/QH13 dated November 24, 2015;
- Construction Law no. 50/2014/QH13 dated June 18, 2014;
- Construction Law no. 62/2020/QH14 dated June 17, 2020;
- Law on Bidding no. 22/2023/QH13 dated November 26, 2013;
- Commercial Law 2005

2. DECREES OF THE GOVERNMENT

- Decree no. 37/2015/NĐ-CP dated April 22, 2015 detailed regulations on construction contract;
- Decree no. 63/2014/NĐ-CP dated June 26, 2014 detailing a number of articles of the Law on Bidding regarding contractor selection;
- Decree no. 50/2021/NĐ-CP dated April 01, 2021 amending and supplementing a number of articles of the Decree No. 37/2015/NĐ-CP.

3. CIRCULARS OF MINISTERS

- Circular no. 02/2023/TT-BXD dated March 03, 2023 of Minister of Construction on guideline for some contents of construction contracts.
- Circular no. 11/2022/TT-BKHĐT dated May 31, 2022 detailing on providing detail the provision and posting of information on bidding and selection of contractors on the national procurement network;



REGULATORY FRAMEWORK ON CONTRACT

1. CIVIL CODE 2015

Civil Code no. 91/2015/QH13 regulates on contract from Article 385 to Article 429, including definition of contract, content of a construction contract; the establishment, amendment procedure on contract, nullified contract, sample contract; contract interpretation; enforcement of a contract; etc.

2. COMMERCIAL LAW 2005

Commercial Law regulates on entering into contracts, obligations and responsibilities of parties, forms of commercial contracts; types of contract; etc.

3. CONSTRUCTION LAW

Construction Law regulates, from Article 138 to Article 147, on basic principles of content a construction contract, including principles of conclusion and execution of construction contracts; contract language; validity and legal enforcement; types of contracts; contents of construction contracts; contract documents; contract amendment; payment; suspension and termination of contract; bonuses, penalties for breach of contract and damages; end of contract performance.

4. LAW ON BIDDING

The regulations on contract are from Article 64 to Article 70 and generally identical with that in Construction Law



02

SOME KEY NOTES ON CONSTRUCTION CONTRACT



WHAT PROBLEMS IN CONSTRUCTION CONTRACT MANAGEMENT ARISE FROM?



01

The process of drafting a contract is unclearly done



02

Poorly managing the performance of the contract



03

Conflict between legal provisions and other issues



THE PROCESS OF DRAFTING AND ENTERING INTO A CONTRACT

01

Parties shall understand the law applicable to the contract as it is the legal basis of the contract

02

Parties shall understand the requirements of the bid package/contract as they are specific requirements.



I. NOTABLE REGULATIONS

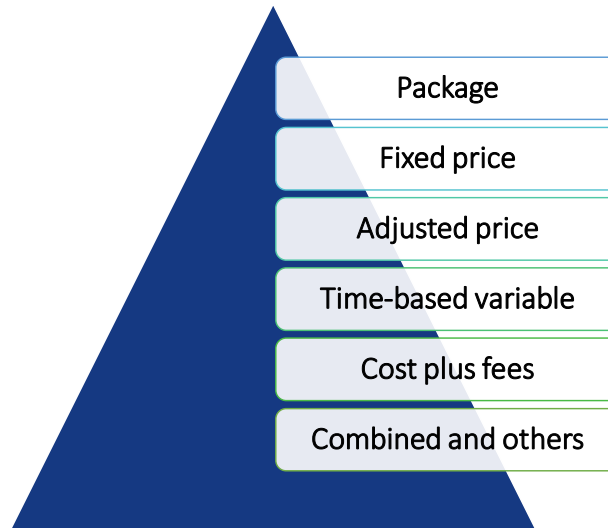
1. What is a bid package/contract on capital utilization? Public investment, foreign state investment, PPP, and other capital resources.
2. Conditions to enter into a contract?
3. Contract price types and potential risks
4. Conditions for advance payment and contract payment
5. Technical and quality requirements
6. Progress requirement?
7. Rights and obligations of parties
8. How to amend a contract?
9. Conditions for ensuring the feasibility of terms in contract, etc.



7. CONDITIONS TO ENTER INTO A CONTRACT



2. CONTRACT PRICE AND APPLICABLE CONDITIONS; ADVANCE PAYMENT, CONTRACT PAYMENT AND FINAL SETTLEMENT



3. CONDITIONS FOR APPLICATION OF CONTRACT PRICES

Package contract

- Sufficient grounds to determine the volume and unit price.
- In case EC/PC/EPC/turnkey contract has not determined volume and unit price, but the parties have sufficient capacity and experience to calculate those.

Fixed unit price contract

- Sufficient grounds to determine the unit price.
- The price shall include risks associating with contract price: slippage, contingency costs...

Adjusted unit price contract

- There are insufficient grounds to determine volume, unit price, and risks related to contract price.

Time-based variable contract

Often applicable to some construction contracts with consulting work.

Cost plus fees contract

When entering into the contract, parties had insufficient grounds to determine the scope and necessity.

Determining management costs, general costs, profit.




4. CONTRACT AMENDMENT

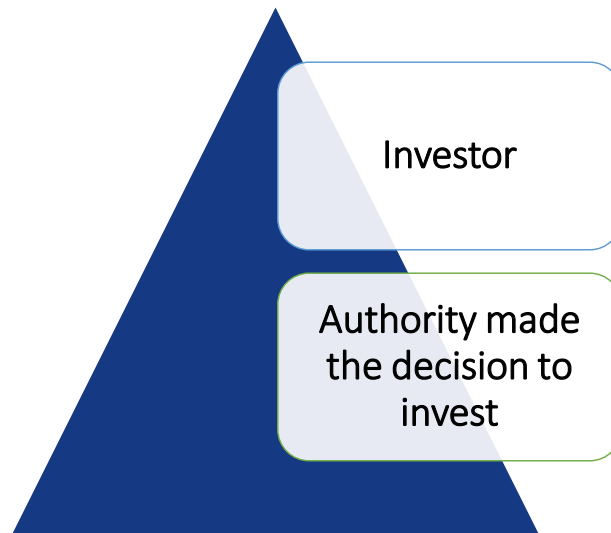
- 
- When could parties amend the contract?
 - Who has the competent authority to decide the amendment of the contract?
 - Rights of entities in the amendment of the contract?
 - How is the scope of regulation?



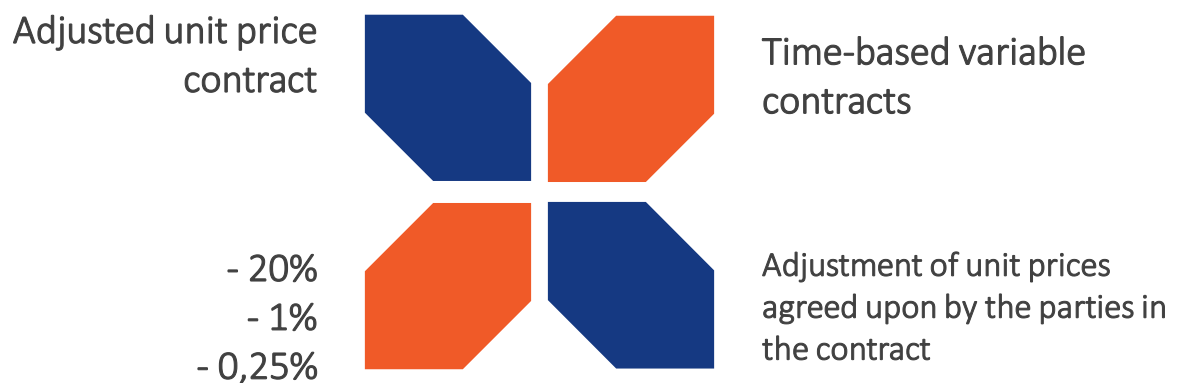
5. CIRCUMSTANCES WHERE PARTIES CAN AMEND THE CONTRACT

- 
- That circumstance is specified in the contract
 - Governmental policy amendments
 - Project adjustments
 - Force majeure
 - Hardship

6. COMPETENT AUTHORITY TO AMEND THE CONTRACT



7. ADJUSTMENT OF UNIT PRICES FOR CONTRACTS USING STATE CAPITAL ONLY APPLIES TO:





8. CONTRACT PRICE ADJUSTMENT METHOD

Direct compensation

- Familiarity with contracting parties
- Unfair to the involved entities
- The calculation is complex
- Must calculate for each job, each type of material
- The calculation is varied, inconsistent

Adjustment factor

- Fairness to involved entities
- Simple calculation
- This can be applied to the amendment of all contract
- There is only one calculation
- Widely applied in the world



9. MANAGE CONTRACT WORKLOAD



In package contracts?



In unit price contracts?



In time-based variable contracts



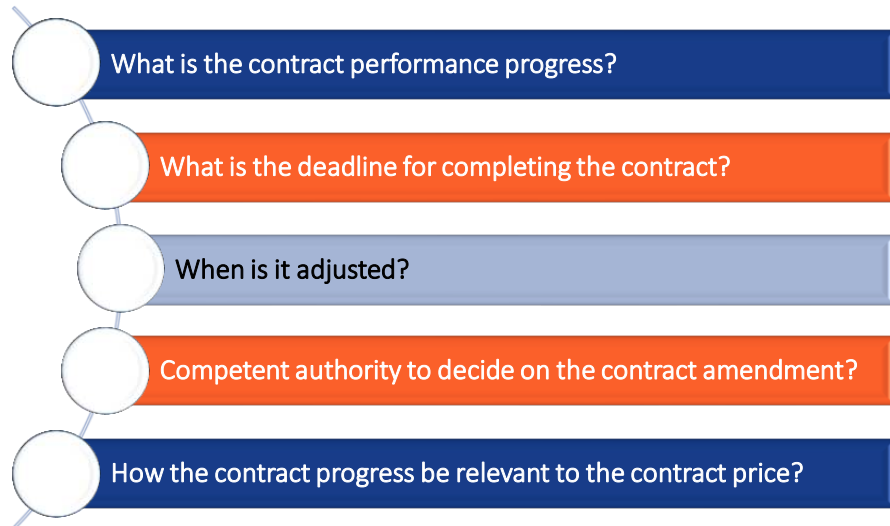
In cost-plus-fee contracts



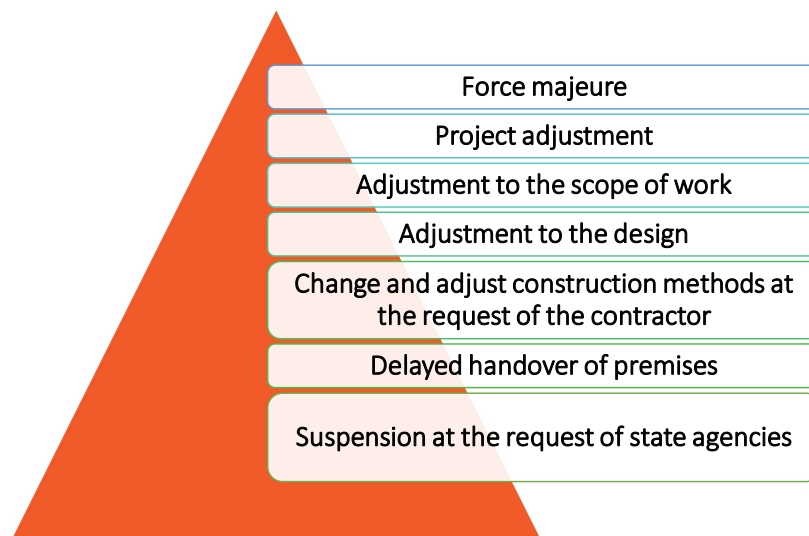
Workload arising outside the scope of the contract



10. CONTRACT PROGRESS



11. CASES OF ADJUSTMENT OF CONTRACT PERFORMANCE PROGRESS





12. OBLIGATIONS OF THE PARTIES IN THE CONTRACT

- Consulting
- Construction
- Procurement of supplies and equipment
- Consultation fee
- Combination

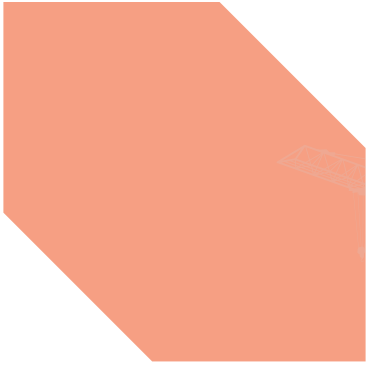


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Q & A





구현양 - 파트너 변호사 - 법무법인 광장

Ms. Hyunyang Koo - Partner at Lee & Ko

구현양 변호사는 2014년 삼성물산 건설부문에 입사하여 호주, 북미, 동남아, 중동 지역에서의 여러 해외 건설 계약 관련 자문을 한 경험이 있으며, 다양한 건설 프로젝트의 클레임 및 국제 중재를 통한 분쟁 해결을 담당해 왔습니다. 이후 법무법인(유) 광장에 입사한 이래 국제중재 전문 변호사로서 해외 건설, 인프라 프로젝트, 소프트웨어 라이선스, 통신, 국제 스포츠 등과 관련된 다양한 분쟁의 국제 중재 및 국제소송 업무를 담당하고 있습니다. 특히 구현양 변호사는 국제상공회의소 (ICC), 싱가포르국제중재센터 (SIAC), 미국중재협회 (AAA), 홍콩국제중재센터 (HKIAC), 대한상사중재원 (KCAB) 등의 다양한 주요 중재 기관에서 여러 중재 사건을 성공적으로 대리하였습니다.

아울러 구현양 변호사는 싱가포르국제중재센터의 젊은 중재전문가 이사회 (YSIAC Committee) 위원, 홍콩국제중재센터 (HKIAC)의 Regional Ambassador, 뭄바이국제중재센터 (MCIA)의 젊은 중재전문가 이사회 (Young MCIA Steering Committee) 의 위원을 맡아 활발히 활동 중에 있습니다.

As a member of Lee & Ko's International Arbitration Team, Hyunyang Koo handles a broad range of international arbitration and cross-border litigation matters involving international construction, software license agreements, military projects, international sports-related disputes, distributorship agreements, etc. Prior to joining Lee & Ko in 2016, she worked at Samsung C&T legal team(international construction), where she handled legal affairs and advice regarding various offshore construction contracts in Australia, North America, South-East Asia, and the Middle East. In Lee & Ko, her main area of practice includes international arbitration cases at leading arbitral institutions such as ICC, LCIA, KCAB, SHIAC, and CAS, as well as ad hoc arbitrations and cross-border litigations.

Ms. Koo is also an active member of the International Arbitration Society and has been appointed as a member of the YSIAC Council, Regional Ambassador for HK45, and a member of the Steering Committee for Young MCIA.



HỘI THẢO | 워크숍

GIẢI QUYẾT TRANH CHẤP XÂY DỰNG QUỐC TẾ TẠI VIỆT NAM

Các Khiếu nại & Tranh chấp - Khuyến nghị từ thực tiễn

베트남에서의 해외 건설 분쟁

클레임 및 분쟁 해결을 위한 실무적 대응 방안

Hà Nội | Ngày 06 tháng 10 năm 2023 (Thứ Sáu)
하노이, 베트남 | 2023. 10. 06.(금)



베트남에서의 해외 건설 분쟁: 클레임 및 분쟁 해결을 위한 실무적 대응 방안

Hyunyang Koo

Partner, Lee & Ko





법무법인 광장 국제중재팀 소개



"An experienced and capable team that is highly responsive and nimble in adapting to unexpected events that crop up." (2023)

"Very efficient legal team with a diverse background. Truly impressed by their holistic approach, considering all details of the case but concentrating and emphasizing the key issues." (2022)

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국제 건설 분쟁 그룹

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- ▶ Represented a major Korean construction company in a dispute against a Saudi company concerning EPC contracts for a construction project in Qatar
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클레임 통지 및 Time Bar 조항의 중요성

Time Bar 조항이란?

- **FIDIC 20.1**

"If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, **the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability** in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.



클레임 통지 및 Time Bar 조항의 중요성

Time Bar 조항을 미준수 시 불이익은 무엇인가?

- Time Bar 조항에 따르면 Contractor는 Engineer (또는 Employer)에게 공기 연장 및 추가 비용을 초래한 특정한 사건이나 상황에 근거하여 클레임에 대한 통지를 하도록 규정하고 있음.
- 만약 Contractor가 해당 Time Bar 조항에서 명시하고 있는 기한 내에 클레임 통지를 하지 못할 경우, Contractor는 원칙적으로 공기 연장 및 추가 비용에 관한 클레임을 제기할 수 없음
- 따라서 해당 Time Bar 조항에 따라 적시에 클레임에 대한 통지를 하는 것은 Contractor가 클레임을 유효하게 제기하기 위한 선결조건에 해당함

클레임 통지 관련 실무상 유의할 사항

Time Bar 조항의 중요성에 대한 이해 필요

계약상 명시된 기한 내에 클레임 통지를 하지 못하는 경우, 시공자는 공기 연장 및 추가 비용에 대한 권리를 상실할 수 있음.

제출해야 할 문서들

시공자는 클레임을 뒷받침할 서류들과 클레임과 관련된 일체 사항들에 대한 기록을 형성하고 보관해야 함.

01

02

03

04

발주자측 감리자는 클레임에 대해 Response를 제공해야 함

시공자가 클레임 및 클레임을 뒷받침할 모든 서류들을 제공한 날로부터 42일 내에 시공자의 클레임에 대한 Response를 제공해야 할 의무가 있음

클레임과 관련된 지속적인 업데이트 필요

시공자는 클레임의 기초가 된 사건이나 상황이 발생한 날로부터 42일 내에 클레임 및 클레임을 뒷받침할 모든 서류들을 제공해야 함



대륙법계 해석론

클레임을 위한 통지 관련 선결조건을 준수하지 못할 경우 대응방안

■ 신의성실의 원칙 (Good faith principle)

발주자가 시공자의 클레임의 기초가 된 사실관계에 대해 이미 알고 있었던 경우에 발주자가 시공자가 Time Bar 조항에 따른 클레임 통지 기한을 준수하지 못한 점을 들어 클레임을 거부하는 경우, 이는 신의성실의 원칙상 허용되지 않는다고 볼 수 있음.

■ 부당이득의 반환 (Unjust enrichment)

발주자는 시공자가 Time Bar 조항에 따른 클레임 통지 기한을 준수하지 못하였다는 이유만으로 관련 공사대금을 지급하지 않는 것은 발주자의 입장에서 부당이득을 취득한 것이라고 해석될 여지가 있음.



영미법계 해석론

클레임을 위한 통지 관련 선결조건을 준수하지 못할 경우 대응방안

- **방해의 원칙 (Prevention Principle)**

Peak v McKinney (1970)

계약을 위반한 당사자는(본 건의 경우, 발주자가 계약을 위반함) 계약의 위반으로부터 이익을 취할 수 없음.

- **신의성실의 원칙**

영미법계에서는 신의성실의 원칙을 별도로 인정하고 있지 않기 때문에, 영미법계 법원이 신의성실의 원칙을 계약상 명시된 당사자간의 합의에 우선하여 적용하는 경우는 많지 않음



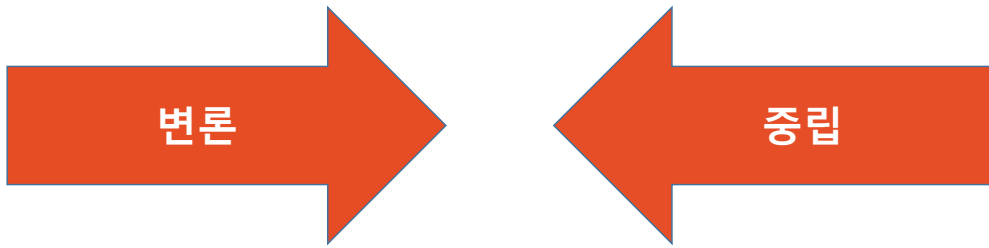
전문가의 선임

전문가 선임과 관련하여 고려해야 할 요소

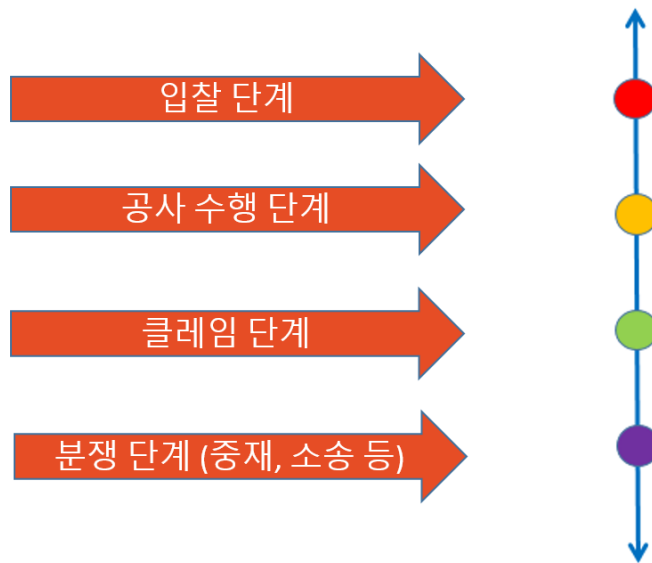
- **자격**
- **경험**
- **전문 분야**
- **해당 프로젝트 관여 여부**
- **고객의 선호도 v. 변호사의 선호도**

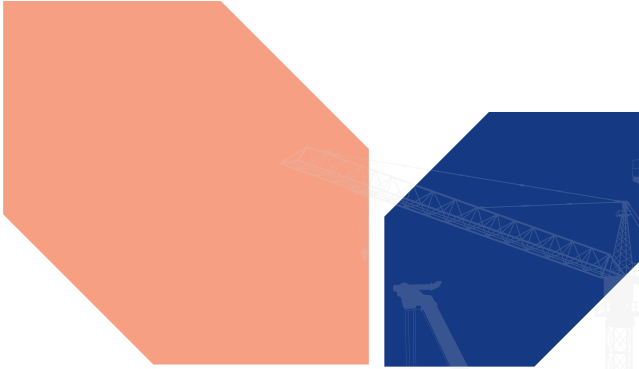


국제 중재에서 전문가 증인의 역할



전문가 증인의 선임 시기 및 각 시기별 장단점





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INTERNATIONAL CONSTRUCTION DISPUTES IN VIETNAM: Practical tips on claims & disputes

Hyunyang Koo

Partner, Lee & Ko



Lee & Ko International Arbitration Team



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International Construction Dispute Resolution Practice Group

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Notices of claims and time bar: why is it so important?

What is a Time Bar clause?

- **FIDIC 20.1**

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Notices of claims and time bar: why is it so important?

What are the consequences?

- A Time Bar clause requires the Contractor to serve the Engineer (or the Employer) a notice of claim for additional time and/or cost based on a specific event which gives rise to the claim.
- If the Contractor fails to notify within the time limit, the Contractor cannot recover time and/or cost regarding the relevant event.
- It is important to note that complying with such notice provisions is a condition precedent to Contractor's claim entitlement. .

Practical tips and takeaways

Understand the consequences

Any claim for time and/or cost will be lost if the Contractor fails to notify within the provided time limit.

01

02

Engineer should respond

The Engineer should respond within 42 days after receiving a fully detailed claim.

Documents to submit

The Contractor should submit supporting documents and maintain contemporary records to substantiate its claims.

03

04

Don't forget to update the claims

The Contractor should submit a fully particularised claim within 42 days after become aware of the relevant event.



The Civil law approach

Is there any way to play around the condition precedent?

- **Good faith principle**

If an Employer was already aware of the events which give rise to the Contractor's claim, the Employer may be prevented from arguing that the Contractor failed to meet the time limit under the Time Bar clause as such action could be seen as acting in bad faith.

- **Unjust enrichment**

An Employer may not be allowed to rely on the sole ground that the Contractor failed to comply with the time limit under the Time Bar clause to avoid payment for the work performed by the Contractor and from which the Employer has benefitted from.



The Common law approach

Is there any way to play around the condition precedent?

- **Prevention Principle**

Peak v McKinney (1970)

A party to a contract may not benefit from its own breach, in which it was the Employer in this case.

- **Good Faith principle**

There are no general principle of good faith under common law jurisdictions, and hence, it would be exceptional for the court to accept that such good faith obligation overrides a contractual agreement.



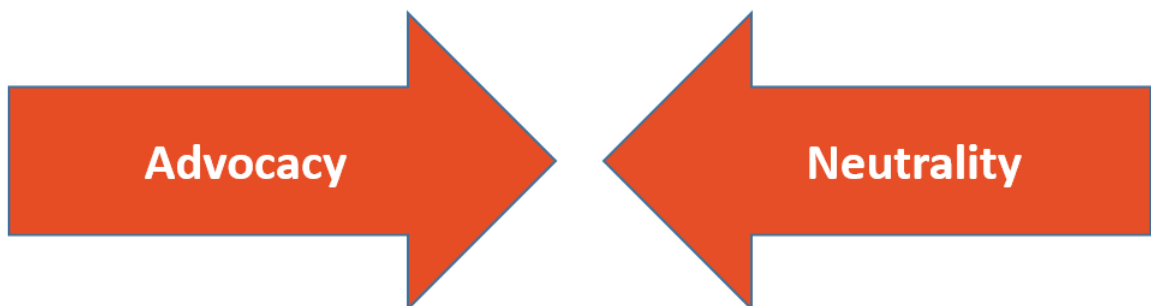
Appointing an expert:

What criteria do you need to consider?

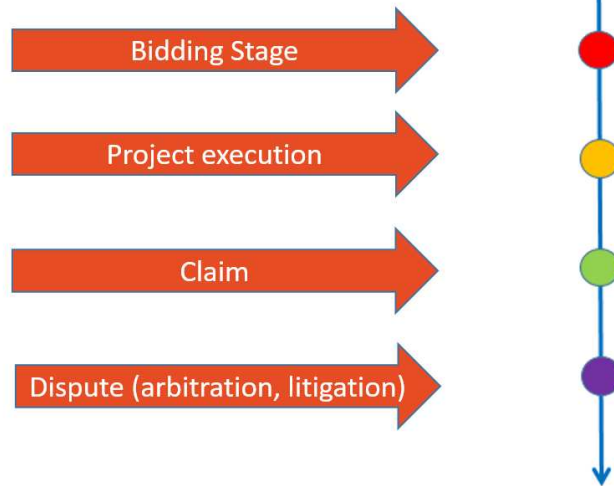
- Qualification
- Experience
- Areas of expertise
- Prior involvement in the project
- Client's preference v. counsel's preference



Expert's role in international arbitration



When do you appoint an expert? Any pros and cons?



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Le Ba Thanh Chung - 박사 과정 재학, Construction Law Vietnam Counsellors (CLVN) 대표 파트너, VIAC 위촉 중재인

Mr. Le Ba Thanh Chung - PhD Candidate, Managing Partner at Construction Law Vietnam Counsellors (CLVN), VIAC Listed Arbitrator

Chung 변호사는 베트남 및 뉴욕주 변호사 자격을 취득하였으며, 건설 전문 변호사로서 베트남 등에서 20년간 활동하였습니다. 또한 듀크대학교 법학전문대학원 법학석사(LLM)학위 및 파리 상공회의소 경영학 석사 학위를 취득했습니다. 2020년부터 듀크대학교 법학전문대학원에서 법학박사(SJD) 학위 과정을 수료하고 있습니다.

Chung 변호사는 90억 달러 규모의 정유 및 석유화학 프로젝트, 복합 가스 발전 프로젝트, LNG 발전 프로젝트, 석탄 화력발전소 프로젝트 등 베트남 내 대규모 인프라 및 에너지 프로젝트에서 법률 고문으로 활동하고 있습니다.

나아가, 베트남 국제중재센터(VIAC)와 싱가포르 국제중재센터(SIAC) 소관 중재 사건들에서 법률대리인 또는 법률 전문가 증인으로 활동하고 있습니다.

Mr. Chung Le is a Managing Partner at Construction Law Vietnam Counsellors (CLVN) and VIAC Listed Arbitrator. He has 20 years of experience as a lawyer practicing in Vietnam and other jurisdictions. Mr. Chung Le is a lawyer member of the Vietnam Bar Federation, the New York State Bar Association, and the U.S. Supreme Court Bar. He also holds an LLM degree from Duke University – School of Law and an MBA degree from the Chamber of Commerce and Industry of Paris (CCI Paris). Since 2020, he has been pursuing a Doctor of Legal Science (SJD) degree at Duke University – School of Law.

Mr. Chung Le has acted as a legal adviser in highly significant country-changing infrastructure and energy projects, namely a USD 9 billion refinery and petrochemical project, several complex electrifications, liquefied natural gas (LNG) projects, and several coal-fired power projects in Vietnam. In dispute resolution practice, Mr. Chung Le has acted as an expert witness, represented clients as counsel, and sat in arbitral tribunals at VIAC and the Singapore International Arbitration Centre (SIAC).



해외 건설 계약에서의 MULTI-TIER DISPUTE RESOLUTION 조항: 올바른 접근 방법은?

MR. LE BA THANH CHUNG

Managing Partner | Construction Law Vietnam Counsellors (CLVN)
Arbitrator | Vietnam International Arbitration Centre (VIAC)



순서

- 01 Multi-tier dispute resolution clause (“MDR”)
- 02 MDR clause 관련 법적 이슈
- 03 MDR clause에 대한 규제
- 04 MDR clause 관련 판례에 대한 분석
- 05 대응 방안



MULTI-TIER DISPUTE RESOLUTION CLAUSE에 대한 소개

해외 건설 계약의 당사자들은 두개 또는 그 이상의 분쟁해결안을 다음과 같이 추가할 수 있음:

- 협상;
- 전문가 결정 ;
- Dispute Avoidance and Adjudication Board;
- 조정;
- 중재/법원.



MDR clause 관련 법적 이슈

01

MDR clause가 당사자들을 구속하는지? 집행이 가능한지?

02

MDR clause를 미준수 시, 어떠한 결과가 발생하는지?



MDR clause 관련 규제

- Civil Procedure Code 2015 는 소송 이전의 절차에 대한 당사자들의 합의와 그러한 합의를 미준수 시 발생하는 결과에 대해 별도로 규제하지 않음
- Resolution 04/2017/NQ-HĐTP의 제3.1조는 법원에 소를 제기할 수 없는 당사자들에 대한 구체적인 사례를 제시하고 있음. 그러나 이는 “법에 따른 사례 ” 만을 규정하고 있을 뿐, 당사자들의 합의에 대한 규제는 포함하고 있지 않음
- LCA 2010 와 VIAC 중재규칙 2017은 소송 이전 절차에 대해 별도로 규제하고 있지 않음
- LCA 2010의 제 9, 38, 58조는 중재 절차의 일환으로 조정과 협상을 두고 있음
- Civil Code 2015 제3.2조는 “법에 의해 금지하고 있지 않은 사항에 대한 의무나 합의 또는 당사자들의 이행이 반사회적이지 않은 경우 유효하며, 이와 관련하여 그 외 대상은 이를 존중해야 한다.”
- LCA 2010 제4.1조: “중재인은 법에 의해 금지하고 있지 않은 사항이나 반사회적이지 않은 사항에 대한 당사자들의 합의를 존중해야 한다.”



예시 1

526/2013/KDTM-QĐ of the Ho Chi Minh City People's Court 결정:

“신청인은 (VIAC에서의 중재를 제기하기 이전에 당사자들이 협상을 해야 한다는) 당사자들간의 합의를 준수하지 않았음”; 그러나 “이러한 비준수는 계약 제13.3조상의 중재 합의를 무효화 시킨다고 보기 어려움 ”

관련 의견: 이 결정과 관련하여, 법원은 MDR Clause의 유효성과 소송 제기 이전 절차에 대한 당사자들의 의무가 당사자들을 구속시킨다는 점을 인정한 것으로 볼 수 있음. 다만, 법원은 신청인의 위와 같은 미준수가 신청인의 중재 제기 신청에 대해 아무런 영향을 미치지 않는다고 보았음.



예시 2 와 예시 3

no. 02/2016/KDTM-ST of the Nghe An People's Court 결정: 법원은 회사의 정관에 따라 분쟁 당사자들이 소송을 제기하기 이전에 내부 조정 절차를 거쳐야 함에도 불구하고 이를 거치지 않았다는 점을 들어 청구 신청서를 반환하고 민사 절차를 종료하였음

no. 10/2014/QĐ-PQT of the Hanoi People's Court 결정: “분쟁 당사자들이 계약 제4조에서 명시하고 있는 분쟁해결절차 Step 1을 거치지 않은 바[...], 당사자들은 합의를 이행하지 않았으므로 LCA의 제68.2조를 준수하지 않았음. 이에 중재판정부는 중재와 해당 사건의 진행을 위한 조건이 충족되지 않았음에도 불구하고 관련 절차를 진행하였고 이는 관련 베트남 법을 위반한 것임.”

관련 의견: 예시 2와 예시 3에서는 법원이 MDR은 집행 가능하고 당사자들을 구속한다고 보았음. 나아가 법원은 이를 소송 진행을 위한 선결 조건으로 본 것인바, 이는 중재나 법원에서의 소송 진행을 위해 충족을 해야 하는 것임



MDR clause 의 집행 및 구속력

건설 계약상 MDR clause는 법에서 금지하고 있는 사항을 위반한다거나 반사회적이지 않는 이상 유효하며 당사자들에 대한 구속력이 있음.

MDR clause 위반시 결과

의견 1: MDR clause는 계약 당사자들을 구속함. 다만, 이를 위반하더라도 중재 또는 법원에서의 소송을 제기함에 있어 영향이 없을 수도 있음

의견 2: The MDR clause는 당사자들에게 소송 제기를 위한 선결 조건으로 작용하며, 이러한 선결조건이 충족되어야 당사자는 중재 또는 법원에서의 소송을 제기할 수 있음



대응 방안

계약 협상 및 작성 시:

- 당사자들은 해당 중재 기관에서 제공하는 표준 중재 조항을 삽입하는 방안을 고려해 볼 필요가 있음
- MDR clause의 경우: 당사자들은 각 절차별로 충족해야 하는 요건 및 요건을 위반할 경우 발생하는 결과에 대해 명시할 필요가 있음

분쟁해결절차 중:

- 절차가 지연되지 않도록 유의하고 중재 또는 법원에서의 소송을 제기하기 이전에 MDR clause에서 명시하고 있는 모든 요건을 충족해야 할 필요가 있음

Lee
& KO

VIAC
VIETNAM INTERNATIONAL ARBITRATION CENTER

KOCHAM
KOREA CONSTRUCTION COUNCIL OF HANOI

감사합니다!

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CLVN
Project and Construction Law Specialists





MULTI-TIER DISPUTE RESOLUTION CLAUSES IN INTERNATIONAL CONSTRUCTION CONTRACTS: THE RIGHT APPROACH?

MR. LE BA THANH CHUNG

Managing Partner | Construction Law Vietnam Counsellors (CLVN)

Arbitrator | Vietnam International Arbitration Centre (VIAC)



CONTENTS

- 01 Multi-tier dispute resolution clause (“MDR”)
- 02 Legal issues concerning MDR clause
- 03 Regulation concerning MDR clause
- 04 Analysis on Decisions of the Court concerning the MDR clause
- 05 Recommendations



INTRODUCTION TO MULTI-TIER DISPUTE RESOLUTION CLAUSE

Parties in international construction contract can negotiate to and insert two or more dispute resolution methods as follows:

- Negotiation;
- Expert determination;
- Dispute Avoidance and Adjudication Board;
- Mediation;
- Arbitration/At-court litigation.



Legal issues concerning the MDR clause

01

Whether MDR clause is enforceable and binding upon parties?

02

What is the consequence of non-compliance with the MDR clause?



Regulation concerning MDR clause

- Civil Procedure Code 2015 does not regulate any pre-litigation procedure upon agreement of parties and the consequences of non-compliance with this agreement.
- Article 3.1, Resolution 04/2017/NQ-HĐTP specifies cases in which a party is not eligible to initiate the lawsuit to the court. However, it only specifies “*cases prescribed by law*” and does not concern agreement by parties.
- LCA 2010 and VIAC Rules of Arbitration 2017 do not regulate on pre-arbitration procedure.
- Article 9, Article 38, and Article 58, LCA 2010 recognize mediation and negotiation as steps in the arbitration procedure.
- Article 3.2, Civil Code 2015 specifies that: “*Any commitment or agreement which does not violate a prohibition by law or is not contrary to social morals is valid for performance by the parties and must be respected by other subjects.*”
- Article 4.1, LCA 2010: “*Arbitrator shall respect parties’ agreement if that agreement does not violate a prohibition by law or is not contrary to social morals.*”



Example 1

Decision no. 526/2013/KDTM-QĐ of the Ho Chi Minh City People’s Court:

“Claimant did not comply with the agreement between parties (parties shall negotiate before initiate arbitration at VIAC)”; however, *“this non-compliance does not nullify the Arbitration Agreement in Clause 13.3 of the Contract.”*

Comment: In this Decision, it is likely that the Court recognized the enforcement of the MDR clause and its binding effect on parties on their obligation concerning pre-arbitration procedure. However, the Court also asserted that the Claimant’s non-compliance would not have any consequence on the Claimant’s arbitration initiation.



Example 2 & Example 3

Decision no. 02/2016/KDTM-ST of the Nghe An People's Court: The Court returned the claim petition and terminated the civil cases because the parties in dispute had not conducted internal mediation prior to initiating litigation according to the Charter of the Company.

Decision no. 10/2014/QĐ-PQT of the Hanoi People's Court: *“As parties in disputes had not executed dispute resolution as per Step 1, Clause 4 of the Contract [...], they did not comply with the agreement and, therefore, went against Article 68.2.b of the LCA. The Arbitral Tribunal handled the case when arbitration and case handling requirements have not been fulfilled is unlawful according to relevant Vietnamese law.”*

Comment: In Example 2 and Example 3, the Court has decided that the MDR is enforceable and binds upon the parties. Moreover, it is likely that the Court considered this as a litigation prerequisite, which means it shall be satisfied before initiating arbitration or at-court litigation.



Enforcement & Binding effect of the MDR clause

The MDR clause in the construction contract is valid and is binding upon parties if the content of this clause does not violate any prohibition by law or is not contrary to social morals.

Consequences of non-compliance with the MDR clause

Opinion 1: The MDR clause binds the parties in the contract. However, the non-compliance with this clause might not affect arbitration/at-court litigation initiation.

Option 2: The MDR clause imposes a litigation prerequisite upon parties, and this prerequisite shall be satisfied before any party initiates arbitration or at-court litigation.



RECOMMENDATIONS

During negotiating and drafting the contract:

- Parties might considering insert the model arbitration clause supplied by the chosen arbitration center.
- In case of inserting the MDR clause: parties should explicitly state requirements for each procedure and consequences of non-compliance

During the dispute resolution procedure:

- Good time-management and fully comply with steps as specified in the MDR clause before initiating arbitration/at-court litigation.



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Vu Thi Hang - *VIAC 사무국 부국장*

Ms. Vu Thi Hang - *Deputy Director of VIAC Secretariat*

베트남국제중재센터(VIAC)에서 10년 가까이 근무한 Vu Thi Hang 부국장은 VIAC의 중재 사건들을 관리하며, 중재인들을 위한 교육 활동 등에 크게 기여했습니다.

VIAC의 과학위원회 위원으로서 베트남의 상사 및 중재 활동을 규제하는 법률(민법, 상법, 기업법, 상사중재법)들의 입법과정에 참여하는 등 연구 활동에도 참여했습니다.

Hang 부국장은 중재 및 ADR 제도에 관한 국제 협력 관련 업무의 일환으로 VIAC의 글로벌 파트너들과의 협력을 강화하고 있습니다. 또한 베트남 내 ADR에 대한 대중의 인식 제고, 상사 중재 및 기타 ADR을 종합적으로 홍보하는 업무를 담당하고 있습니다.

In nearly a decade working at Vietnam International Arbitration Centre (VIAC), Ms. Hang has participated in coordinating, managing arbitration cases at VIAC while contributed greatly to training activities as well as professional activities for arbitrators at VIAC.

As a member of VIAC's Science Council, Ms. Hang has participated in research activities of the Council, directly attending to comment on legal documents regulating commercial and arbitration activities in Vietnam (the Civil Code, Commercial Law, Enterprise Law, Law on Commercial Arbitration, etc.).

From integration perspective, Ms. Hang is in charge of international cooperation activities regarding arbitration and ADRs methods, coordinating cooperation activities with VIAC's international partners focusing on raising the awareness of public on ADRs, enhancing knowledge and experience of ADRs users in Vietnam, and promoting commercial arbitration as well as other ADRs in Vietnam collectively.



베트남에서의 건설 분쟁 관련 국제 중재 절차

Ms. VU THI HANG

Deputy Director of the Secretariat
Vietnam International Arbitration (VIAC)



통계

2,513 사건
(1993 – 2022)

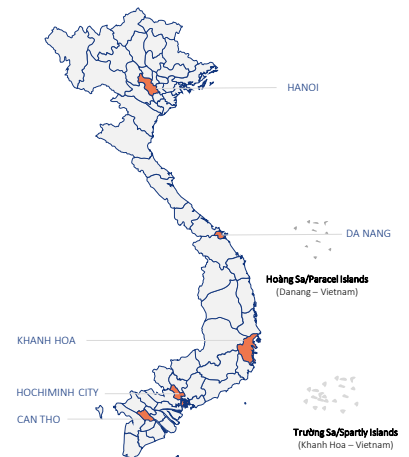
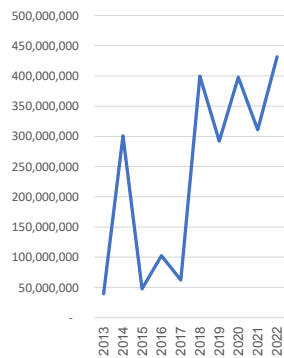


56,1%

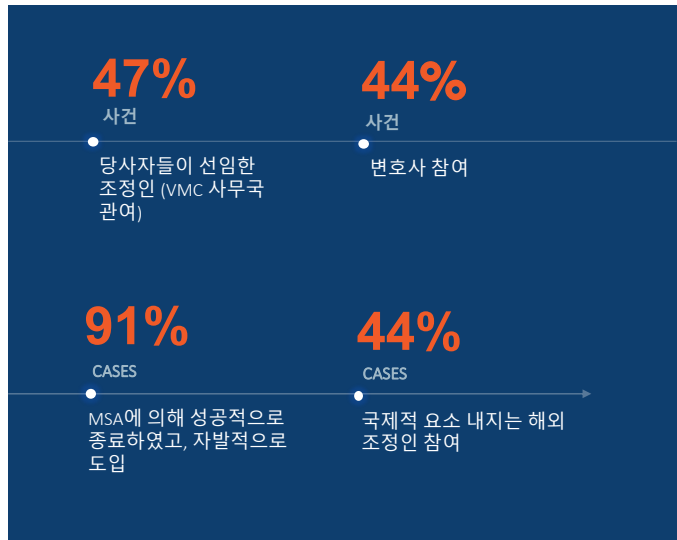
Advocate 또는 Authorized representative 로서의 변호사 참여 비율



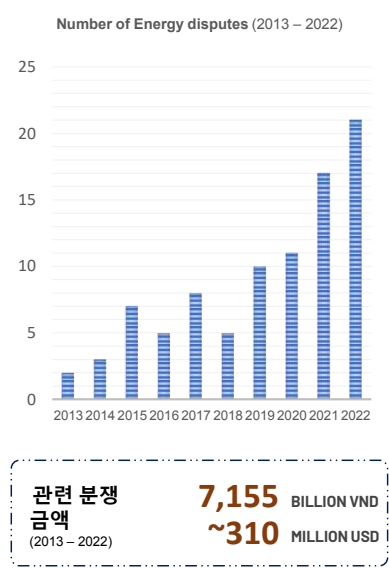
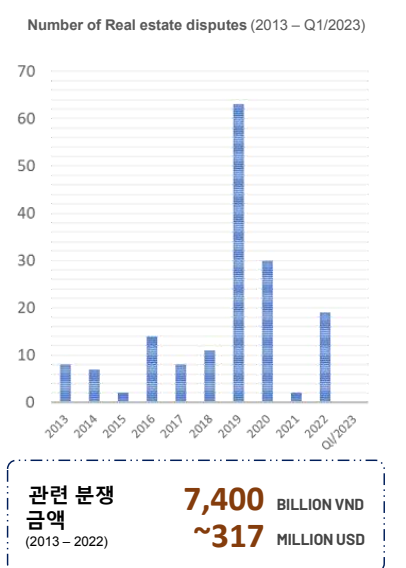
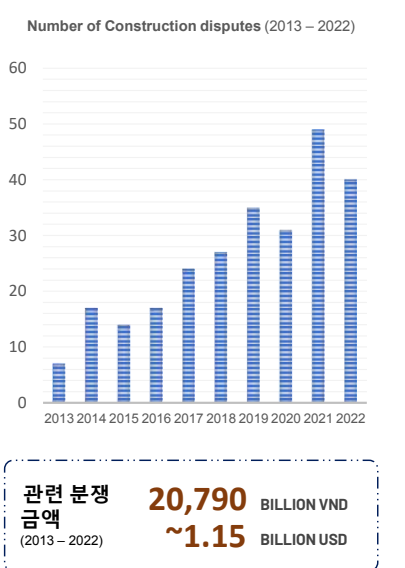
TOTAL DISPUTE VALUE (2013 – 2022)
56,060 BILLION VND
~**2.4** BILLION USD



VMC에서의 분쟁 해결 (2018 – 2022)



분야에서의 분쟁 해결 관련 통계



향후 전망 건설 관련 분쟁



Energy, Mining Projects



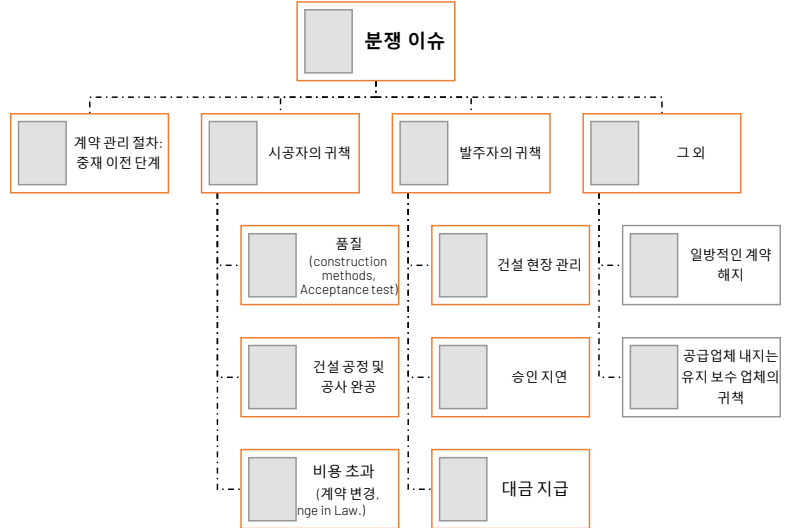
Real Estate Projects (Office Building, Apartment Building, Factories)



Infrastructure Projects (Express way, Bridge, Seaport, Airport, Hospital, etc.)

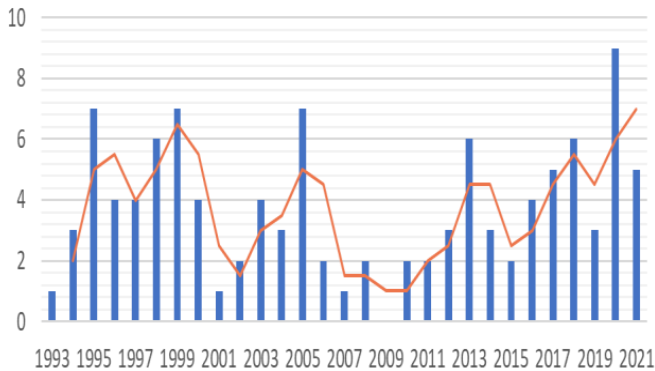


Civil Construction projects



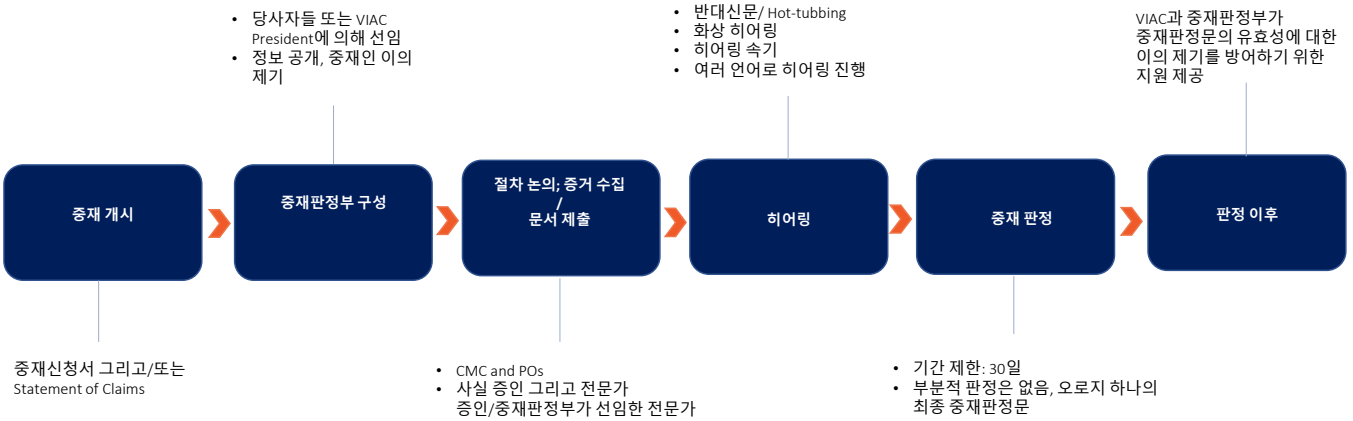
대한민국 관련 VIAC 통계

한국 당사자 관련 VIAC 통계 (1993 - 2021)



총 금액	~2,600 bil VND ~99 mil USD
가장 높은 금액	~1689 bil VND ~72 mil USD
평균 금액	~24,89 bil VND ~1,08 mil USD


VIAC에서의 일반적인 중재 절차



VIAC 국제중재절차


중재판정부는 베트남 국적 및 외국 중재인으로 구성됩니다. 이러한 중재인들은 기관의 중재인 명단에 포함되어 있을 수도 있고 포함되지 않았을 수도 있습니다.

국제적인 중재판정부 (다양한 국적)




실질적인 준거법은 특정 국가의 법 또는 국제법상 국제법의 원칙 또는 외국 법으로 구성될 수 있습니다. (Ex: Vietnamese law, Malaysian law, UK case law, CISG,...)

실질적인 준거법과 절차적인 준거법



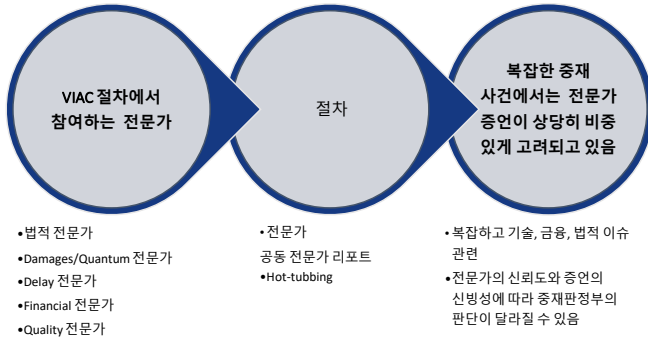
- 히어링 장소는 베트남 외에서 가능
- 중재 언어: 영어, 중국어, 한국어 등
- 증인 반대신문, 증인 cross-checking, 전문가report...
- 화상/Remote 또는 대면 히어링 (실시간 transcription과 통역 서비스)

국제적 절차



향후 전망

VIAC에서 복잡한 중재 진행 시 전문가 참여 관련



다수당사자 중재

동일 계약상 다수당사자 <SHA, SPA & other corporate disputes>

여러 계약의 병합 <Deal Agent; Investor and Shareholder/Company >

절차적 이슈

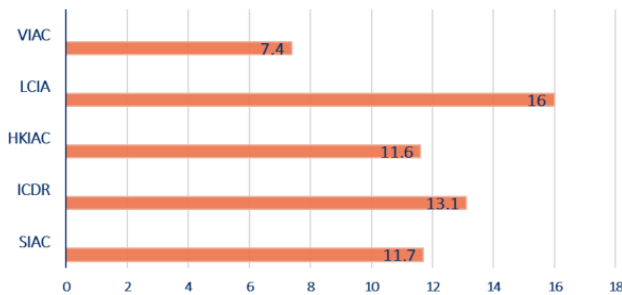
다수 계약의 경우 (비밀유지 및 중재인 선임)

병합할 수 없는 중재합의 조항의 경우/관련 없는 분쟁 계약의 경우

중재판정부 구성 이후 사건 병합

중재 절차에 걸리는 시간 및 비용과 다른 중재기관과의 비교

중재판정부의 중재 판정에까지 걸리는 시간(월 기준) (*)



* International Centre for Dispute Resolution® (ICDR®), Arbitration Report on Time and Cost Considering the Impact of Settling International Arbitrations



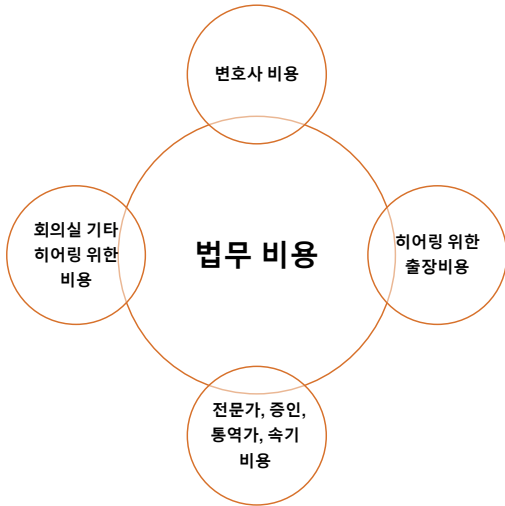
긴급 중재는 이를 단축시킬 수도 있음

다른 중재기관과의 중재 기관 납부 비용 비교

	SIAC	VIAC	ICC
최소 분쟁 금액	~ USD 35,306	~ USD 4,059	N/A
최소 분쟁 금액 기준 최소 기관 납부 비용	~ USD 11,943	~ USD 670	~ USD 5,000 환불 불가
USD 60,000 분쟁 금액 시 중재 비용	~ USD 20,017 (이어링 롬 비용 및 중재판정부 선임, 중재판정부 변경, 중재판정부의 출장 비용은 포함되어 있지 않음)	~ USD 4,337 (이어링 롬 비용 및 중재판정부 선임, 중재판정부 변경비용은 포함; 중재판정부의 출장 비용은 포함되어 있지 않음)	~ USD 25,601 (이어링 롬 비용 및 중재판정부 선임, 중재판정부 변경, 중재판정부의 출장 비용은 포함되어 있지 않음)

향후 전망

비용 관련 VIAC에서의 법무 비용 reimbursement 관점에서의 전략



당사자들의 요청에 따라 변호사 비용은 **recover** 가능

외국 변호사는 **VIAC**에서 변론 가능

법무 비용 클레임 관련 중재 비용 **waive**에 친화적인 정책

BIG WIN
법무 비용의 **recover**를 위한 클레임의 85% 승인 (일부 또는 전체)

INVOICE
법무 비용 **recover**를 위한 입증자료가 부족하다는 점을 들어 기각된 사건의 수 15%

Respondent가 법무비용 **recovery**만을 요청한 사건의 수 5%

두개 또는 그 이상의 로펌이 공동으로 변호한 사건의 수 26개

변호사 비용 최대 보상 금액:
~ **109.8 Bil VND**
[~4.5 Mil USD]

분쟁 금액이 아래와 같은 경우:
~ **5,600 Bil VND**
[~236 Mil USD]

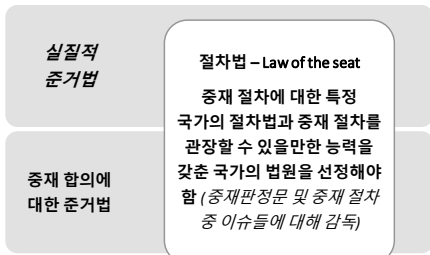
중재 이용자들을 위한 note

중재 기관 선정시 고려할 점

- 영구성
- 중재 절차를 위한 Modern rules을 두고 있는지 여부
- 전문적인 지원 인력
- 합리적인 비용

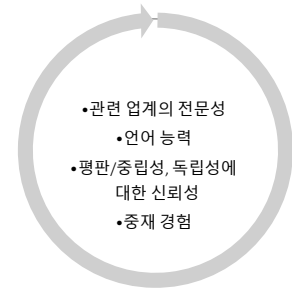
Redfern & Hunters on International Arbitration (6th edition - 2015)

준거법 결정



중재인 선정

“중재는 중재인의 수준에 의해 결정된다”



VIAC에서의 에너지 분야 중재

명단에 포함되어 있지 않은 외국 중재인 선정 가능

국제 중재를 진행함에 있어 다양한 절차적인 practice들을 적절하게 적용 가능

기관 내 법무팀이 중재인들에게 시차와 관계 없이 늘 어시스트 제공 가능

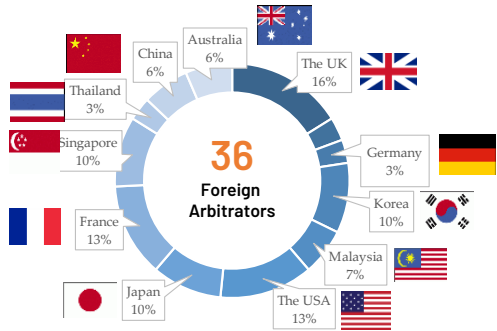
에너지 관련 VIAC 중재의 경우 Energy arbitration 명단에 없는 외국 중재인이 중재판정부에 구성된 경우가 많음

중재 이용자들을 위한 note

VIAC

198
중재인들

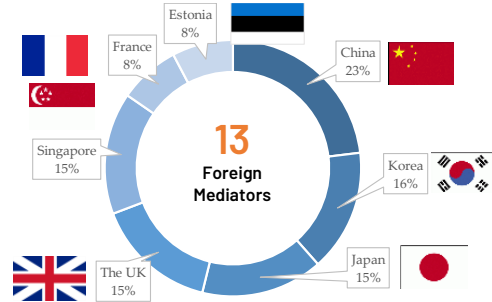
162
36
베트남
중재인들
외국
중재인들



vmc

58
조정인들

45
13
베트남
조정인들
외국
조정인들



Lee & KO

VIAC
VIETNAM INTERNATIONAL ARBITRATION CENTRE

KOCHAM
KOREAN CONSTRUCTION CONTRACTORS ASSOCIATION

THANK YOU
FOR YOUR ATTENTION!





INTERNATIONAL ARRBITRATION PROCEEDINGS FOR CONSTRUCTION DISPUTES IN VIETNAM

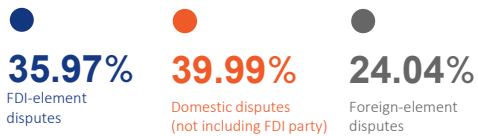
Ms. VU THI HANG

Deputy Director of the Secretariat
Vietnam International Arbitration (VIAC)



Dispute resolution activities at VIAC

2,513 CASES
(1993 – 2022)

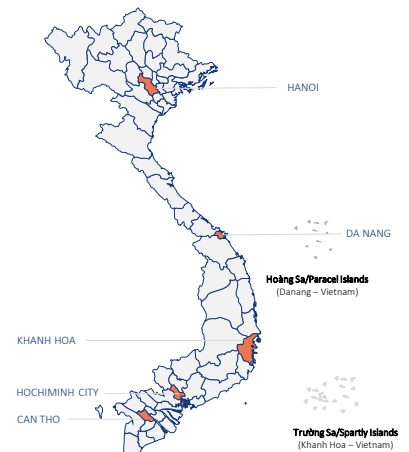
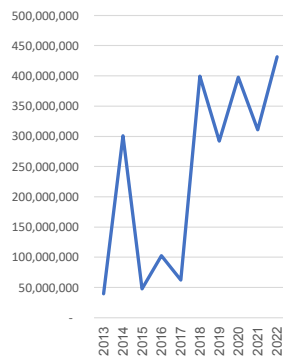


56.1%

Rate of lawyer's participation as Advocate or Authorized representative



TOTAL DISPUTE VALUE (2013 – 2022)
56,060 BILLION VND
~**2.4** BILLION USD



Dispute resolution activities at VMC



36

Number of disputes received by VMC (2018 – 2022)



Total value in dispute

-1,500 BILLION (VND)
~ 68 MILLION (USD)



Types of dispute

Construction
Sales of Goods
Service
Intellectual Property
Real Estate

47%

CASES

With mediators appointed by Parties (With the assistance of VMC secretariat)

44%

CASES

With participation of a lawyer

91%

CASES

Successfully concluded by a MSA and all voluntarily implemented

44%

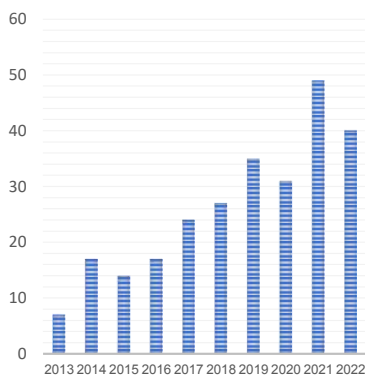
CASES

With international elements or participation of international mediators

3

Sectorial disputes

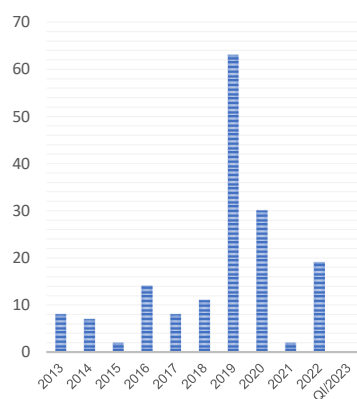
Number of Construction disputes (2013 – 2022)



Total value in construction disputes (2013 – 2022)

20,790 BILLION VND
~1.15 BILLION USD

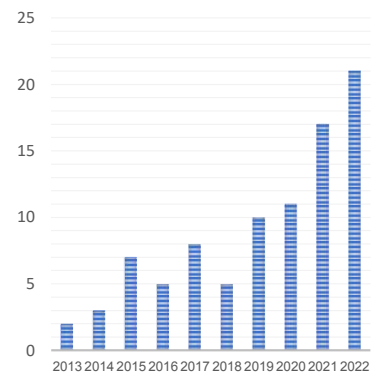
Number of Real estate disputes (2013 – Q1/2023)



Total value in Real estate disputes (2013 – 2022)

7,400 BILLION VND
~317 MILLION USD

Number of Energy disputes (2013 – 2022)



Total value in Energy disputes (2013 – 2022)

7,155 BILLION VND
~310 MILLION USD

4

Observations

Disputes in Construction activities



Energy, Mining Projects



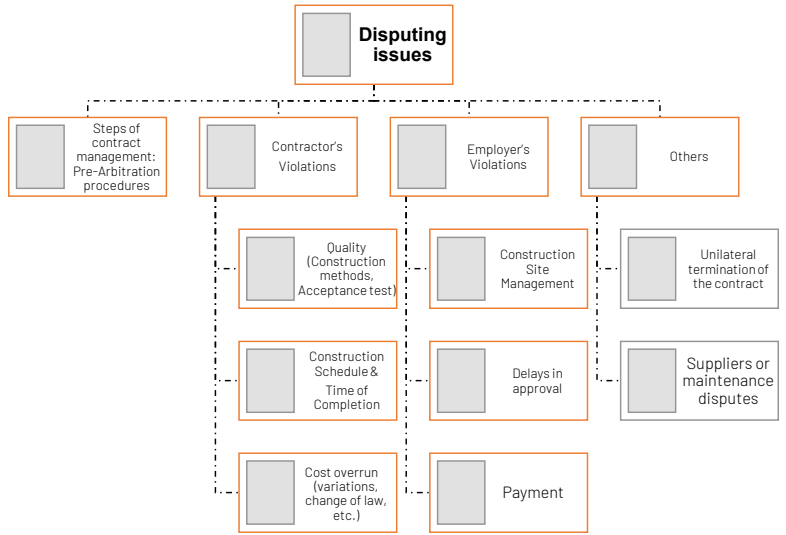
Real Estate Projects (Office Building, Apartment Building, Factories)



Infrastructure Projects (Express way, Bridge, Seaport, Airport, Hospital, etc.)

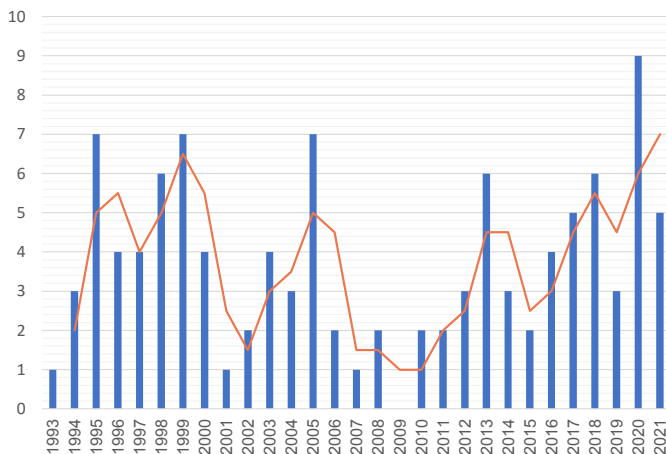


Civil Construction projects



Korea-focused statistics at VIAC

Statistic of disputes featuring Korean parties (1993 – 2021)

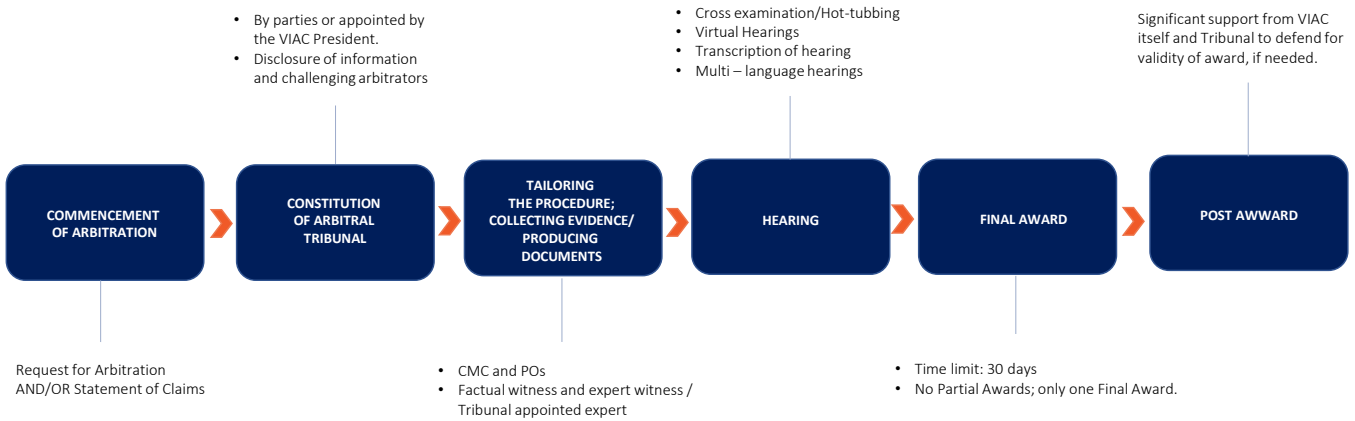


Total value { ~2,600 bil VND
~99 mil USD

Highest value of the dispute { ~1689 bil VND
~72 mil USD

Average value { ~24,89 bil VND
~1,08 mil USD

Typical Arbitration Proceedings at VIAC



7

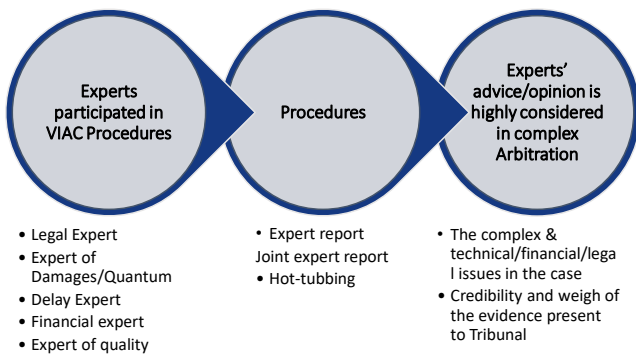
International Arbitration procedure at VIAC



8

Observations (cont.)

Participation Of Experts in complex arbitration at VIAC



MULTIPARTY ARBITRATION

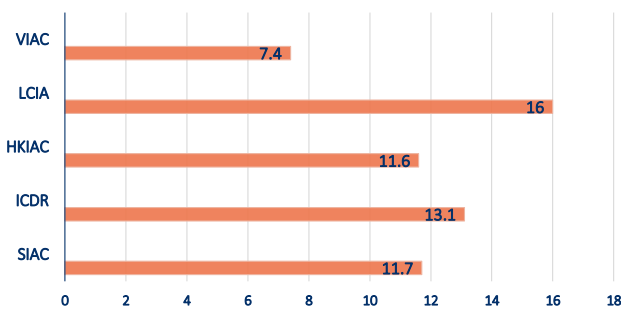
- Multiple parties to the same contract <SHA, SPA & other corporate disputes>
- Consolidation cases of different contracts <Deal Agent; Investor and Shareholder/Company >

PROCEDURAL ISSUES

- Multi-contracts arbitration (Confidentiality and Right to select an Arbitrator)
- Incompatible dispute resolution clauses in multiple contracts/irrelevant disputing contracts
- Consolidation of disputes after the Arbitral Tribunal is constituted

Arbitration duration & cost at some arbitration institutions

Median duration of arbitration for all tribunals (months) (*)



* International Centre for Dispute Resolution® (ICDR®), Arbitration Report on Time and Cost Considering the Impact of Settling International Arbitrations



Expedited procedure could rush-up the duration

COMPARISON BOARD ON ARBITRATION FEE OF SOME INTERNATIONAL ARBITRATION INSTITUTIONS

	SIAC	VIAC	ICC
Minimum value in dispute	~ USD 35,306	~ USD 4,059	N/A
Minimum fee with the minimum value in dispute	~ USD 11,943	~ USD 670	~ USD 5,000 non-refundable filing fee
Arbitration fee with the value in dispute of USD 60,000	~ USD 20,017 (not including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Travel and accommodation expenses of Arbitrator)	~ USD 4,337 (Including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Not including Travel and accommodation expenses of Arbitrator)	~ USD 25,601 (not including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Travel and accommodation expenses of Arbitrator)

Observations

Foresee the Cost Strategy from Observation of the reimbursement of Legal Costs at VIAC



Lawyer's fees are recoverable upon request of party

Foreign lawyers can practice at VIAC

Favorable policy of waiving arbitration fees for the legal costs claim

85% claims on recovery of legal costs **granted** (partially or wholly)

15% cases where supporting evidence for recovery of legal costs determined **insufficient**

5% cases where Respondent **only** claims for recovery of legal costs

26 cases where a legal team consisting of 2 or more law firms (collab) to defend a party

Highest granted amount of lawyer's fees:
~**109.8 Bil VND**
[~4.5 Mil USD]

In a case of value in dispute:
~**5,600 Bil VND**
[~236 Mil USD]

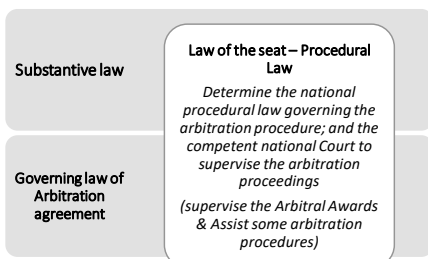
Notes for Arbitration users

WHAT TO LOOK FOR IN AN ARBITRAL INSTITUTION?

- Permanency
- Modern rules of arbitration
- Specialized & Professional staff
- Reasonable costs and fees

Redfern & Hunters on International Arbitration (6th edition - 2015)

CHOICE OF LAW



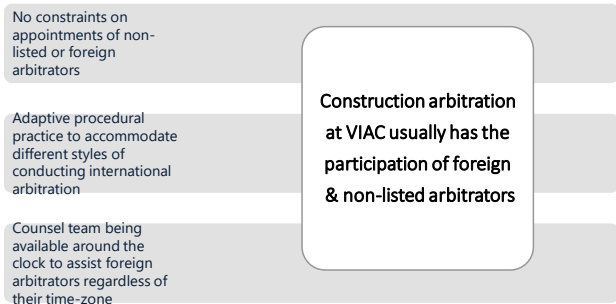
SELECT AN ARBITRATOR

"ARBITRATION IS AS GOOD AS ARBITRATOR"



- Industry Knowledge
- Language Ability
- Reputation/Credibility for Independence and Impartiality
- Experience in Arbitration

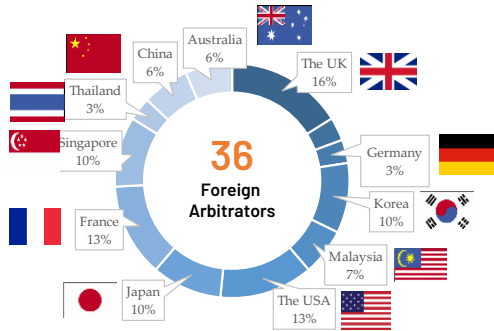
ENERGY ARBITRATION AT VIAC



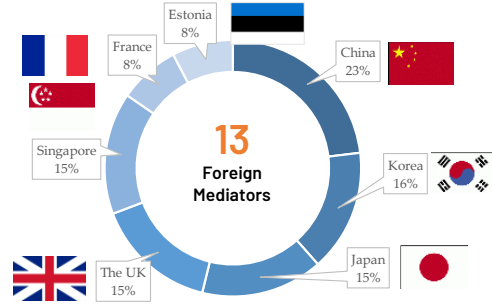
Notes for Arbitration users



198 Arbitrators | **162** Vietnamese Arbitrators | **36** Foreign Arbitrators



58 Mediators | **45** Vietnamese Mediators | **13** Foreign Mediators







**THANK YOU
FOR YOUR ATTENTION!**