

# VIAC

VIETNAM INTERNATIONAL ARBITRATION CENTRE

## 2021 VIAC's ARBITRATION SERIES



# CHOICE OF SEAT OF ARBITRATION FOR VIETNAM-RELATED DISPUTES

Sharings about arbitration practice in Vietnam and Singapore



2 PM, 25th (Fri) June 2021



Livestream on Zoom platform



# 01

What to consider when choosing a seat of arbitration for contracts with foreign elements in Vietnam?

# 02

Practical issues in arbitration procedures regarding seat of arbitration



KEYNOTE SPEAKER

## DANG XUAN HOP (Mr.)

Chairman of Hop Dang's Chambers  
VIAC's Listed Arbitrator



### EDMUND J KRONENBURG (Mr.)

Managing Partner  
of Braddell Brothers LLP  
VIAC's Listed Arbitrator



### DOAN NHAT MINH (Mr.)

Senior Associate, VILAF



### DAO NHU NGOC LINH (Ms.)

Counsel at VIAC Secretariat



PAN

## CHƯƠNG TRÌNH

Time	Content
2pm – 2.10pm	Opening Speech
2.10pm – 2.40pm	<p><b>What to consider when choosing a seat of arbitrator for contracts with foreign elements in Vietnam?</b></p> <ul style="list-style-type: none"> <li>○ The nature of seat and legal consequences of selecting a seat?</li> <li>○ What the parties should consider in the selection of the seat of arbitration?</li> <li>○ What the arbitrators should consider in the selection of the seat of arbitration in the absence of the parties' agreement?</li> </ul>
	<p><b>Keynote Speaker</b></p> <p><b>Mr. Dang Xuan Hop</b> – Chairman of HopDang's Chambers, VIAC's Listed Arbitrator</p>
2.40pm – 3.40pm	<p><b>Practical issues in arbitration procedures regarding seat of arbitration.</b></p> <ul style="list-style-type: none"> <li>○ Drafting an explicit or implicit arbitration agreement on the seat of arbitration? Advantages and legal risks in practice?</li> <li>○ Most crucial factors influencing the choice of the seat of arbitration;</li> <li>○ Experts share a Decision which showcases the supporting or supervising role of the Court of the seat; and comment based on the criteria of selecting a seat of arbitration;</li> <li>○ Is seat-shopping effective?.</li> </ul>
	<p><b>Moderator</b></p> <p><b>Mr. Dang Xuan Hop</b> – Chairman of HopDang's Chambers, VIAC Listed Arbitrator</p>
	<p><b>Panelist</b></p> <p><b>Mr. Edmund J Kronenburg</b> – Managing Partner of Braddell Brothers LLP, VIAC's Listed Arbitrator</p>
	<p><b>Mr. Doan Nhat Minh</b> – Senior Associate, VILAF</p>
	<p><b>Ms. Dao Nhu Ngoc Linh</b> – Counsel at VIAC Secretariat</p>
3.40pm – 4.10pm	Q&A
4.10pm – 4.20pm	Closing Speech

## Choosing the seat of arbitration

Hop Dang  
[hop@hopdang.com](mailto:hop@hopdang.com)

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## Purposes of presentation

- The concept of the seat of arbitration
  - Seat/place/venue etc.
- Factors to consider when parties choose the seat; and
- Factors to consider when the tribunal chooses the seat.

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## Context

- Contract being negotiated between two parties from two different countries e.g. a Vietnamese party and a French party;
- Options for seat of arbitration:
  - Vietnam?
  - France?
  - Singapore (third neutral)? or
  - Not stated.

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## Context

- Often (not always) not relevant for disputes between only domestic parties, governed by domestic law, all within one country.
- Note that in Vietnam:
  - The choice of a city/ province as the seat may be important in determining the court / enforcement agency having jurisdiction.

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## Context

- Disputes arising out of this contract shall be resolved by arbitration at the VIAC by [3] arbitrators ....
- The seat of the arbitration is ...
- The language of arbitration is ...
- The governing law of the contract is ....

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## The SEAT

- If you don't specify a seat in the arbitration clause, it may be like driving blindfolded!!
- If there is a dispute, you may be in for a lot of uncertainties / difficulties.
- So what is it?

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## What is the seat of arbitration?

- The legal system in which the arbitration agreement exists:
- A fish in a fish tank: find a picture of this!

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## How is the seat chosen?

- It could be chosen by the parties directly by stating in the contract:
- *“Disputes arising out of or in connection with this contract shall be resolved by arbitration at the VIAC. The seat of arbitration shall be Singapore ....”*

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## How is the seat chosen?

- Less ideal: it could be chosen by the parties indirectly through choosing the arbitration rules of an institution:
- SIAC Rules 2013 (now replaced):
- *The parties may agree on the seat of arbitration. Failing such an agreement, the seat of arbitration shall be Singapore, unless the Tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.*

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## How is the seat chosen?

- If not agreed by the parties, then, the Tribunal will choose.
- *“The place of arbitration shall be as agreed by the parties. Otherwise, the Arbitral Tribunal shall determine the place of arbitration it considers appropriate.*

*(VIAC Rule 22.1)*

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## Functions of the seat

- Determining the nationality of the arbitration which helps identify:
  - The procedural law that governs the arbitration; and
  - The local courts that will supervise the arbitration / set aside the award.
- Without the seat, no one knows what to do!
- *“You will fail the exam if you don’t specify the seat in the award!!!”*

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## Seat v. Place v. Venue

- The seat of arbitration is the legal birthplace of the arbitration, determining its nationality;
- Also often called “place of arbitration”.
- Contrast the place/venue of the hearing is simply the physical location where the hearing or other steps of the proceedings take place.

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## Seat v. Place v. Venue

- *Personally, to avoid confusion, I would use:*
- *“seat of arbitration”, not “place of arbitration”; and*
- *“Venue of hearing”, not “place of hearing”.*

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## Please avoid confusion like in *P&ID v. Nigeria*

- ... if any .. dispute arises, ... a Party may serve on the other a notice of arbitration under the rules of the *Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004)*.
- The venue of the arbitration shall be London, England.
- Different courts have different views on the meaning of this!
- US\$ 6.6 billion at stake!

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## Is VIAC a seat?

- The VIAC is not a seat. It is only an office / an institution. It is not a “legal system”.
- After specifying the VIAC, you still need to choose the seat:
  - Vietnam
  - France
  - Singapore
  - etc

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## Practical examples

- If the seat is Vietnam, the award must be issued within 30 days from the hearing date. If the seat is Singapore, no time limit.
- If the seat is Vietnam, the award could be set aside if the tribunal relied on “false evidence”. If the seat is Singapore, no such ground.
- If the seat is Vietnam, probably the statutory limitation period is 2 years. If the seat is Singapore, it may be longer, depending on the governing law of the contract.

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## Factors to consider

- Parties:
  - Neutrality!
  - Quality of the legal system;
  - Quality of the court system;
  - Quality of the legal profession;
  - Quality of the arbitration profession and ancillary services.
  - Quality of the award – enforceability (New York convention country?)
  - Which seat do the parties like/trust the most for your contract???

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## Seat in Vietnam or another country?

- Different parties, different perspectives!
- Regarding enforcement:
  - If enforcement in Vietnam, having a Vietnam seated arbitration/award will avoid the recognition process for foreign arbitral awards.
  - If enforcement in another country, perhaps better for it to be seated in that country?

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## Choice of a foreign seat

- Pros
  - Quality of legal system, court and arbitration systems;
  - Quality of award for enforcement;
- Cons
  - Inconvenience?
  - Costs?
  - Lack of familiarity with the legal system, the court system.
  - The need to engage foreign lawyers;
  - The need for the award to be recognized and enforced in Vietnam.

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## Vietnam or Singapore?

- Impossible to give a “one size fits all” answer. It all depends on the contract, the parties’ perceptions and the relevant circumstances at the time.
- Sharing a story.

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## Factors to consider

- Tribunals:
  - Often starting with the rules:
  - VIAC Rule 22.1
  - The place of arbitration shall be as agreed by the parties. Otherwise, the Arbitral Tribunal shall determine the place of arbitration it considers appropriate.

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## Factors to consider

- SIAC Rule 21.1
- The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.

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## Factors Tribunals take into account

- Proximity between the potential seat and the parties / transaction / arbitration agreement;
- Quality and efficiency of the process;
- Enforceability (New York convention).
- Neutrality;
- Other relevant considerations on a case by case basis.

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## Conclusions

- Key elements in an arbitration clause:
  - Institution
  - Seat
  - Governing law
  - Language
- The seat goes to the heart of the award, determining its nature and enforceability. It needs to be chosen carefully.
- Discussion time!

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**Webinar 04: Choice of seat of arbitration for Vietnam-related disputes – Sharings about arbitration practice in Vietnam and Singapore**

**Panel:**

- **Dang Xuan Hop** – Chairman of HopDang's Chambers, VIAC's Listed Arbitrator
- **Edmund J Kronenburg** – Managing Partner of Braddell Brothers, VIAC's Listed Arbitrator
- **Doan Nhat Minh** – Senior Associate, VILAF
- **Dao Nhu Ngoc Linh** – Counsel at VIAC Secretariat

No.	Q&A	
1	<p><b>As far as I read the 6th edition of Redfern &amp; Hunter (a gift I got from VIAC), it is now encouraged that Parties to agree on seat of arbitration to be a specific city (of a nation). I am wondering whether such agreement implies agreement on both seat of arbitration and location of hearings? the interpretation of such implied agreement is of importance as in law of commercial arbitration in Vietnam, if parties have agreement on location of hearings, the arbitration tribunal could not override such agreement. Is that regulation the same in other jurisdiction / other rules of arbitration?</b></p>	
	<p><b>[Mr. Hop]</b></p>	<p>Basically, the question got three parts to it: first part is the choice of a city as opposed to the choice of a country or a legal system we talked about and what does that mean; the second part is whether the choice of a city also implies both seat and venue; and third under the Vietnamese law if the parties have agreed on a particular matter, like the location of the hearing, the tribunal could not override that, is that the same in other countries?</p> <p>Choice of a city as opposed to the choice of a country: As I was saying in my presentation, as far as Vietnam is concerned, it would be nice to know in advance which court you will go to. So you choose Hanoi for example, you put the agreement not only in the legal system of Vietnam as a whole, but also you know that you will go to the court of Hanoi if you have any issues as opposed to having a fight over which court will have jurisdiction.</p> <p>I recently had a case, so the institution asked me to handle the case, and the agreement specifically said “There shall be physical hearings to take place in Ho Chi Minh City”, that’s what they say in the contract. I had to decline because I can’t do it. The institution was trying to convince me that, but in this day and age, there’s got to be an implied term that if this is not physically possible then you can do it online. I said “Well, I cannot run that risk, if others can do it for me then.” I decline the case for three others in Ho Chi Minh City, but if the parties have agreed, it’s very hard for me, and why should I do it? I do not see the rationale, unless there are exceptions.</p>
	<p><b>[Mr. Edmund]</b></p>	<p>The choice of a seat should refer to a legal jurisdiction. If the legal jurisdiction is a city, then you specify the city, if the legal jurisdiction is the country, you specify the whole country, like Singapore, you can specify Singapore. The presumed location of the hearing, if it’s not specified most tribunals will start from the premise that it will be in the</p>

No.	Q&A	
		<p>same location as the seat. So if the seat is Singapore, they will presume Singapore is the location of the hearing. But the Tribunal should still ask the parties “Is this the most convenient location, are there any better locations?” and you can have the hearings in different locations. I had an arbitration where we had part of the arbitration in Singapore, part of the arbitration hearing in California, actually. It really depends sometimes where the witnesses are. There's a sort of presumption but you can, you should in fact, as the Tribunal, ask the parties where they want to have the hearing.</p> <p>Can the Tribunal override the parties' agreement? The Tribunal has a say in the entire process obviously, but if both parties are saying “We would like to have the hearing in Hawaii”, the tribunal should try to give effect to that, unless he has major problems with Hawaii, for example he's allergic to the sun and sea and the sand. In which case he would say “Well that puts me at health risks and I do not want to fly there”. Or they want to have the hearing in Moscow and there are people in Moscow out to kill him and he does not want to go there, then he should just tell the parties “I would love to give effect to your agreement but I have a problem.”</p>
	[Ms. Linh]	<p>Personally, to me, such an agreement on a particular city of a country does not necessarily imply the hearing venue. Because obviously the parties want a particular city as a seat of arbitration means referring to the legal system as Mr. Kronenburg just mentioned. Especially, in the context of Vietnamese Law on Commercial Arbitration, the choice of a particular city as the seat of arbitration also has the meaning of determining the competent court supporting and supervising the arbitration as well. So, I do not think it necessarily implies the hearing venue. However, I have to agree with Mr. Kronenburg that if the tribunal has a power to decide on the hearing venue, then they may take into account the parties' choice of seat in order to make an appropriate decision on the hearing venue. If the parties have an express agreement, not implied one, on hearing venue, the tribunal shall acknowledge such express agreement.</p>
	[Mr. Minh]	<p>In other countries, it may be important to determine the seat of arbitration to be a specific city, because it may be a federal state, then each state has a specific and separate legal system and legal court, which may be important in some nations.</p>
2	<p><b>It is by law that there is distinction between place of arbitration and venue of hearings/meetings in arbitration. But in practice, is such distinction distinct? I once had a case at VIAC, no agreement on place or venue, the claimant filed the case in Hanoi and the Tribunal decided the place and venue to be Hanoi; then I had another case at VIAC but we filed the case in HCMC, then the Tribunal decided place and venue to be HCMC. I don't see such distinction. Could you please explain.</b></p>	
	[Mr. Edmund]	<p>I think in Vietnam, the peculiarity that I might not be the best person to comment on this problem, but I will see for international audience. In Vietnam, you have to be careful on where you find and what you regard as “the seat”. Because there are specific laws.</p>
	[Mr. Hop]	<p>I think just because in your two cases that the tribunals decided that the seat is the same as the present following, does not mean in the next case the decision should be the</p>



No.	Q&A	
		<p>same, it would depend on the accountancy. Legally speaking, there are different things as we're talking about it for a long time. I think in this day and days, with virtual hearing and everything, they are going to be really distinctive. Because there's no more physical place, it'll all be on Zoom, so you need to see those two different than physical hearing.</p>
	<p><b>[Ms. Linh]</b></p>	<p>It is hard to draw the distinction by the default provisions in Vietnamese law on commercial arbitration. Because although there is a definition of place of arbitration, it is not too clear about the seat. It's not about the term here, but there is a definition of the place or the seat of arbitration. However, there is no definition of hearing venue, the only provision I can draw your attention to is the article 3, paragraph 8 of the law on commercial arbitration which says: "If a place of arbitration is Vietnam, the award is considered to be rendered in Vietnam, regardless of the hearing venue". So may be by virtue of this provision, you can see the differences between seat of arbitration and hearing venue. Apart from the default provision in the law, there are another way to draw the distinction between these two concepts, placing on the consideration of the implication thereof. For example, regarding seat of arbitration, we refer to the legal system, procedural law, court system and enforcement route; whereas the hearing venue has other considerations, such as the convenience for the members of the tribunals, for parties, and other participants of the arbitral proceedings as well as associated expenses.</p>
	<p><b>[Mr. Minh]</b></p>	<p>In case the parties have no agreement on the place or the venue of the arbitration, the tribunal must decide which location, place or venue is appropriate. You do not give us full context of your cases, what you say is that the first case, you find the case in Hanoi, and the other case you find it in HCMC. Just my guessing, but I think that there are some kinds of connections between each case to the venue of the hearing or the place of arbitration. So, for example, in the first case, both parties are in HN, or in the second case, the projected office or the place where the contract is performed is HCMC, and may be the tribunal they based on the context of the case to decide the place or the venue of the arbitration is in HN, and for the second one, HCMC, but it's just my guessing on that. But I can confirm with you that they are still separate issues and concepts under the law of Vietnam.</p>
<p><b>3</b></p>	<p><b>There is a draft of resolution by the Vietnamese supreme court regarding the recognition and enforcement of foreign arbitral decisions. According to the draft, only final awards could be recognized and enforced in Vietnam; foreign provisional measures will not either be recognized or enforced. May I ask whether such draft regulation against international commitment of Vietnam? If I choose Singapore as the seat for my dispute and SIAC as the arbitration centre; is it the situation that a SIAC interim measures, in case the draft is passed, will be denied in Vietnam? If we could not change such regulation, may I choose VIAC to remedy the situation, of course the seat is Singapore.</b></p>	
	<p><b>[Mr. Hop]</b></p>	<p>My understanding, and I'd be happy to be corrected, is that so far the Vietnamese court take a, in my view, rather strict view of the concept of award, and it's got to be a final award. And that's partly because, I think, the Vietnamese Law on Commercial Arbitration</p>

No.	Q&A	
		<p>defines what a final award is. So if you want something that is not final and the court says “Not to do with me, I don’t know what this is, please go away.”, is that true? Have you had any experience trying to enforce an interim decision like that from overseas in a Vietnamese court and whether you have been successful if at all?</p>
	<p><b>[Mr. Minh]</b></p>	<p>I think there are two issues with this question. The first one is, as you say, whether the VN court and the Vietnamese law allows for the recognition and enforcement of interim measure, which is normally not the final award. And the answer No, under the Vietnamese law, only the final award can be recognized and enforced in Vietnam.</p> <p>But for the interim measures, there is another aspect to this question, I think, it is whether the Vietnamese court has the power or jurisdiction to support an SIAC arbitration with regard to some interim measures in Vietnam. Because, as a principle, the court who will have the power to handle the request for interim measures will be the court where the asset or where the interim measure is being applied. So, for example, this is a dispute between a Vietnamese party and a Singaporean party administered by the SIAC, and the Singaporean party wants to apply for the interim measure of a building or a land of the Vietnamese party in Vietnam. So, whether they can do it or they can find the interim measure to do it in this call. And the answer is uncertain, because, under the Vietnamese law, there is no express provision that requires the Vietnamese to support the SIAC arbitration in such case. And as far as I remember, there is a handbook of arbitration, negotiation and reconciliation, issued by the Supreme Court of Vietnam and the World Bank Group in 2017, in which you can find some kinds of implications that the Vietnamese court may only support the arbitration that takes place in Vietnam. So, I have some case like I have described before, for example the Singaporean party and the Vietnamese party, and the Singaporean party wants to apply for the interim measure in Vietnam, and it was not successful. That’s what I can share with you.</p>
	<p><b>[Ms. Linh]</b></p>	<p>To answer directly to the question, the solution of switching the choice of institution from SIAC to VIAC does not resolve the problem at hand. Because the seat of arbitration determines the legal system and the court system that provides support and supervision over the arbitral proceedings, and not to concern the arbitration institution, whether it is VIAC or SIAC. So, I think that is not the solution.</p> <p>What I think the parties may consider is, when they have the seat of arbitration in Singapore, you can determine that the Singaporean court is the competent court over the arbitral proceedings, therefore, they are competent in dealing with the request for application of interim measure. Once a decision on the application for interim measure is issued and they have problems in enforcing it, there might be some sort of cooperation or collaboration in this regard between the legal system and national court of Singapore and Vietnam in order to support in enforcement of such kind of interim measure. So, I think it might be one solution that the party might consider. If you can somehow foresee and predict the place where you need to seek enforcement of arbitral awards or</p>

No.	Q&A	
		application of interim measures, then you should choose that as a seat of arbitration in order to enable your wish.
4	<p><b>Different seats may have variations in the obligations of the tribunals and parties, for example duty of confidentiality. Vietnam and Singapore law listed this duty by default, but other "safe" seats like Paris don't have this duty in their laws. As I am a practitioner mainly in listed company which often requires confidentiality in dispute resolution, so should my company choose such jurisdictions to be seat of our dispute? In such situation, do we need a non-disclosure agreement among the tribunal members and the parties to ensure confidentiality?</b></p>	
	[Mr. Edmund]	<p>This is one clear example of consideration you should take into account before choosing the seat. In VN, Singapore and other jurisdiction, arbitration are confidential, but if you think that French arbitrations are not confidential, that is a negative point against French arbitration, especially if you want to keep the dispute from getting to the press or if it deals with some business secrets. Let's see you don't have a confidential arbitration, what can you do? You can still ask whether the tribunal would make an order that the parties would keep the proceedings and all the documents confidential. Then it's up to the tribunal whether they can make the order depending on the power of the tribunal and the law of the seat, even if it is not a default provision, "Do I have the power to do that? Should I do that to promote the parties' interests in the case?". So if the tribunal agrees to do that, then it's the question whether you can enforce that. It comes back to whether the court's willing to enforce such an order made by the tribunal. So again, a lot of things just fall back to the choice of seat. More of a story to choose your seat carefully.</p>
5	<p><b>As you may know, the ODR in international arbitration has been made feasible under the impact of the COVID 19 pandemic. In case the parties have yet to determine the seat of arbitration in the arbitration agreement and the parties bring their dispute to VIAC or SIAC and the procedures would be resolved in a virtual or online manner entirely. In this case, what approach do we have to determine the seat of arbitration?</b></p>	
	[Mr. Hop]	<p>I think, from my perspective, whether you have the hearing online or in real life has no relevance on the choice of seat as we have been talking about so far. So, if you do not specify the seat in the agreement, the tribunal has to do it based on the factors we talked about earlier. But it is advisable for the parties to choose the seat in advance, whether Vietnam or Singapore or elsewhere, so that when we come to conduct the proceedings online, we will do so online but in the shadow of that particular system governing the proceedings as a method of procedure.</p>
6	<p><b>Is an arbitral award issued by a tribunal of VIAC using Vietnamese law as the law of the seat a domestic or foreign one? As I can see, it is a domestic award under Vietnamese arbitration law but a foreign one under New York convention. Since determining whether an award is domestic or foreign impacts its enforcement procedure, I look forward to hearing the experts' opinions.</b></p>	

No.	Q&A	
	<b>[Mr. Hop]</b>	My personal view on this matter is that under both the Vietnamese law and the New York Convention, these are domestic award with the seat in Vietnam. But others and the court may disagree, so there is a bit of uncertainty in this situation.
7	<p><b>I am an in-house lawyer of a big manufactures in Vietnam, to be honest, I am not familiar with either Vietnamese or Singaporean arbitration in practice though I did read quite a lot about arbitration (I participated in many events by VIAC). Needless to say Singaporean arbitration is at its advanced developments and many foreign laws on arbitration are more efficient than Vietnamese ones. However, when in Rome do as Roman do is a conventional rule. I do understand there are advantages and disadvantages of selecting the procedural law to be Vietnamese or Singaporean; therefore, I am thinking of the possibility that there could be some kind of alliance or joint venture of VIAC and SIAC so parties in arbitration could have both. Is that even feasible?</b></p>	
	<b>[Mr. Edmund]</b>	I think it is an interesting idea but also quite problematic. Again, VIAC doesn't necessarily mean a Vietnam seat, SIAC doesn't mean a Singapore seat. You could have a Vietnam-seated arbitration governed by the SIAC rules. So, each institution will come up with their own rules to suit their particular circumstances. But I think what would be a little bit more interesting is whether the two jurisdiction, Singapore and Vietnam, the legal systems, could work together to support one another. If you have, for example, a VIAC arbitration seated in Singapore and the tribunal makes some sort of conservatory or protective measure to order security or to make an injunction, that order can then be taken to the Vietnamese courts for it to enforce to support the VIAC arbitration that is happening with Singapore as the seat. I think that will be really interesting and that requires not the discussion between VIAC and SIAC, that is the discussion between the Singapore court and the Vietnam court. If we can get the discussion going, not only between Singapore and Vietnam, but Singapore, Vietnam, Indonesia, Thailand, everyone in ASEAN, because we are all in this part of the world, we should all help one another. If we could get that discussion going, it would be simply excellent.
	<b>[Mr. Hop]</b>	My personal tip from pending those discussions taking place as Edmund was contemplating, I think for the moment it is much safer to choose one particular seat. But when you mix the two you have quite a bit of a problem, it's like marrying two women or two men at the same time. You want to be very careful. Just choose one, one is enough for the moment.
	<b>[Ms. Linh]</b>	I totally agree with what has been said by Mr. Kronenburg. It is very difficult to take advantage of both seats of arbitration, especially because both two countries and their legal systems are separate and unique, so not to mention it's quite impossible to take advantage of both seats of arbitration. However, apart from what has been said by Mr. Kronenburg, for your information, VIAC and SIAC have been engaging each other in many of the joint activities in order to provide more insights into arbitration-related issues in both countries so as to better prepare our users for their arbitral proceedings so that they will be ready if they have to sometimes go to arbitration. And also the solution to your question is to carefully study the specific features of your transactions and potential

No.	Q&A	
		disputes that might arise during the course of your transactions as well as to take into account all the other relevant factors as previously mentioned by our speakers.
8	<p><b>From the speakers' presentation, I personally think it is hard for Vietnamese judges to separate the place of arbitration as a legal home from the physical location of the hearing. May be there is a risk of the award being annulled in case the place of arbitration and the physical location of the hearing are different?</b></p>	
	<b>[Mr. Minh]</b>	So theoretically speaking, and in practice we have seen cases and some comments from the practitioners that it may be confusing and difficult for Vietnamese court to differentiate between the place of arbitration and the venue of the hearing. However, it is not quite popular these days, especially in case the modern and advance courts like in Hanoi or HCMC or Danang or some other courts. So in case you have to convince the court that they are two different issues, you should try to make it as clear as possible with reference from the decisions of other courts, like the Hanoi courts or HCMC courts for these courts to see that they are kinds of the separate issue. If you can find some kinds of cases from the higher-level courts, like the High Court, or even the Supreme Court, they would be a reliable source to be convinced by your opinions.
	<b>[Ms. Linh]</b>	The question may create a dawn impression of choosing Vietnam as the seat of arbitration because of the potential risk of enforcement of the final award if the court misunderstands or confuses between the two very basic concepts. We are a very young jurisdiction in arbitration and it is still developing. In the course of that, VIAC has been continuously working closely with the court system and all the local courts in order to ensure that they understand to the best of their content and to understand most of the basic concepts and not to misunderstand or confuse when considering or review the arbitral award. So we are still keeping that kind of collaboration and cooperation channel in order to support and brighten the future of arbitration in Vietnam.
9	<p><b>On the basis of the delocalization theory, would you think that one day the seat could be abolished from arbitration, or in other words, the seat will evolve into something international/supranational.</b></p>	
	<b>[Mr. Hop]</b>	I think this concept was raised 25 years ago, and in my view, I think it has since then been dead. You cannot be driving without a traffic law; how would you drive without a traffic law hanging over you? You must know what to do. That is my view, it will not go away, it is here to stay, and based on current legal frameworks. But I am interested to see if other panellists disagree with me.
	<b>[Mr. Edmund]</b>	I agree with Mr. Hop. As I said, the arbitration agreement is nothing without the law that gives it force, so you need to know what the law is. The law is influenced by the seat or determined by the seat. If you do not have a seat, you do not have a law, and if you don't have the law then the arbitration agreement is written in water. And by the same token, I am just going to try and jump on another question at the same time. If the courts at the seat set aside an award, they are effectively saying it never took place, and so the law withdraws its support for the award and the arbitration, and therefore the arbitration is a

No.	Q&A	
		nullity. So, it all goes together: you need the seat because it tells you what law gives force to the arbitration agreement.
10	<b>When there is a conflict between the provisional regulations of VIAC rule and the mandatory regulations stipulated in the Singaporean law, how can it be dealt with?</b>	
	<b>Mr. Edmund</b>	Singapore is a model law country so a lot of provision in Singapore are not mandatory in the sense that, there is a default position, but the parties can agree otherwise, so you listen to the rule to tell you what the parties agree, either under the rule or what is actually in the arbitration. But if it is a mandatory provision in Singapore law, e.g., the arbitration agreement must be in writing, no other rules could undo or contest that. You must give effect to the Singapore laws regardless of what the rules say.
11	<b>As you said earlier: since April 2020, how effective did online courts in Singapore perform, compared to that of offline court before? And what is most challenge?</b>	
	<b>[Mr. Edmund]</b>	From my experience, it is highly effective, not because I am a Singaporean, but we are able to make our arguments, we are able to address the judges, we save a lot of time travelling to the court, we can do this from our offices or from home. The biggest challenge: showing documents to the court to ensure that the court is on the same page. So, we have to use technology to ensure that the court is looking at the same page, the most basic of which would be to share the screen, but that's difficult because we control what the court can see and what the court can't see. Sometimes it's not really fair, because you miss out the next paragraph and things like that. As a matter of fact, the law society of Singapore is working out something to make that a bit better and the Academy of Law as well in Singapore. So that's the biggest challenge: showing documents to the court and to witnesses.
12	<b>Can you summarise your opinion to avoid possible confusion to the audience? Does the choice of seat mean (i) selection of supervisory court; (ii) procedural arbitration procedure (or mandatory rules only); (iii) governing law of arbitration agreement (under New York Convention 1958) and (iv) place of the hearing or all?</b>	
	<b>[Mr. Hop]</b>	The choice of seat certainly means it provide record so the court of Singapore would provide the proceeding if you choose the Singapore seat. The same go for arbitration procedures. The procedures apply as a whole, and the mandatory rules are the rules you cannot opt out of, the mandatory rules certainly apply. Regarding non-mandatory rules, you got the option to depart from it, but the whole law would apply as governing law over the arbitration agreement.
	<b>[Mr. Edmund]</b>	The arbitration clause in the contract is regarded as a separate agreement from the rest of the contract, which is called the doctrine of separability. Because it is separated from the contract, it got its own governing law. The governing law could be the same with the governing law of the contract or it could be different. Whether it is the same or not, depending on what stated in the arbitration clause itself. If the arbitration clause said it

No.	Q&A	
		is governed by the law of a specific law, even if the contract is governed by a different law, the arbitration law will still be governed by its own law. If the arbitration clause is silent as to what its governing law is, that would be solved out by the courts or tribunal. In looking at this factor, is there an implied choice? If it's an implied choice of what the governing law is, it's the answer.
13	<b>In case of an online arbitration, where the parties did not agree on the seat in their arbitration agreement, such arbitration is kind of decentralized, as it is conducted in cyberspace; and therefore, the seat of arbitration has yet to be determined. Given so, if the parties raise dispute against each other on the seat matter (since it matters to the later enforcement process), on what ground can the tribunal determine the seat of such online arbitration?</b>	
	<b>[Mr. Hop]</b>	Again, as I was saying before whether it is online or offline has got nothing to do with the seat. The seat discussion is a separate matter from the manner of the hearing. If the parties have not agreed on the seat, the tribunal will choose a seat for them based on the factors we talked about since we started: neutrality, proximity, etc. The Tribunal will base on those grounds to choose a seat for the arbitration, whether online or not.
14	<b>Thanks a lot for all your insights, they are immensely helpful. I just have a quick question: To make it clear in the agreement, what would be the appropriate Vietnamese wording for seat of arbitration, so that to differentiate between the seat and the hearing venue. Normally in Vietnam currently we use “địa điểm trọng tài” and I understand that it refers to hearing venue only.</b>	
	<b>[Ms. Linh]</b>	I agree that it's not all about the terminology that you may use. Its more about the legal concept and definition and interpretation of the law. There is no definition of the hearing venue in the law of commercial arbitration, but if you look at the consideration of a specific provision on the hearing venue, Art 11.2 of Law on Commercial Arbitration, designated specially for the hearing venue, you'll see the all considerations that the law has provided that the tribunal may take into account when deciding on the hearing venue, which is the convenience for parties, tribunal member, other participants all your insights, as well as associated expenses and other considerations think it fits. If you look at those implications and the consideration as well as definition of arbitration place in the law, you may have an idea how to distinguish and see the differences between the concepts, and do not get confused just because of the terminologies.
15	<b>Based on the principle of separability. How can the Vietnam court set aside the award?</b>	
	<b>[Ms. Linh]</b>	The principle of separability is provided in Article 19 of the Law on Commercial Arbitration, which states that arbitration agreement is separate from the main contract. The change, amendment, extension, cancellation or validity or in operation of the contract does not affect the validity of the arbitration agreement.  The court may set aside award if it falls under any circumstance prescribed in Article 68 of the Law on Commercial Arbitration.



No.	Q&A	
16	<p><b>Our corporation is applying 2 groups of model contracts for international transactions and transactions in Vietnam. The first group contains arbitration clause referring to ICC Shanghai Office, and the other refers to VIAC without further clarification on place of arbitration. Is it automatically interpreted that the place of arbitration shall be China and Vietnam?</b></p>	
		<p>This is generally not taken automatically as a reference to seat of arbitration in China or Vietnam because this is not an express agreement of the parties on seat of arbitration. Under ICC Rules and VIAC Rules, the tribunal shall have the power to determine seat of arbitration in the absence of the parties' express agreement thereon. In doing so, the tribunal may consider several factors, including but not limited to the place where the arbitration institution office is located, places of the parties, place where the contract is most closely connected, etc.</p> <p>In order to avoid an unexpected decision by the tribunal in this regard, it is recommended that parties specify their choice of seat in the contract.</p>
17	<p><b>If an arbitral award is set aside by the court of the seat, whether the winning party may bring such award to the court of a foreign country for recognition and enforcement because the winning party finds assets of the losing party in such country?</b></p>	
	<p><b>[Ms. Linh]</b></p>	<p>New York Convention 1958 Article V.1 provides that "recognition and enforcement of the award <b>may</b> be refused if the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made". Therefore, this depends on the law of the place where recognition and enforcement are sought as well as the view of competent court in such country. Most countries follow the principle that an award that has been set aside by the court of the seat has no legal effect as if it no longer exists, and therefore cannot be enforced. However, some particular courts in France, the Netherlands or England for example, have decided otherwise based on the principle of delocalisation of international arbitration.</p>

**\*Disclaimer:**

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