

The background features a stylized globe with a network overlay. The globe is dark blue with glowing yellow and orange city lights. A complex network of blue and orange lines connects various points across the globe, creating a web-like structure. The lines are thin and semi-transparent, allowing the globe's surface to be visible through them. The overall aesthetic is high-tech and global.

**Baker  
McKenzie.**

# **Legal Solutions for Foreign Investors in the Period of COVID-19**

Conference | December 17, 2021



# Two Areas

1

Solutions for Foreign Investors in the Period of COVID-19

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2

Strategies for Protecting Foreign Invested Enterprises with Legal Provisions and Measures to Prevent Disputes when Conducting Investment Authorities

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A stylized globe with a network overlay of blue and orange lines and dots, representing global connectivity or data flow. The globe is partially visible on the right side of the frame.

1

# **Solutions for Foreign Investors in the Period of COVID-19**

# FDI in the Period of COVID-19

## Uncertain Future for Global Trade & Investment



New Focus on "Resilience" in export markets prompting "on-shoring" movement.



Concern regarding weak points in global supply chains taking on strategic / security connotations



Need for investment destinations to stay competitive, reliable



Balancing public health concerns with impact on larger economy



The background features a stylized globe with a network overlay. The globe is dark blue with glowing yellow and orange city lights. Overlaid on the globe is a complex network of thin, light blue lines connecting various points, resembling a global communication or data network. Some points are highlighted with small red and blue circles.

**2**

# **Strategies for Protecting Foreign Invested Enterprises and Measures for preventing Disputes When Conducting Foreign Investment Activities**

# Investment Planning

Try to be clear on rights and remedies in advance



## Contractual and Licensing Protections

- Detailed Agreements in Advance
- Dispute Resolution Provisions in G2G Investment Agreements



## Investment Protection Insurance

- Investors Compare Treaty vs. Private Options



## Bankruptcy and Litigation



# Forms of Investment Protection

## Broad Range of Options



### Out of Court: Mediation, Arbitration

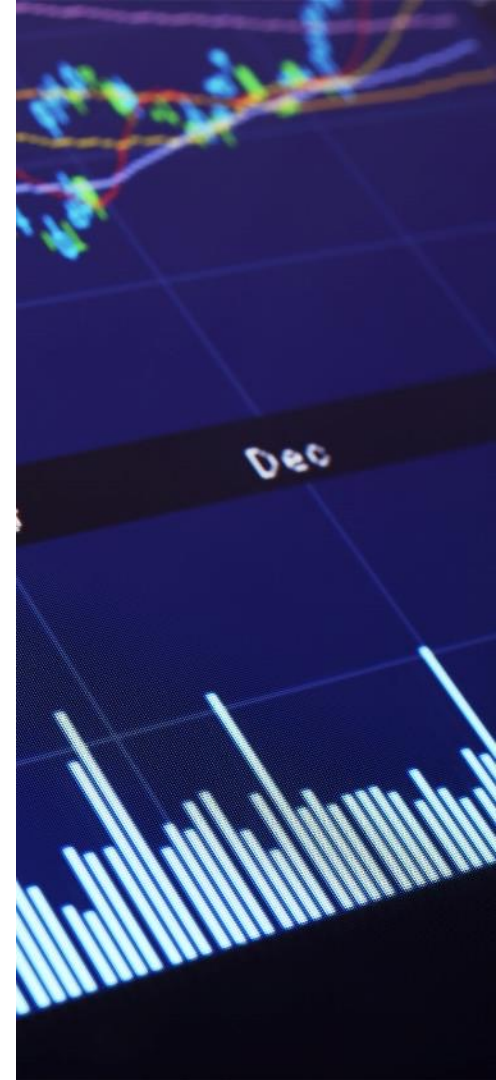
- Arbitration – Where is the Seat of the Arbitration, in Vietnam or abroad?
- Arbitrators – nationality requirements?
- Arbitral vs. Non-Arbitral disputes, Specialized Disputes



### In court: Conciliation, Litigation



### Under Treaty (Where the State is involved)



# Arbitration



A valid and enforceable arbitration agreement is a **MUST**

- **Valid arbitration agreement:** Signatory's authority, the agreement in written form, ...
- **Enforceable arbitration agreement:** The agreement refers to an existing arbitration center and applicable rules,...



Statute of limitation: 02 years



Arbitral awards are final unless they are set aside by a competent court.





# Arbitration

## Enforcement of the arbitral award/decisions

### Off-shore arbitral award/decisions (e.g. SIAC):

- Local recognition & enforcement procedure before a Vietnamese court may be required before the final award can be enforced in Vietnam
- Off-shore arbitrator's interim injunction orders are unlikely enforced in Vietnam.

### On-shore arbitral award/decisions (e.g. VIAC):

- Local recognition & enforcement procedure before a court is **not** required **unless** the debtor request the court to set aside the award/decisions
- VIAC and other local arbitrators can issue injunction orders.

# Court



Courts must refuse to accept case if there is a (valid and enforceable) arbitration agreement



Statute of limitation: generally 03 years



First-instance court judgements can be appealed to a higher court.

# Key points



Consider Divorce even at  
the Marriage



Horses for Courses



Scope of Arbitration  
Clause



Identifying Risks in  
Advance



Consider Treaty  
Framework



Extra-Legal DR still needs  
legal basis

# Questions



# Our Dispute Resolution team



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